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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 338

RIN 3064–AF89

Fair Housing Rule, Consumer Protection in Sales of Insurance Rule; Technical Correction

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Technical correction.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is making a technical correction to the FDIC's Fair Housing Rule to reinsert a previous instruction regarding the Equal Housing Lending Poster.

DATES: Effective on June 23, 2023.

FOR FURTHER INFORMATION CONTACT: Alys V. Brown, Senior Attorney, Legal Division, *alybrown@fdic.gov;* Thaddeus J. King, Policy Analyst, Division of Depositor and Consumer Protection, 202–898–3541, *thking@fdic.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Fair Housing Rule prohibits FDIC-supervised institutions from engaging in discriminatory advertising involving residential real estate-related transactions. The rule was last amended in August 2022 through a technical correction to reflect a reorganization and change in the name of the FDIC's former Consumer Response Center to the National Center for Consumer and Depositor Assistance and to add web addresses.[1]

In February 2021, the FDIC amended part 338 to make it applicable to State savings associations, and revised § 338.4 by removing the mailing address for the former Consumer Response Center and replacing it with a bracketed instruction to insert on the Equal Housing Lending Poster the address for the former Consumer Response Center as stated on the FDIC's website at *www.fdic.gov.*[2] Historically, the required language for the Equal Housing Lending Poster included only the mailing address for the former Consumer Response Center, now renamed the National Center for Consumer and Depositor Assistance.

In August 2022, the FDIC updated 12 CFR part 338 through a technical correction to replace the reference to ''Consumer Response Center'' in the bracketed instruction with its new name, the ''National Center for Consumer and Depositor Assistance,'' and to add the web address for the National Center for Consumer and Depositor Assistance complaint portal. When updating 12 CFR part 338 in August 2022, the bracketed instruction to include the mailing address was inadvertently removed.

Therefore, the FDIC is making a further technical correction to 12 CFR part 338 to reinsert the bracketed instruction for FDIC-supervised institutions to insert on their Equal Housing Lending Posters the mailing address for the National Center for Consumer and Depositor Assistance as stated on the FDIC's website at *www.fdic.gov.* Including the instruction for FDIC-supervised banks to insert the mailing address, rather than listing the National Center for Consumer and Depositor Assistance's current mailing address, helps ensure that posters contain the Center's up-to-date mailing address. Banks (and the public) can find the National Center for Consumer and Depositor Assistance's current mailing address by visiting *www.fdic.gov* and searching for ''National Center for Consumer and Depositor Assistance'' with the website's search tool. Banks that experience difficulty in determining the appropriate mailing address for the National Center for Consumer and Depositor Assistance for inclusion on the Equal Housing Lending Poster may contact the FDIC for assistance.

List of Subjects in 12 CFR Part 338

Aged, Banks, Banking, Civil rights, Credit, Fair housing, Individuals with disabilities, Marital status discrimination, Mortgages, Religious discrimination, Reporting and recordkeeping requirements, Savings associations, Sex discrimination, Signs and symbols.

Authority and Issuance

For the reasons stated in the preamble, the FDIC amends 12 CFR part 338 as follows:

PART 338—FAIR HOUSING

■ 1. The authority citation for part 338 continues to read:

Authority: 12 U.S.C. 1817, 1818, 1819, 1820(b), 2801 *et seq.;* 15 U.S.C. 1691 *et seq.;* 42 U.S.C. 3605, 3608; 12 CFR parts 1002, 1003; 24 CFR part 110.

■ 2. Amend § 338.4 by revising paragraph (b) to read as follows:

§ 338.4 Fair housing poster.

* * * * *

(b) The Equal Housing Lender Poster shall be at least 11 by 14 inches in size and have the following text:

We Do Business in Accordance with Federal Fair Lending Laws.

UNDER THE FEDERAL FAIR HOUSING ACT, IT IS ILLEGAL, ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEX, HANDICAP, OR FAMILIAL STATUS (HAVING CHILDREN UNDER THE AGE OF 18) TO:

- Deny a loan for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling or to deny any loan secured by a dwelling; or
- Discriminate in fixing the amount, interest rate, duration, application procedures, or other terms or conditions of such a loan or in appraising property.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC 20410, for processing under the Federal Fair Housing Act;

AND TO:

Federal Deposit Insurance Corporation, National Center for Consumer and Depositor Assistance, [FDIC-supervised institution should insert mailing address for National Center for Consumer and Depositor Assistance found at *www.fdic.gov*], *https://ask.fdic.gov/fdicinformationandsupportcenter,* for processing under the FDIC Regulations.

UNDER THE EQUAL CREDIT OPPORTUNITY ACT, IT IS ILLEGAL

[1] 87 FR 48079 (Aug. 8, 2022); 87 FR 49767 (Aug. 12, 2022).

[2] *See* 86 FR 8088 (Feb. 3, 2021).

TO DISCRIMINATE IN ANY CREDIT TRANSACTION:

- On the basis of race, color, national origin, religion, sex, marital status, or age;
- Because income is from public assistance; or
- Because a right has been exercised under the Consumer Credit Protection Act.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

Federal Deposit Insurance Corporation, National Center for Consumer and Depositor Assistance, [FDIC-supervised institution should insert mailing address for National Center for Consumer and Depositor Assistance found at *www.fdic.gov*], *https://ask.fdic.gov/fdicinformationandsupportcenter.*

* * * * *

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on April 18, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–08609 Filed 4–21–23; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0815; Project Identifier AD–2021–00679–T; Amendment 39–22401; AD 2023–06–15]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. This AD was prompted by reports of missing shims, a wrong type of shim, shanked fasteners, fastener head gaps, and incorrect hole sizes common to the left and right sides at a certain station (STA) frame inner chord and web. This AD requires inspecting for existing repairs, inspecting the area for cracking, and performing applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 30, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publications listed in this AD as of May 30, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0815; 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 identified in this final rule, 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–2022–0815.

FOR FURTHER INFORMATION CONTACT: Bill Ashforth, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3520; email: *bill.ashforth@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 certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. The NPRM published in the **Federal Register** on September 9, 2022 (87 FR 55325). The NPRM was prompted by reports of missing shims, a wrong type of shim, shanked fasteners, fastener head gaps, and incorrect hole sizes common to the left and right sides at a certain station (STA) frame inner chord and web. In the NPRM, the FAA proposed to require inspecting for existing repairs, inspecting the area for cracking, and performing applicable on-condition actions. The FAA is issuing this AD to address cracking in the left and right sides of STA 727 frame inner chord and S–18A web before the cracking reaches a critical length. This condition, if not addressed, could result in cracks in fatigue critical baseline structure (FCBS) and the inability of a principal structural element (PSE) to sustain limit load, which could adversely affect the structural integrity of the airplane.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from six commenters, including American Airlines (AAL), Aviation Partners Boeing (APB), Boeing, Southwest Airlines (SWA), United Airlines (UAL), and one individual. The following presents the comments received on the NPRM and the FAA's response to each comment, except the comment from an individual, which was outside the scope of this AD.

Request To Include Revised Service Information

SWA, UAL, and AAL noted that Boeing planned to issue Revision 1 of Boeing Requirements Bulletin 737–53A1402 RB, and requested consideration for its incorporation into the final rule.

SWA requested that the FAA issue a global AMOC for use of Revision 1 for the requirements.

AAL and UAL noted that the original requirements bulletin had two issues of concern:

- Figures 3, 4, 5, and 6 identify fastener part number (P/N) BACN11E4 as a replacement part. The commenters noted that the fastener has been superseded, and the alternative part, P/N BACN11E4V, is not listed in the Boeing Structural Repair Manual.
- Figures 5 and 6 specify installing a shim regardless of the measured gap, but also state that a gap of 0.006 inch is acceptable after shimming. AAL added that the original requirements bulletin does not give any instructions if the gap is 0.006 inch or less prior to shim installation.

The commenters noted that Revision 1 addresses both issues, and requested that the FAA either (1) delay issuance of the final rule pending release of Revision 1 or (2) revise the proposed AD to allow use of the alternative fasteners and forgo installation of a shim for a gap of 0.006 inch or less prior to shim installation.

The FAA agrees with the request. Boeing has confirmed that P/N BACN11E4 is no longer available, and the new replacement P/N is BACN11E4V. The FAA has reviewed Boeing Alert Requirements Bulletin

737–53A14020 RB, Revision 1, dated January 30, 2023, which updates the fastener callouts and clarifies that shim installation is not required when the measurement of the gap without shim and fasteners installed is 0.006 inch or less. These changes do not impose any additional work over that specified in the original requirements bulletin. The FAA has revised this AD to require accomplishment of Revision 1 of the requirements bulletin and to provide credit for the original requirements bulletin in paragraph (i)(1) of this AD.

Effects of Winglets on Accomplishment of the Proposed Actions

APB and SWA commented regarding the installation of blended or split scimitar winglets per Supplemental Type Certificate (STC) ST00830SE and the effect of that installation on compliance with the proposed actions. SWA further requested a change to paragraph (c) of the proposed AD to clarify that the installation of STC ST00830SE does not affect the accomplishment of the manufacturer's service instructions.

The FAA agrees to clarify that the installation of winglets per STC ST00830SE does not affect the accomplishment of the manufacturer's service instructions. Therefore, the installation of STC ST00830SE does not affect the ability to accomplish the actions required by this AD. Operators of airplanes with these winglets do not need to request a ''change in product'' alternative method of compliance (AMOC) approval as specified in 14 CFR 39.17. The FAA has redesignated paragraph (c) of the proposed AD as paragraph (c)(1) of this AD, and added paragraph (c)(2) to this AD accordingly.

Request To Correct Typographical Error

Boeing requested the correction of a typographical error in the ''Related Service Information under 1 CFR part 51'' section of the preamble of the NPRM. The commenter noted that ''HFECD'' should be corrected to ''HFEC.''

The FAA agrees with the request. The instance of ''HFECD'' has been changed to ''HFEC'' in the preamble of this AD as requested.

Request To Make Required Action Optional

SWA requested that the initial general visual inspection (GVI) for existing repairs be optional for airplanes in Group 1, Configuration 2, on which Boeing Alert Requirements Bulletin 737–53A1385 RB, dated August 16, 2019, has already been accomplished. SWA noted that Table 1 and Table 2 of Boeing Alert Requirements Bulletin 737–53A1385 RB, dated August 16, 2019, require the initial GVI for existing repairs, and that including this step in Table 3 and Table 4 of Boeing Alert Requirements Bulletin 737–53A1402 RB, dated July 2, 2021, would necessitate reporting that had already been done in Boeing Alert Requirements Bulletin 737–53A1385 RB, dated August 16, 2019. The commenter further noted that Boeing Alert Service Bulletin 737–53A1402, dated July 2, 2021, does not require re-reporting of existing repairs for Group 1, Configuration 1, airplanes after the shim installation or during the post-repair repetitive inspections.

The FAA partially agrees with this request. Boeing Requirements Bulletin 737–53A1385 RB specifies inspecting for existing repairs, contacting Boeing if any repair is found, and checking for a gap if no repair is found. The FAA agrees that reports for Boeing Alert Requirements Bulletin 737–53A1402 RB, dated July 2, 2021, Group 1, Configuration 2, need not be repeated if an inspection was previously done as specified in Boeing Requirements Bulletin 737–53A1385 RB. However, rather than making this required action optional, paragraph (i) has been added to this AD giving operators credit for completing that task before the effective date of this AD using Boeing Requirements Bulletin 737–53A1385 RB, dated August 16, 2019.

Request for Additional AMOC

SWA requested that for any AMOC received with regard to AD 2015–08–09, Amendment 39–18145 (80 FR 24195, April 30, 2015) (AD 2015–08–09), an AMOC to the proposed AD be included as well, to alleviate the requirement to obtain a revised FAA 8100–9 for any AMOC to the proposed AD.

The FAA does not agree with the request. AD 2015–08–09 mandated Boeing Alert Service Bulletin 737–53A1325, dated December 3, 2013, and this AD does not supersede AD 2015–08–09; therefore, AMOCs approved for AD 2015–08–09 will continue to be in force and are not affected by the required actions of this AD.

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 Requirements Bulletin 737–53A1402 RB, Revision 1, dated January 30, 2023. This service information specifies procedures for a general visual inspection of the left and right sides of STA 727 frame inner chord at S–18A for existing repairs, an open hole high frequency eddy current (HFEC) inspection of the left and right side entire stackup of the STA 727 frame inner chord at S–18A for cracking (for certain configurations), a surface HFEC inspection of the left and right side STA 727 frame inner chord at S–18A web for cracking, and applicable on-condition actions. On-condition actions include installation of a new shim, a surface HFEC inspection of the STA 727 frame inner chord at S–18A for cracking, and repair. 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 1,925 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
General visual inspection	2 work-hours × $85 per hour = $170	$0	$170	$327,250
HFEC inspection and shim installation	5 work-hours × $85 per hour = $425	0	425	818,125

The FAA estimates the following costs to do any necessary repairs or inspections that would be required based on the results of the inspection. The agency has no way of determining the number of aircraft that might need these repairs or inspections:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Inspection	3 work hours × $85 per hour = $255	$0	$255

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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:

2023–06–15 The Boeing Company: Amendment 39–22401; Docket No. FAA–2022–0815; Project Identifier AD–2021–00679–T.

(a) Effective Date

This airworthiness directive (AD) is effective May 30, 2023.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 737–53A1402 RB, dated July 2, 2021.

(2) Installation of Supplemental Type Certificate (STC) ST00830SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST00830SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of missing shims, a wrong type of shim, shanked fasteners, fastener head gaps, and incorrect hole sizes common to the left and right side station (STA) 727 frame inner chord and S–18A web. The FAA is issuing this AD to address cracking in the left and right side of STA 727 frame inner chord and S–18A web before it reaches a critical length. This condition, if not addressed, could result in cracks in fatigue critical baseline structure (FCBS) and the inability of a principal structural element (PSE) to sustain limit load, which could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–53A1402 RB, Revision 1, dated January 30, 2023, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–53A1402 RB, Revision 1, dated January 30, 2023.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–53A1402, Revision 1, dated January 30, 2023, which is referred to in Boeing Alert Requirements Bulletin 737–53A1402 RB, Revision 1, dated January 30, 2023.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–53A1402 RB, Revision 1, dated January 30, 2023, use the phrase ''the Original Issue date of the Requirements Bulletin 737–53A1402 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 737–53A1402 RB, Revision 1, dated January 30, 2023, specifies contacting Boeing for repair instructions or for alternative inspections: This AD requires doing the repair, or doing the alternative inspections and applicable on-condition actions using a method approved in accordance with the procedures specified in paragraph (j) 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 Requirements Bulletin 737–53A1402 RB, dated July 2, 2021.

(2) This paragraph provides credit for accomplishment of the most recent inspection and report as specified in the requirements of paragraph (g) of this AD, if those actions were performed before the

effective date of this AD using Boeing Alert Requirements Bulletin 737–53A1385 RB, dated August 16, 2019.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle 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) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-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, Seattle 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.

(k) Related Information

For more information about this AD, contact Bill Ashforth, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3520; email: *bill.ashforth@faa.gov.*

(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 Requirements Bulletin 737–53A1402 RB, Revision 1, dated January 30, 2023.

(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, *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on March 24, 2023.

Christina Underwood,

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

[FR Doc. 2023–08477 Filed 4–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1492; Project Identifier MCAI–2022–01184–T; Amendment 39–22407; AD 2023–07–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Canada Limited Partnership Model BD–500–1A10 airplanes. This AD was prompted by reports the overwing emergency exit door (OWEED) escape line may be incorrectly routed. This AD requires inspecting the OWEED escape line and correcting the routing if required, as specified in a Transport Canada AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 30, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 30, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1492; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The 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 material incorporated by reference in this AD, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email: *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca;* website: *tc.canada.ca/en/aviation.*

• You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2022–1492.

FOR FURTHER INFORMATION CONTACT: Chirayu Gupta, 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:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Canada Limited Partnership Model BD–500–1A10 airplanes. The NPRM published in the **Federal Register** on December 6, 2022 (87 FR 74522). The NPRM was prompted by AD CF–2022–51, dated August 30, 2022 (Transport Canada AD CF–2022–51), issued by Transport Canada, which is the aviation authority for Canada (also referred to as the MCAI). The MCAI states certain airplanes may have entered service with the OWEED escape line incorrectly routed, in a manner that would render it inoperable when needed. The OWEED escape line is used to facilitate passenger egress along the wings following a ditching event. It is possible for the OWEED escape line to be installed under the liner of the OWEED resulting in the escape line not deploying, which could cause possible injuries to passengers escaping over the wing following a ditching event.

In the NPRM, the FAA proposed to require inspecting the OWEED escape line and correcting the routing if required, as specified in Transport Canada AD CF–2022–51. The FAA is issuing this AD to address he unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1492.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from Air Line Pilots Association, International (ALPA) who supported the NPRM without change.

The FAA received an additional comment from one commenter, Delta Air Lines (Delta). The following presents the comment received on the NPRM and the FAA's response to each comment.

Request for Correction of Service Bulletin

Delta commented that step 2.3.4 in the Accomplishment Instructions of Airbus Canada Limited Partnership Service Bulletin BD500–256005 Issue 001 dated 14 April 2020, contains a typographical error. Delta noted that step 2.3.4 states ''Torque the screws (2) to 25 to 30 lbf·in. (2.82 to 3.39 Nm) (refer to AMP BD500–A–J20–31–00–00AAA–711A–A).'' Delta stated that Airbus Canada confirmed that the ''(2)'' reference is incorrect and should be ''(1).'' Delta added that ''screws (2)'' do not exist and are not identified in any other step or figure in Airbus Canada Limited Partnership Service Bulletin BD500–256005 Issue 001 dated 14 April 2020.

The FAA agrees and confirmed with Airbus Canada Limited Partnership that this is a typographical error and the correct reference in step 2.3.4 is ''(1).'' The FAA added paragraph (h)(2) to this AD to allow using the correct reference for the step.

Conclusion

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 referenced above. The FAA reviewed the relevant data, considered the 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 this product. 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

Transport Canada AD CF–2022–51 specifies procedures for doing a detailed inspection of the OWEED escape line routing and correcting the OWEED escape line routing, if required. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 4 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1.5 work-hours × $85 per hour = $128	$0	$128	$512

The FAA estimates the following costs to do any necessary on-condition action that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	$0	$85

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:

2023–07–05 Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Amendment 39–22407; Docket No. FAA–2022–1492; Project Identifier MCAI–2022–01184–T.

(a) Effective Date

This airworthiness directive (AD) is effective May 30, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Canada Limited Partnership (Type Certificate previously held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Model BD–500–1A10 airplanes, certificated in any category, as identified in Transport Canada AD CF–2022–51, dated August 30, 2022 (Transport Canada AD CF–2022–51).

(d) Subject

Air Transport Association (ATA) of America Code: 25, Equipment/furnishings.

(e) Unsafe Condition

This AD was prompted by reports the overwing emergency exit door (OWEED) escape line may be incorrectly installed. The FAA is issuing this AD to ensure the OWEED escape line is installed correctly. The unsafe condition, if not addressed, could result in the OWEED escape line not deploying, resulting in possible passenger injury following a ditching event.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Transport Canada AD CF–2022–51.

(h) Exceptions to Transport Canada AD CF–2022–51

(1) Where Transport Canada AD CF–2022–51 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where step 2.3.4 of the service information referenced in Transport Canada AD CF–2022–51 specifies torqueing screws, replace the text ''screws (2)'' with ''screws (1).''

(i) Additional 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; or Airbus Canada Limited Partnership's Transport Canada Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Additional Information

For more information about this AD, contact Chirayu Gupta, 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 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) Transport Canada AD CF–2022–51, dated August 30, 2022.

(ii) [Reserved]

(3) For Transport Canada AD CF–2022–51, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email: *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca;* website: *tc.canada.ca/en/aviation.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material 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 April 4, 2023.

Christina Underwood,

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

[FR Doc. 2023–08593 Filed 4–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0028; Project Identifier MCAI–2022–01164–T; Amendment 39–22404; AD 2023–07–02]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2022–03–12, which applied to all Airbus SAS Model A330–200, –300, –800, and –900 series airplanes; and Model A340–200, –300, –500, and –600 series airplanes. AD 2022–03–12 required replacing the doghouse door lock placard with an improved instruction placard. This AD was prompted by reports that the instructions on the doghouse door lock placard are unclear and incomplete, and by a determination that additional parts need to be modified. This AD continues to require the actions in AD 2022–03–12 and expands the list of affected parts, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also prohibits the installation of affected parts under certain conditions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 30, 2023.

The Director of the Federal Register approved the incorporation by reference

of a certain publication listed in this AD as of May 30, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0028; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The 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 material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this material 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 in the AD docket at *regulations.gov* under Docket No. FAA–2023–0028.

FOR FURTHER INFORMATION CONTACT:

Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email *vladimir.ulyanov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2022–03–12, Amendment 39–21929 (87 FR 8169, February 14, 2022) (AD 2022–03–12). AD 2022–03–12 applied to all Airbus SAS Model A330–200, –300, –800, and –900 series airplanes; and Model A340–200, –300, –500, and –600 series. AD 2022–03–12 required replacing the doghouse door lock placard with an improved instruction placard. AD 2022–03–12 also prohibited the installation of affected parts under certain conditions. The FAA issued AD 2022–03–12 to address possible incorrect operation of the doghouse door lock due to unclear and incomplete handling instructions on the door placard installed near the lock. This condition, if not addressed, could lead to failure of the latch, which could block the door in the closed position and prevent access to the emergency equipment inside the doghouse.

The NPRM published in the **Federal Register** on January 30, 2023 (88 FR 5814). The NPRM was prompted by AD 2022–0179, dated August 26, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022–0179) (also referred to as the MCAI). The MCAI states that the instructions on the doghouse door lock placard are unclear and incomplete, and could lead to incorrect operation of the lock. This condition, if not corrected, could lead to failure of the latch, blocking the door in the closed position and preventing access to emergency equipment, possibly resulting in injury to airplane occupants. Since EASA AD 2021–0136 was issued, it has been determined that additional parts need to be modified.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0028.

In the NPRM, the FAA proposed to continue to require the actions in AD 2022–03–12 and expand the list of affected parts, as specified in EASA AD 2022–0179, dated August 26, 2022. The NPRM also proposed to prohibit the installation of affected parts under certain conditions. The FAA is issuing this AD to address possible incorrect operation of the doghouse door lock due to unclear and incomplete handling instructions on the door placard installed near the lock. The unsafe condition, if not addressed, could result in failure of the latch, which could block the door in the closed position and prevent access to the emergency equipment inside the doghouse.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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 referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, 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

EASA AD 2022–0179 specifies procedures for replacing the doghouse door lock placard with an improved instruction placard. EASA AD 2022–0179 also prohibits the installation of doghouses with incorrect instruction placards. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 62 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2 work-hours × $85 per hour = $170	Up to $95 per placard	Up to $265 per placard	Up to $16,430.*

*Assuming one placard per product. The number of placards on an airplane depends on the passenger configuration and varies from operator to operator.

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) 2022–03–12, Amendment 39–21929 (87 FR 8169, February 14, 2022); and

■ b. Adding the following new AD:

2023–07–02 Airbus SAS: Amendment 39–22404; Docket No. FAA–2023–0028; Project Identifier MCAI–2022–01164–T.

(a) Effective Date

This airworthiness directive (AD) is effective May 30, 2023.

(b) Affected ADs

This AD replaces AD 2022–03–12, Amendment 39–21929 (87 FR 8169, February 14, 2022) (AD 2022–03–12).

(c) Applicability

This AD applies to all Airbus SAS airplanes, certificated in any category, as identified in paragraphs (c)(1) through (8) of this AD.

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

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

(3) Model A330–841 airplanes.

(4) Model A330–941 airplanes.

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

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

(7) Model A340–541 airplanes.

(8) Model A340–642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Unsafe Condition

This AD was prompted by reports that the instructions on the doghouse door lock placard are unclear and incomplete, and by a determination that additional parts need to be modified. The FAA is issuing this AD to address possible incorrect operation of the doghouse door lock due to unclear and incomplete handling instructions on the door placard installed near the lock. The unsafe condition, if not addressed, could result in failure of the latch, which could block the door in the closed position and prevent access to the emergency equipment inside the doghouse.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0179, dated August 26, 2022 (EASA AD 2022–0179).

(h) Exceptions to EASA AD 2022–0179

(1) Where EASA AD 2022–0179 refers to June 18, 2021 (the effective date of EASA AD 2021–0136), this AD requires using March 21, 2022 (the effective date of AD 2022–03–12).

(2) Where EASA AD 2022–0179 refers to its effective date, this AD requires using the effective date of this AD.

(3) Although EASA AD 2022–0179 specifies to ''remove the placard and install an improved handling instructions placard on each affected part,'' this AD requires replacing the placard on each affected part with an improved handling instructions placard.

(4) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0179.

(i) Additional FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Additional Information

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email *vladimir.ulyanov@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0179, dated August 26, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0179, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material 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 March 30, 2023.

Christina Underwood,

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

[FR Doc. 2023–08529 Filed 4–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0158; Project Identifier MCAI–2022–01148–T; Amendment 39–22414; AD 2023–07–12]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A300 series airplanes. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 30, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 30, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0158; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The 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 material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this material 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 in the AD docket at *regulations.gov* under Docket No. FAA–2023–0158.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@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 Airbus SAS Model A300 series airplanes. The NPRM published in the **Federal Register** on February 6, 2023 (88 FR 7651). The NPRM was prompted by AD 2022–0171, dated August 19, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022–0171) (also referred to as the MCAI). The MCAI states that new or more restrictive airworthiness limitations have been developed.

EASA AD 2022–0171 specifies that it requires a task (limitation) related to the replacement of life-limited parts already in Airbus A300 Airworthiness Limitations Section (ALS) Part 1 Safe Life Airworthiness Limitations Items (SL–ALI) Revision 02 that is required by EASA AD 2017–0204 (which corresponds to FAA AD 2018–18–19, Amendment 39–19398 (83 FR 47056, September 18, 2018) (AD 2018–18–19)), and that incorporation of EASA AD 2022–0171 invalidates (terminates) prior instructions for that task. This AD therefore terminates the limitations for the tasks identified in the service information referenced in EASA AD 2022–0171, as required by paragraph (g) of AD 2018–18–19, for Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes only.

In the NPRM, the FAA proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in EASA AD 2022–0171. The FAA is issuing this AD to address fatigue damage in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0158.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from the Air Line Pilots Association, International (ALPA), who supported the NPRM without change.

Conclusion

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 referenced above. The FAA reviewed the relevant data, considered the comment 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 this product. Except for minor editorial changes, 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 EASA AD 2022–0171, which specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits. 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 2 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per

operator to be $7,650 (90 work-hours × $85 per work-hour).

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:

2023–07–12 Airbus SAS: Amendment 39–22414; Docket No. FAA–2023–0158; Project Identifier MCAI–2022–01148–T.

(a) Effective Date

This airworthiness directive (AD) is effective May 30, 2023.

(b) Affected ADs

This AD affects AD 2018–18–19, Amendment 39–19398 (83 FR 47056, September 18, 2018) (AD 2018–18–19).

(c) Applicability

This AD applies to all Airbus SAS Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue damage in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0171, dated August 19, 2022 (EASA AD 2022–0171).

(h) Exceptions to EASA AD 2022–0171

(1) This AD does not adopt the requirements specified in paragraph (1) of EASA AD 2022–0171.

(2) Paragraph (2) of EASA AD 2022–0171 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (2) of EASA 2022–0171 is at the applicable ''limitations'' as incorporated by the requirements of paragraph (2) of EASA AD 2022–0171, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraph (3) of EASA AD 2022–0171.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0171 does not apply.

(i) Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0171.

(j) Terminating Action for AD 2018–18–19

Accomplishing the actions required by this AD terminates the corresponding requirements of AD 2018–18–19 for the tasks identified in the service information referenced in EASA AD 2022–0171, for Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes only.

(k) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Additional Information

For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.*

(m) 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 this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0171, dated August 19, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0171, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999

000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material 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 April 8, 2023.

Christina Underwood,

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

[FR Doc. 2023–08488 Filed 4–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0010; Project Identifier MCAI–2022–01090–T; Amendment 39–22406; AD 2023–07–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model CL–600–2B16 (604 Variant) airplanes. This AD was prompted by a determination that during certain modes, the flight guidance/autopilot does not account for engine failure while capturing an altitude. This AD requires revising the existing airplane flight manual (AFM) to add new limitations and procedures. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 30, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 30, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0010; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The 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 identified in this final rule, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com.*

• You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2023–0010.

FOR FURTHER INFORMATION CONTACT: Chirayu Gupta, 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:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model CL–600–2B16 (604 Variant) airplanes. The NPRM published in the **Federal Register** on February 2, 2023 (88 FR 7013). The NPRM was prompted by AD CF–2022–45, dated August 11, 2022, issued by Transport Canada, which is the aviation authority for Canada (referred to after this as the MCAI). The MCAI states that during (V) ALTS CAP or (V) ALTV CAP modes, the flight guidance/autopilot does not account for engine failure while capturing an altitude. If an engine failure occurs during or before a climb while in one of these modes, the airspeed may decrease rapidly below the safe operating speed, and prompt crew intervention may be required to maintain a safe operating speed. Transport Canada AD CF–2022–45 requires updating the Limitations and Abnormal Procedures of the AFM for (V) ALTS CAP or (V) ALTV CAP modes to address the unsafe condition for the affected Model CL–600–2B16 (604 Variant) airplanes. These updates include:

• A warning regarding the potential airspeed decay in the case of an engine failure during a climb while in (V) ALTS CAP or (V) ALTV CAP modes.

• A new procedure to adjust the pitch attitude to maintain the required operating airspeed in the case of an engine failure during a climb while in (V) ALTS CAP or (V) ALTV CAP modes.

The unsafe condition, if not addressed, could result in the airplane failing to maintain a safe operating speed.

In the NPRM, the FAA proposed to require revising the existing airplane flight manual (AFM) to add new limitations and procedures. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0010.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from an individual who supported the NPRM without change.

Conclusion

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 referenced above. The FAA reviewed the relevant data, considered the comment 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 this product. Except for minor editorial changes, 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 information, which specifies revised Limitations and Abnormal Procedures of the AFM for (V) ALTS CAP or (V) ALTV CAP modes. These documents are distinct since they apply to different airplane models and configurations.

• Sub-section 2. ''Automatic Flight Control System,'' of section 02–08, Systems Limitations, of Chapter 2—LIMITATIONS of Bombardier Challenger 604 Airplane Flight Manual—Publication No. PSP 604–1, Revision 120, dated December 8, 2020. (For obtaining this section of the Bombardier Challenger 604 Airplane

Flight Manual—Publication No. PSP 604–1, use Document Identification No. CH 604 AFM.)

• Sub-sub-section B., ''Engine Failure in Climb During (V) ALTS CAP or (V) ALTV CAP,'' of sub-section 1. ''Single Engine Procedures'' of section 05–03, ''Single Engine Procedures,'' of Chapter 5—ABNORMAL PROCEDURES; of Bombardier Challenger 604 Airplane Flight Manual—Publication No. PSP 604–1, Revision 120, dated December 8, 2020. (For obtaining this section of the Bombardier Challenger 604 Airplane Flight Manual—Publication No. PSP 604–1, use Document Identification No. CH 604 AFM.)

• Sub-section 2. ''Automatic Flight Control System,'' of section 02–08, Systems Limitations, of Chapter 2—LIMITATIONS of Bombardier Challenger 605 Airplane Flight Manual—Publication No. PSP 605–1, Revision 58, dated December 8, 2020. (For obtaining this section of the Bombardier Challenger 605 Airplane Flight Manual—Publication No. PSP 605–1, use Document Identification No. CH 605 AFM.)

• Sub-sub-section B., ''Engine Failure in Climb During (V) ALTS CAP or (V) ALTV CAP,'' of sub-section 1. ''Single Engine Procedures'' of section 05–03, ''Single Engine Procedures,'' of Chapter 5—ABNORMAL PROCEDURES of Bombardier Challenger 605 Airplane Flight Manual—Publication No. PSP 605–1, Revision 58, dated December 8, 2020. (For obtaining this section of the Bombardier Challenger 605 Airplane Flight Manual—Publication No. PSP 605–1, use Document Identification No. CH 605 AFM.)

• Sub-section 2. ''Automatic Flight Control System,'' of section 02–08, Systems Limitations, of Chapter 2—LIMITATIONS of Bombardier Challenger 650 Airplane Flight Manual—Publication No. PSP 650–1, Revision 23, dated December 8, 2020. (For obtaining this section of the Bombardier Challenger 650 Airplane Flight Manual—Publication No. PSP 650–1, use Document Identification No. CH 650 AFM.)

• Sub-sub-section B., ''Engine Failure in Climb During (V) ALTS CAP or (V) ALTV CAP,'' of sub-section 1. ''Single Engine Procedures'' of section 05–03, ''Single Engine Procedures,'' of Chapter 5—ABNORMAL PROCEDURES; of Bombardier Challenger 650 Airplane Flight Manual—Publication No. PSP 650–1, Revision 23, dated December 8, 2020. (For obtaining this section of the Bombardier Challenger 650 Airplane Flight Manual—Publication No. PSP 650–1, use Document Identification No. CH 650 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.

Costs of Compliance

The FAA estimates that this AD affects 409 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$34,765

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:

2023–07–04 Bombardier, Inc.: Amendment 39–22406; Docket No. FAA–2023–0010; Project Identifier MCAI–2022–01090–T.

(a) Effective Date

This airworthiness directive (AD) is effective May 30, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model CL–600–2B16 (604 Variant) airplanes, certificated in any category, serial numbers (S/N) 5301 through 5665 inclusive, 5701 through 5988 inclusive, and 6050 through 6160 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 22, Auto flight.

(e) Unsafe Condition

This AD was prompted by a determination that during (V) ALTS CAP or (V) ALTV CAP modes, the flight guidance/autopilot does not account for engine failure while capturing an altitude. The FAA is issuing this AD to address the possible occurrence of an engine failure during or before a climb while in (V) ALTS CAP or (V) ALTV CAP modes, which

could cause the airspeed to decrease rapidly. The unsafe condition, if not addressed, could result in the airplane failing to maintain a safe operating speed.

(f) Compliance

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

(g) Revision of Existing AFM

Within 30 days after the effective date of this AD: Do the applicable actions specified in paragraph (g)(1) through (3) of this AD.

(1) For Model CL–600–2B16 (604 variant), S/N 5301 through 5665 inclusive: Revise the existing AFM to incorporate the information specified in paragraphs (g)(1)(i) and (ii) of this AD of Bombardier Challenger 604 Airplane Flight Manual—Publication No. PSP 604–1, Revision 120, dated December 8, 2020.

(i) Sub-section 2. ''Automatic Flight Control System,'' of section 02–08, Systems Limitations, of Chapter 2—LIMITATIONS.

(ii) Sub-sub-section B., ''Engine Failure in Climb During (V) ALTS CAP or (V) ALTV CAP,'' of sub-section 1. ''Single Engine Procedures'' of section 05–03, ''Single Engine Procedures,'' of Chapter 5—ABNORMAL PROCEDURES.

Note 1 to paragraph (g)(1): For obtaining Bombardier Challenger 604 Airplane Flight Manual—Publication No. PSP 604–1, use Document Identification No. CH 604 AFM.

(2) For Model CL–600–2B16 (604 variant), S/N 5701 through 5988 inclusive: Revise the existing AFM to incorporate the information specified in paragraphs (g)(2)(i) and (ii) of this AD of Bombardier Challenger 605 Airplane Flight Manual—Publication No. PSP 605–1, Revision 58, dated December 8, 2020.

(i) Sub-section 2. ''Automatic Flight Control System,'' of section 02–08, Systems Limitations, of Chapter 2—LIMITATIONS.

(ii) Sub-sub-section B., ''Engine Failure in Climb During (V) ALTS CAP or (V) ALTV CAP,'' of sub-section 1. ''Single Engine Procedures'' of section 05–03, ''Single Engine Procedures,'' of Chapter 5—ABNORMAL PROCEDURES.

Note 2 to paragraph (g)(2): For obtaining Bombardier Challenger 605 Airplane Flight Manual—Publication No. PSP 605–1, use Document Identification No. CH 605 AFM.

(3) For Model CL–600–2B16 (604 variant), S/N 6050 through 6160 inclusive: Revise the existing AFM to incorporate the information specified in paragraphs (g)(3)(i) and (ii) of this AD of Bombardier Challenger 650 Airplane Flight Manual—Publication No. PSP 650–1, Revision 23, dated December 8, 2020.

(i) Sub-section 2. ''Automatic Flight Control System,'' of section 02–08, Systems Limitations, of Chapter 2—LIMITATIONS.

(ii) Sub-sub-section B., ''Engine Failure in Climb During (V) ALTS CAP or (V) ALTV CAP,'' of sub-section 1. ''Single Engine Procedures'' of section 05–03, ''Single Engine Procedures,'' of Chapter 5—ABNORMAL PROCEDURES.

Note 3 to paragraph (g)(3): For obtaining Bombardier Challenger 650 Airplane Flight Manual—Publication No. PSP 650–1, use Document Identification No. CH 650 AFM.

(h) Additional 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 New York ACO Branch, mail it to ATTN: Program Manager, Continuing Operational Safety, at the address identified in paragraph (i)(2) of this AD or email to: *9-avs-nyaco-cos@faa.gov.* If mailing information, also submit information by email. 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; or Bombardier, Inc.'s Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Additional Information

(1) Refer to Transport Canada AD CF–2022–45, dated August 11, 2022, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–0010.

(2) For more information about this AD, contact Chirayu Gupta, 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.*

(j) 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 this AD specifies otherwise.

(i) Sub-section 2. ''Automatic Flight Control System,'' of section 02–08, Systems Limitations, of Chapter 2—LIMITATIONS of Bombardier Challenger 604 Airplane Flight Manual—Publication No. PSP 604–1, Revision 120, dated December 8, 2020.

Note 4 to paragraph (j)(2)(i): This note applies to paragraphs (j)(2)(i) and (ii) of this AD. For obtaining Bombardier Challenger 604 Airplane Flight Manual—Publication No. PSP 604–1, use Document Identification No. CH 604 AFM.

(ii) Sub-sub-section B., ''Engine Failure in Climb During (V) ALTS CAP or (V) ALTV CAP,'' of sub-section 1. ''Single Engine Procedures'' of section 05–03, ''Single Engine Procedures,'' of Chapter 5—ABNORMAL PROCEDURES of Bombardier Challenger 604 Airplane Flight Manual—Publication No. PSP 604–1, Revision 120, dated December 8, 2020

(iii) Sub-section 2. ''Automatic Flight Control System,'' of section 02–08, Systems Limitations, of Chapter 2—LIMITATIONS of Bombardier Challenger 605 Airplane Flight Manual—Publication No. PSP 605–1, Revision 58, dated December 8, 2020.

Note 5 to paragraph (j)(2)(iii): This note applies to paragraphs (j)(2)(iii) and (iv) of this AD. For obtaining Bombardier Challenger 605 Airplane Flight Manual—Publication No. PSP 605–1, use Document Identification No. CH 605 AFM.

(iv) Sub-sub-section B., ''Engine Failure in Climb During (V) ALTS CAP or (V) ALTV CAP,'' of sub-section 1. ''Single Engine Procedures'' of section 05–03, ''Single Engine Procedures,'' of Chapter 5—ABNORMAL PROCEDURES of Bombardier Challenger 605 Airplane Flight Manual—Publication No. PSP 605–1, Revision 58, dated December 8, 2020.

(v) Sub-section 2. ''Automatic Flight Control System,'' of section 02–08, Systems Limitations, of Chapter 2—LIMITATIONS of Bombardier Challenger 650 Airplane Flight Manual—Publication No. PSP 650–1, Revision 23, dated December 8, 2020.

Note 6 to paragraph (j)(2)(v): This note applies to paragraphs (j)(2)(v) and (vi) of this AD. For obtaining Bombardier Challenger 650 Airplane Flight Manual—Publication No. PSP 650–1, use Document Identification No. CH 650 AFM.

(vi) Sub-sub-section B., ''Engine Failure in Climb During (V) ALTS CAP or (V) ALTV CAP,'' of sub-section 1. ''Single Engine Procedures'' of section 05–03, ''Single Engine Procedures,'' of Chapter 5—ABNORMAL PROCEDURES of Bombardier Challenger 650 Airplane Flight Manual—Publication No. PSP 650–1, Revision 23, dated December 8, 2020.

(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 April 3, 2023.

Christina Underwood,

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

[FR Doc. 2023–08478 Filed 4–21–23; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2022–0728; FRL–10255–02–R5]

Air Plan Approval; Michigan; Part 4 Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to Michigan's State Implementation Plan (SIP). The Michigan Department of Environment, Great Lakes, and Energy (EGLE) submitted on August 17, 2022, changes to Michigan's Air Pollution Control Rules, Emissions Limitations and Prohibitions—Sulfur Bearing Compounds. The revision includes administrative changes to existing rules and updates to material adopted by reference.

DATES: This final rule is effective on May 24, 2023.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2022–0728. All documents in the docket are listed on the *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 either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Charles Hatten at (312) 886–6031, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Control Strategies Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

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

I. What is being addressed in this document?

This revision approves EGLE's August 17, 2022, submission to Michigan's Air Pollution Control Rules in Chapter 336, Part 4. The revision includes administrative changes to existing rules and updates to material adopted by reference. A detailed analysis of the revision, and EPA's reasons for approval are provided in EPA's notice of proposed rulemaking (NPRM), dated January 13, 2023 (88 FR 2303), and will not be restated here.

II. What comments did we receive on the proposed rule?

EPA provided a 30-day review and comment period in the NPRM. The comment period ended on February 13, 2023. We received no comments on the proposed rule.

III. What action is EPA taking?

EPA is approving the revision to Part 4 as submitted on August 17, 2022, into the Michigan SIP. Specifically, EPA is approving revision to Michigan rule R336.1401a ''Definitions''; R336.1401 ''Emission of sulfur dioxide from power plants''; R336.1402 ''Emission of SO_2 from fuel-burning equipment at a stationary source other than power plants''; and R336.1404 ''Emission of SO_2 and sulfuric acid mist from sulfuric acid plants'', effective October 24, 2019.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Michigan Regulations addressing SO_2 emissions, as described in section III of this preamble and set forth in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov,* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the Clean Air Act (CAA) as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

V. Statutory and Executive Order Reviews

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

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

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

[1] 62 FR 27968 (May 22, 1997).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

EGLE did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, 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).

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 June 23, 2023. Filing a petition for reconsideration by the Administrator of this final rule 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. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 17, 2023.

Debra Shore,

Regional Administrator, Region 5.

For the reasons stated in the preamble, title 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.*

■ 2. In § 52.1170, the table in paragraph (c) is amended by revising the entries for R336.1401a, R336.1401, R336.1402, and R336.1404 under the heading ''Part 4. Emission Limitations and Prohibitions—Sulfur Bearing Compounds'' to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MICHIGAN REGULATIONS

Michigan citation	Title	State effective date	EPA approval date	Comments
*	*	*	*	*
Part 4. Emission Limitations and Prohibitions—Sulfur Bearing Compounds				
R 336.1401	Emission of sulfur dioxide from power plants	10/24/2019	4/24/2023, [INSERT **FEDERAL REGISTER** CITATION].	.....
R 336.1401a	Definitions	10/24/2019	4/24/2023, [INSERT **FEDERAL REGISTER** CITATION].	.....
R 336.1402	Emission of SO_2 from fuel-burning equipment at a stationary source other than power plants.	10/24/2019	4/24/2023, [INSERT **FEDERAL REGISTER** CITATION].	.....
*	*	*	*	*
R 336.1404	Emission of SO_2 and sulfuric acid mist from sulfuric acid plants.	10/24/2019	4/24/2023, [INSERT **FEDERAL REGISTER** CITATION].	.....
*	*	*	*	*

* * * * *

[FR Doc. 2023–08484 Filed 4–21–23; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2020–0161; FRL–10428–02–R6]

Air Plan Approval; Texas; Reasonable Further Progress Plan for the Dallas-Fort Worth Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving revisions to the State Implementation Plan (SIP) for Texas as proposed on October 9, 2020, and supplemented on December 20, 2022. The revisions were submitted by Texas on May 13, 2020, to meet the Reasonable Further Progress (RFP) requirements for the Dallas-Fort Worth Serious ozone nonattainment area (DFW area) for the 2008 ozone National Ambient Air Quality Standard (NAAQS). Specifically, EPA is approving the RFP demonstration and associated Motor Vehicle Emission Budgets (budgets). EPA is also notifying the public that EPA finds these RFP budgets for the DFW area adequate for the purpose of transportation conformity. As a result of such finding, the DFW area must use the budgets from the submitted DFW RFP SIP for future conformity determinations. The EPA is not finalizing a previous proposed approval of revisions to the SIP that address RFP contingency measure requirements for the DFW area in this action and that will be addressed in a separate action.

DATES: This rule is effective on May 24, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID EPA–R06–OAR–2020–0161. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* 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. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Paige, EPA Region 6 Office, Infrastructure and Ozone Section, 214–665–6521, *paige.carrie@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

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

I. Background

The background for this action is discussed in detail in our October 9, 2020, proposal and December 20, 2022, supplemental proposal (85 FR 64084 and 87 FR 77770, respectively).[1] In the October 2020 document, we proposed to approve a portion of the May 13, 2020, Texas SIP revision addressing RFP requirements for the 2008 8-hour ozone NAAQS for the two Serious ozone nonattainment areas in Texas (''the Texas RFP submittal''). These two areas are the DFW and the Houston-Galveston-Brazoria (HGB) areas. The Texas RFP submittal also establishes budgets for the year 2020 and includes contingency measures for each of the DFW and HGB areas, should the areas fail to make reasonable further progress or fail to attain the NAAQS by the applicable attainment date. Our October 2020 proposal addressed only that portion of the Texas RFP submittal that refers to the DFW area. The portion of the Texas RFP submittal that refers to the HGB area was addressed in a separate rulemaking action.[2]

Our October 2020 proposal also provided information on ozone formation, the ozone standards, area designations, related SIP revision requirements under the CAA, and the EPA's implementing regulations for the 2008 ozone NAAQS, referred to as the 2008 Ozone SIP Requirements Rule (''2008 Ozone SRR'').[3] The DFW area, comprising Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise counties was classified as Serious nonattainment for the 2008 ozone NAAQS and as such was subject to the Serious area requirements, one of which was to demonstrate RFP in reducing volatile organic compounds (VOC).[4] In demonstrating RFP, emission reductions of nitrogen oxides (NO_X) may be substituted for VOC reductions, if certain criteria are met.[5] As explained in our October 2022 proposal and TSD, because the State has already satisfied the 15 percent VOC emissions reduction requirement for the DFW area, all 10 counties in the DFW nonattainment area may substitute NO_X reductions for VOC, consistent with the 2008 Ozone SRR (see 80 FR 12264, 12271), 40 CFR 51.1110, and EPA's NO_X Substitution Guidance.

The comment period on our October 2020 proposal closed on November 9, 2020. We received relevant supportive and adverse comments on our proposal from the North Central Texas Council of Governments (NCTCOG) and Air Law for All (ALFA) on behalf of the Center for Biological Diversity and the Sierra Club.[6] One commenter supported the proposed action and concurred with the on-road mobile source emission inventories and budgets for 2020. One commenter stated that our proposal did not address how the substitution of NO_X emission reductions for VOC emission reductions in the DFW RFP plan is consistent with the CAA. Based on those comments, we published a supplemental proposal to address the NO_X substitution issue raised. Our December 2022 supplemental proposal provided an overview of ozone chemistry and NO_X substitution effects, discussed ozone chemistry in the DFW area, and described how Texas's use of NO_X substitution is warranted and appropriately implemented. Our December 2022 action also proposed to approve the NO_X substitution provided in the Texas RFP submittal for the DFW area.

The comment period on our December 2022 supplemental proposal closed on January 19, 2023. We received one comment from an anonymous source that addresses the fossil fuel industry. However, such comments do not raise NO_X substitution in the DFW area, which is the subject of the December 2022 supplemental proposal and thus, are beyond the scope of the action and do not require a response below.[7]

[1] Henceforth we refer to these proposals as ''the October 2020 document'' or ''the October 2020 proposal'' and ''the December 2022 action'' or ''the December 2022 supplemental proposal.'' These proposals and our Technical Support Document (TSD) are provided in the docket for this action.

[2] Our final action to approve the RFP plan for the HGB area was published on May 10, 2021 (86 FR 24717).

[3] See 80 FR 12264 (March 6, 2015).

[4] Our final determination that the DFW Serious nonattainment area failed to attain the 2008 ozone NAAQS by the area's attainment date is outside the scope of this action (87 FR 60926, October 7, 2022).

[5] See 80 FR 12264, 12271 for an explanation of criteria. NO_X and VOC are precursors to ozone formation.

[6] Henceforth, we refer to the NCTCOG and ALFA as ''the commenter(s)''. These comments are provided in the docket at *https://www.regulations.gov* under docket ID: EPA–R06–OAR–2020–0161.

[7] All comments received on this action are provided in the docket at *https://*

Continued

Our responses to comments received on the October 2020 proposal follow.

II. Response to Comments

Comment: The commenter states that emissions reductions from Texas sources would assist in mitigating the public health impacts caused by ozone in the DFW area. The commenter describes the health effects of exposure to ozone, including the effects on children and disadvantaged communities in the DFW area. The commenter mentions that reducing ozone levels below the 2008 ozone NAAQS of 75 parts per billion (ppb) would have large and immediate health benefits in Texas. The commenter includes numerous health studies in support of these statements.

Response: The EPA appreciates the commenter's views and studies submitted regarding exposure to ground level ozone. This action addresses certain requirements for the DFW area under the 2008 ozone NAAQS; however, a more stringent ozone standard of 70 ppb was promulgated in 2015.[8] Because the DFW area is also designated as nonattainment for the 2015 ozone NAAQS, the Texas Commission on Environmental Quality (TCEQ or State) is working on additional measures to assist the DFW nonattainment area in attaining the 2015 ozone NAAQS.[9]

Comment: Citing specific statutory provisions and excerpts from the EPA's implementation rules for the 1997 and 2008 ozone NAAQS, the commenter asserts that the RFP demonstration for the DFW Serious area must meet both the general RFP requirements in CAA section 172(c)(2) that are tied to attainment of the ozone standards and the specific RFP requirements in CAA section 182(c)(2)(B) for reductions in emissions of VOCs from baseline emissions. The commenter contends that the RFP ''targets'' cannot be severed from the attainment demonstration and control strategy and independently approved. The commenter asserts that because the EPA has not proposed to approve the attainment demonstration and control strategy for the DFW area, there is no basis to propose that the RFP demonstration for the DFW area meets the general RFP requirements in CAA section 172(c)(2).[10]

Response: We disagree with the commenter's assertion that the RFP demonstration does not satisfy RFP requirements because it does not ensure attainment, which is inconsistent with the EPA's existing interpretation of RFP requirements established in implementing regulations for the 2008 ozone NAAQS. As the commenter notes, Serious ozone nonattainment areas are subject to the general requirements for nonattainment plans in CAA subpart 1 and the specific requirements for ozone areas in CAA subpart 2, including the requirements related to RFP and attainment. This is consistent with the structure of the CAA as modified under the 1990 amendments, which introduced additional subparts to part D of title I of the CAA to address requirements for specific NAAQS pollutants, including ozone (subpart 2), carbon monoxide (subpart 3), particulate matter (subpart 4), and sulfur oxides, nitrogen dioxide, and lead (subpart 5).

These subparts apply tailored requirements for these pollutants, including those based on an area's designation and classification, in addition to and often in place of the generally applicable provisions retained in subpart 1. While CAA section 172(c)(2) of subpart 1 states only that nonattainment plans ''shall require reasonable further progress,'' CAA sections 182(b)(1) and 182(c)(2)(B) of subpart 2 provide specific percent reduction targets for ozone nonattainment areas to meet the RFP requirement. Put another way, subpart 2 further defines RFP for ozone nonattainment areas by specifying the incremental amount of emissions reduction required by set dates for those areas.[11] For Moderate ozone nonattainment areas, CAA section 182(b)(1) defines RFP by setting a specific 15 percent VOC reduction requirement over the first six years of the plan. For Serious or higher ozone nonattainment areas, CAA section 182(c)(2)(B) defines RFP by setting specific annual percent reductions for the period following the first six-year period and allows averaging over a three-year period. With respect to the 1-hour ozone NAAQS, the EPA stated that, by meeting the specific percent reduction requirements in CAA sections 182(b)(1) and 182(c)(2)(B), the state will also satisfy the general RFP requirements of section 172(c)(2) for the time period discussed.[12]

We agree with the commenter that the EPA has adapted the RFP requirements under the CAA to implement the three 8-hour ozone NAAQS that have been promulgated since the 1990 CAA Amendments. In the ''Phase 2'' SIP Requirements Rule for the 1997 Ozone NAAQS (Phase 2 rule),[13] the EPA adapted the RFP requirements of CAA sections 172(c)(2) and 182(a)(1) so as to require plans to provide for the minimum required percent reductions and, for certain Moderate areas, to provide for the reductions as necessary for attainment. See, *e.g.,* 40 CFR 51.910(a)(1)(ii)(A) and (b)(2)(ii)(C).

In 2015, the EPA replaced the regulations promulgated through the Phase 2 rule with the regulations promulgated through the 2008 Ozone SRR.[14] In the 2008 Ozone SRR, the EPA established RFP requirements for the 2008 ozone NAAQS that are similar, in most respects, to those in the Phase 2 rule for the 1997 ozone NAAQS but that do not define RFP for certain Moderate areas in terms of the reductions needed for attainment.[15] More explicitly, in the 2008 Ozone SRR, the EPA defined RFP as meaning both the ''emissions reductions required under CAA section 172(c)(2) *which the EPA interprets to be an average 3 percent per year emissions reductions of either VOC or* NO_X and CAA sections 182(c)(2)(B) and (c)(2)(C) and the 15 percent reductions over the first six years of the plan and the following three percent per year average under 40 CFR 51.1110.'' [16] Thus, under the 2008 Ozone SRR, the RFP emissions reductions required for Serious or higher ozone nonattainment areas under CAA section 172(c)(2) are based on a set annual percentage found in the CAA, not on the specific attainment needs for the area. In this regard, we have been even more explicit in our SRR for the 2015 ozone NAAQS: [17] ''Reasonable further progress (RFP) means the emissions reductions required under CAA sections 172(c)(2), 182(c)(2)(B), 182(c)(2)(C), and § 51.1310. The EPA

www.regulations.gov under docket ID: EPA–R06–OAR–2020–0161.

[8] See 80 FR 65292 (October 26, 2015).

[9] See 87 FR 60897 (October 7, 2022).

[10] The RFP targets are also referred to as milestones.

[11] CAA section 171(1) defines RFP as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' The words ''this part'' in the statutory definition of RFP refer to part D of title I of the CAA, which contains the general requirements in subpart 1 and the pollutant-specific requirements in subparts 2–5 (including the ozone-specific RFP requirements in CAA sections 182(b)(1) and 182(c)(2)(B) for Serious areas).

[12] See 57 FR 13498 at 13510 (for Moderate areas) and at 13518 (for Serious areas) (April 16, 1992).

[13] See 70 FR 71612 (November 29, 2005).

[14] 80 FR 12264. Under 40 CFR 51.919 and 51.1119, the regulations promulgated in the 2008 Ozone SRR replaced the regulations promulgated in the Phase 2 rule, with certain exceptions not relevant here.

[15] Compare RFP requirements for the 1997 ozone NAAQS at 40 CFR 51.910(a)(1)(ii)(A) and (b)(2)(ii)(C) with the analogous provisions for the 2008 ozone NAAQS at 40 CFR 51.1110(a)(2)(i)(B).

[16] See 40 CFR 51.1100(t) (emphasis added).

[17] See 83 FR 62998 (December 6, 2018).

interprets RFP under CAA section 172(c)(2) to be an average 3 percent per year emissions reduction of either VOC or NO_X.[18]

In the 2008 Ozone SRR, which is the set of regulations that governs the EPA's action here, RFP is defined in terms of percent reduction from the area's emissions in the baseline year, not in terms of the reductions necessary for attainment. In other words, for the 2008 ozone NAAQS, the RFP milestones represent the minimum progress that is required under the CAA and our regulations, not necessarily all of the reductions necessary to achieve attainment of the ozone NAAQS, which could vary largely from one nonattainment area to another.

The DFW area RFP demonstration in the Texas RFP submittal was developed for the DFW Serious nonattainment area [19] to meet the applicable requirements of the CAA and our 2008 Ozone SRR, not the Phase 2 rule for the 1997 ozone NAAQS. Specifically, we reviewed the RFP demonstration in the Texas RFP submittal for compliance with the requirements under 40 CFR 51.1110(a)(2)(i), which adapts the requirements under CAA sections 172(c)(2) and 182(b)(1) for Moderate areas, and 40 CFR 51.1110(a)(2)(ii), which adapts the requirements of CAA section 182(c)(2)(B) for Serious areas.[20] The requirements under 40 CFR 51.1110(a)(2)(i) and (ii) are cumulative and together they require a 15 percent reduction in emissions from the baseline year within six years after the baseline year and average emissions reductions of three percent per year for all remaining three-year periods after the first six-year period until the year of the area's attainment date. As explained in our October 2020 proposal, based on our evaluation, we found that the Texas RFP submittal for the DFW area provided for the percent reductions required under the 2008 Ozone SRR.[21]

Under the 2008 Ozone SRR, the RFP demonstration for the 2008 ozone NAAQS does not need to provide for the reductions needed for attainment. Thus, contrary to the commenter's assertion, the RFP demonstration for the DFW area can be severed from the attainment demonstration and control strategy and can be independently approved, and we do so in this final rule by approving the RFP demonstration for the DFW area in the Texas RFP submittal while deferring action on the attainment demonstration.

Comment: The commenter asserts that there is no basis to conclude that the DFW RFP Plan meets the requirements for VOC emission reductions, as it relies on substitute reductions in emissions of NO_X that have not been shown to be equivalent to the required VOC emission reductions.

Response: Our October 2020 proposal did not address how the NO_X reductions in the DFW RFP plan are at least as effective as using VOC reductions in reducing ozone. Consequently, we published a December 2022 supplemental proposal, which addresses the NO_X issue. Our December 2022 supplemental proposal describes in detail ozone chemistry in the DFW area and evaluates the use of NO_X substitution in the Texas submittal. As described in our December 2022 supplemental proposal, the State's review of DFW ozone and NO_X concentrations for each day of the week links levels of NO_X, rather than VOC, with ozone levels, indicating that decreasing levels of NO_X would result in decreasing levels of ozone. The State's ambient NO_X and ozone data in the DFW area indicate that those areas of DFW with the highest ozone values are NO_X-limited and there are no violating monitors in the DFW areas described as VOC-limited.[22] Our December 2022 supplemental proposal also describes a recent analysis by the EPA that points to the DFW area as NO_X-limited.[23] Our December 2022 action proposes that Texas's use of NO_X substitution in the DFW area is reasonable and appropriately implemented. Our December 2022 action also proposes to approve the NO_X substitution provided in the Texas RFP submittal for the DFW area as consistent with CAA section 182(c)(2)(C). The comment period for the December 2022 supplemental proposal was open from December 20, 2022, to January 19, 2023. We did not receive public comments on our December 2022 supplemental proposal that address or otherwise challenge the technical basis for NO_X substitution in the DFW area.

Comment: The commenter provides numerous statements regarding the EPA's NO_X Substitution Guidance,[24] contending that if the EPA intended to adopt the positions set forth in the NO_X Substitution Guidance, the proposal would be arbitrary and capricious and contrary to law because of problems with the NO_X Substitution Guidance. These comments assert generally that the NO_X Substitution Guidance contradicts CAA section 182(c)(2)(C) by recommending a procedure that fails to demonstrate any equivalence between VOC and NO_X reductions, relies on incorrect policy assumptions, and gives legal justifications that are without merit.

Response: Our proposed approval of the RFP plan's use of NO_X substitution is compatible with the NO_X Substitution Guidance, which, while non-binding and not having the force of regulation, provides a recommended procedure for substituting NO_X emission reductions for VOC reductions on a percentage basis, consistent with the State's identified emissions reduction measures, and RFP milestones and requirements. As noted earlier in these responses and in our December 2022 supplemental proposal, our approval of the State's use of NO_X substitution is supported by conditions in the DFW area and EPA analyses and is consistent with the requirements in CAA section 182(c)(2)(C). Comments relating solely to the NO_X Substitution Guidance are outside the scope of this rulemaking action.

Comment: The commenter states that the EPA must disapprove the contingency measures. The commenter also asserts that the NO_X contingency measures have not been shown to be efficient in reducing ozone concentrations.

Response: On January 29, 2021, the U.S. Court of Appeals for the District of Columbia Circuit (''D.C. Circuit'') issued a decision in response to challenges to EPA's 2015 and 2018 rules implementing the NAAQS for ozone, (80 FR 12264 and 83 FR 62998 (December 6, 2018)). *Sierra Club, et al.* v. *EPA,* 985 F.3d 1055 (D.C. Cir. 2021). Among the rulings in this decision, the D.C. Circuit vacated EPA's interpretation of the CAA to allow states to rely on already implemented control measures to meet the statutory

[18] See 40 CFR 51.1300(l).

[19] The DFW area was reclassified from Serious to Severe nonattainment for the 2008 ozone NAAQS (87 FR 60926, October 7, 2022). The RFP and other SIP requirements for the Severe nonattainment area will be addressed in a separate rulemaking action.

[20] 40 CFR 51.1110(a)(2) applies to the DFW area because DFW is an area with an approved 1-hour ozone NAAQS 15 percent VOC Rate of Progress (ROP) plan.

[21] 85 FR 68268, at 68274–68276.

[22] The phrase ''NO_X-limited'' means that ozone concentrations are more sensitive to ambient NO_X levels than to ambient VOC levels. Therefore, in a NO_X-limited area, the formation of ozone is limited by the amount of NO_X present and ozone concentrations are most effectively reduced by lowering NO_X emissions, rather than lowering emissions of VOC. Additional VOC does not lead to the formation of more ozone in areas where the reaction is NO_X-limited.

[23] These analyses are described in the December 2022 supplemental proposal and are posted in the docket for this action.

[24] NO_X Substitution Guidance, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, December 1993, available at *https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/19931201_oaqps_nox_substitution_guidance.pdf.*

requirements of section 172(c)(9) or 182(c)(9) for contingency measures in nonattainment plans for the ozone NAAQS (see 83 FR 62998, 63026–27). The EPA is reexamining the contingency measures portion of the Texas RFP submittal for the DFW area considering the D.C. Circuit decision. Therefore, we are not taking final action at this time on the contingency measures submitted as part of the May 13, 2020, Texas RFP submittal for the DFW area included in the October 2020 proposal. The EPA plans to address the contingency measures in a separate action.

Comment: The commenter contends that the motor vehicle emissions budgets must be consistent with attainment requirements as well as RFP requirements and in the absence of an approved attainment demonstration and control strategy, the RFP budgets must be disapproved. In support of this contention, the commenter cites selected portions of CAA section 176(c) and the EPA's transportation conformity rule. First, under section 176(c)(1)(B)(iii), the commenter notes that a Federal action cannot ''delay timely attainment of any standard,'' and without an approved attainment demonstration and control strategy, which could require VOC and NO_X emissions reductions beyond those required by section 182(c)(2)(C), there is no way to tell if a transportation plan, improvement program, or project will ''delay timely attainment'' of the 2008 ozone standards, even if it stays within the proposed RFP budgets. Second, the commenter notes that, under the EPA's rules for transportation conformity, the term ''control strategy implementation plan revision'' is defined as the ''implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress *and* attainment.'' [25] For attainment plans (as opposed to maintenance plans), budgets are in part defined as ''that portion of the total allowable emissions defined in the submitted or approved *control strategy implementation plan revision.*'' [26] Thus, the commenter argues that the budgets depend on the control strategy implementation plan revision, which must demonstrate both RFP and attainment.

In addition, the commenter notes that the particular budgets proposed for approval are derived from the projected on-road mobile source emissions estimates in the attainment year (2020) emissions inventory upon which the attainment demonstration is based, and thus must be consistent with attainment requirements as well as RFP requirements. Because the EPA has not approved the attainment demonstration, including the projected attainment year emissions inventory, the commenter asserts that the EPA cannot approve the budgets that derive from that inventory.

Response: First, we acknowledge that the budgets are derived from the projected attainment year (2020) emissions inventory for the DFW Serious nonattainment area. However, year 2020 was both an RFP milestone year and the attainment year for the DFW area.[27] Therefore, the projected 2020 emissions inventory was the basis for both the RFP demonstration for that milestone year and for the attainment demonstration. As explained earlier in these responses, the RFP demonstration and attainment demonstration requirements are independent requirements under the 2008 Ozone SRR and thus, can be approved separately. In this final action, we are approving the budgets only for RFP purposes.

Second, we note that CAA section 176(c)(4)(B) obligates the EPA to promulgate, and periodically update, criteria and procedures for demonstrating and assuring conformity in the case of transportation plans, programs, and projects, and we have done so at 40 CFR part 93, subpart A (''Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws'') (herein, ''transportation conformity rule''). Our transportation conformity rule defines ''motor vehicle emissions budget'' as ''that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones *or* demonstrating attainment or maintenance of the NAAQS. . . .'' [28] Further, among the criteria we must use when evaluating a budget for adequacy or approval, is the criterion at 40 CFR 93.118(e)(4)(iv) that requires budgets, when considered together with all other emissions sources, to be consistent with applicable requirements for RFP, attainment, *or* maintenance (*whichever is relevant to the given implementation plan submission*).[29]

Thus, under our transportation conformity rule, the EPA can approve motor vehicle emissions budgets if we find them consistent, when considered together with all other emissions sources, with the applicable requirements for RFP or attainment; it is not required that the budget be consistent with RFP and attainment but only that they are consistent with the requirement that is relevant for purposes of the SIP. In this instance, the relevant requirements are those for RFP, not attainment, and we are approving the budgets as consistent with those requirements, not the attainment requirements, consistent with the transportation conformity rule.[30] This interpretation has been upheld by the Ninth Circuit in *Natural Resources Defense Council* v. *EPA,* 638 F.3d 1183 (9th Cir. 2011). In this case, the petitioners similarly argued that the CAA and the EPA's implementing regulations require the EPA to consider attainment data when determining the adequacy of budgets for milestone years,[31] but the Ninth Circuit agreed with the EPA that the EPA's transportation conformity rule provides otherwise. More specifically, the court agreed with the EPA that, for a milestone year, a budget need only demonstrate RFP toward the ultimate goal of attainment.[32]

On June 3, 2020, EPA posted the availability of the DFW area NO_X and VOC budgets on EPA's website for the purpose of soliciting public comments, as part of the adequacy process.[33] The comment period closed on July 3, 2020, and we received no comments. EPA's adequacy review of Texas's submitted budgets indicates that the budgets meet

[25] 40 CFR 93.101 (emphasis added).

[26] Id. (emphasis added).

[27] As mentioned earlier in this document, the DFW area was reclassified from Serious to Severe nonattainment for the 2008 ozone NAAQS. The attainment date for the Severe nonattainment area is July 20, 2027 (87 FR 60926). Therefore, and consistent with 40 CFR 51.1100(h), the attainment year ozone season for the DFW Severe nonattainment area is 2026. The RFP and other SIP requirements for the Severe nonattainment area will be addressed in a separate rulemaking action.

[28] See 40 CFR 93.101 (emphasis added).

[29] See 40 CFR 93.118(e)(4)(iv) (emphases added).

[30] The commenter claims that the EPA's adequacy determination is irrelevant for purposes of whether the EPA can approve the motor vehicle emissions budgets (MVEBs), because the EPA has stated that its adequacy review ''should not be used to prejudge EPA's ultimate approval or disapproval of the SIP.'' The EPA agrees that the adequacy determination is based on a cursory review of the SIP submittal when it is made prior to action on the SIP submittal itself. However, today's adequacy determination is based on the EPA's complete review, and approval, of the RFP demonstration for the DFW area within the Texas RFP submittal.

[31] *Natural Resources Defense Council* v. *EPA,* 638 F.3d 1183, 1191 (9th Cir. 2011).

[32] Id.

[33] See *https://www.epa.gov/state-and-local-transportation/adequacy-review-state-implementation-plan-sip-submissions-conformity.*

the adequacy criteria set forth by 40 CFR 93.118(e)(4), as follows:

- *The submitted control strategy implementation plan revision or maintenance plan was endorsed by the Governor (or his or her designee) and was subject to a State public hearing:* The SIP revision was submitted to EPA by the Chairman of the Texas Commission on Environmental Quality, who is the Governor's designee.
- *Before the control strategy implementation plan or maintenance plan was submitted to EPA, consultation among federal, State, and local agencies occurred; full implementation plan documentation was provided to EPA; and EPA's stated concerns, if any, were addressed:* Texas conducted an interagency consultation process involving EPA and the U.S. Department of Transportation, the Texas Department of Transportation and the DFW area Metropolitan Planning Organization. All comments and concerns were addressed prior to the final submittal.
- *The motor vehicle emissions budget(s) is clearly identified and precisely quantified:* The budgets were clearly identified and quantified in Texas's submittal and presented in Table 6 of our October 2020 proposal. The budgets are presented again in this final action in Table 1.
- *The motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission):* The 2020 budgets apply a safety margin derived from surplus emissions reductions from the 2020 RFP demonstration and are therefore larger than the on-road mobile source inventory for 2020. However, the DFW RFP plan demonstrates that these budgets are consistent with reasonable further progress when considered with all other source categories for the 2020 RFP milestone year. The 2020 budgets were developed with appropriate data inputs for the 2020 milestone year, including vehicle miles of travel, speeds, and emissions factors.
- *The motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan:* The budgets were developed from the on-road mobile source inventories, including all applicable state and Federal control measures. Inputs related to inspection and maintenance and fuels are consistent with Texas's Federally approved control programs.
- *Revisions to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins (see 40 CFR 93.101 for definition); and reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled):* The submitted RFP plan establishes new 2020 budgets to ensure continued progress towards attainment of the standards; therefore, this criterion is not applicable in this circumstance. In light of our responses to the comments and for the reasons provided in the October 2020 proposal and December 2022 supplemental proposal, we are taking final action to approve the RFP demonstration and the related motor vehicle emissions budgets and are finding that the budgets are adequate for transportation conformity purposes.

TABLE 1—RFP MOTOR VEHICLE EMISSIONS BUDGETS FOR DFW

[In tons per day]

Year	NO_X	VOC
2020	107.25	62.41

III. Final Action

We are approving revisions to the Texas SIP that address the RFP requirements for the DFW Serious ozone nonattainment area for the 2008 ozone NAAQS. Specifically, we are approving the RFP demonstration and associated motor vehicle emissions budgets. We are also notifying the public that EPA finds the budgets for NO_X and VOC for the DFW area are adequate for the purpose of transportation conformity. Within 24 months from May 24, 2023, the transportation partners will need to demonstrate conformity to the new NO_X and VOC MVEBs pursuant to 40 CFR 93.104(e)(3).

IV. Environmental Justice Considerations

As stated in our December 2022 supplemental proposal and for informational purposes only, EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within the 10-county DFW ozone nonattainment area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise counties). EPA then compared the data to the national average. The results of the demographic analysis indicate that, for populations within Collin, Dallas, Denton, Ellis, Kaufman, and Tarrant counties, the percent people of color (persons who reported their race as a category other than White alone (not Hispanic or Latino)) is higher than the national average (ranging from 46.1 to 75.4 percent versus 43.1 percent). For populations within Johnson, Parker, Rockwall, and Wise counties, the percent people of color (persons who reported their race as a category other than White alone (not Hispanic or Latino)) is lower than the national average (ranging from 19.7 to 35.9 percent versus 43.1 percent). Within people of color, the percent of the population that is Black or African American alone is higher than the national average in Dallas, Ellis, Kaufman, and Tarrant counties (ranging from 14.4 to 23.8 percent versus 13.6 percent) and lower than the national average in the other six DFW counties (ranging from 1.8 to 11.9 percent versus 13.6 percent). Within people of color, the percent of the population that is American Indian/Alaska Native is lower than the national average in all 10 of the DFW counties (ranging 0.7 percent to 1.2 percent versus 1.3 percent). Within people of color, the percent of the population that is Asian alone is higher than the national average in Collin, Dallas, and Denton counties (ranging from 7.0 to 17.5 percent versus 6.1 percent) and lower than the national average in the other seven DFW counties (ranging from 0.6 to 6.0 percent versus 6.1 percent). Within people of color, the percent of the population that is Native Hawaiian and Other Pacific Islander alone is higher than the national average in Johnson County (0.5 percent versus 0.3 percent), equal to the national average in Tarrant County (0.3 percent), and lower than the national average in the other eight DFW counties (0.1 percent versus 0.3 percent). Within people of color, the percent of the population that is two or more races is equal to the national average in Collin County (2.9 percent) and lower than the national average in the other nine DFW counties (ranging from 2.0 to 2.8 percent versus 2.9 percent). Within people of color, the percent of the population that is Hispanic or Latino is lower than the national average in Collin and Parker counties (ranging from 14.0 to 15.8 percent versus 18.9 percent) and higher than the national average in the other eight DFW counties (ranging from 20.0 to 41.4 percent versus 18.9 percent). The percent of people living in poverty in Dallas County is higher than the

national average (13.7 percent versus 11.6 percent) and lower than the national average in the other nine DFW counties (ranging from 4.8 to 10.5 percent versus 11.6 percent).[34]

This final action does not add new rules to the SIP but demonstrates ongoing reductions of ozone precursor emissions, as required by the CAA. Information on ozone and its relationship to negative health impacts can be found at *https://www.epa.gov/ground-level-ozone-pollution.*[35] We expect that the continuing emission reductions demonstrated in this action will generally be neutral or contribute to reduced environmental and health impacts on all populations in the 10-county DFW ozone nonattainment area, including people of color and low-income populations. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the 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 approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

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

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The TCEQ did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an EJ analysis, as is described above in the section titled, ''Environmental Justice Considerations.'' The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, 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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 23, 2023. Filing a petition for reconsideration by the Administrator of this final rule 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. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: April 17, 2023.

Earthea Nance,

Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 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 SS—Texas

■ 2. In § 52.2270(e), the table titled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended by adding the entry ''Reasonable Further

[34] Demographic data from the U.S. Census Bureau: *https://www.census.gov/quickfacts/fact/table/US/PST045222.*

[35] See also, 80 FR 65292 (October 26, 2015).

Progress (RFP) Plan and RFP Motor Vehicle Emission Budgets for 2020'' at the end of the table to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Comments
* *	* * *		*	*
Reasonable Further Progress (RFP) Plan and RFP Motor Vehicle Emission Budgets for 2020.	Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant and Wise Counties, TX.	3/4/2020	4/24/2023 [Insert **Federal Register** citation].	

[FR Doc. 2023–08436 Filed 4–21–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2022–0921; FRL–10846–01–OCSPP]

Oxirane, 2-Methyl-, Polymer With Oxirane, Ether With 1,2,3-Propanetriol (3:1); Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of oxirane, 2-methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1); minimum average number molecular weight 6,000 Daltons (CAS Reg. No. 9082–00–2) when used as an inert ingredient in a pesticide chemical formulation. Delta Analytical Corporation on behalf of Borchers Americas, Inc., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of oxirane, 2-methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1) on food or feed commodities when used in accordance with these exemptions.

DATES: This regulation is effective April 24, 2023. Objections and requests for hearings must be received on or before June 23, 2023 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0921, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2022–0921 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before June 23, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b), although the Office of the Administrative Law Judges, which houses the Hearing Clerk, encourages parties to file objections and hearing requests electronically. *See https://www.epa.gov/sites/default/files/2020-05/documents/2020-04-10_-_order_urging_electronic_service_and_filing.pdf.*

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2022–0921, by one of the following methods.

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI

or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets#express.*

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

II. Background and Statutory Findings

In the **Federal Register** of January 3, 2023 (88 FR 38) (FRL–9410–08), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN–11711) filed by Delta Analytical Corporation, 12510 Prosperity Drive, Suite 160, Silver Spring, MD 20904 on behalf of Borchers Americas, Inc., 811 Sharon Drive, Westlake, OH 44145. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of oxirane, 2-methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1) (CAS Reg. No. 9082–00–2). That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments.

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

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). Oxirane, 2-methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1) conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition at least two of the atomic elements carbon, hydrogen, nitrogen, oxygen, silicon, and sulfur.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize. An available biodegradation study supports that oxirane, 2-methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1) is not readily biodegradable (MRID 52074101).

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the Toxic Substances Control Act (TSCA) Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 Daltons.

7. The polymer does not contain certain perfluoroalkyl moieties consisting of a CF_3- or longer chain length as listed in 40 CFR 723.250(d)(6).

Additionally, the polymer also meets as required the following exemption criteria: specified in 40 CFR 723.250(e):

The polymer's minimum number average MW of 6,000 Daltons is greater than 1,000 and less than 10,000 Daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, oxirane, 2-methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1) meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to oxirane, 2-methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1).

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that oxirane, 2-methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1) could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The minimum number average MW of oxirane, 2-methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1) is 6,000 Daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since oxirane, 2-methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1) conform to the criteria that identify a low-risk polymer, there

are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found oxirane, 2-methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1) to share a common mechanism of toxicity with any other substances, and oxirane, 2-methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1) does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance exemption, therefore, EPA has assumed that oxirane, 2-methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1) does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor. Due to the expected low toxicity of oxirane, 2-methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1), EPA has not used a safety factor analysis to assess the risk. For the same reasons no additional safety factor is needed for assessing risk to infants and children.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of oxirane, 2-methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1).

VIII. Other Considerations

Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

IX. Conclusion

Accordingly, EPA finds that exempting residues of oxirane, 2-methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1) from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

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

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

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

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

XI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 18, 2023.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

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

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

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

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

■ 2. In § 180.960, add in alphabetical order the polymer ''Oxirane, 2-methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1), minimum number average molecular weight (in amu) of 6,000'' to the table to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

TABLE 1 TO § 180.960

Polymer	CAS No.
* * * * * * *	
Oxirane, 2-methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1), minimum number average molecular weight (in amu) of 6,000	9082–00–2
* * * * * * *	

[FR Doc. 2023–08585 Filed 4–21–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2023–0039; FRL–10869–01–OCSPP]

Oxirane, 2-Methyl-, Polymer With Oxirane, Ether With D-Glucitol (6:1); Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of oxirane, 2-methyl-, polymer with oxirane, ether with D-glucitol (6:1) when used as an inert ingredient in a pesticide chemical formulation. Delta Analytical Corporation, on behalf of Borchers Americas, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of oxirane, 2-methyl-, polymer with oxirane, ether with D-glucitol (6:1) on food or feed commodities when used in accordance with these exemptions.

DATES: This regulation is effective April 24, 2023. Objections and requests for hearings must be received on or before June 23, 2023 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2023–0039, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2023–0039 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before June 23, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b), although the Office of the Administrative Law Judges, which houses the Hearing Clerk, encourages parties to file objections and hearing requests electronically. *See https://www.epa.gov/sites/default/files/2020-05/documents/2020-04-10_-_order_urging_electronic_service_and_filing.pdf.*

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2023–0039, by one of the following methods.

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting

comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets#express.*

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

II. Background and Statutory Findings

In the **Federal Register** of February 23, 2023 (88 FR11402) (FRL–10579–01), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN–11713) filed by Delta Analytical Corporation, 12510 Prosperity Drive, Suite 160, Silver Spring, MD 20904 on behalf of Borchers Americas, Inc., 811 Sharon Drive, Westlake, OH 44145. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of oxirane, 2-methyl-, polymer with oxirane, ether with D-glucitol (6:1), (CAS Reg. No. 56449–05–9). That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments.

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

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). Oxirane, 2-methyl-, polymer with oxirane, ether with D-glucitol (6:1) conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition at least two of the atomic elements carbon, hydrogen, nitrogen, oxygen, silicon, and sulfur.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize. An available biodegradation study supports that oxirane, 2-methyl-, polymer with oxirane, ether with D-glucitol (6:1) is not readily biodegradable (MRID 52074101).

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the Toxic Substances Control Act (TSCA) Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 Daltons.

7. The polymer does not contain certain perfluoroalkyl moieties consisting of a CF_3- or longer chain length as listed in 40 CFR 723.250(d)(6).

Additionally, the polymer also meets as required the following exemption criteria: specified in 40 CFR 723.250(e):

The polymer's minimum number average MW is greater than or equal to 10,000 Daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, oxirane, 2-methyl-, polymer with oxirane, ether with D-glucitol (6:1) meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to oxirane, 2-methyl-, polymer with oxirane, ether with D-glucitol (6:1).

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that oxirane, 2-methyl-, polymer with oxirane, ether with D-glucitol (6:1) could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The minimum number average MW of oxirane, 2-methyl-, polymer with oxirane, ether with D-glucitol (6:1) is 10,000 Daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since oxirane, 2-methyl-, polymer with oxirane, ether with D-glucitol (6:1) conforms to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined

that a tolerance is not necessary to protect the public health.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found oxirane, 2-methyl-, polymer with oxirane, ether with D-glucitol (6:1) to share a common mechanism of toxicity with any other substances, and oxirane, 2-methyl-, polymer with oxirane, ether with D-glucitol (6:1) does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance exemption, therefore, EPA has assumed that oxirane, 2-methyl-, polymer with oxirane, ether with D-glucitol (6:1) does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor. Due to the expected low toxicity of oxirane, 2-methyl-, polymer with oxirane, ether with D-glucitol (6:1), EPA has not used a safety factor analysis to assess the risk. For the same reasons no additional safety factor is needed for assessing risk to infants and children.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of oxirane, 2-methyl-, polymer with oxirane, ether with D-glucitol (6:1).

VIII. Other Considerations

Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

IX. Conclusion

Accordingly, EPA finds that exempting residues of oxirane, 2-methyl-, polymer with oxirane, ether with D-glucitol (6:1) from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

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

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

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

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

XI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 18, 2023.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

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

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

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

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

■ 2. In § 180.960, amend table 1 to the section by adding, in alphabetical order, the polymer ''Oxirane, 2-methyl-, polymer with oxirane, ether with D-glucitol (6:1), minimum number average molecular weight (in amu) of 10,000'' to the table to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

TABLE 1 TO § 180.960

Polymer	CAS No.
* * * * * * *	
Oxirane, 2-methyl-, polymer with oxirane, ether with D-glucitol (6:1), minimum number average molecular weight (in amu) of 10,000	56449–05–9
* * * * * * *	

[FR Doc. 2023–08583 Filed 4–21–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2022–0711; FRL–10848–01–OCSPP]

α-D-Glucopyranoside, β-D-Fructofuranosyl, Polymer With Methyloxirane and Oxirane; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of α-D-glucopyranoside, β-D-fructofuranosyl, polymer with methyloxirane and oxirane with a minimum number average molecular weight (in amu) of 9,800 (CAS Reg. No. 26301–10–0) when used as an inert ingredient in a pesticide chemical formulation. Delta Analytical Corporation, on behalf of Borchers Americas, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of α-D-glucopyranoside, β-D-fructofuranosyl, polymer with methyloxirane and oxirane on food or feed commodities when used in accordance with this exemption.

DATES: This regulation is effective April 24, 2023. Objections and requests for hearings must be received on or before June 23, 2023, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0711, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2022–0711 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before June 23, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b), although the Office of the Administrative Law Judges, which houses the Hearing Clerk, encourages parties to file objections and hearing requests electronically. *See https://www.epa.gov/sites/default/files/2020-05/documents/2020-04-10_-_order_urging_electronic_service_and_filing.pdf.*

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2022–0711, by one of the following methods.

• *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets#express.*

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

II. Background and Statutory Findings

In the **Federal Register** of September 23, 2022 (87 FR 58047) (FRL–9410–05–OSCPP), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN–11712) filed by Delta Analytical Corporation, 12510 Prosperity Drive, Suite 160, Silver Spring, MD 20904 on behalf of Borchers Americas, Inc., 811 Sharon Drive, Westlake, OH 44145. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of α-D-glucopyranoside, β-D-fructofuranosyl, polymer with methyloxirane and oxirane with a minimum number average molecular weight (in amu) of 9,800 (CAS Reg. No. 26301–10–0). That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments.

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

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). α-D-Glucopyranoside, β-D-fructofuranosyl, polymer with methyloxirane and oxirane conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition at least two of the atomic elements carbon, hydrogen, nitrogen, oxygen, silicon, and sulfur.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize. An available biodegradation study supports that α-D-glucopyranoside, β-D-fructofuranosyl, polymer with methyloxirane and oxirane is not readily biodegradable (MRID 52074101).

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the Toxic Substances Control Act (TSCA) Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 Daltons.

7. The polymer does not contain certain perfluoroalkyl moieties consisting of a CF_3- or longer chain length as listed in 40 CFR 723.250(d)(6). Additionally, the polymer also meets as required the following exemption criteria: specified in 40 CFR 723.250(e):

The polymer's minimum number average MW of 9,800 Daltons is greater than 1,000 and less than 10,000 Daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, α-D-Glucopyranoside, β-D-fructofuranosyl, polymer with methyloxirane and oxirane meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to α-D-Glucopyranoside, β-D-fructofuranosyl, polymer with methyloxirane and oxirane.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that α-D-Glucopyranoside, β-D-fructofuranosyl, polymer with methyloxirane and oxirane could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The minimum number average MW of α-D-Glucopyranoside, β-D-fructofuranosyl, polymer with methyloxirane and oxirane is 9,800

Daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since α-D-Glucopyranoside, β-D-fructofuranosyl, polymer with methyloxirane and oxirane conforms to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found α-D-Glucopyranoside, β-D-fructofuranosyl, polymer with methyloxirane and oxirane to share a common mechanism of toxicity with any other substances, and α-D-Glucopyranoside, β-D-fructofuranosyl, polymer with methyloxirane and oxirane does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance exemption, therefore, EPA has assumed that α-D-Glucopyranoside, β-D-fructofuranosyl, polymer with methyloxirane and oxirane does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor. Due to the expected low toxicity of α-D-glucopyranoside, β-D-fructofuranosyl, polymer with methyloxirane and oxirane, EPA has not used a safety factor analysis to assess the risk. For the same reasons no additional safety factor is needed for assessing risk to infants and children.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of α-D-glucopyranoside, β-D-fructofuranosyl, polymer with methyloxirane and oxirane.

VIII. Other Considerations

Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

IX. Conclusion

Accordingly, EPA finds that exempting residues of α-D-glucopyranoside, β-D-fructofuranosyl, polymer with methyloxirane and oxirane from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

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

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

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

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

XI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 18, 2023.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

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

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

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

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

■ 2. In § 180.960, amend table 1 to the section by adding, in alphabetical order, the polymer ''α-D-Glucopyranoside, β-D-fructofuranosyl, polymer with methyloxirane and oxirane with a minimum number average molecular weight (in amu) of 9,800'' to the table to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

TABLE 1 TO § 180.960

Polymer	CAS no.
* * * * * * *	
α-D-Glucopyranoside, β-D-fructofuranosyl, polymer with methyloxirane and oxirane with a minimum number average molecular weight (in amu) of 9,800	26301–10–0
* * * * * * *	

[FR Doc. 2023–08584 Filed 4–21–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 192

[Docket No. PHMSA–2011–0023; Amdt. No. 192–133]

RIN 2137–AF39

Pipeline Safety: Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments: Technical Corrections; Response to Petitions for Reconsideration

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Final rule; technical corrections; response to petitions for reconsideration.

SUMMARY: PHMSA is making necessary technical corrections to ensure consistency within, and the intended effect of, a recently issued final rule titled ''Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments.'' PHMSA also alerts the public to its November 18, 2022, and April 19, 2023, responses to petitions for reconsideration of this final rule.

DATES: Effective May 24, 2023.

FOR FURTHER INFORMATION CONTACT:

Technical questions: Steve Nanney, Senior Technical Advisor, by telephone at 713–272–2855.

General information: Robert Jagger, Senior Transportation Specialist, by telephone at 202–366–4361.

SUPPLEMENTARY INFORMATION: On August 24, 2022, as the culmination of a decade-long rulemaking process, PHMSA published a final rule titled ''Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments'' [1] amending the Pipeline Safety Regulations at 49 CFR part 192 to improve the safety of onshore gas transmission pipelines. In preparing to implement provisions of the August 2022 Final Rule, as well as through discussions with stakeholders (including petitions for reconsideration of the August 2022 Final Rule), PHMSA has identified several places in the amended regulatory text that would benefit from technical correction to facilitate timely implementation of the August 2022 Final Rule consistent with the function and purposes described in the administrative record. PHMSA also alerts the public to the availability in the rulemaking docket of its November 18, 2022, response to a petition for reconsideration filed by the American Gas Association and its April 19, 2022, response to a petition for reconsideration jointly filed by the Interstate Natural Gas Association of America and the American Petroleum Institute.

[1] 87 FR 52224 (Aug. 24, 2022) (''August 2022 Final Rule'').

A. Technical Corrections To Ensure Consistency Between §§ 192.714 and 192.933

Among the August 2022 Final Rule's regulatory amendments were the enhancement of existing repair criteria and repair schedules for anomalies discovered in a High Consequence Area (HCA) and the extension of those repair criteria and schedules to onshore gas transmission lines outside an HCA. *See* 87 FR at 52226 (''The content of the non-HCA repair criteria being finalized in this rule is consistent with the criteria for HCAs''). This was achieved by adding similar repair criteria and scheduling requirements to both 49 CFR 192.714 (applicable to non-HCA lines) and § 192.933 (applicable to HCA lines). *See* 87 FR at 52246. However, PHMSA has identified three instances in the amended regulatory text that would benefit from technical correction to facilitate timely implementation of the August 2022 Final Rule consistent with the function and purposes described in the administrative record.

First, both §§ 192.714 and 192.933 provide, at respective paragraph (d)(1), for specific conditions that must be repaired immediately. These are the most severe, risk-bearing conditions and the August 2022 Final Rule set out the importance for public and environmental safety of their swift remediation upon detection. That detection may come from regularly scheduled assessments and the evaluation of anomalies that appear indicative of a serious condition. Section 7 of ASME/ANSI B31.8S provides that examination of these indications must occur ''within a period not to exceed 5 days following determination of the condition,'' with ''prompt[ ]'' remediation thereafter of

any defect found to require repair or removal.[2] ASME/ANSI B31.8S, section 7 is incorporated in the HCA immediate repair criteria at § 192.933(d)(1) for operators to follow in their evaluation and remediation schedule. However, parallel language was inadvertently omitted from § 192.714(d). *See* 87 FR at 52246 (referencing ASME/ANSI B31.8S, section 7 in the preamble discussion supporting § 192.714).[3] This omission from § 192.714 leaves unintended asymmetry in the evaluation and remediation schedule for immediate repair conditions between HCA and non-HCA lines, with potential for operator confusion. As the § 192.714 repair criteria were intended to largely mirror those at § 192.933, PHMSA is correcting this oversight by adding to the beginning of § 192.714(d)(1) similar language that begins § 192.933(d)(1): ''An operator's evaluation and remediation schedule for immediate repair conditions must follow section 7 of ASME/ANSI B31.8S (incorporated by reference, *see* § 192.7).''

Second, §§ 192.714(d)(3) and 192.933(d)(3) list various ''monitored conditions'' that entail less acute risk to public safety and the environment but which nevertheless merit monitoring by operators to ensure no further degradation occurs. Evidence supporting differentiation between a scheduled repair condition and a monitored repair condition can include an engineering critical assessment (ECA) demonstrating critical strain levels are not exceeded; conversely, exceedance of critical strain levels will often require a condition be scheduled for a repair under §§ 192.714(d)(2) and 192.933(d)(2). For that reason, PHMSA explained during the Gas Pipeline Advisory Committee (GPAC) meeting that it intended for dent repair criteria for both HCA and non-HCA areas to provide that ''[d]ents analyzed by ECA, but shown to not exceed critical strain levels[,] would be Monitored Conditions'' under §§ 192.714(d)(3) and 192.933(d)(3).[4] However, the regulatory text adopted by the August 2022 Final Rule included references to ECA as an element for only two of three monitored dent conditions in § 192.714 (applicable to non-HCA lines), even as it referenced ECA for all three monitored dent conditions in § 192.933 (applicable to HCA lines). *See* §§ 192.714(d)(3)(ii)–(iii) and 192.933(d)(3)(i)–(iii). The omission of ECA in the criteria at § 192.714(d)(3)(i) for dents on the bottom third (⅓) of the pipeline was inadvertent, as further demonstrated by reference to the same condition found in § 192.933(d)(3)(i) for HCA pipelines, which correctly includes the reference to an ECA. Accordingly, PHMSA is correcting the editorial oversight at § 192.714(d)(3)(i) by revising the regulatory language to provide that a dent on the bottom third (⅓) of a pipeline can be a monitored condition ''where an engineering analysis, performed in accordance with § 192.712(c), demonstrates critical strain levels are not exceeded.''

Third, PHMSA also clarifies that § 192.714(b) permits operators in certain circumstances to use the default values provided for in § 192.712(d)(3) and (e)(2) to calculate predicted failure pressure during repair operations when their documented material properties are unknown. Section 192.714(b) sets general, baseline requirements to ''ensure that the repairs are made in a safe manner'' and requires a ''pipeline segment's operating pressure [to] be less than the predicted failure pressure determined in accordance with § 192.712 during repair operations.'' Section 192.712 directs operators to use material property values that are documented in traceable, verifiable, and complete records where possible and provides conservative values operators may use where they are not. *See* § 192.712(d)(3), (e)(2). Operators must, in complying with §§ 192.714(b) and 192.933(a), either use documented material properties where they are available; obtain any missing documentation through § 192.607 where possible; or where such documentation is unavailable and cannot be obtained in a timely manner, employ the conservative assumptions in § 192.712 in their stead. *See* 87 FR at 52253. To make this clear, PHMSA is issuing a technical correction to add as the final sentence to both §§ 192.714(b) and 192.933(a): ''Until documented material properties are available, the operator must use the conservative assumptions in either § 192.712(e)(2) or, if appropriate following a pressure test, in § 192.712(d)(3).'' As PHMSA explained in the August 2022 Final Rule, an operator ''missing any material properties during anomaly evaluations and repairs'' should, through the ensuing repair operation, ''confirm those material properties under §§ 192.607 and 192.712(e) through (g)'' for future use. 87 FR at 52253.

B. Technical Correction to § 192.319(f) for Consistency With § 192.461(h) Regarding Schedule for Completing Any Necessary Repairs

PHMSA also intended in the August 2022 Final Rule to establish a consistent approach for scheduling remediation of severe coating damage for newly installed (pursuant to § 192.319) and existing (pursuant to § 192.461) pipelines to protect against corrosion. As PHMSA explained during the GPAC meeting, PHMSA intended both §§ 192.319 and 192.461 to provide operators 1 year total (contingent on obtaining any necessary permits) to complete the assessment of a pipe's corrosion protective coating and make any needed repairs; specifically, PHMSA intended to provide operators 6 months for the assessment plus 6 months from the assessment to complete any necessary repairs, with an allowance for permitting delays.[5] While § 192.461 contains language providing for this schedule at paragraphs (f) (assessment) and (h) (repair), and § 192.319 provides for the same schedule at paragraph (d) (assessment), PHMSA inadvertently omitted such language from paragraph (f) (repair) of § 192.319. PHMSA is therefore issuing a technical correction so that § 192.319(f) provides 6 months from the assessment, or as soon as practical after obtaining necessary permits, to complete any necessary repairs. This technical correction will also ensure that under § 192.319(f) operators apply for any needed permits within 6 months, mirroring the language in § 192.461(h).

C. Technical Correction To Specify the Unit Measurement in § 192.473(c)(3) Is in Alternating Current (AC)

Finally, among several provisions providing safety measures against potential corrosion, the August 2022 Final Rule includes language at § 192.473(c) obliging operators to conduct interference surveys to detect certain stray currents, for example, those from ''co-located pipelines, structures, or high voltage alternating current (HVAC) power lines.'' 87 FR at 52269 (amending § 192.473(c)(1)). Detecting and remediating interference surveys is essential to protecting pipeline integrity against stray currents

[2] Am. Soc'y Mech. Eng'rs, B31.8S–2004, ''Managing System Integrity of Gas Pipelines,'' sec. 7 (2005) (''ASME/ANSI B31.8S'').

[3] PHMSA included amendatory language at § 192.7(c)(6) to incorporate by reference ASME/ANSI B31.8S for § 192.714(d). *See* 87 FR at 52267.

[4] GPAC, Mar. 26 to 28, 2018 Meeting Slides at slide 150 (Mar. 2018); 87 FR at 52249. The GPAC meeting material is available on the public meeting page accessible at *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=132.*

[5] GPAC, June 6 to 7, 2017 Meeting Slides at slides 10 & 13 (June 2017) (providing 6 months for assessment ''plus 6 months to complete repairs''); GPAC, June 6, 2017 Meeting Transcript, at 40. The GPAC material is available on the public meeting page accessible at *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=123.*

that interfere with a corrosion control system. 87 FR at 52237. Section 192.473(c)(3), as adopted by the August 2022 Final Rule, requires that operators take remedial action when those surveys detect interference current that meets or exceeds 100 amps per meter square. The precise unit of measure is ''100 amps per meter squared alternating current (AC).'' 100 amps is calibrated as the appropriate value when measured in AC, as PHMSA has also specified in special permits it has issued, stating: ''Remedial action is required when the interference . . . is at a level that could cause significant corrosion (defined as 100 amps per meter square for AC-induced corrosion)[.]'' *See, e.g.,* Special Permit Requested by Natural Gas Pipeline Company of America, LLC, Class 1 to Class 3, Dkt. No. PHMSA–2019–0150 (Issued May 17, 2022), *https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2022-05/2019-0150-NGPL-Class-1-to-3-FL-SP-05-17-2022.pdf;* Special Permit Requested by Florida Gas Transmission Company, LCC, Class 1 to Class 3, Dkt. No. PHMSA–2020–0001 (Issued Mar. 31, 2022), *https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2022-04/2020-0001-Florida-Gas-Transmission-SP-Class-1-to-3-FL-SP-03-31-2022.pdf.* PHMSA is issuing a technical correction to clarify in the regulatory text of § 192.473(c)(3) that the unit of measure is in AC.

D. Response to Petitions for Reconsideration

PHMSA alerts the public and regulated community to its responses to petitions for reconsideration filed by the American Gas Association (AGA), the Interstate Natural Gas Association of America (INGAA), and the American Petroleum Institute (API). On September 23, 2022, AGA submitted a petition for reconsideration of the August 2022 Final Rule requesting clarification of two definitions at § 192.3 (regarding ''in-line inspection'' and ''transmission line'') and additional compliance time. *See* Docket No. PHMSA–2011–0023–0643. PHMSA's November 18, 2022, response letter to AGA's petition is available in the docket for this rulemaking at Docket No. PHMSA–2011–0023–0646.

Also on September 23, 2022, INGAA and API jointly submitted a petition for reconsideration of the August 2022 Final Rule that raised a wide variety of requests, including additional compliance time. *See* Docket No. PHMSA–2011–0023–0644. PHMSA's April 19, 2023, response letter to INGAA and API's petition is available in the docket for this rulemaking at Docket No. PHMSA–2011–0023–0649. Several of the issues raised in this petition have also informed technical corrections made in this notice.

IV. Regulatory Analyses and Notices

A. Legal Authority

Statutory authority for these technical corrections to the August 2022 Final Rule, as with that final rule itself, is provided by the Federal Pipeline Safety Act (49 U.S.C. 60101 *et seq.*). The Secretary delegated his authority under the Federal Pipeline Safety Act to the PHMSA Administrator under 49 CFR 1.97.

PHMSA finds it has good cause to make these five technical corrections without notice and comment pursuant to Section 553(b) of the Administrative Procedure Act (APA, 5 U.S.C. 551, *et seq.*). Section 553(b)(B) of the APA 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. These technical corrections, as explained above, are all editorial in nature and consistent with the intent of the recently published August 2022 Final Rule, which itself was the product of a decade-long rulemaking record with extensive notice and opportunity for comment, including various occasions for input through the GPAC at public meetings. The technical corrections make no substantive changes to the August 2022 Final Rule but merely facilitate its implementation by aligning the regulatory text with explanatory material in the August 2022 Final Rule's preamble and the administrative record. Because the August 2022 Final Rule is the product of an extensive administrative record with numerous opportunities (including through written comments and the advisory committee) for public comment, PHMSA finds that additional comment on the technical corrections herein is unnecessary.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

These technical corrections have been evaluated in accordance with existing policies and procedures and are considered not significant under Executive Order 12866 (''Regulatory Planning and Review'') [6] and DOT Order 2100.6A (''Rulemaking and Guidance Procedures''). While the August 2022 Final Rule received review by the Office of Management and Budget (OMB) under Executive Order 12866, these technical corrections (which are consistent with the final rule) are not considered significant and accordingly, this notice has not been reviewed under that authority. PHMSA finds that the technical corrections herein (in all respects consistent with the final rule) neither impose incremental compliance costs nor adversely affect safety.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Flexibility Fairness Act of 1996 (RFA, 5 U.S.C. 601 *et seq.*), generally requires Federal regulatory agencies to prepare a Final Regulatory Flexibility Analysis (FRFA) for a final rule subject to notice-and-comment rulemaking under the APA. 5 U.S.C. 604(a).[7] PHMSA did so for the August 2022 Final Rule, where the FRFA is available in the rulemaking docket, and that analysis remains unchanged as the technical corrections will impose no new incremental compliance costs.[8] Because PHMSA has ''good cause'' under the APA to forego comment on the technical corrections herein, no FRFA is required, consistent with the Small Business Administration's implementing guidance which explains that ''[i]f an NPRM is not required, the RFA does not apply.'' [9]

D. Paperwork Reduction Act

The technical corrections in this notice impose no new or revised information collection requirements beyond those discussed in the August 2022 Final Rule.

E. Unfunded Mandates Reform Act of 1995

These technical corrections do not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995 (UMRA, 2 U.S.C. 1501 *et seq.*). PHMSA prepared an analysis of the UMRA considerations in the final regulatory impact analysis for the August 2022 Final Rule, which is available in the docket for the rulemaking.[10] These technical corrections have no substantial effect on that analysis as they will impose no new incremental compliance costs. PHMSA has analyzed the technical corrections in this notice

[6] 58 FR 51735 (Oct. 4, 1993).

[7] This requirement is subject to exceptions—which are not in any event applicable here because PHMSA has good cause to forego comment in adopting the technical correction herein.

[8] Final Regulatory Impact Analysis, Doc. No. PHMSA–2011–0023–0637, at 44 (Aug. 26, 2022).

[9] Small Business Administration, ''A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act'' 55 (2017).

[10] Doc. No. PHMSA–2011–0023–0637, at 44 (Aug. 26, 2022).

under the factors in the UMRA, as well, and determined that the technical corrections to the final rule herein do not impose enforceable duties on State, local, or Tribal governments or on the private sector of $100 million or more, adjusted for inflation, in any one year.

F. National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) requires Federal agencies to prepare a detailed statement on major Federal actions significantly affecting the quality of the human environment. PHMSA analyzed the August 2022 Final Rule in accordance with NEPA, implementing Council on Environmental Quality regulations (40 CFR parts 1500–1508), and DOT implementing policies (DOT Order 5610.1C, ''Procedures for Considering Environmental Impacts'') and determined the final rule would not significantly affect the quality of the human environment.[11] The technical corrections in this notice have no effect on PHMSA's earlier NEPA analysis prepared on the August 2022 Final Rule as the technical corrections are consistent, and merely facilitate compliance with, the August 2022 Final Rule. The purpose of the technical corrections is to further improve safety in conducting operations and repairs.

G. Privacy Act Statement

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to inform its rulemaking process. 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 FDMS), which can be reviewed at *www.dot.gov/privacy.*

H. Executive Order 13132 (Federalism)

PHMSA has analyzed this notice in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism'').[12] PHMSA has previously determined that the August 2022 Final Rule itself did not impose any substantial direct effect on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government, *see* 87 FR at 52266; nor do the technical corrections herein, which are consistent with the August 2022 Final Rule and merely facilitate its compliance. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

I. Executive Order 13211

PHMSA analyzed the August 2022 Final Rule and determined that the requirements of Executive Order 13211 (''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'')[13] did not apply. Neither are these technical corrections to the rule a ''significant energy action'' under Executive Order 13211 as they are not likely to have a significant adverse effect on supply, distribution, or energy use. Further, OMB has not designated these corrections a significant energy action.

J. Executive Order 13175

This document was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments'')[14] and DOT Order 5301.1 (''Department of Transportation Policies, Programs, and Procedures Affecting American Indians, Alaska Natives, and Tribes''). Because nothing herein has Tribal implications or imposes substantial direct compliance costs on Indian Tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

K. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609 (''Promoting International Regulatory Cooperation''),[15] agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The technical corrections to the final rule in this notice do not impact international trade.

L. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 192

Corrosion control, Incorporation by reference, Installation of pipe in a ditch, Integrity management, Internal inspection device, Management of change, Pipeline safety, Repair criteria, Surveillance.

In consideration of the foregoing, PHMSA further amends 49 CFR part 192, as amended August 24, 2022, at 87 FR 52224, and effective May 24, 2023, by making the following technical amendments:

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 1. The authority citation for part 192 continues to read as follows:

Authority: 30 U.S.C. 185(w)(3), 49 U.S.C. 5103, 60101 *et seq.,* and 49 CFR 1.97.

■ 2. Section 192.319, as amended August 24, 2022, at 87 FR 52269, and effective May 24, 2023, is further amended by revising paragraph (f) to read as follows:

§ 192.319 Installation of pipe in a ditch.

* * * * *

(f) An operator of an onshore steel transmission pipeline must develop a remedial action plan and apply for any necessary permits within 6 months of completing the assessment that identified the deficiency. An operator must repair any coating damage classified as severe (voltage drop greater than 60 percent for DCVG or 70 dBμV for ACVG) in accordance with section 4 of NACE SP0502 (incorporated by reference, *see* § 192.7) within 6 months of the assessment, or as soon as practicable after obtaining necessary permits, not to exceed 6 months after the receipt of permits.

* * * * *

■ 3. Section 192.473, as amended August 24, 2022, at 87 FR 52269, and effective May 24, 2023, is further amended by revising paragraph (c)(3) to read as follows:

§ 192.473 External corrosion control: Interference currents.

* * * * *

(c) * * *

(3) Development of a remedial action plan to correct any instances where

[11] Final Environmental Assessment, Doc. No. PHMSA–2011–0023–0635 (July 2022).

[12] 64 FR 43255 (Aug. 10, 1999).

[13] 66 FR 28355 (May 22, 2001).

[14] 65 FR 67249 (Nov. 6, 2000).

[15] 77 FR 26413 (May 4, 2012).

interference current is greater than or equal to 100 amps per meter squared alternating current (AC), or if it impedes the safe operation of a pipeline, or if it may cause a condition that would adversely impact the environment or the public; and

* * * * *

■ 4. Section 192.714, as added August 24, 2022, at 87 FR 52271, and effective May 24, 2023, is amended by revising paragraphs (b), (d)(1) introductory text, and (d)(3)(i) to read as follows:

§ 192.714 Transmission lines: Repair criteria for onshore transmission pipelines.

* * * * *

(b) *General.* Each operator must, in repairing its pipeline systems, ensure that the repairs are made in a safe manner and are made to prevent damage to persons, property, and the environment. A pipeline segment's operating pressure must be less than the predicted failure pressure determined in accordance with § 192.712 during repair operations. Repairs performed in accordance with this section must use pipe and material properties that are documented in traceable, verifiable, and complete records. If documented data required for any analysis, including predicted failure pressure for determining MAOP, is not available, an operator must obtain the undocumented data through § 192.607. Until documented material properties are available, the operator must use the conservative assumptions in either § 192.712(e)(2) or, if appropriate following a pressure test, in § 192.712(d)(3).

* * * * *

(d) * * *

(1) *Immediate repair conditions.* An operator's evaluation and remediation schedule for immediate repair conditions must follow section 7 of ASME/ANSI B31.8S (incorporated by reference, *see* § 192.7). An operator must repair the following conditions immediately upon discovery:

* * * * *

(3) * * *

(i) A dent that is located between the 4 o'clock and 8 o'clock positions (bottom ⅓ of the pipe) with a depth greater than 6 percent of the pipeline diameter (greater than 0.50 inches in depth for a pipeline diameter less than NPS 12), and where an engineering analysis, performed in accordance with § 192.712(c), demonstrates critical strain levels are not exceeded.

* * * * *

■ 5. Section 192.933, as amended August 24, 2022, at 87 FR at 52277, and effective May 24, 2023, is further amended by revising paragraph (a) introductory text to read as follows:

§ 192.933 What actions must be taken to address integrity issues?

(a) *General requirements.* An operator must take prompt action to address all anomalous conditions the operator discovers through the integrity assessment. In addressing all conditions, an operator must evaluate all anomalous conditions and remediate those that could reduce a pipeline's integrity. An operator must be able to demonstrate that the remediation of the condition will ensure the condition is unlikely to pose a threat to the integrity of the pipeline until the next reassessment of the covered segment. Repairs performed in accordance with this section must use pipe and material properties that are documented in traceable, verifiable, and complete records. If documented data required for any analysis is not available, an operator must obtain the undocumented data through § 192.607. Until documented material properties are available, the operator must use the conservative assumptions in either § 192.712(e)(2) or, if appropriate following a pressure test, in § 192.712(d)(3).

* * * * *

Issued in Washington, DC, under authority delegated in 49 CFR 1.97.

Tristan H. Brown,

Deputy Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2023–08548 Filed 4–21–23; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2022–0062; FXES11130900000C6–234–FF09E42000]

RIN 1018–BG77

Endangered and Threatened Wildlife and Plants; Technical Corrections for 62 Wildlife and Plant Species on the Lists of Endangered and Threatened Wildlife and Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Partial withdrawal of direct final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are withdrawing, in part, a February 2, 2023, direct final rule that revises the taxonomy of 62 wildlife and plant species listed under the Endangered Species Act of 1973, as amended (Act). For the Hawaiian hoary bat (*Lasiurus cinereus semotus*), we received comments relating to scientific research relevant to its taxonomic classification; and as a result, we are withdrawing the amendment in the direct final rule for this species only. The amendments in the direct final rule for the other 61 wildlife and plant species will be effective on May 3, 2023.

DATES: Effective April 24, 2023, the Service withdraws amendatory instruction 2.a published at 88 FR 7142 on February 2, 2023.

ADDRESSES: The direct final rule may be found online at *https://www.regulations.gov* under Docket No. FWS–R1–ES–2022–0062.

FOR FURTHER INFORMATION CONTACT: Marilet Zablan, Program Manager for Restoration and Endangered Species Classification, U.S. Fish and Wildlife Service, Pacific Regional Office, Ecological Services, 911 NE 11th Avenue, Portland, OR 97232; telephone 503–231–6131. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

Our regulations under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), in title 50 of the Code of Federal Regulations at 50 CFR 17.11(c) and 17.12(b) direct us to use the most recently accepted scientific names for species on the Lists of Endangered and Threatened Wildlife and Plants (50 CFR 17.11(h) and 17.12(h)). Accordingly, on February 2, 2023, we published in the **Federal Register** a direct final rule (88 FR 7134) to revise the taxonomy and nomenclature of 62 wildlife and plant species listed under section 4 of the Act (16 U.S.C. 1531 *et seq.*). All of these changes are supported by peer-reviewed scientific studies and reflect taxonomy that has been accepted by taxonomic authorities. Specific references relevant to each species are cited in the text of the February 2, 2023, direct final rule, and the list of references is posted as a supporting document at *https://www.regulations.gov* under Docket No. FWS–R1–ES–2022–0062.

Consequently, we published the direct final rule without a prior proposal

because we considered it a noncontroversial action that was in the best interest of the public and should be undertaken in as timely a manner as possible. We stated that if we received comments that provide strong justifications as to why the rule should not be adopted or why it should be changed for any of these species, we would publish a document in the **Federal Register** withdrawing this rule for the appropriate species before the effective date.

Comments on the Direct Final Rule

We received eight comments on the direct final rule. Three of these comments called our attention to continuing scientific disagreement over the taxonomic classification of the Hawaiian hoary bat. These comments concurred with the decision in the direct final rule to elevate the Hawaiian hoary bat from subspecies to species level, and none of the comments disagreed with amending the common name to include the Hawaiian name (ʻōpeʻapeʻa). However, they noted that moving the Hawaiian hoary bat from the genus *Lasiurus* to *Aeorestes* has not been generally accepted.

As noted in the direct final rule, *Aeorestes* was accepted by the Integrated Taxonomic Information System (ITIS 2022, unpaginated) and the American Society of Mammalogists (2022, unpaginated). Yet, commenters noted that *Lasiurus* continues to be widely used in the scientific literature and was retained by multiple authorities including the American Museum of Natural History (Bats of the World: A Taxonomic and Geographic Database), the Handbook of the Mammals of the World, and the International Union for Conservation of Nature (IUCN) Red List. One commenter attached a detailed review of this taxonomic issue that was recently prepared by the Global Bat Taxonomy Working Group of the IUCN Species Survival Commission Bat Specialist Group, recommending that *Lasiurus* be retained as the genus name for hoary bats, with *Aeorestes* as a subgenus.

We concur that these comments are significant and that the taxonomic status of Hawaiian hoary bat merits further consideration pending a more clear scientific consensus on this issue. Therefore, we are withdrawing that portion of the direct final rule concerning the listed entity Hawaiian hoary bat (*Lasiurus cinereus semotus*). In the future, we may propose changes in the taxonomy of Hawaiian hoary bat with opportunity for further public comment.

Other topics discussed in the comments were not specific to the taxonomic issues raised in the direct final rule. Three commenters expressed approval for inclusion of local common names in addition to English names. Two commenters requested that we also coordinate with the National Oceanic and Atmospheric Administration to amend the common names of two listed sea turtles (green sea turtle (*Chelonia mydas*) and hawksbill sea turtle (*Eretmochelys imbricata*)), so as to include Hawaiian, Chamorro, Carolinian, and Samoan names; sea turtles were not addressed in the direct final rule, but we will consider incorporating this change in a future action. We did not receive significant adverse comments concerning the taxonomy of the other 61 wildlife and plant species addressed in the direct final rule.

Partial Withdrawal of the Direct Final Rule

For the reasons stated above, we withdraw amendatory instruction 2.a of the direct final rule published on February 2, 2023, at 81 FR 7134–7177.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–08503 Filed 4–21–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 220325–0078; RTID 0648–XC939]

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; 2023 Closure of the Northern Gulf of Maine Scallop Management Area to the Limited Access General Category Fishery

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the closure of the Northern Gulf of Maine Scallop Management Area for the remainder of the 2023 fishing year for Limited Access General Category vessels. Regulations require this action once NMFS projects that 100 percent of the Northern Gulf of Maine Set-Aside will be harvested. This action is intended to prevent the overharvest of the 2023 Northern Gulf of Maine Set-Aside.

DATES: Effective 0001 hr local time, April 21, 2023, through March 31, 2024.

FOR FURTHER INFORMATION CONTACT: Louis Forristall, Fishery Management Specialist, (978) 281–9321.

SUPPLEMENTARY INFORMATION: The regulations governing fishing activity in the Northern Gulf of Maine (NGOM) Scallop Management Area are located in 50 CFR 648.54 and 648.62. These regulations authorize vessels issued a valid Federal scallop permit to fish in the NGOM Scallop Management Area under specific conditions, including the NGOM Set-Aside for the 2023 fishing year, and a State Waters Exemption Program for the State of Maine and Commonwealth of Massachusetts. Section 648.62(b)(2) requires the NGOM Scallop Management Area to be closed to scallop vessels issued Federal Limited Access General Category (LAGC) scallop permits, except as provided below, for the remainder of the fishing year once the NMFS Greater Atlantic Regional Administrator determines that 100 percent of the NGOM Set-Aside is projected to be harvested. Any vessel that holds a Federal NGOM (LAGC B) or Individual Fishing Quota (IFQ) (LAGC A) permit may continue to fish in the Maine or Massachusetts state waters portion of the NGOM Scallop Management Area under the State Waters Exemption Program found in § 648.54 provided it has a valid Maine or Massachusetts state scallop permit and fishes only in that state's respective waters.

Based on trip declarations by federally permitted LAGC scallop vessels fishing in the NGOM Scallop Management Area and analysis of fishing effort, we project that the 2023 NGOM Set-Aside will be harvested as of April 21, 2023. Therefore, in accordance with § 648.62(b)(2), the NGOM Scallop Management Area is closed to all federally permitted LAGC scallop vessels as of April 21, 2023. As of this date, no vessel issued a Federal LAGC scallop permit may fish for, possess, or land scallops in or from the NGOM Scallop Management Area after 0001 local time, April 21, 2023, unless the vessel is fishing exclusively in state waters and is participating in an approved state waters exemption program as specified in § 648.54. Any federally permitted LAGC scallop vessel

that has declared into the NGOM Scallop Management Area, complied with all trip notification and observer requirements, and crossed the vessel monitoring system demarcation line on the way to the area before 0001, April 21, 2023, may complete its trip and land scallops. This closure is in effect until the end of the 2023 scallop fishing year, through March 31, 2024.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest and impracticable. NMFS also finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons noted below. The NGOM Scallop Management Area opened for the 2023 fishing year on April 1, 2023. The regulations at § 648.60(b)(2) require this closure to ensure that federally permitted scallop vessels do not harvest more than the allocated NGOM Set-Aside. NMFS can only make projections for the NGOM closure date as trips into the area occur on a real-time basis and as activity trends appear. As a result, NMFS can typically make an accurate projection only shortly before the set-aside is harvested. The rapid harvest rate that has occurred in the last 2 weeks makes it more difficult to project a closure well in advance. To allow federally permitted LAGC scallop vessels to continue taking trips in the NGOM Scallop Management Area during the period necessary to publish and receive comments on a proposed rule would result in vessels harvesting more than the 2023 NGOM Set-Aside for the NGOM Scallop Management Area. This would result in excessive fishing effort in the area thereby undermining conservation objectives of the Atlantic Sea Scallop Fishery Management Plan and requiring more restrictive future management measures to make up for the excessive harvest. Also, the public had prior notice and full opportunity to comment on this closure process when we solicited comments during rulemaking for 2023 NGOM management provisions (88 FR 19559, April 3, 2023).

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

Dated: April 19, 2023.

Kelly Denit,

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

[FR Doc. 2023–08601 Filed 4–19–23; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 78
Monday, April 24, 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 73

[NRC–2023–0068]

Draft Regulatory Guide: Cybersecurity Event Notifications

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft regulatory guide (DG), DG–5079, ''Cybersecurity Event Notifications.'' This DG is proposed Revision 1 to Regulatory Guide (RG) 5.83 of the same name. This proposed revision describes methods that the staff of the NRC considers acceptable for licensees to meet requirements in NRC regulations to report and record cybersecurity events.

DATES: Submit comments by May 24, 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: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0068. 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.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

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

FOR FURTHER INFORMATION CONTACT: Daniel Warner, Office of Nuclear Security and Incident Response, telephone: 301–287–3642; email: *Daniel.Warner@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. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0068 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–2023–0068.
- *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.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2023–0068 in your comment submission.

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

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

II. Additional Information

The NRC is issuing for public comment a DG 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 DG, entitled ''Cybersecurity Event Notifications,'' (ADAMS Accession No. ML22250A443) is temporarily identified by its task number, DG–5079, which is proposed Revision 1 of RG 5.83 of the same name.

The DG describes methods that the staff of the NRC considers acceptable for licensees to report and record cybersecurity events as required under section 73.77 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Cyber security event notifications.'' This guide applies to nuclear power reactor licensees that are licensed to operate under 10 CFR part 50, ''Domestic Licensing of Production and Utilizations

Facilities,'' or 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.''

The staff is also issuing for public comment a regulatory analysis (ADAMS Accession No. ML22250A472). The staff developed a regulatory analysis to assess the value of issuing or revising a regulatory guide as well as alternative courses of action.

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

III. Backfitting, Forward Fitting, and Issue Finality

Issuance of DG–5079, if finalized, 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'' (ADAMS Accession No. ML18093B087); constitute forward fitting as that term is defined and described in MD 8.4; or affect issue finality of any approval issued under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' As explained in DG–5079, applicants and licensees would not be required to comply with the positions set forth in this guide.

IV. 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: April 18, 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. 2023–08532 Filed 4–21–23; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 425

RIN 3084–AB60

Negative Option Rule

AGENCY: Federal Trade Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') seeks public comment on proposed amendments to the Commission's Negative Option Rule (or ''Rule'') to combat unfair or deceptive practices that include recurring charges for products or services consumers do not want and cannot cancel without undue difficulty.

DATES: Written comments must be received on or before June 23, 2023. Parties interested in presenting views orally should submit a request to do so as explained below, and such requests must be received on or before June 23, 2023.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Negative Option Rule; Project No. P064202'' on your comment and file your comment online through *https://www.regulations.gov.* If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex N), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, (202) 326–2889, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Overview

The Commission seeks comment on a proposal to improve its existing regulations for negative option programs. These programs are widespread in the marketplace and can provide substantial benefits for sellers and consumers. However, consumers cannot reap these benefits when marketers fail to make adequate disclosures, bill consumers without their consent, or make cancellation difficult or impossible. Problematic negative option practices have remained a persistent source of consumer harm for decades, saddling shoppers with recurring payments for products and services they never intended to purchase or did not want to continue buying. In the past, the Commission sought to address these practices through individual law enforcement cases and a patchwork of laws and regulations. Nevertheless, problems persist, and consumers continue to submit thousands of complaints to the FTC each year.

To solicit input about these issues, the Commission published an advance notice of proposed rulemaking (ANPR) on October 2, 2019 (84 FR 52393). After reviewing the comments received in response and issuing an ''Enforcement Policy Statement Regarding Negative Option Marketing'' on November 4, 2021 (86 FR 60822), the Commission, as detailed in this document, now proposes to amend the existing Rule to implement new requirements to provide important information to consumers, obtain consumers' express informed consent, and ensure consumers can easily cancel these programs when they choose. All these proposed changes would be applicable to all forms of negative option marketing in all media (*e.g.,* telephone, internet, traditional print media, and in-person transactions).[1]

II. Negative Option Marketing

Negative option offers come in a variety of forms, but all share a central feature: each contain a term or condition that allows a seller to interpret a customer's silence, or failure to take an affirmative action, as acceptance of an offer.[2] Before describing the proposed amendments, it is helpful to review the various forms such an offer can take. Negative option marketing generally falls into four categories: prenotification plans, continuity plans, automatic renewals, and free trial (*i.e.,* free-to-pay or nominal-fee-to-pay) conversion offers.

Prenotification plans are the only negative option practice currently covered by the Commission's Negative Option Rule. Under such plans (*e.g.,* product-of-the-month clubs), sellers provide periodic notices offering goods to participating consumers and then send—and charge for—those goods only if the consumers take no action to decline the offer. The periodic announcements and shipments can continue indefinitely. In continuity plans, consumers agree in advance to receive periodic shipments of goods or provision of services (*e.g.,* bottled water

[1] The Commission proposes to issue such amendments pursuant to Section 18 of the FTC Act, which authorizes the Commission to promulgate rules specifying acts or practices in or affecting commerce which are unfair or deceptive. 15 U.S.C. 57a(a)(2).

[2] The Commission's Telemarking Sales Rule defines a negative option feature as a provision in an offer or agreement to sell or provide any goods or services ''under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.'' 16 CFR 310.2(w).

delivery), which they continue to receive until they cancel the agreement. In automatic renewals, sellers (*e.g.,* a magazine publisher, credit monitoring service provider, etc.) automatically renew consumers' subscriptions when they expire, unless consumers affirmatively cancel the subscriptions. Finally, with free trial marketing, consumers receive goods or services for free (or at a nominal fee) for a trial period. After the trial period, sellers automatically begin charging a fee (or higher fee) unless consumers affirmatively cancel or return the goods or services.

Some negative option offers include upsell or bundled offers, where sellers use consumers' billing data to sell additional products from the same seller or pass consumers' billing data to a third party for their sales. An upsell occurs when a consumer completes a first transaction and then receives a second solicitation for an additional product or service. A bundled offer occurs when a seller packages two or more products or services together so they cannot be purchased separately.

III. FTC's Current Negative Option Rule

The Commission first promulgated the Rule in 1973 pursuant to the FTC Act, 15 U.S.C. 41 *et seq.,* finding some negative option marketers committed unfair and deceptive practices that violated Section 5 of the Act, 15 U.S.C. 45. The Rule applies only to prenotification plans for the sale of goods, and therefore, does not reach most modern negative option marketing.[3]

The current Rule requires prenotification plan sellers to disclose their plan's material terms clearly and conspicuously before consumers subscribe. It enumerates seven material terms sellers must disclose: (1) how subscribers must notify the seller if they do not wish to purchase the selection; (2) any minimum purchase obligations; (3) the subscribers' right to cancel; (4) whether billing charges include postage and handling; (5) that subscribers have at least ten days to reject a selection; (6) that if any subscriber is not given ten days to reject a selection, the seller will credit the return of the selection and postage to return the selection, along with shipping and handling; and (7) the frequency with which announcements and forms will be sent.[4] In addition, sellers must provide particular periods during which they will send introductory merchandise, give consumers a specified period to respond to announcements, provide instructions for rejecting merchandise in announcements, and promptly honor written cancellation requests.[5]

IV. Other Current Regulatory Requirements

Several other statutes and regulations also address harmful negative option practices. First, Section 5 of the FTC Act, which prohibits unfair or deceptive acts or practices, has traditionally served as the Commission's primary mechanism for addressing deceptive negative option claims. Additionally, the Restore Online Shoppers' Confidence Act (''ROSCA''), 15 U.S.C. 8401–8405, the Telemarketing Sales Rule, 16 CFR part 310, the Postal Reorganization Act (*i.e.,* the Unordered Merchandise Statute), 39 U.S.C. 3009, and the Electronic Fund Transfer Act (''EFTA''), 15 U.S.C. 1693–1693r, all address various aspects of negative option marketing. ROSCA, however, is the only law primarily designed to do so.

A. Section 5 of the FTC Act

Section 5(a) of the FTC Act, 15 U.S.C. 45(a), is the core consumer protection statute enforced by the Commission. That section broadly addresses ''unfair or deceptive acts or practices'' but has no provisions that specifically address negative option marketing.[6] Therefore, in guidance and cases, the FTC has highlighted five basic Section 5 requirements that negative option marketing must follow to avoid deception.[7] First, marketers must disclose the material terms of a negative option offer including, at a minimum: the existence of the negative option offer; the offer's total cost; the transfer of a consumer's billing information to a third party, if applicable; and how to cancel the offer. Second, Section 5 requires that these disclosures be clear and conspicuous. Third, sellers must disclose the material terms of the negative option offer before consumers agree to the purchase. Fourth, marketers must obtain consumers' consent to such offers. Finally, marketers must not impede the effective operation of promised cancellation procedures and must honor cancellation requests that comply with such procedures.

Although these basic guidelines are useful, the legality of a particular negative option depends on an individualized assessment of the advertisement's net impression and the marketer's business practices. In addition to these deception-based requirements, the Commission has repeatedly stated billing consumers without consumers' express informed consent is an unfair act under the FTC Act.[8]

B. ROSCA

Enacted by Congress in 2010 to address ongoing problems with online negative option marketing, ROSCA contains general provisions related to disclosures, consent, and cancellation.[9] ROSCA prohibits charging or attempting to charge consumers for goods or services sold on the internet through any negative option feature unless the marketer: (1) clearly and conspicuously discloses all material terms of the

[3] The Rule defines ''negative option plan'' narrowly to apply only to prenotification plans. 16 CFR 425.1(c)(1). In 1998, the Commission clarified the Rule's application to such plans in all media, stating that it ''covers all promotional materials that contain a means for consumers to subscribe to prenotification negative option plans, including those that are disseminated through newer technologies.'' 63 FR 44555, 44561 (Aug. 20, 1998).

[4] 16 CFR 425.1(a)(1)(i)–(vii).

[5] 16 CFR 425.1(a)(2) and (3); 425.1(b).

[6] Under the FTC Act, ''unfair or deceptive acts or practices'' include acts or practices involving foreign commerce that cause or are likely to cause reasonably foreseeable injury within the United States or involve material conduct occurring within the United States. 15 U.S.C. 45(a)(4)(A). Section 5(n) of the FTC Act provides that ''unfair'' practices are those that cause or are likely ''to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.'' 15 U.S.C. 45(n).

[7] *See Negative Options: A Report by the Staff of the FTC's Division of Enforcement,* 26–29 (Jan. 2009), *https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf.* In discussing the five principal Section 5 requirements related to negative options, the report cites to the following pre-ROSCA cases, *FTC* v. *JAB Ventures,* No. CV08–04648 (C.D. Cal. 2008); *FTC* v. *Complete Weightloss Center,* No. 1:08cv00053 (D.N.D. 2008); *FTC* v. *Berkeley Premium Nutraceuticals,* No. 1:06cv00051 (S.D. Ohio 2006); *FTC* v. *Think All Publ'g,* No. 4:07cv11 (E.D. Tex. 2006); *FTC* v. *Hispanexo,* No. 1:06cv424 (E.D. Va. 2006); *FTC* v. *Consumerinfo.com,* No. SACV05–801 (C.D. Cal. 2005); *FTC* v. *Conversion Mktg.,* No. SACV04–1264 (C.D. Cal. 2004); *FTC* v. *Mantra Films,* No. CV03–9184 (C.D. Cal. 2003); *FTC* v. *Preferred Alliance,* No. 103–CV0405 (N.D. Ga. 2003); *United States* v. *Prochnow,* No. 102–CV–917 (N.D. Ga. 2002); *FTC* v. *Ultralife Fitness, Inc.,* No. 2:08–cv–07655–DSF–PJW (C.D. Cal. 2008); *In the Matter of America Isuzu Motors,* FTC Docket No. C–3712 (1996); *FTC* v. *Universal Premium Services,* No. CV06–0849 (C.D. Cal. 2006); *FTC* v. *Remote Response,* No. 06–20168 (S.D. Fla. 2006). The report also cited the FTC's previously issued guidance, *Dot Com Disclosures* (2002), archived at *https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-issues-guidelines-internet-advertising/0005dotcomstaffreport.pdf.*

[8] Courts have found unauthorized billing to be unfair under the FTC Act. *See, e.g., FTC.* v. *Neovi, Inc.,* 604 F.3d 1150, 1157–59 (9th Cir. 2010), *amended by* 2010 WL 2365956 (9th Cir. June 15, 2010); *FTC* v. *Amazon.com, Inc.,* No. C14–1038–JCC, 2016 WL 10654030, at *8 (W.D. Wash. Apr. 26, 2016); *FTC* v. *Ideal Fin. Sols., Inc.,* No. 2:13–CV–00143–JAD, 2015 WL 4032103, at *8 (D. Nev. June 30, 2015).

[9] 15 U.S.C. 8401–8405.

transaction before obtaining the consumer's billing information, regardless of whether a material term directly relates to the terms of the negative option offer; [10] (2) obtains a consumer's express informed consent before charging the consumer's account; and (3) provides simple mechanisms for the consumer to stop recurring charges.[11] ROSCA, however, does not prescribe specific steps marketers must follow to comply with these provisions.

ROSCA also addresses offers made by, or on behalf of, third-party sellers during, or immediately following, a transaction with an initial merchant.[12] In connection with these offers, ROSCA prohibits post-transaction, third-party sellers from charging or attempting to charge consumers unless the seller: (1) before obtaining billing information, clearly and conspicuously discloses the offer's material terms; and (2) receives the consumer's express informed consent by obtaining the consumer's name, address, contact information, as well as the full account number to be charged, and requiring the consumer to perform an additional affirmative action indicating consent.[13] ROSCA also prohibits initial merchants from disclosing billing information to any post-transaction third-party seller for use in any internet-based sale of goods or services.[14]

Furthermore, a violation of ROSCA is a violation of a Commission trade regulation rule under Section 18 of the FTC Act.[15] Thus, the Commission may seek a variety of remedies for violations of ROSCA, including civil penalties under Section 5(m)(1)(A) of the FTC Act; [16] injunctive relief under Section 13(b) of the FTC Act; [17] and consumer redress, damages, and other relief under Section 19 of the FTC Act.[18] Although Congress charged the Commission with enforcing ROSCA, it did not direct the FTC to promulgate implementing regulations.

[10] *See In re: MoviePass, Inc.,* No. C–4751 (Oct. 5, 2021).

[11] 15 U.S.C. 8403. ROSCA incorporates the definition of ''negative option feature'' from the Commission's Telemarketing Sales Rule, 16 CFR 310.2(w).

[12] ROSCA defines ''post-transaction third-party seller'' as a person other than the initial merchant who sells any good or service on the internet and solicits the purchase on the internet through an initial merchant after the consumer has initiated a transaction with the initial merchant. 15 U.S.C. 8402(d)(2).

[13] 15 U.S.C. 8402(a).

[14] 15 U.S.C. 8402(b).

[15] 15 U.S.C. 8404 (citing Section 18 of the FTC Act, 15 U.S.C. 57a).

[16] 15 U.S.C. 45(m)(1)(A).

[17] 15 U.S.C. 53(b).

[18] 15 U.S.C. 57b(a)(1), (b).

C. Telemarketing Sales Rule

The Telemarketing Sales Rule (''TSR''), 16 CFR part 310, prohibits deceptive telemarketing acts or practices, including those involving negative option offers, and certain types of payment methods common in deceptive negative option marketing. The TSR only applies to negative option offers made over the telephone. Specifically, the TSR requires telemarketers to disclose all material terms and conditions of the negative option feature, including the need for affirmative consumer action to avoid the charges, the date (or dates) the charges will be submitted for payment, and the specific steps the customer must take to avoid the charges. It also prohibits telemarketers from misrepresenting such information and contains specific requirements related to payment authorization.[19]

D. Other Relevant Requirements

EFTA [20] and the Unordered Merchandise Statute also contain provisions relevant to negative option marketing.[21] EFTA prohibits sellers from imposing recurring charges on a consumer's debit cards or bank accounts without written authorization.[22] The Unordered Merchandise Statute provides that mailing unordered merchandise, or a bill for such merchandise, constitutes an unfair method of competition and an unfair trade practice in violation of Section 5 of the FTC Act.[23]

V. Limitations of Existing Regulatory Requirements

The existing patchwork of laws and regulations does not provide industry and consumers with a consistent legal framework across media and offers. For instance, as discussed above, the current Rule does not cover common practices such as continuity plans, automatic renewals, and trial conversions.[24] In addition, ROSCA and the TSR do not address negative option plans in all media—ROSCA's general statutory prohibitions against deceptive negative option marketing only apply to internet sales, and the TSR's more specific provisions only apply to telemarketing. Yet, harmful negative option practices that fall outside of ROSCA and the TSR's coverage still occur.[25]

Additionally, the current framework does not provide clarity about how to avoid deceptive negative option disclosures and procedures. For example, ROSCA lacks specificity about cancellation procedures and the placement, content, and timing of cancellation-related disclosures. Instead, the statute requires marketers to provide ''simple mechanisms'' for the consumer to stop recurring charges without guidance about what is simple.

VI. Past Rulemaking and Enforcement Efforts

The Commission initiated its last regulatory review of the Negative Option Rule in 2009,[26] following a 2007 FTC workshop and subsequent Staff Report.[27] The Commission completed the review in 2014.[28] At the time, the Commission found the comments supporting the Rule's expansion ''argue convincingly that unfair, deceptive, and otherwise problematic negative option marketing practices continue to cause substantial consumer injury, despite determined enforcement efforts by the Commission and other law enforcement agencies.'' [29] It also noted practices not covered by the Rule (*e.g.,* trial

[19] 16 CFR 310.3(a).

[20] 15 U.S.C. 1693–1693r.

[21] 39 U.S.C. 3009.

[22] EFTA provides that the Commission shall enforce its requirements, except to the extent that enforcement is specifically committed to some other federal government agency, and that a violation of any of its requirements shall be deemed a violation of the FTC Act. Accordingly, the Commission has authority to seek injunctive relief for EFTA violations, just as it can seek injunctive relief for other Section 5 violations.

[23] The Commission has authority to seek the same remedies for violations of the Unordered Merchandise Statute that it can seek for other Section 5 violations. The Commission can seek civil penalties pursuant to Section 5(m)(1)(B) of the FTC Act from violators who have actual knowledge that the Commission has found mailing unordered merchandise unfair. 15 U.S.C. 45(m)(1)(B).

[24] Indeed, the prenotification plans covered by the Rule represent only a small fraction of negative option marketing. In 2017, for instance, the Commission estimated that fewer than 100 sellers (''clubs'') were subject to the current Rule's requirements. 82 FR 38907, 38908 (Aug. 16, 2017).

[25] For instance, the Commission recently brought two cases under Section 5 involving negative option plans that did not involve either internet sales or telemarketing. *FTC and State of Maine* v. *Health Research Labs., LLC,* No. 2:17–cv–00467–JDL (D. Me. 2018); and *FTC and State of Maine* v. *Mktg. Architects,* No. 2:18–cv–00050 (D. Me. 2018).

[26] 74 FR 22720 (May 14, 2009).

[27] *See Negative Options, supra* note 7, at 26–29.

[28] 79 FR 44271 (July 31, 2014).

[29] The Commission cited a number of its law enforcement actions challenging negative option marketing practices, including, for example, *FTC* v. *Process Am., Inc.,* No. 14–0386–PSG–VBKx (C.D. Cal. 2014) (processing of unauthorized charges relating to negative option marketing); *FTC* v. *Willms,* No 2:11–cv–00828 (W.D. Wash. 2011) (internet free trials and continuity plans); *FTC* v. *Moneymaker,* No. 2:11–cv–00461–JCM–RJJ (D. Nev. 2012) (internet trial offers and continuity programs); *FTC* v. *Johnson,* No. 2:10–cv–02203–RLH–GWF (D. Nev. 2010), (internet trial offers); and *FTC* v. *John Beck Amazing Profits, LLC,* No. 2:09–cv–04719 (C.D. Cal. 2009) (infomercial and telemarketing trial offers and continuity programs).

conversions and continuity plans) accounted for most of its enforcement activity in this area. Nevertheless, the Commission declined to expand or enhance the Rule, concluding that amendments were not warranted at that time because the enforcement tools provided by the TSR and, especially, ROSCA, which had only recently become effective, might prove adequate to address the problems generated by deceptive or unfair negative option marketing. However, the Commission emphasized that, if ROSCA and its other enforcement tools failed to adequately protect consumers, the Commission would consider whether and how to amend the Rule.[30]

Since that review, the problems with negative options have persisted. The Commission and states continue to bring cases regularly that challenge negative option practices, including more than 30 recent FTC cases. These matters involved a range of deceptive or unfair practices, including inadequate disclosures for ''free'' offers and other products or services, enrollment without consumer consent, and inadequate or overly burdensome cancellation and refund procedures.[31] In addition, the Commission continues to receive thousands of complaints each year related to negative option marketing. These cases and the high volume of ongoing complaints suggests there is prevalent, unabated consumer harm in the marketplace.

VII. 2019 Advance Notice of Proposed Rulemaking

Given these continued concerns, the Commission published its 2019 ANPR seeking comments on the current Rule, as well as possible regulatory measures to reduce consumer harm created by deceptive or unfair negative option marketing.[32] Specifically, the Commission sought comment on various alternatives, including amendments to existing rules to further address disclosures, consumer consent, and cancellation. The Commission also requested input on whether and how it should use its authority under Section 18 of the FTC Act to expand the Negative Option Rule to address prevalent, unfair, or deceptive practices involving negative option marketing.[33] In response, the Commission received 17 comments, which we discuss in Section IX.[34]

VIII. 2021 Enforcement Policy Statement

On November 4, 2021, the Commission published an ''Enforcement Policy Statement Regarding Negative Option Marketing'' to provide guidance regarding its enforcement of various statutes and FTC regulations.[35] The Statement enunciates various principles rooted in FTC case law and previous guidance related to the provision of information to consumers, consent, and cancellations. Among these principles, the Statement emphasized ROSCA's requirement that sellers disclose all material terms related to the underlying product or service that are necessary to prevent deception, regardless of whether that term relates directly to the terms of the negative option offer.[36] In addition, consistent with ROSCA, judicial decisions applying Section 5, and cases brought by the Commission, the seller should obtain the consumer's acceptance of the negative option feature offer separately from any other portion of the entire transaction. Finally, regarding cancellation, the Statement explained negative option sellers should provide cancellation mechanisms at least as easy to use as the method the consumer used to initiate the negative option feature.

IX. Comments Received in Response to the ANPR

Commenters generally supported the current FTC Negative Option Rule. However, as detailed below, they split on whether the Commission should amend the Rule to include new requirements. Some argued existing provisions are adequate, and any additional regulations could harm businesses and consumers by creating unnecessary, overly prescriptive directives that discourage innovation. Others contended that the Commission should expand or consolidate existing requirements into a single rule applicable to all types of negative option marketing in all types of media in order to adequately protect consumers.

A. General Views on Negative Option Marketing

Benefits: Several commenters emphasized the benefits of negative option marketing to both consumers and businesses and warned new regulations may limit consumer options.[37] They discussed the ease and simplicity such plans offer consumers by allowing them to avoid time-consuming and inefficient transactions. The Service Contract Industry Council (SCIC) and the News Media Alliance explained such arrangements greatly reduce ''the disruption to a consumer's daily life'' by allowing them to maintain their service without going through the enrollment process ''month after month, or year after year.'' They also help customers avoid problems such as breaks in service when they forget to renew.

The Entertainment Software Association (ESA), which represents video and computer game companies, added subscriptions allow ''consumers to replenish commodity items (such as personal care products), enjoy new

[30] 79 FR at 44275–76.

[31] Examples of these matters include: *FTC* v. *Triangle Media Corp.,* 3:18–cv–01388–LAB–LL (S.D. Cal. 2019); *FTC* v. *Credit Bureau Ctr., LLC,* No. 17–cv–00194 (N.D. Ill. 2018); *FTC* v. *JDI Dating, Ltd.,* No. 1:14–cv–08400 (N.D. Ill. 2018); *FTC, Illinois, and Ohio* v. *One Techs., LP,* No. 3:14–cv–05066 (N.D. Cal. 2014); *FTC* v. *Health Formulas, LLC,* No. 2:14–cv–01649–RFB–GWF (D. Nev. 2016); *FTC* v. *Nutraclick LLC,* No. 2:16–cv–06819–DMG (C.D. Cal. 2016); *FTC* v. *XXL Impressions,* No. 1:17–cv–00067–NT (D. Me. 2018); *FTC* v. *AAFE Products Corp.,* No. 3:17–cv–00575 (S.D. Cal. 2017); *FTC* v. *Pact Inc.,* No. 2:17–cv–1429 (W.D. Wash. 2017); *FTC* v. *Tarr,* No. 3:17–cv–02024–LAB–KSC (S.D. Cal. 2017); *FTC* v. *AdoreMe, Inc.,* No. 1:17–cv–09083 (S.D.N.Y. 2017); *FTC* v. *DOTAuthority.com, Inc.,* No. 0:16–cv–62186–WJZ (S.D. Fla. 2018); *FTC* v. *Bunzai Media Group, Inc.,* No. CV15–04527–GW(PLAx) (C.D. Cal. 2018); and *FTC* v. *RevMountain, LLC,* No. 2:17–cv–02000–APG–GWF (D. Nev. 2018).

[32] 84 FR 52393 (Oct. 2, 2019).

[33] Section 18 of the FTC Act authorizes the Commission to promulgate rules that define with specificity acts or practices in or affecting commerce which are unfair or deceptive. 15 U.S.C. 57a(a)(1)(B). The Commission may issue regulations ''where it has reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent.'' 15 U.S.C. 57a(b)(3). The Commission may make such a prevalence finding if it has issued cease and desist orders regarding such acts or practices, or any other available information indicates a widespread pattern of unfair or deceptive acts or practices. Rules under Section 18 ''may include requirements prescribed for the purpose of preventing such acts or practices.''

[34] The comments, which are at *www.regulations.gov,* include: Association of National Advertisers (ANA) (#0082–0008); Performance-Driven Marketing Institute (PDMI) (#0082–0018); Retail Energy Supply Association (RESA) (#0082–0016); The Association of Magazine Media (MPA) (#0082–0019); National Consumers League (NCL) (#0082–0013); ACT—The App Association (#0082–0017); Association for Postal Commerce (''PostCom'') (#0082–0009); Retail Industry Leaders Association (RILA) (#0082–0005); Ralph Oakley (#0082–0004); Chris Hoofnagle (#0082–0002); Pennsylvania Office of Attorney General (on behalf of The Attorneys General of the States of Colorado, Delaware, District of Columbia, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and Wisconsin) (''State AGs'') (#0082–0012); Service Contract Industry Council (SCIC) (#0082–0007); Truth in Advertising (TINA) (#0082–0014); Rep. Mark Takano (#0082–0003); Digital Media Association (DiMA) (#0082–0015); The Entertainment Software Association and Internet Association (ESA) (#0082–0011); News Media Alliance (''the Alliance'') (#0082–0006).

[35] 86 FR 60822.

[36] The Commission recently alleged a negative option seller's failure to disclose it was impeding access to its movie subscription service violates ROSCA. *In the Matter of MoviePass, Inc.* No. C–4751 (Oct. 5, 2021).

[37] SCIC, ESA, MPA, and RESA.

items or personalized items at designated intervals (such as clothing and food), and obtain access to products or services at discounts or with members-only benefits (such as entertainment and content services).'' The Association of Magazine Media (MPA), an association of magazine publishers, noted that current automatic renewal subscriptions feature high transparency, offer ease of use, facilitate long-term customer relationships, provide a ''frictionless customer service experience,'' save costs, and allow consumers to receive continuous delivery for as long as they wish. According to MPA, free trials also allow consumers to sample magazine titles before committing to a subscription purchase.

Additionally, commenters detailed the benefits such renewals provide businesses. MPA stated they help companies avoid the substantial costs of processing invoices and checks each month. For publishers, automatic renewals reduce costs by eliminating multiple notices, forestalling fraudulent mailings, and preventing costly interruptions in service. Retail Energy Supply Association (RESA) also noted automatic renewal plans are critical in the competitive energy supply industry because they promote competition in states with restructured energy markets.

Negative Aspects: However, not all commenters saw inherent benefit in the growing negative option market. Commenter Hoofnagle, a law professor, cautioned the shift to subscription services has caused businesses to become ''laser-focused'' on enrollment and retention at the expense of the underlying product or consumer value.[38] In his view, the new focus on subscriptions ''corrupts innovation'' because it motivates companies to ''invest in psychological tricks to maintain continuous charging'' instead of creating the ''best, most compelling products.'' According to Hoofnagle, large, dominant platforms devote resources to developing manipulative subscription systems (*i.e.,* ''dark patterns'') that induce consumers to sign up for products and services they would not otherwise pay for. Hoofnagle asserted that, ultimately, subscription maintenance becomes the firm's ''terminal goal.''

B. Information on Current Practices and Deception in the Market

Various commenters submitted information about the scope, volume, and types of negative option marketing, indicating negative options involving free trials, continuity, and auto-renewal programs are pervasive and growing in number. Additionally, many commenters asserted deceptive negative option practices continue to be prevalent, with some describing particular issues with free trials. Finally, commenters discussed ongoing state enforcement efforts related to these problems.

Expansion of Negative Option Marketing: Several commenters indicated negative option marketing continues to grow dramatically. For instance, according to a 2018 McKinsey & Company study, the subscription e-commerce market increased more than 100% over a five-year period prior to the study's publication.[39] The largest retailers in that market generated $2.6 billion in sales in 2016. A consumer survey prepared for the same study showed nearly half of the respondents had enrolled in at least one negative option subscription, while 35% enrolled in three or more.[40] PDMI also noted the study demonstrates consumers' familiarity with these programs and their embrace of ''the benefits such plans provide including convenience, lower cost and the ability to try something for free before purchasing.'' PDMI suggested the number of such programs has likely increased since the study's completion. It also observed that negative option sales via mobile devices have increased in recent years, including the display of ''shoppable ads'' on most social media platforms. However, it cautioned against projecting the results. Given rapid changes in technology and advertising models in the digital space media, PDMI emphasized the difficulty of predicting ''how consumers may choose to purchase goods and services even just a few years from now.'' Finally, PDMI explained most negative options appear online, offering a wide array of products and services from major brands including ''media services, meal preparation kits, shaving and beauty products, beer and wine, contacts and ordinary household consumables.''

Prevalence of Deceptive Practices Generally: In addition to the sheer volume of negative option marketing, commenters identified evidence of ongoing, widespread deceptive practices. No commenter argued otherwise. TINA, for example, explained negative options are one of its top complaint categories. These complaints usually involve consumers who unwittingly enroll in programs and then find it difficult or impossible to cancel. In addition, NCL cited a 2017 national telephone survey commissioned by *CreditCards.com* finding 35% of U.S. consumers have enrolled in at least one automatically renewing contract without realizing it. Referring to another survey conducted in 2016, TINA noted that unwanted fees associated with trial offers and automatically renewing subscriptions ranked as ''the biggest financial complaint of consumers.'' [41]

The State AGs also detailed specific deceptive or unfair practices they see regularly, including the ''lack of informed consumer consent, lack of clear and conspicuous disclosures, failure to honor cancellation requests and/or refusal to provide refunds to consumers who unknowingly enrolled in plans.'' They further explained the nature of the underlying products often fails to alert consumers of their enrollment in a negative option program. For instance, many offers involve credit monitoring or anti-virus computer programs costing less than $20 a month and have no tangible presence for consumers. The State AGs explained that consumers are often unaware of having ordered these products, never use them, and never notice them on their bills. The State AGs further explained these transactions often pull consumers into a stream of recurring payments by obtaining credit card information to ostensibly pay for a small shipping charge. As a result, many ''consumers have been billed for such services for years before discovering the unauthorized charges.''

Commenters also noted the ongoing enforcement efforts and litigation in recent years involving negative option marketing. In addition to FTC cases, TINA stated that more than 100 federal class actions involving various negative option terms and conditions have been filed since 2014. Notwithstanding these actions, according to TINA, ''the incidence of deceptive negative option offers continues to rise.'' Citing the increase in consumer complaints and consumer harm in recent years, Representative Takano stated, ''deceptive online marketing and

[38] NCL also asserted ''[t]here is abundant evidence that consumers are harmed by negative option clauses.''

[39] *See* ESA.

[40] *See* Tony Chen, et al., *Thinking inside the subscription box: New research on e-commerce consumers* (Feb. 9, 2018), *https://www.mckinsey.com/industries/technology-media-and-telecommunications/our-insights/thinking-inside-the-subscription-box-new-research-on-ecommerce-consumers.*

[41] *See* Rebecca Lake, *Report: Hidden Fees Are #1 Consumer Complaint, mybanktracker.com* (updated Oct. 16, 2018), *https://www.mybanktracker.com/money-tips/money/hidden-fees-consumer complaint-253387.*

unclear recurring payment plans are leaving too many consumers on the hook for products they may not want or even know they purchased.'' [42]

In addition to inadequate disclosures and consent procedures, commenters stated some businesses continue to thwart consumers' efforts to cancel recurring payments. NCL cited the 2017 *CreditCards.com* survey finding nearly half of all respondents (42%) complained about ''the level of difficulty companies have created for the contract/service cancellation process.'' [43] Further, consistent with the Commission's enforcement history, the State AGs explained many harmful unfair or deceptive practices involve the failure to provide ''consumers with a simple cancellation method.'' NCL added some companies hide behind complex procedures ''to prevent cancellation while others surprise consumers with price increases or contract renewals.'' The State AGs stated the sellers often deny consumers refunds and force them ''to pay to return the unordered goods.'' Finally, Hoofnagle concluded businesses make cancellation difficult in order to raise consumer transaction costs and deter them from ending the contract. ''To put this in another perspective,'' he wrote, ''companies would never put such transaction costs in the way of a purchase option.'' Noting numerous complaints from consumers stymied in their efforts ''through long telephone hold times and otherwise,'' the State AGs also explained that current practices often require consumers to cancel using a different method than the one used to sign up for the program. Further, they often force consumers to listen to multiple upsells before allowing cancellation.

Specific Problems with Free Trials: Several commenters noted particular problems with free trials or trial conversions. According to the State AGs, advertisements for free-to-pay conversion offers often lure consumers by promising a ''free'' benefit while failing to clearly and conspicuously disclose future payment obligations. These offers sometimes include information to distract consumers from reading the actual purchase terms. The State AGs report these deceptive practices are ''rampant online and throughout social media.'' These agencies further state, ''trial conversions are rife with the potential for abuse and deception,'' as companies induce consumers with offers that imply no obligation.

Despite current requirements such as ROSCA, the State AGs observed sellers still often fail to clearly and conspicuously disclose recurring payment obligations incurred by consumers who sign up for these trials. In addition, to gain access to consumer accounts, sellers often charge a small shipping fee for the ''free trial'' and obtain credit card information in the process. Consumers confronting these sellers often face fees to return the unordered goods and have difficulty obtaining refunds and cancelling their subscriptions.

Additionally, as commenters correctly noted, FTC complaint data indicates substantial problems with free trial marketing. According to NCL and TINA, a Better Business Bureau study of FTC data titled ''Subscription Traps and Deceptive Free Trials Scam Millions with Misleading Ads and Fake Celebrity Endorsements'' demonstrated complaints about free trials doubled between 2015 and 2017, with complaints during the period reaching nearly 37,000 and losses totaling more than $15 million. The BBB study, which the State AGs also cited, shows losses in FTC ''free trial offer'' cases exceeded $1.3 billion (over the ten years covered by the study). NCL stated that, according to the BBB, the average consumer loss for a free trial is $186.[44]

Other studies reveal similar trends. TINA noted the FBI's internet Crime Complaint Center recorded a rise in complaints about free trial offers, growing from 1,738 in 2015 to 2,486 in 2017, with losses totaling more than $15 million. Similarly, a 2019 *Bankrate.com* survey cited by NCL found that 59% of consumers have signed up for ''free trials'' that automatically converted into a recurring payment obligation ''against their will.'' In NCL's view, these data point to ''a troubling, and costly problem for American consumers.''

Ongoing Law Enforcement Efforts: The State AGs detailed dozens of enforcement actions taken in recent years to address the proliferation of deceptive negative option claims. According to these agencies, their actions ''demonstrate that problems persist in this area and that additional regulatory action is needed.'' For example, over the last decade, New York alone has reached 23 negative option settlements involving a variety of products and services such as membership programs, credit monitoring, dietary supplements, and apparel. These cases have garnered over $10 million in consumer restitution and $14 million in penalties, costs, and fees. The State AGs also described several of the larger settlements reached through multistate investigations, as well as from individual states, involving negative option offers for products and services such as satellite radio, social networking services, language learning programs, security monitoring, and dietary supplements. They also recounted representative stories of consumers who ordered what they thought were free, no-obligation samples but found themselves enrolled in costly programs. The Commission's recent cases in this area address many, if not all, of the same concerns.

C. Opposition to New Requirements

No commenter opposed the existing Rule, which applies only to prenotification plans. ANA, for example, noted it provides consumers with transparency regarding material terms of marketed advance consent plans and choices regarding which products or services they want to receive. The Rule also provides ''businesses flexibility to engage in marketing that benefits consumers.'' In addition, ANA stated it enables consumers to purchase goods and services over time and gain exposure to ''new, exciting, and useful products and services to which they likely would not have been exposed in the absence of advanced consent arrangements.''

Industry members generally opposed any new regulatory provisions for negative option marketing, arguing existing laws are adequate.[45] According to these commenters, current requirements provide adequate consumer protections, and enforcement agencies possess ample tools to address deceptive practices. The current framework furnishes, in MPA's words, ''a sweeping landscape of federal and state laws that govern such programs, including ROSCA, the TSR, EFTA, and the [Unordered Merchandise Statute].'' SCIC added that new credit card rules from MasterCard and Visa contain compliance requirements for auto renewal programs and thus augment the existing regulatory framework. As ESA explained, existing laws ''are thorough and allow businesses the flexibility to craft messages and operational

[42] Congressman Mark Takano represents California's 41st District in the United States House of Representatives.

[43] Brady Porche, *Poll: Recurring charges are easy to start, hard to get out of, Creditcards.com* (Aug. 22, 2017), *https://www.creditcards.com/credit-card-news/autopay-poll.php.*

[44] Steve Baker, *Subscription traps and deceptive free trials scam millions with misleading ads and fake celebrity endorsements,* Better Business Bureau (Dec. 2018), *https://www.bbb.org/globalassets/local-bbbs/council-113/media/bbb-study-free-trial-offers-and-subscription-traps.pdf.*

[45] *See* ANA, RESA, MPA, PostCom, RI, SCIC, DiMA, ESA, and the Alliance.

procedures'' based on their customers, the message's medium, available technologies for consent, and cost-effective cancellation methods. In ANA's view, since ''violations of the various standards are heavily enforced,'' additional requirements would fail to ''prevent bad and dishonest actors from behaving unfairly or deceptively in the marketplace.'' Finally, some commenters suggested the number of actions the FTC has brought in recent years demonstrates the agency already has adequate law enforcement tools to combat deceptive negative option marketing.[46]

Industry members also cautioned that new regulations might diminish the benefits provided by negative option offers and hamper innovation.[47] For example, ESA argued current law enforcement requirements adequately address ''deceptive or abusive negative option practices'' without overly burdensome new regulation. Others, like DIMA and MPA, warned new regulations using a restrictive ''one-size-fits-all model'' would ultimately harm consumers because, for example, they would restrict marketers' ability to tailor their offers to consumers' wishes. MPA also noted an expanded Rule might over-burden legitimate businesses to consumers' detriment while failing to halt specific problems already subject to existing federal statutes, FTC rules, and state laws.[48]

These commenters also cautioned against adding regulations absent sufficient information about problematic practices. Specifically, the Alliance recommended the FTC refrain from imposing new requirements without ''clear evidence of a significant problem justifying such measures.'' Similarly, ANA asked FTC to identify a ''clear record'' of perceived harms so that businesses can provide meaningful comments and clearly identify any gaps in the regulations.

D. Concerns About Existing State Requirements

Many industry commenters also stated a growing number of state laws address many forms of negative option marketing. According to PDMI, for example, there are currently at least 18 state laws, and many more are sure to follow.[49] Notable among these is California's negative option statute, which addresses disclosures, consent, and accessible and cost-effective cancellation. Virginia has a similar law that provides civil penalties of $5,000 per violation, as well as a private right of action. ESA complained many of these state laws ''have imposed unique and inconsistent requirements'' on marketers. PDMI noted, for instance, Florida, Hawaii, and New Mexico laws reference inconsistent renewal periods (six, one, and two months, respectively). Other states have differing requirements for notifications prior to the renewal period (*e.g.,* Florida (30–60 days); New York (15–30 days); North Carolina (15 to 45 days)).[50]

Several industry commenters emphasized these inconsistent state requirements create problems. PDMI, for example, explained they impose ''a considerable burden on companies that utilize negative option marketing, particularly small businesses.'' The lack of uniformity requires some companies to create ''multiple different order pathways and disclosures'' for consumers in different states. For example, many marketers must fashion a single ''order experience'' and set of disclosures that comply with the most restrictive law. According to PDMI, the continued proliferation of differing state requirements has made an onerous and burdensome compliance process even worse. For example, while California's automatic renewal law appears most burdensome to many, Vermont's recent statute is more restrictive in certain aspects (*e.g.,* consent requires consumers to check a box). In addition, the District of Columbia now requires a seller to obtain separate affirmative consent before a free trial converts to a paid subscription. PDMI explained compliance issues could lead to contract voidance and potential exposure in class action litigation.

PDMI argued these various state laws have not helped consumers. Its members' anecdotal observations suggest little difference in results, such as cancellation rates, between states with differing degrees of restrictive requirements. In its view, these observations may indicate consumers have become generally familiar with negative option programs. At the same time, it contended the more restrictive state laws have imposed significant compliance costs while offering little actual consumer benefit. Thus, PDMI believes consumers and businesses would benefit from a single FTC Rule that preempts state regulation in this area. ESA agreed, explaining that if ''FTC regulations in the negative option space could have a preemptive effect,'' it would be interested in ''exploring a uniform regime that allows for growth and flexibility in the industry, much as the current framework permits.''

In contrast, MPA argued that an expanded FTC Rule would layer on top of the existing ''patchwork'' and fail to provide a consistent legal framework for industry and consumers. In its view, ''publishers should be afforded the flexibility to tailor their subscription offers to their readers within the bounds of existing laws.''

Finally, TINA argued the proliferation of state requirements, as well as MasterCard and Visa's new rules, reflect ''an attempt to fill the gap in federal enforcement.'' [51] According to TINA, the resulting collection of state rules and credit card policies leaves consumers with different levels of protection depending on where they live or what credit card they use. Thus, in TINA's opinion, ''the uniform protection'' an updated FTC Rule ''can offer is much needed.''

E. Need for Additional Consumer Education

Several commenters suggested the Commission focus on improving existing consumer education efforts.[52] ESA recommended updated industry guidance and additional consumer education in lieu of issuing new regulatory requirements. However, other commenters argued the Commission should not rely on consumer education alone. Hoofnagle, for example, described consumer and business education as ''an uneconomical'' tool for addressing problems associated with

[46] *See* ESA, ANA, MPA.

[47] Two commenters specifically argued any new rule should avoid creating duplicative requirements for their members. First, SCIE, which represents service contract companies, argued State agencies typically regulate their members, and any new FTC rule should avoid any duplicative or potentially conflicting requirements. Similarly, the App Association urged the Commission to consider ''excluding software apps and digital platforms'' from expanded requirements ''until there is an adequate evidence base demonstrating that its extension to the app economy is appropriate, as part of its scaled, flexible approach to implementing ROSCA.''

[48] *See also* ANA.

[49] *See,* ANA, ESA, PDMI, SCIC, MPA, TINA. Examples of State laws include: California (Cal. Bus. & Prof. Code secs. 17600–17606), Vermont (9 V.S.A. sec. 2454a); District of Columbia (D.C. Code secs. 28A–201 to 28A–204); Florida (Fla. Stat 501.165); Hawaii (Haw. Rev. Stat. sec. 481–9.5); North Carolina (N.C. Gen. Stat. sec. 75–41); and New York (N.Y. Gen. Oblig. Law sec. 5–903(2)).

[50] RESA also asked the Commission to exclude from its rule any activities ''already regulated by state public service commissions'' such as competitive retail electricity and natural gas suppliers. ACIC explained that many of these state laws exempt contracts that renew for a period of a month or less and instead focus on longer term renewing contracts. Additionally, many states have elected to exempt contracts that consumers may cancel at any time with a pro rata refund required to be provided to the consumer upon cancellation.

[51] *See, e.g.,* MasterCard, ''*Transaction Processing Rules,*'' at *https://www.mastercard.us/content/dam/public/mastercardcom/na/global-site/documents/transaction-processing-rules.pdf.*

[52] *See* DiMA, ESA.

negative options. He explained that such education must compete ''with hundreds of'' other consumer priorities, from ''organic food labeling to energy efficiency ratings,'' and creates direct and indirect costs, including consumer time, potential consumer confusion, and even misapprehension. The State AGs, who supported education initiatives, similarly warned, ''such efforts will likely reach only a small fraction of the consuming public.'' Thus, they recommended the Commission use its authority to issue ''clear-cut rules'' to help companies avoid deceptive marketing practices that ''have caused, and continue to cause, substantial consumer harm.''

F. Limitations of Existing Requirements

Several commenters discussed the limitations of existing requirements. For example, the State AGs discussed ROSCA's shortcomings, arguing while the statute has helped combat abuses over the internet, it ''lacks specificity as to how informed consent should be obtained or how clear and conspicuous disclosures should be made.'' They also noted ROSCA does not provide ''any concrete, bright line requirements that allow enforcement agencies to readily identify violations.'' Given existing limitations, the State AGs concluded new regulatory provisions are necessary to establish specific, clear rules to help businesses' compliance efforts and to allow states to easily identify nonconforming practices. TINA also asserted ROSCA and FTC requirements lack needed specificity regarding cancellation requirements, noting ROSCA only directs marketers to provide ''simple mechanisms for a consumer to stop recurring charges.'' In contrast, PDMI said the concept of simple cancellation is well understood by sellers in the marketplace.

G. Support for New Regulations

Several commenters supported additional FTC regulations to address negative option marketing.[53] The State AGs, for example, strongly urged the Commission to expand the existing Rule or issue new regulations ''to combat deceptive and unfair marketing . . . in all forms of negative option marketing, with additional provisions to address issues that arise with respect to trial conversion offers.'' Similarly, commenter Oakley recommended ''very strong regulations to stop companies from signing people up for unwanted products/services.'' PDMI, an industry group, favored amending the Rule to broaden its ''scope to apply to all forms of negative option marketing.'' In its view, such a rule ''would provide greater protection to consumers, would enhance business compliance and would lower overall compliance costs.'' PDMI also opined that ''consumers and business would benefit from federal preemption of state law regulation in this area.'' Representative Takano concluded, ''it is time we update the tools and policies designed to ensure companies no longer profiteer through these deceptive practices.'' TINA added the Rule needs updates to ensure both consumers and businesses obtain the full benefits of negative options. It further argued the current requirements leave consumers vulnerable and provide incentives for businesses to ''silently hope consumers forget about them.'' It predicted that, without changes to the Rule, the trend of deceptive trial offers and subscriptions will continue to grow. In TINA's opinion, updates would ''be minimally burdensome to companies'' because they would merely require businesses to be ''forthcoming and straightforward'' with their customers.

Scope: Commenters supporting new provisions generally recommended the Commission expand the Rule's existing regulatory scope to cover all negative option marketing methods in all media, and consolidate requirements.[54] The State AGs identified unfair or deceptive practices, such as those associated with free trials, which occur in the marketplace but are not covered by the current Negative Option Rule. They also suggested free-to-pay solicitations deserve closer scrutiny than other negative option features due to the longstanding evidence of deceptive tactics, prevalence of consumer complaints about unauthorized charges, and consumer risks associated with these offers.

PDMI agreed a consolidated Negative Option Rule would provide a significant benefit. It explained having requirements in ''five different places'' imposes burdens on both consumers and businesses and heightens the risk of inadvertent non-compliance. Scattered requirements also create a ''trap for the unwary for businesses who do not realize that they must ferret out'' applicable mandates across ''a wide swath of the federal regulatory landscape.'' According to PDMI, consolidation of negative option marketing into a single rule would minimize burdens on marketers, reduce consumer confusion, and enhance compliance. Therefore, PDMI recommended the FTC revise its Rule to include all negative option types and to include ROSCA's three core provisions regarding notice, consent, and cancellation. In its view, ''this would provide a solid foundation for protecting consumers and providing businesses with one uniform set of requirements that can be easily and consistently implemented across all channels and markets.''

Need for Flexibility: Several commenters urged the Commission to employ a flexible approach that accounts for technological changes. They cautioned overly prescriptive rules would jeopardize the consumer benefits of negative options and harm the businesses that provide them.[55] MPA, for example, stated the FTC should not micromanage ''lawful business conduct'' because such an approach would neither enhance business compliance nor benefit consumers. Several commenters raised concerns about overly prescriptive regulatory requirements because a ''one size fits all'' approach reduces flexibility and hampers innovation. For example, according to ESA, new regulations would likely create standardization that ''is unworkable across all industries, media, and technology.'' It added an effort to account for all the various iterations of a subscription offer or sales medium would be impractical or unreasonable. Finally, SCIC noted that FTC staff has emphasized the need for marketers to be ''free to use their many tools of creativity to figure out the best way to convey that information.''

According to PDMI, rules ''need to be sufficiently fluid to permit marketers to adapt their offerings'' to current and future media channels. It explained that market changes occur too quickly for any Commission rule to stay apace. Therefore, PDMI strongly urged the Commission to follow its historical ''performance'' standard approach and ''avoid dictating precisely how disclosure must be made, consent must be obtained, or cancellation methods must be implemented.'' For instance, it recommended leaving terms such as ''clear and conspicuous'' and ''express informed'' consent undefined to ''preserve flexibility in the face of rapidly changing technology'' and ensure meeting the FTC's goals without rigid restrictions.

Important Information: Beyond the need for flexibility, the commenters provided specific disclosure recommendations. NCL, for example, suggested the Rule require businesses ''to clearly and conspicuously disclose their renewal terms prior to the entry of

[53] NCL, Oakley, TINA, State AGs, PDMI, Takano, and Hoofnagle.

[54] *See, e.g.,* State AGs, PDMI, and TINA.

[55] *See, e.g.,* App Association, ESA, and ANA.

payment information.'' It also recommended the Commission incorporate the ''clear and conspicuous'' definition from both California's and the District of Columbia's automatic renewal statutes. In NCL's view, these disclosures should specifically include cancellation instructions and deadlines, renewal dates, contract length, amendment notifications, renewal costs, contract changes at renewal, and business contact information. Hoofnagle asserted sellers also should provide a total cost disclosure so consumers understand what they will be paying each year, as opposed to monthly.

NCL also argued the Rule should require marketers to send notifications electronically, and, for contracts of six months or more, by postal mail, with links, phone numbers, and prepaid postcards appropriate to the medium. The State AGs urged the Commission to require important disclosures (*e.g.,* billing information and requests for acceptance) on a separate page free of ''any other information that may serve as a distraction.''

Consent: Commenters offered a variety of suggestions regarding possible consent requirements. The State AGs recommended requiring ''consumers to take a separate, affirmative action'' to consent to negative option features, such as ''clicking an 'I Agree' button to accept the trial product'' accompanied by disclosures about the ''terms of the offer, including the amount and frequency of payments.'' The State AGs and TINA recommended requirements directing businesses to obtain consent after the trial period expires. TINA noted the District of Columbia now requires companies offering free trials of a month or more to notify consumers between one and seven days before the expiration of the free trial and obtain affirmative consent to the renewal prior to charging consumers.

As described above, the App Association suggested the Commission provide flexibility in any new regulations, but particularly those involving consent. It advocated for a ''flexible and outcome-driven regulatory environment'' that would allow small businesses to create ''the best way for their company to implement this specific requirement'' and ''encourage new innovative approaches in consumer transparency.'' Given the likelihood of future technological changes (*e.g.,* faster devices that consumers will want to use quickly), the App Association suggested any new FTC provisions include ''flexible yet stable requirements that protect the consumer's right to choose but at the same time do not stifle innovation.''

Cancellation: Several commenters provided specific recommendations for new cancellation rules, including, for example, that the FTC require businesses to provide a cancellation mechanism that mirrors the customer's method of enrollment.[56] TINA explained consumers should be able to cancel their negative options in ''an easy and specific manner'' using procedures that are ''at least as easy as the subscription process.'' In its view, at a minimum, if a consumer subscribed online, they should be able to cancel online. The lack of such specific requirements leaves consumers vulnerable to a company's interpretation of what ''simple'' might mean under ROSCA. It also urged the Commission to consider Visa's new rules requiring businesses to provide an ''easy way to cancel the subscription'' online, similar to unsubscribing from an email distribution list. TINA additionally noted California's new rule mandating an easy-to-use cancellation mechanism online, such as a termination email. The State AGs similarly recommended the FTC require ''that consumers be allowed to cancel their memberships by the same method as their enrollment (as well as by other methods, at the business's option).'' The App Association, however, urged flexibility in any new cancellation requirements and cautioned against ''overly-prescriptive approaches.'' Instead, it recommended FTC allow ''marketers to decide how to implement their own notification system to stop reoccurring charges,'' and to efficiently scale approaches based on consumer expectations and needs.

Hoofnagle, who discussed the negative impacts of abusive cancellation procedures, suggested the Commission prohibit certain specific ''transaction costs'' imposed on some consumers. Such practices include requiring users to repeatedly request cancelling, to sign in with additional security (*e.g.,* requiring a CAPTCHA completion), to accept third-party scripting, and to re-enter information such as a credit card number. Hoofnagle agreed with other commenters that ''cancellation should never be more transactionally burdensome than enrollment'' and there should be ''symmetry between purchase and cancel.'' He also recommended the FTC consider a ''one-time 'no' rule'' to require marketers to accept a consumer's first ''cancel'' request and end the transaction without trying to convince the consumer to change their minds or pitching further offers.

[56] Takona and TINA.

Material Changes: Commenters also recommended requirements to address material changes to contract conditions after the consumer enrolls, including changes to price, service, goods, and other material terms. According to TINA, for example, the FTC should require businesses to notify consumers of such changes and provide them an opportunity to cancel before the terms take effect. TINA stated current FTC requirements, as well as ROSCA, do not address ''instances in which the terms may change.'' Several states, including Virginia, California, and Oregon, require businesses to provide consumers with a clear and conspicuous notice of the material change as well as information about how to cancel ''in a manner that is capable of being retained by the consumer.'' [57]

Reminders: Commenters also recommended requiring businesses to provide additional reminders as part of their negative option offerings.'' [58] For example, TINA supported imposing a notice requirement prior to subscription expiration containing cancellation instructions similar to VISA's new rules. Those rules require an electronic reminder, sent to consumers a week before the trial period expires, with a link to an online cancellation page. TINA also argued for regular, ongoing notice of the agreement terms along with cancellation instructions. In its view, ''such a requirement is important to protect consumers from paying for products or services they do not want or need.'' According to Representative Takano, such reminders ''will help decrypt the complex nature of negative option agreements'' and ensure businesses cannot continue to charge consumers who intended to make only a single purchase.

The State AGs agreed, explaining periodic disclosures ensure consumers are aware of recurring charges and ''help prevent the continuation of unknowing or unwanted enrollment in these plans.'' They recommended notifications at regular intervals for month-to-month plans, with appropriately worded subject lines (*e.g.,* ''Important Billing Information''), coupled with a convenient cancellation method. For services that renew annually, the State AGs contended that, before charging for renewal, companies should notify consumers within a specified period

[57] TINA also noted that a bill introduced into the House in 2019, the Unsubscribe Act (H.R. 2683), contains similar requirements. *See also* Takano, NCL, and Hoofnagle. For free trials, NCL argued the Rule should require marketers to obtain express consent before increasing the price of service for an established customer.

[58] TINA, Takano, and State AGs.

about the timing, amount, and billing method along with convenient cancellation procedures. Finally, both the State AGs and Hoofnagle suggested the FTC consider whether periods of consumer inactivity (*e.g.,* 24 months) for a subscribed service should trigger notifications.

Miscellaneous Recommendations: The commenters provided several other recommendations for new requirements, including provisions involving refunds, consumer contact information, deletion of consumer data, and amendments to the TSR. First, the State AGs proposed requiring businesses to provide full refunds to consumers ''unwittingly enrolled in a negative option plan.'' Second, they suggested the Rule require businesses to obtain a consumer's email address at the initial consent and send a confirmatory email describing the service or product, the amount and timing of any payments, the payment collection method, and a toll-free cancellation number. For offers involving goods, the State AGs stated businesses should include an invoice in every shipment containing the seller's name and address, the negative option program terms, return instructions, and a toll-free phone number or email address for cancellation. Third, Hoofnagle asserted a rule should require consumer data deletion after ''a reasonable amount of time'' to provide customers with a ''true exit'' from the transaction. Fourth, the State AGs urged the Commission to amend and expand the TSR's negative option provisions to require sellers to record entire customer transactions and retain such recordings for a specified period. In addition, they recommended the TSR require marketers to provide full refunds in response to complaints unless the company can provide a phone call recording ''establishing the consumer's affirmative consent.''

Banning Certain Enrollment Methods: The State AGs suggested the Commission limit, or prohibit, certain types of negative option marketing that are, in their opinion, ''inherently unreliable.'' First, they suggested a ban on ''free-to-pay conversion programs'' (*e.g.,* free trial magazine subscriptions) to consumers at retail checkout in brick-and-mortar stores. According to the State AGs, cashiers fail to disclose the material terms and conditions of these offers, including the fact that consumers will receive a monthly bill after the trial ends. Retailers use the consumer's signature authorizing the entire purchase (*e.g.,* groceries, etc.) as consent for the negative option program, and then rely on ''inconspicuous'' terms on the sale receipt as evidence of consent. The State AGs identified this practice as an ''inherently unreliable means of obtaining consumers' informed consent and should be prohibited.''

Second, the State AGs urged the Commission to ban the use of consumers' check endorsements to obtain consent to be periodically billed for goods or services. They asserted this practice has led to widespread fraud. Specifically, some businesses send consumers checks for small dollar amounts that appear to come from a familiar company. Small print disclosures near the endorsement line on the reverse of the check indicate that, by cashing the check, consumers are enrolling in a recurring payment program. According to the State AGs, this practice, which has generated many complaints, ''is inherently unreliable and should be prohibited'' because consumers do not scrutinize the small print on the back of these checks and thus have no reason to expect their signature is consent for a recurring payment program.

Finally, the State AGs argued, without further explanation, the FTC Rule should either ban or place restrictions on ''upsell offers that the consumer must respond to before being able to cancel.''

X. Prevalence of Deceptive or Unfair Practices Involving Negative Option Marketing and the Need for the Proposed Amendments

Consistent with the Commission's past conclusions, the recent comments confirm that deceptive practices involving negative option marketing remain prevalent and that additional requirements are needed to protect consumers. In 2014, the Commission found ''that unfair, deceptive, and otherwise problematic negative option marketing practices continue[d] to cause substantial consumer injury, despite determined enforcement efforts by the Commission and other law enforcement agencies.'' [59] The evidence since indicates matters have not improved, and, in fact, may be worse. As detailed in Section IX, the commenters provided substantial evidence—in the form of complaint data, studies, survey results, and law enforcement actions—demonstrating deceptive negative option marketing practices remain prevalent. The FTC, the states, and consumer organizations continue to receive thousands of complaints from consumers who unwittingly enrolled in programs and then find it difficult or impossible to cancel. Additionally, studies cited by commenters confirm a pattern of consumer ensnarement in unwanted recurring payments. Commenters also highlighted the many recent federal and state enforcement actions related to negative options, as well as nearly 100 class action cases filed in the last six years.

The Commission and the states continue to regularly bring cases challenging negative option practices. These matters involve a range of deceptive or unfair practices, including inadequate information regarding free trials and other products or programs, enrollment without consumer consent, and inadequate or overly burdensome cancellation and refund procedures.[60] The existence of these cases and complaints demonstrates that some commenters' contention that all the problems are being addressed is simply not true. In fact, given the considerable limitations of FTC and state enforcement resources, these law enforcement actions likely represent only the tip of the iceberg—a conclusion corroborated by the complaint and survey evidence in the record.

In the ANPR, the Commission explained it receives thousands of complaints a year related to negative option marketing. In addition, State AGs and other commenters detailed ongoing problems with inadequate disclosures, the failure to obtain consent, poor or nonexistent cancellation procedures, and the refusal to honor cancellation requests and refund demands. They further explained deceptive free trial offers are ''rampant online and throughout social media,'' and often lure consumers into recurring payments without clearly and conspicuously disclosing future payment obligations.[61] The evidence offered by commenters also demonstrates many sellers do not provide consumers with simple cancellation methods and, instead, create obstacles, such as long telephone hold times or multiple upsells, to impede consumers from terminating

[59] 79 FR 44271, 44275 (July 31, 2014).

[60] Examples of these matters include: *FTC* v. *Triangle Media Corp.,* No. 3:18–cv–01388–LAB–LL (S.D. Cal. 2019); *FTC* v. *Credit Bureau Ctr., LLC,* No. 17–cv–00194 (N.D. Ill. 2018); *FTC* v. *JDI Dating, Ltd.,* No. 1:14–cv–08400 (N.D. Ill. 2018); *FTC* v. *One Techs., LP,* No. 3:14–cv–05066 (N.D. Cal. 2014); *FTC* v. *Health Formulas, LLC,* No. 2:14–cv–01649–RFB–GWF (D. Nev. 2016); *FTC* v. *Nutraclick LLC,* No. 2:16–cv–06819–DMG (C.D. Cal. 2016); *FTC* v. *XXL Impressions,* No. 1:17–cv–00067–NT (D. Me. 2018); *FTC* v. *AAFE Products Corp.,* No. 3:17–cv–00575 (S.D. Cal. 2017); *FTC* v. *Pact Inc.,* No. 2:17–cv–1429 (W.D. Wash. 2017); *FTC* v. *Tarr,* No. 3:17–cv–02024–LAB–KSC (S.D. Cal. 2017); *FTC* v. *AdoreMe, Inc.,* No. 1:17–cv–09083 (S.D.N.Y. 2017); *FTC* v. *DOTAuthority.com, Inc.,* No. 0:16–cv–62186–WJZ (S.D. Fla. 2018); *FTC* v. *Bunzai Media Group, Inc.,* No. CV15–04527–GW(PLAx) (C.D. Cal. 2018); and *FTC* v. *RevMountain, LLC,* No. 2:17–cv–02000–APG–GWF (D. Nev. 2018).

[61] State AGs.

their contracts. These practices are further reflected in the Commission's recent cases.[62]

XI. Proposed Amendments—Objectives and Content

To address these ongoing problems, the Commission proposes to amend the current Negative Option Rule with the objective of setting clear, enforceable performance-based requirements for all negative option features in all media. The proposed amendments are designed to ensure consumers understand what they are purchasing and allow them to cancel their participation without undue burden or complication. As discussed below, the proposed Rule (retitled ''Rule Concerning Recurring Subscriptions and Other Negative Option Plans'') addresses the most important issues related to negative option marketing, including misrepresentations, disclosures, consent, and cancellation. These proposed changes, which replace existing provisions in the Rule, enhance and clarify existing requirements currently dispersed in other rules and statutes. They also consolidate all requirements, such as those in the TSR, specifically applicable to negative option marketing. Further, the proposed Rule would allow the Commission to seek civil penalties and consumer redress in contexts where such remedies are currently unavailable, such as deceptive or unfair practices involving negative options in traditional print materials and face-to-face transactions (*i.e.,* in media not covered by ROSCA or the TSR) and misrepresentations (which are not expressly covered by ROSCA, even when on the internet).

In developing this proposal, and consistent with concerns raised in the comments, the Commission sought to enhance consumer protections while avoiding detailed, prescriptive requirements that would impede innovation. By generally proposing flexible standards, the Commission seeks to establish rules that will not impede advances or become irrelevant as the market changes, while protecting consumers from widespread deceptive or unfair practices.

Coverage: The Commission proposes eliminating the current Rule's prescriptive requirements applicable to prenotification plans and replacing them with the flexible, but enforceable, standards detailed below. The proposed requirements would apply to all forms of negative option marketing, including prenotification and continuity plans, automatic renewals, and free trial offers.[63] This expanded coverage would establish a common set of requirements applicable to all types of negative option marketing.

The proposed Rule defines ''negative option feature'' to mean a contract provision under which the consumer's silence or failure to take affirmative action to reject a good or service or to cancel the agreement is interpreted by the negative option seller as acceptance or continuing acceptance of the offer. This definition is consistent with the TSR and ROSCA (which references the TSR's definition of negative option). The proposed term includes, but is not limited to, automatic renewals, continuity plans, free-to-pay conversion or fee-to-pay conversions, and pre-notification negative option plans.[64] Additionally, the proposed Rule covers offers made in all media, including internet, telephone, in-person, and printed material. The Commission's experience, confirmed by many commenters, demonstrates that negative option features pose the same risks across media and sales methods. The amendments would establish a comprehensive scheme for regulation of negative option marketing in a single rule, thus consolidating existing negative option-specific provisions in one location. This change will facilitate compliance by providing one-stop regulatory shopping, as noted by the State AGs and PDMI.

Misrepresentations: Section 425.3 of the proposed Rule prohibits any person from misrepresenting, expressly or by implication, any material fact regarding the *entire* agreement—not just facts related to a negative option feature. FTC enforcement experience demonstrates misrepresentations in negative option marketing cases continue to be prevalent and often involve deceptive representations not only related to the negative option feature but to the underlying product (or service) or other aspects of the transaction as well. Such deceptive practices may involve misrepresentations related to costs, product efficacy, free trial claims, processing or shipping fees, billing information use, deadlines, consumer authorization, refunds, cancellation, or any other material representation.[65]

This provision falls within the Commission's Section 5 authority and its separate authority under ROSCA. The proposed provision provides the FTC with the ability to seek civil penalties and consumer redress for material misrepresentations in media other than telemarketing or the internet. The record demonstrates this type of provision is necessary. Specifically, despite the Commission's current authority to obtain redress and injunctions under ROSCA and injunctive relief under Section 5 of the FTC Act, the Commission's many enforcement actions over the past several years have failed to stem the tide of deceptive negative option practices online and in person. Ensuring great relief against those who deceive consumers will benefit both consumers and honest sellers who must compete with those who engage in deception.

Important Information: Section 425.4 of the proposed Rule requires sellers to provide the following important information prior to obtaining the consumer's billing information: (1) that consumers' payments will be recurring, if applicable, (2) the deadline by which consumers must act to stop charges, (3) the amount or ranges of costs consumers may incur, (4) the date the charge will be submitted for payment, and (5) information about the mechanism consumers may use to cancel the recurring payments.

The failure to provide this information is a deceptive or unfair practice. As detailed in the comments (*e.g.,* TINA and State AGs), many sellers fail to provide adequate disclosures, thereby luring consumers into

[62] *See, e.g., FTC* v. *Triangle Media Corp.,* No. 3:18–cv–01388–LAB–LL (S.D. Cal. 2019); *FTC* v. *AdoreMe, Inc.,* No. 1:17–cv–09083 (S.D.N.Y. 2017); and *FTC* v. *One Techs., LP,* No. 3:14–cv–05066 (N.D. Cal. 2014).

[63] The proposed Rule would apply to ''negative option sellers,'' which are defined in the proposal as persons selling, offering, promoting, charging for, or otherwise marketing a negative option feature. With certain exceptions, the FTC Act provides the agency with jurisdiction over nearly every economic sector. Certain entities or activities are wholly or partially exempt from FTC jurisdiction under the FTC Act, including most depository institutions, non-profits, transportation and communications common carriage, and the business of insurance. For instance, under Sections 4 and 5 of the FTC Act, the Commission's jurisdiction does not apply to non-profit organizations generally, but it does extend to non-profits that provide economic benefits to their for-profit members, *e.g.,* trade and professional associations. *See California Dental Ass'n* v. *FTC,* 526 U.S. 756 (1999).

[64] Section II of this Notice contains descriptions of these various plans.

[65] *See e.g., FTC* v. *Tarr,* No. 3:17–cv–02024–LAB–KSC (S.D. Cal. 2017); *FTC* v. *First American Payment Systems,* Case 4:22–cv–00654 (E.D. Tex. 2022); *FTC* v. *XXL Impressions,* No. 1:17–cv–00067–NT (D. Me. 2018); *US* v. *MyLife.com, Inc.,* No. 2:20–CV–6692–JFW–PDx (C.D. Cal. 2021); *FTC and State of Maine* v. *Health Research Labs., LLC,* No. 2:17–cv–00467–JDL (D. Me. 2018); *FTC and State of Connecticut* v. *Leanspa, LLC,* No. 3:11–cv–01715–JCH (D. Conn. 2013); *FTC* v. *WealthPress, Inc. et al.,* No. 3:23–cv–00046 (M. D. Fla. 2023); *FTC* v. *BunZai Media Group, Inc.,* No. CV15–04527–GW(PLAx) (C.D. Cal. 2018); *FTC* v. *Willms,* No 2:11–cv–00828 (W.D. Wash. 2011); *FTC* v. *Universal Premium Services,* No. CV06–0849 (C.D. Cal. 2006); *FTC* v. *Remote Response,* No. 06–20168 (S.D. Fla. 2006); and *FTC* v. *Jeremy Johnson, et al.,* No. 2:10–cv–02203 (D. Nev. 2016).

purchasing goods or services they do not want. Moreover, the proposal is consistent with ROSCA, which requires sellers to clearly and conspicuously disclose ''all material terms of the transaction before obtaining the consumer's billing information.'' Specifically, the proposed Rule, like ROSCA, would require sellers to disclose any material conditions related to the underlying product or service that is necessary to prevent deception, regardless of whether that term directly relates to the terms of the negative option offer.[66] Complementing ROSCA, the proposal also specifies the types of information sellers must provide so that they have more certainty and consumers receive the information they need to understand the terms of their enrollment. This provision is consistent with Commission orders in this area, requiring no more than any advertisement would need to be non-deceptive.

The proposal does not mandate a long list of prescriptive disclosures, such as renewal dates or business contact information, as some commenters suggested. There is an inherent tradeoff between providing consumers with additional information and ensuring they see and understand the information they need (*i.e.,* consumers may miss important information if the important points are surrounded by useful but less critical information).

Further, to help ensure consumers actually see and understand this important information, the proposed Rule contains general requirements for the location and form of the necessary information in written, telephone, and in-person offers. The FTC's law enforcement experience and consumer complaints are replete with examples of hidden disclosures, including those in fine print, buried in paragraphs of legalese and sales pitches, and accessible only through hyperlinks.[67] Making the rules of the road clear prevents deception by businesses trying to take advantage of the gray areas in current statutes and regulations; the possibility of civil penalties deters those who are engaging in fraudulent practices. Moreover, these clearer guidelines should level the playing field for legitimate businesses, freeing them from having to compete against those employing deception.

Specifically, consistent with the Commission's Policy Statement, the proposed amendments require marketers to present this information ''clearly and conspicuously,'' a term defined in the proposed amendments. Under the proposal, this information should be difficult to miss (*i.e.,* easily noticeable) or unavoidable and easily understandable by ordinary consumers. In addition, all required information, regardless of media, should not contain any other information that interferes with, detracts from, contradicts, or otherwise undermines the ability of consumers to read, hear, see, or otherwise understand the required information, including any information not directly related to the material terms and conditions of any negative option feature. The proposed amendments also contain requirements related to visual, audible, and written disclosures consistent with the principles enunciated in the Policy Statement. For example, in any communication that is solely visual or solely audible, the disclosure should be made through the same means through which the communication is presented. Additionally, written disclosures should appear immediately adjacent to the means of recording the consumer's consent for the negative option feature. Again, the Commission's law enforcement experience as well as the comments demonstrate the need for this direction, which should benefit businesses who are trying to make non-deceptive claims by leveling the playing field.

Finally, the FTC's comprehensive definition of ''clear and conspicuous,'' developed through years of enforcement experience, covers all the concepts provided in California and DC laws' ''clear and conspicuous'' definitions with one exception. That exception, the fact that the DC definition requires that disclosures be visually proximate to any request for consumer consent, is incorporated by the proposed Rule in a separate consent section.[68]

Consent: Section 425.5 of the proposed Rule also requires negative option sellers to obtain consumers' express informed consent before charging them. The failure to obtain such consent is a deceptive or unfair practice, and the record demonstrates how pervasive this problem has become.[69] Thus, the proposed consent requirements are necessary given how easily marketers can enroll consumers in negative option programs without actual consent.

Proposed Section 425.5 is consistent with ROSCA's basic ''express informed consent'' requirement while providing more guidance on how to comply. This more detailed guidance removes ambiguity for marketers, while leveling the playing field and providing deterrence. Moreover, the provision provides flexibility to allow for innovation and change over time. The proposed Rule achieves these goals by requiring marketers to: (1) obtain the consumer's unambiguously affirmative consent to the negative option feature separately from any other portion of the offer; (2) refrain from including any information that ''interferes with, detracts from, contradicts, or otherwise undermines'' the consumer's ability to provide express informed consent; (3) obtain the consumer's unambiguously affirmative consent to the entire transaction; and (4) obtain and maintain (for three years or a year after cancellation, whichever is longer) verification of the consumer's consent.[70]

These requirements address commenters' (*e.g.,* TINA, Rep. Takano, and State AGs) concerns that many sellers employ inadequate consent procedures to increase enrollment in negative option programs. By providing more specificity regarding the steps sellers must take to ensure they obtain consumer consent, these provisions will also help address the deceptive use of so-called ''dark patterns,'' sophisticated design practices that manipulate users into making choices they would not otherwise have made.[71] Indeed, consumer agreement to any free-to-pay conversion or negative option feature or any other automatic renewal provision obtained through the use of deceptive or unfair dark patterns does not constitute express informed consent.

The provisions also address the unique challenges presented by negative option offers, even for marketers trying to comply with the law. Specifically,

[66] *See In re: MoviePass, Inc.,* No. C–4751 (Oct. 5, 2021).

[67] *See, e.g., FTC* v. *Triangle Media Corp.,* No. 3:18–cv–01388–LAB–LL (S.D. Cal. 2019); *FTC* v. *Tarr,* No. 3:17–cv–02024–LAB–KSC (S.D. Cal. 2017); *FTC* v. *One Techns., LP,* No. 3:14–cv–05066 (N.D. Cal. 2014).

[68] Cal. Bus. & Prof. Code section 17601 and DC Code section 28A–202.

[69] *See, e.g.,* State AGs comments; *FTC* v. *Bunzai Media Group, Inc.,* No. CV15–04527–GW(PLAx) (C.D. Cal. 2018); *FTC* v. *Health Formulas, LLC,* No. 2:14–cv–01649–RFB–GWF (D. Nev. 2016); *FTC* v. *JDI Dating, Ltd.,* No. 1:14–cv–08400 (N.D. Ill. 2018); *FTC and State of Maine* v. *Health Research Laboratories, LLC,* No. 2:17–cv–00467–JDL (D. Me. 2018) (Section 5); *FTC* v. *XXL Impressions,* No. 1:17–cv–00067–NT (D. Me. 2018) (Section 5).

[70] The Commission seeks comment on whether the proposed Rule should contain a different recordkeeping period.

[71] The FTC recently released a report describing these practices, which include disguising ads to look like independent content, making it difficult for consumers to cancel subscriptions or charges, burying key terms or junk fees, and tricking consumers into sharing their data. *See Bringing Dark Patterns to Light,* FTC Staff Report (Sept. 2022), *https://www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf.*

consumers can easily focus solely on the aspects of an offer that mirror the offers they regularly encounter (*e.g.,* the quality, functionality, one-time price of the item, and the availability of a free trial offer). Thus, many consumers think they are consenting to these core attributes but miss the other unusual price term—the negative option feature. The proposal addresses these issues by requiring marketers to obtain consent for the negative option feature separately from the rest of the offer and other parts of the transaction, thereby ensuring the consent is informed.[72] For instance, according to the comments, sellers offering negative option features through in-person transactions frequently use consumers' signatures on the entire purchase as consent for the negative option. Further, in effect, the requirement for a separate negative option consent prohibits certain negative option enrollment methods, such as the use of retail sales receipts or check endorsements, in which the customer's signature serves a dual purpose (*e.g.,* negative option enrollment and promotional check cashing). As commenters noted, such practices appear to be particularly attractive to those committing fraud. Finally, the Rule requires sellers to obtain consent for the entire transaction to ensure consumers also agree to elements of the agreement not specifically related to the negative option feature.[73]

To maintain consistency with the TSR, the proposed consent provision also contains a cross-reference to 16 CFR part 310 to inform sellers of that regulation and includes specific mention of TSR requirements for consent in transactions involving preacquired account information and a free-to-pay conversion.[74] However, beyond the basic steps discussed above and these current TSR requirements, the proposed consent requirements contain no prescriptive provisions requiring sellers to implement specific practices.

Instead, the proposed Rule provides guidance for sellers making written offers (including those on the internet) to assure they have obtained the consumer's unambiguously affirmative consent. Specifically, for all written offers (including over the internet), sellers may obtain express informed consent through a check box, signature, or other substantially similar method, which the consumer must affirmatively select or sign to accept the negative option feature, and no other portion of the offer.[75] This approach should protect consumers and marketers alike. Consumers are assured they pay for only the goods and services they choose, and marketers can opt for the certainty of avoiding liability by adhering to the Commission's proposed means of compliance. Alternatively, marketers are free to innovate as long as they meet the express informed consent standard.

In the free trial context, while marketers must obtain consumers' express informed consent prior to being charged, the proposal does not require sellers to obtain an additional (or alternative) round of consent after the trial's completion. Although such additional consent would remind many consumers of their ongoing purchases, the failure to provide this second round of consent does not necessarily constitute an unfair or deceptive practice.[76] For example, if sellers follow the proposed Rule's disclosure and consent requirements, consumers should understand they are enrolled in, and will be charged for, the negative option feature once the free trial ends. Nonetheless, the Commission invites comment on whether additional (or alternative) measures are necessary to prevent unfairness or deception and ensure consumers have adequate notice concerning the initiation of recurring purchases or payments following the completion of a free trial. For example, the Commission seeks comment on whether sellers offering free trials should be required to obtain an additional round of consent before charging a consumer at the completion of the free trial.

Simple Cancellation Mechanism (''Click to Cancel''): Easy cancellation is an essential feature of a fair and non-deceptive negative option program. If consumers cannot easily leave the program when they wish, the negative option feature is little more than a means of charging consumers for goods or services they no longer want. Unfortunately, the record demonstrates easy cancellation is all too often illusory.[77] To address this persistent unfair and deceptive practice, the proposed Rule, consistent with ROSCA and California requirements, directs sellers to provide a simple cancellation mechanism to immediately halt any recurring charges.[78] However, while ROSCA's cancellation provision is laudable, it has failed to eliminate the barriers many marketers have erected to keep consumers from canceling. Specifically, many marketers take advantage of the ambiguity of the term simply to thwart or delay consumers' attempts to cancel. The Commission's cases, as well as the State AGs' and TINA's comments, demonstrate the need for clearer guardrails in this area. To construct these guardrails, the proposed Rule requires the mechanism to be at least as simple as the one used to initiate the charge or series of charges. Because sellers have huge incentives to create a frictionless purchasing process, ensuring cancellation is equally simple should remove barriers, such as unreasonable hold times or verification requirements. The lack of detailed requirements affords businesses flexibility in meeting the proposed Rule's simple cancellation standard.

The proposal also requires sellers to provide a simple cancellation mechanism through the same medium used to initiate the agreement, whether, for instance, through the internet, telephone, mail, or in-person. On the internet, this ''Click to Cancel'' provision requires sellers, at a minimum, to provide an accessible cancellation mechanism on the same website or web-based application used for sign-up. If the seller allows users to sign up using a phone, it must provide, at a minimum, a telephone number and ensure all calls to that number are answered during normal business hours. Further, to meet the requirement that the mechanism be at least as simple as the one used to initiate the recurring charge, any telephone call used for cancellation cannot be more expensive than the call used to enroll (*e.g.,* if the

[72] *See, e.g., FTC* v. *Jason Cardiff (Redwood Scientific),* No. ED 18–cv–02104 SJO (PLAx) (C.D. Cal. 2018); *FTC* v. *DOTAuthority.com, Inc.,* No. 0:16–cv–62186–WJZ (S.D. Fla. 2018); *FTC* v. *JDI Dating, Ltd.,* No. 1:14–cv–08400 (N.D. Ill. 2014).

[73] The Commission recently alleged that failure to disclose a material term of the underlying service that was necessary to prevent deception violated this provision of ROSCA. *In re: MoviePass, Inc.,* No. C–4751 (Oct. 5, 2021).

[74] 16 CFR 310(a)(7).

[75] To avoid potential conflicts with EFTA, this proposed provision does not apply to transactions covered by the preauthorized transfer provisions of that Act, 15 U.S.C. 1693e, and Regulation E, 12 CFR 1005.10. Those EFTA provisions, which apply to a range of preauthorized transfers including some used for negative options, contain various prescriptive requirements (*e.g.,* written consumer signatures that comply with E-Sign, 15 U.S.C. 7001–7006, evidence of consumer identity and assent, the inclusion of terms in the consumer authorization, and the provision of a copy of the authorization to the consumer) beyond the measures identified in the proposed Rule. Consequently, compliance with the proposed Rule would not necessarily ensure compliance with Regulation E. For example, use of a check box for consent without additional measures may not comply with Regulation E's more specific authorization requirements.

[76] 15 U.S.C. 57a(a)(1)(B).

[77] *See, e.g.,* NCL and State AGs.

[78] The TSR requires disclosure of the material terms of a seller's cancellation policy (if one exists) and prohibits misrepresentations about cancellation policies. 16 CFR 310.3. However, it does not contain specific cancellation mechanism requirements.

sign-up call is toll free, the cancellation call must also be toll free). For a recurring charge initiated through an in-person transaction, the seller must offer the simple cancellation mechanism through the internet or by telephone in addition to, where practical, the in-person method used to initiate the transaction.

The proposed Rule provides for this flexible approach in lieu of, as some commenters suggested, prohibitions against a list of specific practices (*e.g.,* additional security requirements, third-party scripting, etc.) that may impair cancellation. Specific prohibitions may be counterproductive, solving today's issues only to inadvertently provide a road map to tomorrow's deception. Unscrupulous sellers, for example, can simply circumvent detailed prohibitions and employ new infinitely clever means to thwart consumers. The proposed performance standard avoids this eventuality. Additionally, such restrictions may prohibit legitimate measures used by sellers for security reasons or other purposes. The proposed provision, therefore, mandates results and provides the flexibility to meet them.

The proposed Rule does not contain a separate provision requiring refunds for consumers ''unwittingly enrolled in a negative option plan,'' as some commenters suggested. Such a provision is not needed to prevent deception because enrolling consumers without their express informed consent would already violate the proposed Rule's consent requirements (proposed Section 425.5).

Finally, the proposed Rule does not adopt a commenter recommendation to augment cancellation provisions by requiring sellers to completely delete consumer data following cancellation to provide consumers with a ''true exit.'' Although such a procedure may be desirable for many consumers, the record does not support an assertion that the practice of retaining consumer data after cancellation is inherently unfair or deceptive, nor would a requirement related to data deletion prevent other unfair or deceptive practices related to negative options.[79] Instead, this issue involves questions of relief related to broader privacy issues, and thus falls outside the scope of this proceeding.

Additional Offers Before Cancellation (''Saves''): The proposed Rule also contains a provision for sellers who seek to pitch additional offers or modifications (*i.e.,* defined as a ''Save'' in the proposed Rule) during a consumer's cancellation attempt. Under the proposal, before making such pitches, the seller must first ask consumers whether they would like to consider such offers or modifications (*e.g.,* ''Would you like to consider a different price or plan that could save you money?''). If consumers decline this invitation, the seller must desist from presenting such offers and cancel the negative option arrangement immediately. If they accept, the seller can pitch the alternative offers. To prevent consumers from entering a protracted series of such offers, the proposed Rule also clarifies that a consumer's consent to receive additional offers or modifications applies only to the cancellation attempt in question and not to subsequent attempts. Thus, consumers could disengage during the ''save'' attempt (*e.g.,* by hanging up, closing the browser, or disconnecting the chat) and avail themselves of the easy cancellation during a separate, subsequent attempt. As noted in the comments (*e.g.,* NCL and State AGs), evidence demonstrates many businesses have created unnecessary and burdensome obstacles in the cancellation process, including forcing uninterested consumers to listen to multiple upsells before allowing cancellation, that are not outweighed by countervailing benefits to consumers or competition. This is an unfair and deceptive practice. The proposed provision would effectively prohibit such practices by giving consumers the ability to avoid them, while allowing sellers to pitch new offers to those consumers who find these additional offers desirable. In addition, this provision should not create any significant burden for sellers.

Reminders and Confirmations: For contracts involving the automatic delivery of physical goods (*e.g.,* pet food), the proposed Rule does not, as some commenters recommended, mandate confirmatory emails or periodic reminders. In situations where the seller has otherwise clearly disclosed the terms of the deal, obtained consent, and provided a simple cancellation mechanism, the record does not support an assertion that the absence of these reminders is inherently unfair or deceptive, given the requirement that sellers must provide all material information upfront. Moreover, while the lack of a reminder may result in some consumers paying for goods they do not want based simply on the lack of diligence, any injury is reasonably avoidable by consumers themselves. Specifically, each delivery serves as a reminder of the contract, allowing consumers to reasonably avoid further payments by contacting the company and cancelling the arrangement. Thus, the record does not support an assertion that such an agreement is inherently unfair.

Subscriptions and other negative option arrangements that do not involve physical goods, however, present a different issue. As some commenters explained, because these services may have no regular, tangible presence for consumers (*e.g.,* data security monitoring or subscriptions for online services), many consumers may reasonably forget they enrolled in such plans and, as a result, incur perpetual charges for services they do not want or use. Thus, the failure to provide reminders for such contracts meet all three elements of unfairness.[80]

Accordingly, the Commission proposes to require sellers to provide an annual reminder to consumers enrolled in negative option plans involving anything other than physical goods. Under the proposal, such reminders must identify the product or service, the frequency and amount of charges, and the means to cancel (see proposed Section 425.7). As a matter of good business practice, many sellers already provide such reminders to consumers enrolled in these programs. However, even for those who do not, the proposal should impose little additional burden (*e.g.,* a short, generic email). The Commission seeks comment on this proposal, including, for example, whether the Commission should narrow the coverage of the proposed language by types of covered services or time duration between reminders.

Material Changes: The proposed Rule does not contain a provision addressing the need for notices when sellers make material changes to a negative option contract. Because these contracts can last years, and even decades, the original agreement often allows the seller to change material terms of the agreement such as price, services, and product quantity. As commenters noted, some states have requirements addressing this issue. However, whether such a practice is unfair or deceptive depends heavily on the facts presented in each case (*e.g.,* consumers may reasonably expect a small annual increase in price for some products or

[79] 15 U.S.C. 57a(a)(1)(B).

[80] *FTC Policy Statement on Unfairness,* appended to *International Harvester Co.,* 104 F.T.C. 949 (1984). ''To justify a finding of unfairness the injury must satisfy three tests. It must be substantial; it must not be outweighed by any countervailing benefits to consumers or competition that the practice produces; and it must be an injury that consumers themselves could not reasonably have avoided.'' *Id.*

services, but not massive increases or even small increases for different products). Because consumer interpretation of these claims is so fact dependent, it is not practical to draw a universal line between legal and violative behavior. Thus, the Commission can best address issues in this area on a case-by-case basis through law enforcement actions. Given the importance of this issue, however, the Commission seeks further comment on whether and how the Rule can address this issue consistent with FTC's authority to combat unfair or deceptive practices.

Penalties: Under the proposal, the civil penalties for the Rule would continue to reflect the amounts set out in 16 CFR 1.98(d).

State Requirements: The Federal Trade Commission Act does not explicitly preempt state law, and the legislative history of the FTC Act indicates that Congress did not intend the FTC to occupy the field of consumer protection regulation.[81] Accordingly, any preemptive effect of a Rule would be limited to instances where it is not possible for a private party to comply with both state and the Commission regulations, or where application of state regulations would frustrate the purposes of the Rule.[82]

Therefore, Section 425.7 of the proposed Rule specifies that the Rule would not supersede, alter, or affect state statutes or regulations relating to negative option marketing, except to the extent that a state statute, regulation, order, or interpretation is inconsistent with the proposed Rule. The proposal also indicates state requirements are not inconsistent with the Rule to the extent they afford greater protection to consumers. The Commission invites comment on whether the proposed Rule conflicts with any existing state requirements.

Consumer Education: The Commission plans to continue its efforts to provide information to help consumers with their purchasing decisions and avoid ensnarement in unwanted recurring payment programs. However, consumer education does not provide a substitute for improving existing regulatory provisions. Consumer education is likely to have a limited benefit where sellers lure consumers into an agreement without consumers' knowledge, particularly with the use of dark patterns.

Exempted Activities: The Commission seeks comment on whether the Rule should exempt any entities or activities that are otherwise subject to the Commission's authority under the FTC Act. In the comments, various interests, such as energy sellers and service contract providers, urged the Commission to exempt their industries. They argued existing state licensing and other requirements that already apply to their activities adequately address the problems noted above and further rules would only interfere with the existing regulatory structure. They note that some state laws (*e.g.,* California) contain exemptions for activities such as service contract sellers and administrators, as well as state public utility commission licensees.

Those commenting on this issue should detail which, if any, industries should be exempt, or not exempt, and why, including whether the proposed Rule would impose requirements that conflict with state regulations targeted to a specific industry sector, or are antithetical to the goals of such state laws.

XII. The Rulemaking Process

As explained in Section XIII of this document, the Commission invites interested parties to submit data, views, and arguments on the proposed amendments to the Negative Option Rule and the issues and questions raised in this document. The comment period will remain open until June 23, 2023.[83] To the extent practicable, all comments will be available on the public record and posted at the docket for this rulemaking on *https://www.regulations.gov.* The Commission will provide an opportunity for an informal hearing if an interested person requests to present their position orally. *See* 15 U.S.C. 57a(c). Any person interested in making a presentation at an informal hearing must submit a comment requesting to make an oral submission, and the request must identify the person's interests in the proceeding and indicate whether there are any disputed issues of material fact that need to be resolved during the hearing. *See* 16 CFR 1.11(e). The comment should also include a statement explaining why an informal hearing is warranted and a summary of any anticipated testimony. If the Commission schedules an informal hearing, either on its own initiative or in response to request by an interested party, a separate notice will issue. *See id.* 1.12(a).

The Commission can decide to finalize the proposed rule if the rulemaking record, including the public comments in response to this NPRM, supports such a conclusion. The Commission may, either on its own initiative or in response to a commenter's request, engage in additional processes, which are described in 16 CFR 1.12, 1.13. Based on the comment record and existing prohibitions against deceptive or unfair negative option marketing under Section 5 of the FTC Act and other rules and statutes, the Commission does not here identify any disputed issues of material fact that need to be resolved at an informal hearing. The Commission may still do so later, on its own initiative or in response to a persuasive showing from a commenter.

XIII. Request for Comments

The Commission seeks comments on all aspects of the proposed requirements, including the likely effectiveness of the proposed Rule in helping the Commission combat unfair or deceptive practices in negative option marketing. The Commission also seeks comment on various alternatives to the proposed regulation, to further address disclosures, consumer consent, and cancellation. It also seeks comment on other approaches, such as the publication of additional consumer and business education. The Commission seeks any suggestions or alternative methods for improving current requirements. In their replies, commenters should provide any available evidence and data that supports their position, such as empirical data, consumer perception studies, and consumer complaints.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before June 23, 2023. Write ''Negative Option Rule; Project No. P064202'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the website *https://www.regulations.gov.*

Because of the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov*

[81] *See, e.g., Am. Fin. Servs. Ass'n* v. *FTC,* 767 F.2d 957, 989 (D.C. Cir. 1985).

[82] Preemption would occur where there is an ''actual conflict between the two schemes of regulation [such] that both cannot stand in the same area.'' *Fla. Lime & Avocado Growers, Inc.,* v. *Paul,* 373 U.S. 132, 141 (1963). *See also Am. Fin. Servs.,* 767 F.2d 957 (Credit Practices Rule); *Harry and Bryant Co.* v. *FTC,* 726 F.2d 993 (4th Cir. 1984) (Funeral Rule); *Am. Optometric Assoc.* v. *FTC,* 626 F.2d 896 (D.C. Cir. 1980) (Ophthalmic Practices Rule).

[83] The Commission elects not to provide a separate, second comment period for rebuttal comments. *See* 16 CFR 1.11(e) (''The Commission may in its discretion provide for a separate rebuttal period following the comment period.'').

website. To ensure that the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write ''Negative Option Rule; Project No. P064202'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex N), Washington, DC 20580. If possible, please submit your paper comment to the Commission by overnight service.

Because your comment will be placed on the public record, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not contain sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential''—as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including, in particular, competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *https://www.regulations.gov*—as legally required by FTC Rule 4.9(b), 16 CFR 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before June 23, 2023. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/policy-notices/privacy-policy*.

XIV. Preliminary Regulatory Analysis and Regulatory Flexibility Act Requirements

Under Section 22(a) of the FTC Act, 15 U.S.C. 57b–3(a), the Commission must issue a preliminary regulatory analysis for a proceeding to amend a rule if the Commission: (1) estimates that the amendment will have an annual effect on the national economy of $100 million or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. The Commission has preliminarily determined that the proposed amendments to the Rule will not have such effects on the national economy; on the cost of goods and services offered for sale by mail, telephone, or over the internet; or on covered parties or consumers. The proposed amendments contain requirements related to consumer disclosures, consumer consent, and cancellation. In developing these proposals, the Commission has sought to minimize prescriptive requirements and provide flexibility to sellers in meeting the Rule's objectives. In addition, most sellers provide some sort of disclosures, follow consent procedures, and offer cancellation mechanisms in the normal course of business. Thus, compliance with the proposed requirements should not create any substantial added burden. The Commission, however, requests comment on the economic effects of the proposed amendments.

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires that the Commission conduct an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule and a Final Regulatory Flexibility Analysis (''FRFA''), if any, with the final rule, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605. The RFA requires an agency to provide an IRFA with the proposed Rule and a FRFA with the final rule, if any. The Commission is not required to make such analyses if a rule would not have such an economic effect, or if the rule is exempt from notice-and-comment requirements.

The Commission does not have sufficient empirical data at this time regarding the affected industries to determine whether the proposed amendments to the Rule may affect a substantial number of small entities as defined in the RFA. However, a preliminary analysis suggests the proposed amendments to the Rule would not have a significant economic impact on small entities. The proposed amended rule would apply to all businesses using Negative Option Features in the course of selling goods or services. Small entities in potentially any industry could incorporate a negative option feature into a sales transaction. The Commission is unaware, however, of any source of data identifying across every industry the number of small entities that routinely utilize negative option features. Based on the comments received in response to the ANPR, and on the Commission's own experience and expertise, the Commission believes the use of negative option features may be more prevalent in some industries than others, for example, computer security services, online streaming services, and service contract providers. The Commission lacks sufficient data to determine the portion of total estimated affected companies (see estimate in the Paperwork Reduction Act analysis in section XV) that qualify as small businesses across each industry. Therefore, the Commission seeks comments on the percentage of affected companies that qualify as small businesses.

In addition, it is also unclear whether the proposed amendments to the Rule would have a significant economic impact on small entities. However, as noted in Section XV, the impact of the proposed requirements on all firms, whether small businesses or not, may not be substantial. As discussed in that section, the FTC estimates the majority of firms subject to the proposed recordkeeping requirements already retain these types of records in the normal course of business. The FTC anticipates many transactions subject to the Rule are conducted via the internet, minimizing burdens associated with compliance. Additionally, most entities

subject to the Rule are likely to store data though automated means, which reduces compliance burdens associated with record retention. Furthermore, regarding the proposed disclosure requirements, it is likely the substantial majority of sellers routinely provide these disclosures in the ordinary course as a matter of good business practice. Moreover, many state laws already require the same or similar disclosures as the Rule would mandate. Finally, some negative option sellers are already covered by the Telemarketing Sales Rule and thus subject to its disclosure requirements. The Commission therefore anticipates that the Rule will not have a significant economic impact on small entities. Nevertheless, because the precise costs to small entities of updating their systems and disclosures are difficult to predict, the Commission has decided to publish the following IRFA pursuant to the RFA and to request public comment on the impact on small businesses of the proposed amendments.

A. Description of the Reasons Why Action by the Agency Is Being Considered

As described in this document, the proposed amendments address unfair or deceptive practices in negative option marketing. The FTC, other federal agencies, and state attorneys general have brought multiple actions to stop and remedy the harms caused by negative option marketing. The record demonstrates, however, that existing authorities fall short because there is no uniform legal framework, which leaves entire sectors of the economy under-regulated and constrain the relief that the Commission may obtain for law violations. In the ANPR, the Commission explained it receives thousands of complaints a year related to negative option marketing. As discussed above in Sections VI, VII, and IX, the proposed changes, which replace existing provisions in the Rule, enhance and clarify existing requirements currently dispersed in other rules and statutes. They also consolidate all requirements, such as those in the TSR, specifically applicable to negative option marketing. Further, the proposed Rule would allow the Commission to seek civil penalties and consumer redress in contexts where such remedies are currently unavailable, such as deceptive or unfair practices involving negative options in traditional print materials and face-to-face transactions (*i.e.,* in media not covered by ROSCA or the TSR) and misrepresentations (which are not expressly covered by ROSCA, even when on the internet).

B. Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Amendments

The objective of the proposed amendments is to curb deceptive or unfair practices occurring in negative option marketing. The legal basis for the proposed amendments is Section 18(b)(3) of the FTC Act, 15 U.S.C. 57a(b)(3), which provides the Commission with authority to issue a notice of proposed rulemaking where it has reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Amendments Will Apply

The proposed amendments affect sellers, regardless of industry, engaged in making negative option offers, defined by the Rule to mean any person ''selling, offering, promoting, charging for, or otherwise marketing goods or services with a Negative Option Feature.'' As discussed in the introduction to this section, determining a precise estimate of how many of these are small entities, or describing those entities further, is not readily feasible because the staff is not aware of published, comprehensive revenue and/or employment data for all possible affected entities, which come from a variety of different industries and which may or may not sell goods or services with negative options. The Commission invites comment and information on this issue.

D. Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements

The proposed rule amendments would require negative option sellers to disclose certain information about negative option features, obtain a consumer's express informed consent and maintain records of consumer consent for three years after the initial transaction or one year after cancellation (whichever is longer), and provide consumers a simple mechanism for cancellation. The estimates for the proposed recordkeeping and disclosure requirements are set out within the Paperwork Reduction Act analysis in Section XV. As mentioned in the earlier introductory section of the IFRA, the impact of these proposed requirements on small entities is most likely not significant. The small entities potentially covered by these amendments will include all such entities subject to the Rule (*e.g.,* for purposes of the proposed amendment, entities selling goods or services through negative option offerings). The professional skills necessary for compliance with the proposed amendments would include sales and clerical personnel. The Commission invites comment on these issues.

E. Duplicative, Overlapping, or Conflicting Federal Rules

As discussed in this document, the proposed amendments contain certain provisions that are similar to or expand on requirements in the TSR as well as ROSCA. The proposed amendments would establish a common set of requirements applicable to all types of negative option marketing. The Commission anticipates these changes will facilitate compliance and reduce potential confusion among sellers and consumers regarding their compliance obligations for sales involving negative option offers. The FTC has not identified any other federal statutes, rules, or policies currently in effect that may duplicate or conflict with the proposed rule. As explained above, the proposed amendments have been specifically drafted to avoid any conflict with EFTA and Regulation E. The proposed amendments are also consistent with the existing requirements of the TSR, *see supra* Section XI, while filling a regulatory gap by extending protections to other, non-telemarketing transactions. The Commission invites comment and information regarding any potentially duplicative, overlapping, or conflicting federal statutes, rules, or policies.

F. Description of Any Significant Alternatives to the Proposed Amendments

In formulating the proposed amendments, the Commission has made every effort to avoid imposing unduly burdensome requirements on sellers. To that end, the Commission has avoided, where possible, proposing specific, prescriptive requirements that could stifle marketing innovation or otherwise limit seller options in using new technologies. In addition, the Commission has sought comments as detailed in Section XI of this document on several alternatives, including provisions related to consent requirements (additional consent for free trials) and reminder requirements (narrowing the scope of product types requiring reminders). The former would likely increase burdens on sellers but, at the same time, may benefit consumers by helping to ensure they do not become enrolled in negative option arrangements they do not want. The latter alternative would likely decrease

burden but may fail to help consumers cancel programs they are unaware of. The Commission seeks comments on the ways in which the proposed amendments could be modified to reduce costs or burdens for small entities. If the comments filed in response to this document identify small entities that would be affected by the proposed Rule, as well as alternative methods of compliance that would reduce the economic impact of the proposed Rule on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final Rule.

XV. Paperwork Reduction Act

The current Rule contains various provisions that constitute information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (''OMB'') regulations implementing the Paperwork Reduction Act (''PRA''). OMB has approved the Rule's existing information collection requirements through January 31, 2024 (OMB Control No. 3084–0104). The proposed amendments make changes in the Rule's recordkeeping and disclosure requirements that will increase the PRA burden as detailed below. Accordingly, FTC staff will submit this notice of proposed rulemaking and associated Supporting Statement to OMB for review under the PRA.[84]

Estimated Annual Hours Burden: 265,000 hours.

The estimated burden for recordkeeping compliance is 53,000 hours and the estimated burden for the requisite disclosures is 212,000 hours. Thus, the total PRA burden is 265,000 hours. These estimates are explained below.

Number of Respondents

FTC staff estimates there are 106,000 entities currently offering negative option features to consumers. This estimate is based primarily on data from the U.S. Census North American Industry Classification System (NAICS) for firms and establishments in industry categories wherein some sellers offer free trials, automatic renewal, prenotification plans, and continuity plans. Based on NAICS information as well as its own research and industry knowledge, FTC staff identified an estimated total of 530,000 firms involved in such industries.[85] However, FTC staff estimates that only a fraction of the total firms in these industry categories offer negative option features to consumers. For example, few grocery stores and clothing retailers, which account for approximately a third of the of the total estimate from all industry categories, are likely to regularly offer negative option features. In addition, some entities included in the total may qualify as common carriers, exempt from the Commission's authority under the FTC Act. Accordingly, the Commission estimates that approximately 106,000 business entities (20%) offer negative option features to consumers.

Recordkeeping Hours

The proposed Rule would require negative option sellers to retain records sufficient to verify consumer consent related to a negative option feature and consideration of further offers prior to cancellation for at least 3 years, or until one year after the consumer cancels the contract or the contract is otherwise terminated, whichever period is longer. FTC staff estimates the majority of firms subject to the Rule already retain these types of records in the normal course of business. Under such conditions, the time and financial resources needed to comply with disclosure requirements do not constitute ''burden'' under the PRA.[86] Moreover, staff anticipates that many transactions subject to the Rule are conducted via the internet and most entities subject to the Rule are likely to store data though automated means, which reduces compliance burdens associated with record retention. Accordingly, staff estimates that 53,000 entities subject to the Rule will require approximately one hour per year to comply with the Rule's recordkeeping requirements, for an annual total of 53,000 burden hours.

Disclosure Hours

The proposed Rule would require negative option sellers to provide several disclosures to consumers including the amount to be charged, the deadline the consumer must act to avoid charges, the date charges will be submitted for payment, the cancellation mechanism the consumer can use to end the agreement, reminders for recurring payments involving non-physical goods, and requests related to further offers prior to cancellation.[87] Staff anticipates that the substantial majority of sellers routinely provide these disclosures in the ordinary course as a matter of good business practice. For these sellers, the time and financial resources associated with making these disclosures do not constitute a ''burden'' under the PRA because they are a usual and customary part of regular business practice. 5 CFR 1320.3(b)(2). Moreover, many state laws require the same or similar disclosures as the Rule mandates. In addition, approximately 2,000 negative option sellers are already covered by the Telemarketing Sales Rule and subject to its disclosure requirements. Accordingly, to reflect these various considerations, FTC estimates the disclosure burden required by the Rule will be, on average, two hours each year for each seller subject estimated to be subject the Rule, for a total estimated annual burden of 212,000 hours.

Estimated Annual Labor Cost: $5,689,550.

As indicated above, staff estimates existing covered entities will require approximately 53,000 hours to comply with the proposed rule's recordkeeping provisions. Applying a clerical wage rate of $18.75/hour,[88] recordkeeping maintenance for existing telemarketing entities would amount to an annual cost of approximately $993,750.

The estimated annual labor cost for disclosures for all entities is $4,695,800. This total is the product of applying an estimated hourly wage rate for sales personnel of $22.15 [89] to the estimate of

[84] The PRA analysis for this rulemaking focuses strictly on the information collection requirements created by and/or otherwise affected by the amendments.

[85] Examples of these industries include sellers of software, streaming media, social media services, financial monitoring, computer security, fitness services, groceries and meal kits, dietary supplements, sporting goods, home service contracts, home security systems, office supplies, pet food, computer supplies, cleaning supplies, home/lawn maintenance services, personal care products, clothing sales, energy providers, newspapers, magazines, and books. The NAICS does not provide estimates for all of these categories. Where such data is unavailable, the staff has used its own estimates based on its knowledge of these industry categories.

[86] Under the PRA, the time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (*e.g.,* in compiling and maintaining business records) does not constitute burden from the Rule where the associated recordkeeping is a usual and customary part of business activities. 5 CFR 1320.3(b)(2).

[87] Because all legitimate sellers offer consumers some sort of cancellation mechanism in the normal course of business, the proposed Rule's requirement for a simple cancellation mechanism is unlikely to create additional burdens.

[88] This figure is derived from the mean hourly wage shown for Information and Record Clerks. *See Occupational Employment and Wages—May 2021,* Bureau of Labor Statistics, U.S. Department of Labor (March 31, 2022), Table 1 (''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2021''), *available at https://www.bls.gov/news.release/pdf/ocwage.pdf.*

[89] This figure is derived from the mean hourly wage shown for Sales and related occupations. *See Occupational Employment and Wages, supra.*

212,000 hours for compliance with the Rule's disclosure requirements.

Thus, the estimated annual labor costs are $5,689,550 [($993,750 recordkeeping) + ($4,695,800 disclosure)].

Estimated Annual Non-Labor Cost

The capital and start-up costs associated with the Rule's recordkeeping provisions are *de minimis.* Any disclosure or recordkeeping capital costs involved with the Rule, such as equipment and office supplies, would be costs borne by sellers in the normal course of business.

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the disclosure, recordkeeping, and reporting requirements are necessary, including whether the resulting information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) how to improve the quality, utility, and clarity of the disclosure requirements; and (4) how to minimize the burden of providing the required information to consumers.

XVI. Communications by Outside Parties to the Commissioners or Their Advisors

Pursuant to Commission Rule 1.18(c)(1), the Commission has determined that communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor shall be subject to the following treatment. Written communications and summaries or transcripts of oral communications shall be placed on the rulemaking record if the communication is received before the end of the comment period. They shall be placed on the public record if the communication is received later. Unless the outside party making an oral communication is a member of Congress, such communications are permitted only if advance notice is published in the Weekly Calendar and Notice of ''Sunshine'' Meetings.[90]

List of Subjects in 16 CFR Part 425

Advertising, Trade practices.

For the reasons set out in this document, the Commission proposes to amend part 425 of title 16 of the Code of Federal Regulations as follows:

■ 1. Revise part 425 to read as follows:

[90] *See* 15 U.S.C. 57a(i)(2)(A); 16 CFR 1.18(c).

PART 425—RULE CONCERNING RECURRING SUBSCRIPTIONS AND OTHER NEGATIVE OPTION PLANS

Sec.
425.1 Scope.
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425.8 Relation to State laws.

Authority: 15 U.S.C. 41–58.

§ 425.1 Scope.

This Rule contains requirements related to any form of negative option plan in any media, including, but not limited to, the internet, telephone, in-print, and in-person transactions.

§ 425.2 Definitions.

(a) *Billing information* means any data that enables any person to access a customer's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

(b) *Charge, charged,* or *charging* means any attempt to collect money or other consideration from a consumer, including but not limited to causing Billing Information to be submitted for payment, including against the consumer's credit card, debit card, bank account, telephone bill, or other account.

(c) *Clear and conspicuous* means that a required disclosure is easily noticeable (*i.e.,* difficult to miss) and easily understandable by ordinary consumers, including in all of the following ways:

(1) In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.

(2) A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

(3) An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

(4) In any communication using an interactive electronic medium, such as the internet, phone app, or software, the disclosure must be unavoidable. A disclosure is not clear and conspicuous if a consumer must take any action, such as clicking on a hyperlink or hovering over an icon, to see it.

(5) The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.

(6) The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

(7) The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

(8) When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, ''ordinary consumers'' includes members of that group.

(d) *Negative option feature* is a provision of a contract under which the consumer's silence or failure to take affirmative action to reject a good or service or to cancel the agreement is interpreted by the negative option seller as acceptance or continuing acceptance of the offer, including, but not limited to:

(1) an automatic renewal;

(2) a continuity plan;

(3) a free-to-pay conversion or fee-to-pay conversion; or

(4) a pre-notification negative option plan.

(e) *Negative option seller* means the person selling, offering, promoting, charging for, or otherwise marketing goods or services with a negative option feature.

(f) *Save* means an attempt by a seller to present any additional offers, modifications to the existing agreement, reasons to retain the existing offer, or similar information when a consumer attempts to cancel a negative option feature.

§ 425.3 Misrepresentations.

In connection with promoting or offering for sale any good or service with a negative option feature, it is a violation of this Rule and an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act (''FTC Act'') for any negative option seller to misrepresent, expressly or by implication, any material fact related to the transaction, such as the negative option feature, or any material fact related to the underlying good or service.

§ 425.4 Important information.

(a) *Disclosures.* In connection with promoting or offering for sale any good or service with a negative option feature, it is a violation of this Rule and an unfair or deceptive act or practice in violation of Section 5 of the FTC Act for a negative option seller to fail to disclose to a consumer, prior to obtaining the consumer's billing information, any material term related to the underlying good or service that is necessary to prevent deception, regardless of whether that term directly relates to the negative option feature, and including but not limited to:

(1) That consumers will be charged for the good or service, or that those charges will increase after any applicable trial period ends, and, if applicable, that the charges will be on a recurring basis, unless the consumer timely takes steps to prevent or stop such charges;

(2) The deadline (by date or frequency) by which the consumer must act in order to stop all charges;

(3) The amount (or range of costs) the consumer will be charged and, if applicable, the frequency of such charges a consumer will incur unless the consumer takes timely steps to prevent or stop those charges;

(4) The date (or dates) each charge will be submitted for payment; and

(5) The information necessary for the consumer to cancel the negative option feature.

(b) *Form and content of required information.*

(1) Clear and conspicuous: Each disclosure required by paragraph (a) of this section must be clear and conspicuous.

(2) Placement:

(i) If directly related to the negative option feature, the disclosures must appear immediately adjacent to the means of recording the consumer's consent for the negative option feature; or

(ii) If not directly related to the negative option feature, the disclosures must appear before consumers make a decision to buy (*e.g.,* before they ''add to shopping cart'').

(3) Other information: All communications, regardless of media, must not contain any other information that interferes with, detracts from, contradicts, or otherwise undermines the ability of consumers to read, hear, see, or otherwise understand the disclosures, including any information not directly related to the material terms and conditions of any negative option feature.

§ 425.5 Consent.

(a) *Express informed consent.* In connection with promoting or offering for sale any good or service with a negative option feature, it is a violation of this Rule and an unfair or deceptive act or practice in violation of Section 5 of the FTC Act for a negative option seller to fail to obtain the consumer's express informed consent before charging the consumer. In obtaining such expressed informed consent, the negative option seller must:

(1) Obtain the consumer's unambiguously affirmative consent to the negative option feature offer separately from any other portion of the transaction;

(2) Not include any information that interferes with, detracts from, contradicts, or otherwise undermines the ability of consumers to provide their express informed consent to the negative option feature;

(3) Obtain the consumer's unambiguously affirmative consent to the rest of the transaction; and

(4) Keep or maintain verification of the consumer's consent for at least three years, or one year after the contract is otherwise terminated, whichever period is longer.

(b) *Requirements for negative option features covered in the Telemarketing Sales Rule.* Negative option sellers covered by the Telemarketing Sales Rule must comply with all applicable requirements provided in part 310 of this title, including, for transactions involving preacquired account information and a free-pay-conversion, obtaining from the customer, at a minimum, the last four (4) digits of the account number to be charged and making and maintaining an audio recording of the entire telemarketing transaction as required by part 310.

(c) *Documentation of unambiguously affirmative consent for written offers.* Except for transactions covered by the preauthorized transfer provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693e) and Regulation E (12 CFR 1005.10), a negative option seller will be deemed in compliance with the requirements of paragraph (a)(3) of this section for all written offers (including over the internet or phone applications), if that seller obtains the required consent through a check box, signature, or other substantially similar method, which the consumer must affirmatively select or sign to accept the negative option feature and no other portion of the transaction. The consent request must be presented in a manner and format that is clear, unambiguous, non-deceptive, and free of any information not directly related to the consumer's acceptance of the negative option feature.

§ 425.6 Simple cancellation (''Click to Cancel'').

(a) *Simple mechanism required for cancellation.* In connection with promoting or offering for sale any good or service with a negative option feature, it is a violation of this Rule and an unfair or deceptive act or practice in violation of Section 5 of the FTC Act for the negative option seller to fail to provide a simple mechanism for a consumer to cancel the negative option feature and avoid being charged for the good or service and immediately stop any recurring charges.

(b) *Simple mechanism at least as simple as initiation.* The simple mechanism required by paragraph (a) of this section must be at least as easy to use as the method the consumer used to initiate the negative option feature.

(c) *Minimum requirements for simple mechanism.* At a minimum, the negative option seller must provide the simple mechanism required by paragraph (a) of this section through the same medium (such as internet, telephone, mail, or in-person) the consumer used to consent to the negative option feature, and:

(1) For internet cancellation, in addition to the requirements of paragraphs (a) and (b) of this section, the negative option seller must provide, at a minimum, the simple mechanism over the same website or web-based application the consumer used to purchase the negative option feature.

(2) For telephone cancellation, in addition to the requirements of paragraphs (a) and (b) of this section, the negative option seller must, at a minimum, provide a telephone number, and assure that all calls to this number are answered promptly during normal business hours and are not more costly than the telephone call the consumer used to consent to the negative option feature.

(3) For in-person sales, in addition to the requirements of paragraphs (a) and (b) of this section, the negative option seller must offer the simple mechanism through the internet or by telephone in addition to, where practical, an in-person method similar to that the consumer used to consent to the negative option feature. If the simple mechanism is offered through the telephone, all calls must be answered during normal business hours and, if applicable, must not be more costly than the telephone call the consumer used to consent to the negative option feature.

(d) *Saves:* The seller must immediately cancel the negative option

feature upon request from a consumer, unless the seller obtains the consumer's unambiguously affirmative consent to receive a Save prior to cancellation. Such consent must apply only to the cancellation attempt in question and not to subsequent attempts. The negative option seller must keep or maintain verification of the consumer's consent to receiving a Save prior to cancellation for at least three years, or one year after the contract is otherwise terminated, whichever period is longer.

§ 425.7 Annual reminders for negative option features not involving physical goods.

In connection with sales with a negative option feature that do not involve the automatic delivery of physical goods, it is a violation of this Rule and an unfair act or practice in violation of Section 5 of the FTC Act for a negative option seller to fail to provide consumers reminders, at least annually, identifying the product or service, the frequency and amount of charges, and the means to cancel. At a minimum, such reminders must be provided through the same medium (such as internet, telephone, or mail) the consumer used to consent to the negative option feature. For in-person sales, the negative option seller must provide the reminder through the internet or by telephone in addition to, where practical, an in-person method similar to that the consumer used to consent to the negative option feature.

§ 425.8 Relation to State laws.

(a) *In general.* This part shall not be construed as superseding, altering, or affecting any other State statute, regulation, order, or interpretation relating to negative option requirements, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) *Greater protection under State law.* For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this part.

By direction of the Commission, Commissioner Wilson dissenting.

April J. Tabor,

Secretary.

Note: the following statements will not appear in the Code of Federal Regulations:

Statement of Chair Lina M. Khan Joined by Commissioner Rebecca Kelly Slaughter and Commissioner Alvaro M. Bedoya

Today the Commission has voted out a proposal for a much-needed update to the FTC's nearly 50-year-old Negative Option Rule. As the Commission knew when the rule was passed in 1973, companies too often manipulate consumers into paying for subscriptions for goods and services that they don't want. The problem has only gotten worse. Today, we are proposing to not only lay out clear rules of the road for marketing negative option plans, but also to mandate that companies make it as easy to cancel as they make it to sign up in the first place.

Negative option plans refer to any situation where the customer is presumed to continue to accept an agreement or offer unless they affirmatively decline it. This structure can be harmless, and can even benefit consumers, when properly disclosed. Problems arise when businesses manipulate consumers away from taking that affirmative step, which can result in customers paying for things they don't want or need. Where consumer protection laws are inadequate, or inadequately enforced, dishonest companies will keep developing ways to make it easier to inadvertently subscribe, and ever harder to cancel, harming consumers and honest competitors along the way.

The original Negative Option Rule addressed what we call ''prenotification plans.'' These are where sellers provide consumers with notice of the product, send the product, and then charge for it unless the consumer affirmatively declines. Since then, the Commission has gained other authorities to help address deceptive negative options, including the Telemarketing Sales Rule and the Restore Online Shoppers' Confidence Act. The Commission has actively enforced these rules and laws, including in over 30 cases from just the past few years.[1] In 2021, we issued a policy statement articulating the Commission's various existing authorities.[2]

But these authorities have left major gaps. TSR applies only to telemarketing, ROSCA only to online shopping, and the existing Negative Option Rule only to prenotification plans. Meanwhile, even as we've been busy enforcing these laws, negative option marketing has only increased, along with abuses. Some companies are using ever more sophisticated dark patterns to thwart consumer efforts to cancel a product or service. Some consumers report thinking they've successfully canceled, only to find out later that they didn't notice a nearly invisible button that they needed to click in order to finalize their decision.

Accordingly, today's proposed rulemaking draws on Section 5's prohibition against unfair or deceptive practices. Specifically, it proposes to amplify ROSCA's simple-cancellation mandate and applies it across the full universe of negative option marketing. As the Commission has found in case after case, companies can make it easy to sign up—sometimes inadvertently—for an ongoing good or service and make it difficult to leave. Many gyms reportedly require members to cancel in person or via certified or notarized mail.[3]

You might sign up for a cell phone plan online, but to cancel, you have to call an 800 number, wait on hold for a customer service representative, and then speak to that representative, who will keep you on the line to try to convince you to stay. These companies are betting that customers will be too impatient, busy, or confused to jump through every hoop.

Canceling a subscription should be easy. That's why the proposed update to the Negative Option Rule sets forth clear standards on what we call ''click-to-cancel'': the obligation to make cancellation simple and easy. For example, the proposed rule requires any cancellation to be offered through the same medium as the subscription. Most importantly, it ''must be at least as easy to use as the method the consumer used to initiate the negative option feature.''

[1] Examples of these matters include: *FTC* v. *Triangle Media Corp.,* 3:18–cv–01388–LAB–LL (S.D. Cal. 2019); *FTC* v. *Credit Bureau Ctr., LLC,* No. 17–cv–00194 (N.D. Ill. 2018); *FTC* v. *JDI Dating, Ltd.,* No. 1:14–cv–08400 (N.D. Ill. 2018); *FTC, Illinois, and Ohio* v. *One Techs.,* LP, No. 3:14–cv–05066 (N.D. Cal. 2014); *FTC* v. *Health Formulas, LLC,* No. 2:14–cv–01649–RFB–GWF (D. Nev. 2016); *FTC* v. *Nutraclick LLC,* No. 2:16–cv–06819–DMG (C.D. Cal. 2016); *FTC* v. *XXL Impressions,* No. 1:17–cv–00067–NT (D. Me. 2018); *FTC* v. *AAFE Products Corp.,* No. 3:17–cv–00575 (S.D. Cal. 2017); *FTC* v. *Pact Inc.,* No. 2:17–cv–1429 (W.D. Wash. 2017); *FTC* v. *Tarr,* No. 3:17–cv–02024–LAB–KSC (S.D. Cal. 2017); *FTC* v. *AdoreMe, Inc.,* No. 1:17–cv–09083 (S.D.N.Y. 2017); *FTC* v. *DOTAuthority.com, Inc.,* No. 0:16–cv–62186–WJZ (S.D. Fla. 2018); *FTC* v. *Bunzai Media Group, Inc.,* No. CV15–04527–GW(PLAx) (C.D. Cal. 2018); and *FTC* v. *RevMountain, LLC,* No. 2:17–cv–02000–APG–GWF (D. Nev. 2018).

[2] Fed. Trade Comm'n, Enforcement Policy Statement Regarding Negative Option Marketing (2021), *https://www.ftc.gov/system/files/documents/public_statements/1598063/negative_option_policy_statement-10-22-2021-tobureau.pdf.*

[3] *See, e.g.,* Jeremy Glass, *I Tried to Quit Three Gyms in 1 Day and Ended Up a Stronger Man,* Men's Health (Apr. 14, 2020) *https://www.menshealth.com/fitness/a32085243/how-i-canceled-gym-memberships/.*

To take a simple example, this would put an end to companies requiring you to call customer service to cancel an account that you opened on their website.

The proposed rule contains other proposed consumer protections, as well. Businesses marketing negative option products and services must clearly and conspicuously disclose key material terms—including when any trial period ends, the deadline to cancel, the frequency of charges, the date of payments, and cancellation information—before collecting any billing information from the customer. The Commission also proposes a requirement that businesses get the consumer's unambiguously affirmative consent to the negative option feature of the transaction, separate from any other agreement. The proposal would still allow a business to try to persuade customers to stay, such as by offering perks or discounts. But it would have to get the customer's express consent before doing so.

These are some of the key components of today's Notice of Proposed Rulemaking, which seeks comment on the proposal to update and modernize the Commission's existing authority around negative option plans. If adopted, this rule would enable more efficient enforcement. It would create a more powerful deterrent by introducing the risk of civil penalties. And it would allow the Commission to return money to wronged consumers. The proposed rule would also provide clarity across industries about sellers' obligations when engaging in negative option marketing. The click-to-cancel section of the proposed rule would give companies clear and specific instructions around making it at least as easy to cancel their products and services as it is to register for them.

We invite members of the public to weigh in on these proposed amendments to the Negative Option Rule. As we move forward with the rulemaking process, we will carefully review public comments when deciding whether and how to craft a rule that would protect consumers from these potentially unfair or deceptive practices.

This proposed rulemaking is part of a broader effort at the Commission to examine how we can deploy our scarce resources to achieve maximum impact. Using our rulemaking tools to clarify the law for market participants across the board and activate civil penalties and redress is a key part of this effort. We thank the FTC team for their terrific work in this area. Whether it's unwanted subscription or hidden junk fees, ending exploitative business practices will continue to be a focus of this Commission.

Dissenting Statement of Commissioner Christine S. Wilson

Today the Commission announces a notice of proposed rulemaking (NPRM) suggesting modifications to the Commission's Rule Concerning the Use of Prenotification Negative Option Plans (Negative Option Rule or Rule). The Commission first sought comment on amendments to this Rule in an advance notice of proposed rulemaking (ANPR) published in October 2019.[1] At that time, the Commission explained that abuses in negative option marketing persisted despite the Commission's active enforcement. The existing Negative Option Rule covers a narrow category of negative option marketing, prenotification negative option plans. Other types of negative option features are covered by other statutes or rules [2] enforced by the Commission, and deceptive practices in connection with negative option plans have been challenged under Section 5 of the FTC Act. The Commission noted in the ANPR that differing requirements in the Commission's varied statutes, rules and Section 5 enforcement actions did not provide a consistent, cohesive framework for enforcement and business guidance. The Commission proposed expanding the Negative Option Rule to synthesize the legal requirements within one rule. I supported seeking comment on this proposal because clarity with respect to regulatory requirements benefits consumers and businesses.[3]

The proposed Rule the Commission announces today may achieve the goal of synthesizing the various requirements in one rule—but it also sweeps in far more conduct than previously anticipated. The broadened scope of the Rule would extend far beyond the negative option abuses cited in the ANPR, and far beyond practices for which the rulemaking record supports a prevalence of unfair or deceptive practices. In fact, the Rule would capture misrepresentations regarding the underlying product or service *wholly unrelated to the negative option feature.* For these reasons, I dissent.

The comments received in response to the ANPR, consumer complaints, and the Commission's enforcement actions demonstrate that abuses in negative option marketing persist despite our active enforcement in this area. As the NPRM explains, some marketers misrepresent or fail to disclose clearly and conspicuously the terms, or even the existence, of negative option features; fail to obtain consumers' express, informed consent to the recurring charges; fail to provide a simple mechanism to cancel; and/or engage in activities designed to frustrate consumers' ability to cancel. I agree that these issues are prevalent in the market.

The scope of the proposed Rule is not confined to negative option marketing. It also covers any misrepresentation made about the underlying good or service sold with a negative option feature. Notably, as drafted, the Rule would allow the Commission to obtain civil penalties, or consumer redress under Section 19 of the FTC Act, if a marketer using a negative option feature made misrepresentations regarding product efficacy or any other material fact. The proposed text is as follows:

425.3 Misrepresentations

In connection with promoting or offering for sale any good or service with a negative option feature, it is a violation of this Rule and an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act (''FTC Act'') for any negative option seller to misrepresent, expressly or by implication, any material fact related to the transaction, such as the negative option feature, *or any material fact related to the underlying good or service.* (Emphasis added).

The NPRM confirms that the scope of this provision is intended to extend beyond the terms of the negative option feature. Specifically, the NPRM explains that ''the proposed Rule prohibits any person from misrepresenting, expressly or by implication, any material fact regarding the *entire* agreement—not just facts related to a negative option feature.'' It further explains that ''[s]uch deceptive practices may involve misrepresentations related to costs, product efficacy, free trial claims,

[1] 85 FR 52393 (Oct. 2, 2019).

[2] Specifically, the FTC enforces several statutes and rules that address negative option marketing, including the Restore Online Shoppers' Confidence Act (ROSCA), 15 U.S.C. 8401–8405; the Telemarketing Sales Rule (TSR), 16 CFR part 310; the Postal Reorganization Act (also known as the Unordered Merchandise Rule), 39 U.S.C. 3009; and the Electronic Funds Transfer Act, 15 U.S.C. 1693–1693r.

[3] In 2020, rather than take the next step in the rulemaking process and issue an NPRM, the Commission chose to issue a Policy Statement on Negative Option Marketing, from which I dissented. This Commission repeatedly has issued Policy Statements in the midst of ongoing rulemakings addressing precisely the same issues. Publishing guidance during the pendency of a related rulemaking short-circuits the receipt of public input, conveys disdain for our stakeholders, and does not constitute good government. *See* Christine S. Wilson, Dissenting Statement of Commissioner Christine S. Wilson, Enforcement Policy Statement Regarding Negative Option Marketing (Oct. 2021), *https://www.ftc.gov/system/files/documents/public_statements/1598067/negative_option_policy_statement_csw_dissent.pdf.*

processing or shipping fees, billing information use, deadlines, consumer authorization, refunds, cancellation, or any other material representation.''

Consequently, marketers using negative option features in conjunction with the sale of a good or service could be liable for civil penalties or redress under this Rule for product efficacy claims or any other material representation even if the negative option terms are clearly described, informed consent is obtained, and cancellation is simple. Consider a dietary supplement marketed with a continuity plan that is advertised to relieve joint pain. The Commission alleges the joint pain claims are deceptive and unsubstantiated. The Rule could apply. A grocery delivery service offered via subscription asserts that the consumer's shopping lists will not be shared, but in fact the service does share the information for advertising purposes—a privacy misrepresentation. The Rule could apply. Cosmetics purchased through a monthly subscription service are marketed as Made in USA but in fact are made elsewhere. The Rule could apply.

The Commission does not have authority to seek civil penalties in *de novo* Section 5 cases. And the Commission's ability to seek consumer redress was gravely curtailed by the Supreme Court's decision in *AMG* that found the Commission does not have authority to seek consumer redress under Section 13(b) of the FTC Act.[4] This proposed Rule would fill that vacuum when marketers use a negative option feature.

The NPRM explains that the inclusion of non-negative option related misrepresentations is needed because ''FTC enforcement experience demonstrates misrepresentations in negative option marketing cases continue to be prevalent and *often involve deceptive representations not only related to the negative option feature but to the underlying product (or service) or other aspects of the transaction as well.*'' (Emphasis added). The NPRM cites ten cases as representative of these prevalent deceptive representations. Thus, the NPRM asserts that our law enforcement experience demonstrates that marketers that misrepresent negative option features typically do so in conjunction with other deception.

The Commission is authorized to issue a notice of proposed rulemaking when it ''has reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent.'' [5] Importantly, we did not seek comment in the ANPR about whether an expanded negative option rule should address general misrepresentations; no comments are cited in the NPRM to support the inclusion of these provisions. Absent the above-quoted brief explanation with the accompanying case cites, the NPRM does not offer evidence that negative option marketing writ large is permeated by deception. If that were the case, it might be appropriate to fold in representations about *any* material fact.

In addition, we know that negative option marketing is used lawfully and non-deceptively in a broad array of common transactions—newspaper subscriptions, video streaming services, delivery services, etc. Will the expansion of the Rule as proposed discourage companies from using negative option features, that consumers prefer and enjoy, because of potential liability? Does the inclusion of product efficacy and any other material information in this proposed Rule over-deter the negative option abuses that the Rule purportedly was primarily designed to prevent? The NPRM does not discuss these issues. I encourage the public to address these issues in their comments in response to this NPRM.

It is possible the Commission would exercise prosecutorial discretion and not allege violations of the Rule for all advertising claims, privacy or data security issues, or claims regarding secondary characteristics (*e.g.,* Made in USA or environmental claims). But the NPRM does not indicate a limiting principle to this proposed provision. This Commission, in many areas, has demonstrated a zeal and willingness to push beyond the boundaries of our authority.

In the wake of *AMG,* this Commission has proposed broad, sweeping rules for privacy and data security (the Commercial Surveillance and Data Security ANPR), as well as pricing and fees (the ''junk fees'' or Unfair or Deceptive Fees ANPR). As I noted in my dissents, the scope of those proposals extended far beyond practices for which Commission law enforcement and other evidence have established a prevalence of deceptive or unfair practices.[6] In July 2021, this Commission promulgated a final Made in USA labeling rule that include a definition of ''labeling'' that, in my view, went beyond our Congressional authority to regulate labels.[7] The Commission also has employed or announced novel applications of our existing rules that I believe similarly extend beyond our regulatory authority. For example, in September 2021, the Commission issued a Policy Statement on Breaches by Health Apps and Other Connected Devices that included a novel interpretation of the Health Breach Notification Rule that expanded both the covered universe of entities and the circumstances under which the Commission will initiate enforcement.[8]

With respect to negative options, this NPRM states that the proposed rule is consistent with the Commission's ROSCA cases. I disagree. ROSCA Section 8403 states that for goods or services sold through a negative option feature, the seller must ''clearly and

[4] *AMG Capital Mgmt., LLC* v. *FTC,* 141 S. Ct. 1341 (2021).

[5] 15 U.S.C. 57a(b)(3).

[6] *See* Christine S. Wilson, Dissenting Statement of Commissioner Christine S. Wilson, Advance Notice of Proposed Rulemaking—Junk Fees (Oct. 2022) (explaining that the proposal could launch rules that regulate the way prices are conveyed to consumers across nearly every sector of the economy and is untethered from a solid foundation of FTC enforcement), *https://www.ftc.gov/system/files/ftc_gov/pdf/commissioner-wilson-dissenting-statement-junk-fees-anpr.pdf;* Christine S. Wilson, Dissenting Statement of Commissioner Christine S. Wilson, Trade Regulation Rule on Commercial Surveillance and Data Security (Aug. 2022) (noting that many practices discussed in the ANPR are presented as clearly deceptive or unfair despite the fact that they stretch far beyond practices with which we are familiar, given our extensive law enforcement experience, and wander far afield of areas for which we have clear evidence of a widespread pattern of unfair or deceptive practices), *https://www.ftc.gov/system/files/ftc_gov/pdf/Commissioner%20Wilson%20Dissent%20ANPRM%20FINAL%2008112022.pdf.*

[7] *See* Christine S. Wilson, Dissenting Statement of Commissioner Christine S. Wilson, Final Rule related to Made in U.S.A. Claims (July 2021), *https://www.ftc.gov/system/files/documents/public_statements/1591494/2021-07-01_commissioner_wilson_statement_musa_final_rule.pdf.* The dissent explained that the Rule was not supported by the plain language of Section 45a of the FTC Act that provided authority for the Commission to promulgate a rule addressing ''labels'' or ''the equivalent thereof.'' The language of the Rule described labels to include stylized marks in online advertising or paper catalogs and potentially other advertising marks, such as hashtags, that contain MUSA claims.

[8] *See* Christine S. Wilson, Dissenting Statement of Commissioner Christine S. Wilson, Policy Statement on Breaches by Health Apps and Other Connected Devices (Sept. 2021), *https://www.ftc.gov/system/files/documents/public_statements/1596356/wilson_health_apps_policy_statement_dissent_combined_final.pdf; see also* Separate Statement of Commissioner Christine S. Wilson Concurring in Part, Dissenting in Part, *FTC* v. *Avant, LLC* (Apr. 15, 2019) (dissenting with respect to the maiden use of the Telemarketing Sales Rule (TSR) provision related to novel payments (specifically remotely created checks) in a non-fraud case), *https://www.ftc.gov/system/files/documents/public_statements/1514073/avant_inc_1623090_separate_statement_of_christine_s_wilson_4-15-19.pdf.* In the *Avant* matter, the Commission sought to impose liability under the TSR against a legitimate company, selling legitimate products, in circumstances not contemplated when the Rule was promulgated to address fraudulent businesses abusing these types of payments. *Id.*

conspicuously disclose all material terms of the transaction before obtaining the consumer's billing information.'' The requirement in ROSCA to disclose ''all material terms of the transaction'' cannot reasonably be interpreted to include all product efficacy claims or any material fact about the underlying good or service. A term of the transaction is distinct from an advertising claim or other potentially material information.

The cases in which I supported alleging violations of ROSCA under this Section clearly involved material terms of the transaction. In MoviePass, consumers purchased a movie subscription and the term at issue was whether the subscription was unlimited.[9] In WealthPress, another recent matter alleging violations of ROSCA under this Section, the terms at issue were included by the marketer in the ''terms and conditions'' section of the website and consumers were required affirmatively to agree to accept the terms to complete the transaction.[10] The facts in these cases do not support a reading of the ROSCA ''material term of the transaction'' language to include *any* advertising claim.

It is useful also to recall the genesis of ROSCA and the specific grant of authority Congress provided the Commission. As noted in the findings, ROSCA was promulgated to address a specific abuse in negative option marketing prevalent at that time—third-party upsells of products or services made during check-out for an initial purchase that included negative option features.[11] The terms of the third-party offer that included the negative option feature were not adequately disclosed and consumers were not given an opportunity to consent to a transfer of their billing information to a third-party. They were then locked into recurring charges to which they had not consented and often had difficulty cancelling. The provisions in Section 8403 were ancillary to the intent of the statute and there is no indication in the statute or the legislative history that they were intended to confer on the Commission authority to seek civil penalties or redress for representations wholly unrelated to the terms of the negative option feature. In other words, this proposed Negative Option Rule is inconsistent with the FTC's prior ROSCA cases.

The proposed Rule also will treat marketers differently for purposes of potential monetary liability for Section 5 violations, depending on whether they sell products or services with or without negative option features.

The careful reader may observe that the Commission's Telemarketing Sales Rule (TSR) also includes a prohibition on general misrepresentations.[12] But the TSR was promulgated pursuant to Congressional authorization.[13] The legislative history and Statement of Basis and Purpose of the TSR also provide a substantial evidentiary basis establishing that outbound telemarketing routinely was used as a vehicle for fraud and deception—marketers disturbed consumers in the solitude of their homes, and subjected them to deception and aggressive sales tactics that caused significant consumer injury.[14]

I appreciate staff's steadfast efforts to protect consumers from deceptive negative option practices. I might have supported a tailored rule to address the negative option marketing abuses prevalent in our law enforcement experience that consolidated various legal requirements. This proposal instead attempts an end-run around the Supreme Court's decision in *AMG* to confer *de novo* redress and civil penalty authority on the Commission for Section 5 violations unrelated to deceptive or unfair negative option practices.

For these reasons, I dissent.

[FR Doc. 2023–07035 Filed 4–21–23; 8:45 am]

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[9] *See* Concurring Statement of Commissioner Christine S. Wilson, *In re Moviepass, Inc.* (June 7, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1590708/commissioner_wilson_concur_moviepass_final.pdf.*

[10] *See* Christine S. Wilson, Concurring Statement of Commissioner Christine S. Wilson, *WealthPress Holdings, LLC* (Jan. 2023), *https://www.ftc.gov/system/files/ftc_gov/pdf/2123002wealthpresswilsonconcurstmt.pdf.*

[11] *See* 15 U.S.C. 8401.

[12] 16 CFR 310.3(a)(2)(iii) (prohibiting misrepresentations regarding ''[a]ny material aspect of the performance, efficacy, nature, or central characteristic of the goods or services that are the subject of a sales offer'').

[13] Telemarketing and Consumer Fraud and Abuse Prevention Act. 15 U.S.C. 6101 *et seq.*

[14] *See, e.g.,* 60 FR 43842 (Aug. 23, 1995) (Statement of Basis and Purpose for the Commission's Rule).

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2022–0221]

RIN 1625–AA09

Drawbridge Operation Regulation; Rancocas Creek, Burlington County, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the US Route 543 (Riverside-Delanco) Bridge across Rancocas Creek, mile 1.3, at Burlington County, NJ. The proposed rule allows the drawbridge to change its operating schedule to reduce the number of bridge openings during off-peak hours. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must reach the Coast Guard on or before May 24, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0221 using Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTAR INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Mickey D. Sanders, Fifth Coast Guard District (dpb); telephone (757) 398–6587, email *Mickey.D.Sanders2@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose and Legal Basis

On May 23, 2022, we published a Test Deviation (TD) entitled Drawbridge Operation Regulation; Rancocas Creek, Burlington County, NJ, in the **Federal Register** (86 FR 16153). We received no comments on this rule. The US Route 543 (Riverside-Delanco) Bridge across Rancocas Creek, mile 1.3, at Burlington County, NJ, has a vertical clearance of 4 feet above mean high water in the closed-to-navigation position. The bridge currently operates under 33 CFR 117.745(b).

The Rancocas Creek is used predominately by recreational vessels and pleasure crafts. The three-year, monthly average number of bridge openings from 7 a.m. to 3 p.m., Monday through Friday, 7 a.m. to 1 p.m., Saturday and Sunday, and from 8 p.m. to 11 p.m., daily, as drawn from the data contained in the bridge tender logs, is presented below.

April to October (2018, 2019 and 2020)	Average monthly openings
Monday–Friday, 7 a.m. to 3 p.m	4
Saturday & Sunday, 7 a.m. to 1 p.m	2
Daily, 8 p.m. to 11 p.m	7

III. Discussion of Proposed Rule

The bridge owner requested to modify the operating regulation for the bridge, due to the limited number of requested openings of the bridge from April 1 to October 31, over a period of approximately three years. The data presented in the table above demonstrates the requested modification may be implemented with de minimis impact to navigation. The modification will allow the drawbridge to open on signal from 3 p.m. to 8 p.m., Monday through Friday, and from 1 p.m. to 8 p.m., Saturday and Sunday, from April 16 through October 15.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB). This regulatory action determination is based on the fact that an average of only four bridge openings occurred Monday through Friday, from 7 a.m. to 3 p.m., two openings Saturday and Sunday, from 7 a.m. to 1 p.m., and seven openings daily, from 8 p.m. to 11 p.m., from April 1 to October 31, of 2018, 2019 and 2020.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, (Federalism), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, (Consultation and Coordination with Indian Tribal Governments), because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

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

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2022–0221 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published of any posting or updates to the docket.

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

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and DHS Delegation No. 00170.1, Revision No. 01.3.

■ 2. Revise § 117.745 paragraph (b)(1) to read as follows:

§ 117.745 Rancocas Creek.

* * * * *

(b) * * *

(1) From April 16 through October 15, open on signal from 3 p.m. to 8 p.m., Monday through Friday, and from 1 p.m. to 8 p.m., Saturday and Sunday.

* * * * *

Dated: April 6, 2023.

S.N. Gilreath,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2023–08554 Filed 4–21–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0234]

RIN 1625–AA00

Safety Zone; Fireworks Display, Great Egg Harbor Bay, Ocean City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain navigable waters of Great Egg Harbor Bay in Ocean City, NJ. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a barge-based fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Delaware Bay. Vessels within the zone prior to the enforcement period must leave the zone before the enforcement period begins. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before May 24, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0234 using the Federal Decision-Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Dylan Caikowski, Sector Delaware Bay, Waterways Management Division, U.S. Coast Guard; telephone (215) 271–4814, email *SecDelBayWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On February 16, 2023, Ocean City, New Jersey notified the Coast Guard that it will be conducting a fireworks display from 9:15 p.m. to 9:30 p.m. on July 29, 2023. The fireworks are to be launched from a barge in Great Egg Harbor Bay in the vicinity of Rainbow Channel. Hazards from a fireworks display include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The COTP has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 600-foot radius of the barge.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 600-foot radius of the fireworks barge before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 9 p.m. to 9:45 p.m. on July 29, 2023. The safety zone would cover all navigable waters within 600 feet of a barge in Great Egg Harbor Bay located at approximate position latitude 39°17′23.7″ N, longitude 074°34′31.3″ W. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9:15 p.m. to 9:30 p.m. fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the following factors: (1) although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the COTP Delaware Bay or a designated representative, they may operate in the surrounding area during the enforcement period; (2) persons and vessels will still be able to enter, transit through, anchor in, or remain within the regulated area if authorized by the COTP Delaware Bay; and (3) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

B. Impact on Small Entities

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

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting 45 minutes that would prohibit entry within 600 feet of a fireworks barge. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

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

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at

https://www.regulations.gov. To do so, go to *https://www.regulations.gov,* type USCG- 2023–0234 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. Also, if you click on the Dockets tab and then the proposed rule, you should see a ''Subscribe'' option for email alerts. The option will notify you when comments are posted, or a final rule is published.

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

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0234 to read as follows:

§ 165.T05–0234 Safety Zone; Fireworks Display, Great Egg Harbor Bay, Ocean City, NJ.

(a) *Location.* All navigable waters within 600 feet of a barge in Great Egg Harbor Bay located at approximate position latitude 39°17′23.7″ N, longitude 074°34′31.3″ W.

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard petty officer, warrant or commissioned officer on board a Coast Guard vessel or on board a federal, state, or local law enforcement vessel assisting the Captain of the Port (COTP), Sector Delaware Bay in the enforcement of the safety zone.

(c) *Regulations.*

(1) Under the general safety zone regulations in subpart C of this part, you may not enter or remain in the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter or remain in the zone, contact the COTP or the COTP's representative via VHF–FM channel 16 or 215–271–4807. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) No vessel authorized to enter or remain in the zone may take on bunkers or conduct lightering operations within the safety zone during its enforcement period.

(4) This section applies to all vessels except those engaged in law enforcement, aids to navigation servicing, and emergency response operations.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This zone will be enforced from approximately 9 p.m. to 9:45 p.m. on July 29, 2023.

Dated: April 18, 2023.

Jonathan D. Theel,

Captain, U.S. Coast Guard, Captain of the Port, Sector Delaware Bay.

[FR Doc. 2023–08567 Filed 4–21–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85, 86, 600, 1036, 1037, and 1066

[EPA–HQ–OAR–2022–0829; FRL 10850–01–OAR]

Public Hearing for Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public hearing.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a two-day virtual public hearing to be held on May 9 and May 10, 2023, on its proposal titled, ''Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles,'' which was signed by Administrator Regan on April 11, 2023. An additional session may be held on May 11, 2023, if necessary to accommodate the number of testifiers that sign up to testify. EPA is proposing new, more stringent emissions standards for greenhouse gases (GHG) and criteria pollutants for light-duty vehicles and Class 2b and 3 (''medium-duty'') vehicles that would phase-in over model years 2027 through 2032. In addition, EPA is proposing GHG program revisions in several areas, including off-cycle and air conditioning credits and vehicle certification and compliance. EPA also is proposing new standards to control refueling emissions from incomplete medium-duty vehicles, and battery durability and warranty requirements for light-duty and medium-duty plug-in vehicles.

DATES: EPA will hold a virtual public hearing on May 9 and May 10, 2023. An additional session may be held on May 11, 2023, if necessary to accommodate the number of testifiers that sign-up to testify. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing and registration. See EPA's light-duty GHG website at *https://www.epa.gov/regulations-emissions-vehicles-and-engines/proposed-rule-multi-pollutant-emissions-standards-model* for any updates to this scheduled hearing as EPA does not intend to publish a document in the **Federal Register** announcing updates.

ADDRESSES: The virtual public hearing will be held on May 9 and May 10, 2023. All hearing attendees (including those who do not intend to provide testimony) should notify EPA of their intent to attend or speak at the hearing

by pre-registering by May 2, 2023, preferably by email to *EPA-LD-hearings@epa.gov* or by contacting the contact person listed under **FOR FURTHER INFORMATION CONTACT**, below. Additional information regarding the hearing appears below under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Elizabeth Miller, Office of Transportation and Air Quality, Assessment and Standards Division (ASD), Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4703; email address: *EPA-LD-hearings@epa.gov.*

SUPPLEMENTARY INFORMATION: Under its Clean Air Act section 202 authority, the Environmental Protection Agency (EPA) is proposing new, more stringent emissions standards for criteria pollutants and greenhouse gases (GHG) for light-duty vehicles and Class 2b and 3 (''medium-duty'') vehicles that would phase-in over model years 2027 through 2032. In addition, EPA is proposing GHG program revisions in several areas, including off-cycle and air conditioning credits, the treatment of upstream emissions associated with zero-emission vehicles and plug-in hybrid electric vehicles in compliance calculations, and vehicle certification and compliance. EPA is also proposing new standards to control refueling emissions from incomplete medium-duty vehicles, and battery durability and warranty requirements for light-duty and medium-duty plug-in vehicles. EPA is also proposing minor amendments to update program requirements related to aftermarket fuel conversions, importing vehicles and engines, evaporative emission test procedures, and test fuel specifications for measuring fuel economy. The ''Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles'' proposed rule was signed on April 11, 2023 and will be published in the **Federal Register**. The pre-publication version is available at *https://www.epa.gov/regulations-emissions-vehicles-and-engines/proposed-rule-multi-pollutant-emissions-standards-model.*

EPA is hosting a separate hearing for the ''Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3'' (HDP3) proposed rule that was signed on April 11, 2023. For more information on the HDP3 rule and how to attend the HDP3 hearing, visit the heavy-duty vehicle and engine GHG rule website *https://www.epa.gov/regulations-emissions-vehicles-and-engines/proposed-rule-greenhouse-gas-emissions-standards-heavy.*

Participation in Virtual Public Hearing

To register to speak at the virtual hearing or attend the hearing (including those who do not intend to provide testimony) please notify EPA by May 2, 2023, preferably by email to *EPA-LD-hearings@epa.gov,* or by contacting the contact person listed under **FOR FURTHER INFORMATION CONTACT**. While pre-registration by May 2, 2023, is preferred, registration will be open through the last day of the hearing. EPA will provide participants with the option to enable live closed captioning and if requested, Spanish interpretation during the hearing. If you are requesting special accommodations, please pre-register for the hearing and describe your needs by May 2. To the extent possible, EPA will work to accommodate requests to register or testify received after May 2, though EPA may not be able to arrange accommodations without advanced notice. Instructions and a link to join the hearing will be provided via email to all participants that register.

Each commenter will have a maximum of three minutes to provide oral testimony. EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. EPA recommends submitting the text of your oral comments as written comments to the rulemaking docket for this action (Docket ID EPA–HQ–OAR–2022–0829); please clearly mark your submittal as hearing testimony. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

The testimony provided will be transcribed and included as a part of the record in the docket for this rulemaking. Additional written comments may be submitted to the rulemaking docket, which may be accessed via *www.regulations.gov.* Do not include, either in testimony or written comments submitted directly to the docket, any information you consider to be sensitive information, including but not limited to Confidential Business Information (CBI)/Proprietary Business Information (PBI), medical information about someone other than yourself, or any information whose disclosure is restricted by an applicable authority. Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about how to submit sensitive information such as CBI/PBI, or multimedia submissions; and general guidance on making effective comments.

Please note that any updates made to any aspect of the hearing logistics, including a potential additional session on May 11, 2023, will be posted online at the rule website *https://www.epa.gov/regulations-emissions-vehicles-and-engines/proposed-rule-multi-pollutant-emissions-standards-model.* While EPA expects the hearing to go forward as set forth above, please monitor our website or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to determine if there are any updates. EPA does not intend to publish a document in the **Federal Register** announcing updates.

How can I get copies of the proposed action and other related information?

EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2022–0829. EPA has also developed a website for this proposal, which is available at *https://www.epa.gov/regulations-emissions-vehicles-and-engines/proposed-rule-multi-pollutant-emissions-standards-model.* Please refer to the notice of proposed rulemaking for detailed information related to the proposal.

William Charmley,

Director, Assessment and Standards Division, Office of Transportation and Air Quality.

[FR Doc. 2023–07965 Filed 4–21–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2023–0069; FRL–10579–03–OCSPP]

Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities March 2023

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petition and request for comment.

SUMMARY: This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

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

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2023–0069, through the *Federal eRulemaking Portal*

at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Biopesticides and Pollution Prevention Division (BPPD) (7511M), main telephone number: (202) 566–1400, email address: *BPPDFRNotices@epa.gov* or Cynthia Giles-Parker, Fungicide Branch in the Registration Division: *giles-parker.cynthia@epa.gov* main telephone number 202–566–2704.The mailing address for this contact person is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available at *https://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

A. Notice of Filing—New Tolerance Exemptions for Non-Inerts Except PIPS

1. *PP 2E9036.* EPA–HQ–OPP–2023–0181. Agri-Organic LLC., P.O. Box 7748 Bloomfield Township, MI 48302, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the fungicide, insecticide containing extracts of noni fruit and noni leaves (Morinda citrifolia) in or on fruits, vegetables, nuts, field crops and ornamentals. The petitioner believes no analytical method is needed because an exemption from the requirement of a tolerance is proposed. *Contact:* BPPD.

2. *PP 2F9029.* EPA–HQ–OPP–2023–0184. FytoFend, LLC., 2915 Ogletown Road Newark, DE 19713, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the fungicide, plant regulator containing COS–OGA in or on fruit, vegetables, herbs, and spices. The petitioner believes no analytical method is needed because the concentration of COS–OGA and constituent residues are negligible when compared with what is already naturally present in the environment. *Contact:* BPPD.

B. New Tolerances for Non-Inerts

PP 2F9016. EPA–HQ–OPP–2022–0742. Nippon Soda Co., Ltd c/o Nisso America Inc., 379 Thornall Street, 5th floor Edison, NJ 08837, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide, ipflufenoquin, in or on small fruit vine climbing subgroup except fuzzy kiwi (crop sub-group 13–07F) at 0.80 parts per million (ppm); stone fruit (crop group 12–12) at 0.90 ppm; tree nut (crop group 14–12) at 0.01 ppm; and grape, raisin at 1.50 ppm. The High-Performance Liquid Chromatography with tandem Mass Spectrometric detection (HPLC–MS/MS) and a QuEChERS multi-residue enforcement method with HPLC–MS/MS is used to measure and evaluate the chemical, ipflufenoquin. *Contact:* FB.

Authority: 21 U.S.C. 346a.

Dated: April 14, 2023.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2023–08621 Filed 4–21–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 230414–0102]

RIN 0648–BL56

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fishery Management Plans of Puerto Rico, St. Croix, and St. Thomas and St. John; Amendments 1

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement Amendment 1 to the Puerto Rico Fishery Management Plan (FMP), Amendment 1 to the St. Croix FMP, and Amendment 1 to the St. Thomas and St. John FMP (jointly Amendments 1), as submitted by the Caribbean Fishery Management Council (Council). This proposed rule and Amendments 1 would prohibit the use of buoy gear by the recreational sector in U.S. Caribbean Federal waters and modify the regulatory definition of buoy gear to increase the maximum number of allowable hooks used by the commercial sector in U.S. Caribbean Federal waters from 10 to 25. The purpose of this proposed rule and Amendments 1 is to allow commercial fishermen targeting deep-water fish, including snappers and groupers, in the U.S. Caribbean Federal waters to use buoy gear with up to 25 hooks, while protecting deep-water reef fish resources and habitats and minimizing user conflicts.

DATES: Written comments must be received on or before May 24, 2023.

ADDRESSES: You may submit comments on the proposed rule identified by ''NOAA–NMFS–2023–0032'' by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter ''NOAA–NMFS–2023–0032'', in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Maria Lopez-Mercer, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of Amendments 1, which includes a fishery impact statement and a regulatory impact review, may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/generic-amendment-1-island-based-fishery-management-plans-modification-buoy-gear-definition.*

FOR FURTHER INFORMATION CONTACT: Maria Lopez-Mercer, telephone: 727–824–5305, or email: *maria.lopez@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS and the Council manage reef fish and pelagic stocks and stock complexes in the U.S. Caribbean Exclusive Economic Zone (EEZ) under the Puerto Rico FMP, St. Croix FMP, and St. Thomas and St. John FMP (collectively the island-based FMPs). The Council prepared the island-based FMPs and NMFS implements the FMPs through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and to achieve, on a continuing basis, the optimum yield from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to minimize bycatch and bycatch mortality to the extent practicable. The Magnuson-Stevens Act also authorizes the Council and NMFS to regulate fishing activity to support the conservation and management of fisheries, which may include regulations that pertain to fishing for non-managed species.

On September 22, 2020, the Secretary of Commerce approved the island-based FMPs under section 304(a)(3) of the Magnuson-Stevens Act. For Puerto Rico and the U.S. Virgin Islands (USVI), the Council and NMFS manage fisheries under the island-based FMPs. NMFS published the final rule to implement the island-based FMPs on September 13, 2022 (87 FR 56204). The island-based FMPs contain management measures applicable for Federal waters off each respective island group. Among other measures, for reef fish and pelagic species managed in each island management area, these include allowable fishing gear and methods for harvest. Federal waters around Puerto Rico extend seaward from 9 nautical miles (nmi; 16.7 km) from shore to the offshore boundary of the EEZ. Federal waters around St. Croix, and St. Thomas and St. John extend seaward from 3 nmi (5.6 km) from shore to the offshore boundary of the EEZ. Federal regulations at 50 CFR 600.725(v)(V) describe the authorized fishing gear for each of the Council-managed fisheries and non-managed fisheries in each island management area.

In the U.S. Caribbean, small-scale commercial fishermen harvesting deep-water reef fish, particularly snappers (*e.g.,* queen and cardinal snappers) and groupers, typically use a specific type of hook-and-line gear. This hook-and-line gear is known locally as vertical bottom line or ''cala'' in Puerto Rico and as vertical setline or deep-drop gear in the USVI. Fishing gear configurations and methods used by commercial fisherman to harvest these deep-water snappers and groupers, which includes buoy gear, varies in terms of vessel fishing equipment and materials used, hook type, size and number, number of lines used, types of bait, soaking time, and fishing grounds. Vertical bottom line fishing gear and deep-drop fishing gear can be either attached to the vessel while deployed and retrieved with an electrical reel or unattached to the vessel when rigged and deployed as buoy gear and retrieved with an electrical reel. Buoy gear, known as or ''cala con boya'' in Puerto Rico and as deep-drop buoy gear in the USVI, is typically used to harvest deep-water snappers and groupers in waters up to 1,500 ft (457 m), by commercial fishermen in Puerto Rico and to a lesser extent in the USVI.

Buoy gear is defined in 50 CFR 622.2 as fishing gear that fishes vertically in the water column that consists of a single drop line suspended from a float, from which no more than 10 hooks can be connected between the buoy and the terminal end, and the terminal end contains a weight that is no more than 10 lb (4.5 kg). This current definition of buoy gear applies in Federal waters of the Gulf of Mexico, South Atlantic, and U.S. Caribbean. In addition, buoy gear is listed as an authorized hook-and-line gear type in 50 CFR 600.725(v)(V) for those fishing commercially and recreationally for species that are not managed by the Council (*i.e.,* non-FMP species) in Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John and for those fishing commercially for managed reef fish and managed pelagic species in Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John. As described in Amendments 1, although buoy gear is currently listed as an authorized gear for recreational fishing of species that are not managed under the island-based FMPs, there is no evidence that the recreational sector operating in U.S. Caribbean Federal waters uses or has used buoy gear. Use of buoy gear by the recreational sector is unlikely because it is a very specialized commercial gear type that is expensive and difficult to use by anyone other than a professional commercial fisherman.

In December 2021, commercial fishermen who target deep-water snapper and grouper in Federal waters around Puerto Rico and the USVI commented to the Council that they would like to increase the maximum number of hooks that are allowed while using buoy gear in Federal waters to reflect how the gear is currently used in state waters in both Puerto Rico and the USVI. Under the current definition of buoy gear that applies in Federal waters of the Gulf of Mexico, South Atlantic, and U.S. Caribbean, no more than 10 hooks may be connected between the buoy and the terminal end. Puerto Rico and USVI territorial regulations, on the other hand, do not limit the number of hooks allowed on deep-water reef fish buoy gear.

In this proposed rule and Amendments 1, the use of buoy gear in U.S. Caribbean Federal waters would be limited to those fishing commercially and would be prohibited by those fishing recreationally. Prohibiting the use of buoy gear by the recreational sector in U.S. Caribbean Federal waters would eliminate (1) potential future conflicts between commercial and recreational user groups at the subject fishing grounds, (2) additional ecological, biological, and physical effects that might result from recreational fishing for deep-water snapper and grouper, including risks to managed species that may result from misuse of buoy gear and bycatch of managed species by the recreational sector, and (3) any safety concerns potentially associated with the recreational use of buoy gear at the deep-water reef fish fishing grounds. This proposed rule and Amendments 1 would also modify the definition of buoy gear to allow commercial fishermen in U.S. Caribbean Federal waters to use a maximum of 25 hooks with buoy gear to reflect how the gear is commonly used by commercial fishermen in state waters in Puerto Rico and the USVI.

Management Measures Contained in This Proposed Rule

This proposed rule prohibits the use of buoy gear by the recreational sector in the U.S. Caribbean and modifies the buoy gear definition to increase the maximum number of allowable hooks used by the commercial sector in the U.S. Caribbean.

Recreational Buoy Gear Prohibition

Buoy gear is currently an authorized gear type for those fishing recreationally for species that are not managed by the Council (*i.e.,* non-FMP species) in Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John. As described in Amendments 1, although the use of buoy gear by the recreational sector currently appears unlikely, this proposed rule would take a precautionary approach to prevent any future use of buoy gear by the recreational sector to fish for any species (*i.e.,* managed and non-managed species) in Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John. With respect to non-managed species, the Magnuson-Stevens Act gives the Council and NMFS the authority to regulate fishing activity to support the conservation and management of fisheries. This can include regulations that pertain to fishing for non-managed species.

This proposed rule limits the use of buoy gear to the commercial sector, and seeks to prevent any potential future conflicts between commercial and recreational user groups resulting from the use of buoy gear. These potential conflicts could include competition for fishing grounds. This proposed rule also seeks to eliminate any additional ecological, biological and physical effects that might occur through additional recreational fishing-related pressure at those grounds and to those resources, including overfishing the deep-water snapper and grouper resources, risks to managed species from misuse of the buoy gear and increased bycatch of managed species that might result through the recreational use of buoy gear. Finally, the proposed rule seeks to eliminate safety concerns potentially associated with the presence of an emerging recreational fleet at the deep-water reef fish fishing grounds that could occur because of the specialized characteristics of the buoy gear operations.

Revision of Buoy Gear Definition

The current buoy gear definition, which applies in Federal waters of the Gulf of Mexico, South Atlantic, and U.S. Caribbean, specifies, among other measures, that this gear type may have no more than 10 hooks connected between the buoy and the terminal end.

This proposed rule would change the buoy gear definition to increase the maximum number of hooks allowed between the buoy and the terminal end from 10 to 25 hooks in the EEZ around Puerto Rico, St. Croix, and St. Thomas and St. John. This proposed change in the buoy gear definition would apply only where buoy gear is authorized in the U.S. Caribbean EEZ, and would apply only to the commercial sector as a result of this proposed rule. NMFS notes that this change would apply to the commercial harvest of both Council-managed fisheries and non-managed fisheries. The increased number of authorized buoy gear hooks would allow commercial fishermen fishing in Federal waters off Puerto Rico, St. Croix, and St. Thomas and St. John to legally use the same gear configuration that is commonly used by some commercial fisherman in state waters.

This proposed rule to revise the buoy gear definition in the U.S. Caribbean would also avoid enforcement complications for commercial fishermen harvesting multiple species on a trip because it would allow the use of the buoy gear with up to 25 hooks to harvest managed and non-managed deep-water fish. The change to the buoy gear definition would not change any other part of the buoy gear definition such as weight, construction materials for the drop line, and length of the drop line. Additionally, the current buoy gear definition, as it applies to the Gulf of Mexico and South Atlantic, would not change as a result of this proposed rule.

Measure Contained in This Proposed Rule Not in Amendments 1

In addition to the buoy gear measures contained in Amendments 1, this

proposed rule would correct an error from a previous rulemaking. On September 13, 2022, NMFS published in the **Federal Register** the final rule implementing the island-based FMPs for the U.S. Caribbean (87 FR 56204, September 13, 2022). That final rule contained a minor administrative error in 50 CFR 622.440(a)(2), ''Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs),'' related to a notation for the recreational ACL for mutton snapper in Table 2 to § 622.440(a)(2). Mutton snapper, which is an indicator stock for Snappers, Snapper 4, is notated in that final rule with an asterisk when it should have been annotated with a superscript ''1.'' In Table 2 of 50 CFR 622.440(b)(2), all indicator stocks are to be notated with the superscript ''1.'' NMFS became aware of this inadvertent minor administrative error after the island-based FMPs final rule published. This proposed rule would revise the notation for mutton snapper in Table 2 to 50 CFR 622.440(b)(2), Snappers, Snapper 4, to be a superscript ''1.'' The recreational ACLs in the paragraph would remain the same and not change in this proposed rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the island-based FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination follows.

A description of this proposed rule, why it is being considered, and the objectives of this proposed rule are contained in the **SUPPLEMENTARY INFORMATION** section of this proposed rule. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

This proposed rule concerns the use of buoy gear when fishing in Federal waters off Puerto Rico and the USVI. Buoy gear is a highly specialized commercial fishing gear; however, Federal regulations do not prohibit anglers (recreational fishers) from using it in Federal waters.

Both recreational fishers (anglers) and licensed commercial fishermen who own and operate commercial fishing businesses would be directly affected by the rule; however, anglers are not considered small entities as that term is defined in 5 U.S.C. 601(6), whether fishing from charter vessels/headboats (for-hire) fishing, private or leased vessels. Therefore, estimates of the number of anglers affected by the proposed rule and impacts on them are not provided here.

For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in the commercial fishing industry (NAICS code 11411) is a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates) and its combined annual receipts that are no more than $11 million for all of its affiliated operations worldwide. The Puerto Rico fishery as a whole and USVI fishery as a whole are estimated to generate direct revenues of $6.06 million (2020 dollars) and $5.48 million annually, assuming current landings have fully recovered from hurricane season impacts of the past 5 years and the COVID–19 pandemic. Therefore, all commercial fishing businesses in Puerto Rico, St. Croix, and St. Thomas and St. John are small.

Commercial fishermen who harvest deep-water reef fish and other species, such as Council-managed pelagic species, have traditionally used buoy gear locally known as ''cala con boya'' in Puerto Rico and as deep-drop buoy gear in the USVI. Therefore, estimates of the numbers of small businesses that use buoy gear in Federal waters are based on the number and percentages of licensed commercial fishermen who reported fishing in Federal waters and targeting deep-water reef fish or reef fish prior to the 2017 hurricane season.

In 2016, there were 1,074 licensed commercial fishermen in Puerto Rico, and each of those licensed commercial fishermen represent a small commercial fishing business. In 2016, 811 of those commercial fishermen submitted catch reports and 383 of them submitted reports operated in Federal waters. Puerto Rico's commercial fishermen tend to target multiple categories of fish and shellfish, and the most popularly targeted category is reef fish. Approximately 77 percent of the fishermen (small businesses) target reef fish, and approximately 56 percent target deep-water snapper. It is estimated that from 214 (56 percent) to 295 (77 percent) of the 383 active small commercial fishing businesses that operate in Federal waters off of Puerto Rico may be directly affected the proposed rule.

The most recent Census of Licensed Fishers of the USVI reported 141 licensed commercial fishermen in St. Croix and 119 licensed commercial fishermen in St. Thomas and St. John, and each of those fishermen represent a small commercial fishing business. An estimated 52.5 percent (74) of the 141 licensed commercial fishermen in St. Croix and 80.7 percent (96) of the 119 licensed fishermen in St. Thomas and St. John were active. Moreover, 52.3 percent of active licensed fishermen in St. Croix and 14.8 percent of active licensed fishermen in St. Thomas and St. John harvest deep-water snapper. Hence, an estimated 39 (52.3 percent) of 74 active small commercial fishing businesses in St. Croix and an estimated 14 (14.8 percent) of 96 active small commercial fishing businesses in St. Thomas and St. John would be directly affected by the proposed rule.

This proposed rule would modify the definition of buoy gear. Currently, buoy gear in Federal waters of the Gulf of Mexico, South Atlantic, and U.S. Caribbean is defined as gear that fishes vertically in the water column and consists of a single drop line suspended from a float, from which no more than 10 hooks can be connected between the buoy and the terminal end, and the terminal end contains a weight that is no more than 10 lb (4.5 kg). The proposed rule would change the definition to allow the use of up to 25 hooks connected between the buoy and the terminal end in Federal waters of the U.S. Caribbean.

It is common practice to assume full regulatory compliance when establishing the baseline; however, anecdotal evidence indicates that buoy gear traditionally used in the U.S. Caribbean does not comply with current regulations. For that reason, the following sensitivity analysis examines the economic impacts of the proposed rule with varying rates of baseline compliance: full (100 percent), half (50 percent), and none (0 percent).

With full compliance, NMFS expects all of the small businesses that deploy buoy gear in Federal waters of the U.S. Caribbean could increase the numbers of hooks they use, which could increase landings and dockside revenues from those landings. However, NMFS has insufficient information to quantify either the numbers of small businesses

that would increase the number of hooks they use or the changes in the numbers of hooks deployed. Using more hooks increases effort-related trip costs, and a commercial fishing business would not increase the number of hooks used if the increase in costs reduced its profit. Nonetheless, NMFS expects at least some of the small businesses would increase the number of hooks that they use and have increased landings and revenues (gross and net).

With 50 percent compliance, NMFS expects half of the small businesses that currently use buoy gear in the U.S. Caribbean EEZ could increase the numbers of hooks used, which could increase landings and dockside revenues from those landings, but not as much as if there were full compliance. NMFS has insufficient information to quantify either the numbers of small businesses that would increase the number of hooks they use or the changes in the numbers of hooks deployed. Nonetheless, NMFS expects some small businesses would increase the number of hooks they use, which would increase their landings and revenues.

With no compliance, NMFS expects none of the small businesses that currently use buoy gear in the U.S. Caribbean EEZ would change the number of hooks used because they currently use the maximum number of hooks they prefer to use, and no more than 25 per line. Therefore, there would be no changes in landings and dockside revenues from those landings, and the economic impact would be the same as the no-action alternative. However, even with 0 percent compliance, there could be small businesses that currently use more than 10, but less than 25, hooks per line; and an unknown number of those small businesses could increase the number of hooks that they use, which would increase their landings and revenues, but less than if there were 50 percent compliance.

In summary, there would be no adverse economic impact on any small businesses. At least some small businesses would increase the number of hooks that they use to increase their landings and revenues; however, there is insufficient information to generate an estimate.

No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule. This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects

50 CFR Part 600

Caribbean, Fisheries, Fishing, Recreational.

50 CFR Part 622

Buoy gear, Caribbean, Commercial, Fisheries, Fishing, Recreational.

Dated: April 17, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 600 and 622 are proposed to be amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continue to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. In § 600.725, in paragraph (v), in the table under heading ''V. Caribbean Fishery Management Council'', revise entries 1.H., 2.H, and 3.H., to read as follows:

§ 600.725 General prohibitions.

* * * * *

(v) * * *

Fishery	Authorized gear types
* * * * * * *	
V. Caribbean Fishery Management Council	
* * * * * * *	
1. Exclusive Economic Zone around Puerto Rico	
* * * * * * *	
H. Puerto Rico Recreational Fishery (Non-FMP)	Automatic reel, bandit gear, handline, longline, rod and reel, spear, powerhead, hand harvest, cast net.
* * * * * * *	
2. Exclusive Economic Zone around St. Croix	
* * * * * * *	
H. St. Croix Recreational Fishery (Non-FMP)	Automatic reel, bandit gear, handline, longline, rod and reel, spear, powerhead, hand harvest, cast net.
* * * * * * *	
3. Exclusive Economic Zone around St. Thomas and St. John	
* * * * * * *	
H. St. Thomas and St. John Recreational Fishery (Non-FMP)	Automatic reel, bandit gear, handline, longline, rod and reel, spear, powerhead, hand harvest, cast net.
* * * * * * *	

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 3. The authority citation for part 622 continues to read as follows:

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

■ 4. In § 622.2, revise the definition of ''Buoy gear'' to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Buoy gear means fishing gear that fishes vertically in the water column that consists of a single drop line suspended from a float, from which no more than 10 hooks (except in the EEZ around Puerto Rico, St. Croix, and St. Thomas and St. John where the maximum is 25 hooks) can be connected between the buoy and terminal end, and the terminal end contains a weight that is no more than 10 lb (4.5 kg). The drop line can be rope (hemp, manila, cotton or other natural fibers; nylon, polypropylene, spectra or other synthetic material) or monofilament, but must not be cable or wire. The gear is free-floating and not connected to other gear or the vessel. The drop line must be no greater than 2 times the depth of the water being fished. All hooks must be attached to the drop line no more than 30 ft (9.1 m) from the weighted terminal end. These hooks may be attached directly to the drop line; attached as snoods (defined as an offshoot line that is directly spliced, tied or otherwise connected to the drop line), where each snood has a single terminal hook; or as gangions (defined as an offshoot line connected to the drop line with some type of detachable clip), where each gangion has a single terminal hook.

* * * * *

■ 5. In § 622.440, revise Table 2 to § 622.440(a)(2) to read as follows:

§ 622.440 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

(a) * * *

(2) * * *

TABLE 2 TO § 622.440(a)(2)

Family	Stock or stock complex and species composition	Recreational ACL
Angelfishes	Angelfish—French angelfish, gray angelfish, queen angelfish	2,985 lb (1,353.9 kg).
Groupers	Grouper 3—coney,[1] graysby	19,634 lb (8,905.8 kg).
	Grouper 4—black grouper, red grouper, tiger grouper, yellowfin grouper, yellowmouth grouper.	5,867 lb (2,661.2 kg).
	Grouper 5—misty grouper, yellowedge grouper	4,225 lb (1,916.4 kg).
	Grouper 6—red hind,[1] rock hind	34,493 lb (15,645.7 kg).
Grunts	Grunts—white grunt	2,461 lb (1,116.2 kg).
Jacks	Jacks 1—crevalle jack	41,894 lb (19,002.7 kg).
	Jacks 2—African pompano	5,719 lb (2,594 kg)
	Jacks 3—rainbow runner	8,091 lb (3,670 kg)
Parrotfishes	Parrotfish 2—princess parrotfish, queen parrotfish, redband parrotfish, redtail parrotfish, stoplight parrotfish, striped parrotfish.	17,052 lb (7,734.6 kg).
Snappers	Snapper 1—black snapper, blackfin snapper, silk snapper,[1] vermilion snapper, wenchman.	111,943 lb (50,776.4 kg).
	Snapper 2—cardinal snapper, queen snapper [1]	24,974 lb (11,328 kg).
	Snapper 3—lane snapper	21,603 lb (9,798.9 kg).
	Snapper 4—dog snapper, mutton snapper,[1] schoolmaster	76,625 lb (34,756.5 kg).
	Snapper 5—yellowtail snapper	23,988 lb (10,880.7 kg)
	Snapper 6—cubera snapper	6,448 lb (2,924.7 kg).
Surgeonfishes	Surgeonfish—blue tang, doctorfish, ocean surgeonfish	860 lb (390 kg).
Triggerfishes	Triggerfish—gray triggerfish, ocean triggerfish, queen triggerfish [1]	7,453 lb (3,380.6 kg).
Wrasses	Wrasses 1—hogfish	8,263 lb (3,748 kg).
	Wrasses 2—puddingwife, Spanish hogfish	5,372 lb (2,436.6 kg).

[1] Indicator stock.

* * * * *

[FR Doc. 2023–08338 Filed 4–21–23; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 88, No. 78
Monday, April 24, 2023

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–SC–23–0024]

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request for an extension and revision of a currently approved information collection for Specialty Crops Market News Division.

DATES: Comments on this notice must be received by June 23, 2023 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments concerning this notice by using the electronic process available at *https://www.regulations.gov.* All comments should reference the document number and the date and the page number of this issue of the **Federal Register**. Written comments may be submitted via mail to Specialty Crops Market News Division, AMS, USDA, 1400 Independence Avenue SW, Room 1406 South, Washington, DC 20250–0238. All comments received will be posted without change, including any personal information provided, at *https://www.regulations.gov* and will be included in the record and made available to the public. Please do not include personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. Comments may be submitted anonymously.

FOR FURTHER INFORMATION CONTACT: John T. Okoniewski, Director; Specialty Crops Market News Division, Telephone: (202) 720–2175, Fax: (202) 720–0011 or Email: *John.Okoniewski@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Specialty Crops Market News Division.

OMB Number: 0581–0006.

Expiration Date of Approval: November 30, 2023

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

Abstract: Collection and dissemination of information for specialty crops production and to facilitate trading by providing a price base used by producers, wholesalers, and retailers to market product.

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), section 203(g) directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income and to bring about a balance between production and utilization.

The specialty crops industry provides information on a voluntary basis that is gathered through confidential telephone and face-to-face interviews by market reporters. Reporters request supply, demand, and price information of over 487 fresh fruit, vegetable, nut, ornamental, and other specialty crops, such as honey. The information is collected, compiled, and disseminated by Specialty Crops Market News Division in its critical role as an impartial third party. It is collected and reported in a manner which protects the confidentiality of the respondent and their operations.

The Specialty Crops Market News Division reports are used by academia and various government agencies for regulatory and other purposes, but are primarily used by the specialty crops trade, which includes packers, processors, brokers, retailers, producers, and associated industries. Members of the specialty crops industry regularly make it clear that they need and expect AMS to issue price and supply market reports for commodities of regional, national and international significance in order to assist in making immediate production and marketing decisions and as a guide to the amount of product in the supply channel. In addition, AMS buys hundreds of millions of dollars of specialty crops products each year for domestic feeding programs, and Specialty Crops Market News Division data is a critical component of the decision-making process.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .093 hours per response.

Respondents: Specialty crops industry, or other for-profit businesses, individuals or households, farms.

Estimated Number of Respondents: 2,761.

Estimated Number of Responses per Respondent: 195.

Estimated Total Annual Burden on Respondents: 50,071 hours.

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

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

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–08598 Filed 4–21–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–CP–23–0025]

Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Agricultural Marketing Service (AMS) is requesting comments from all interested individuals and organizations on a renewal of a currently approved information collection request. This information collection is necessary to support the procurement of agricultural commodities for domestic and export food donation programs. AMS issues invitations to purchase or sell and transport commodities, as well as sample, inspect and survey, agricultural commodities at both domestic and foreign locations for use in international food donation programs on a monthly, multiple monthly, quarterly, and yearly basis. The AMS Commodity Procurement Program contracts for marine cargo discharge survey services conducted at the foreign destinations to ascertain count and condition of the commodities delivered.

DATES: Comments on this notice must be received by June 23, 2023 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments concerning this notice by using the electronic process available at *https://www.regulations.gov.* Written comments may be submitted via mail to Mike Dinkel, Commodity Procurement Program, AMS/USDA, 1400 Independence Avenue SW, S–0239, Washington, DC 20250–0239. All comments should reference the document number and the date and the page number of this issue of the **Federal Register**. All comments received will be posted without change, including any personal information provided, at *https://www.regulations.gov* and will be included in the record and made available to the public.

FOR FURTHER INFORMATION CONTACT: Mike Dinkel, Branch Chief; Communication & Support Branch, Telephone: (202) 350–5946; Email: *Michael.dinkel@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Discharge and Delivery Survey Summary and Rate Schedule Forms.

OMB Number: 0581–0317.

Expiration Date of Approval: June 30, 2023.

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

Abstract: The United States donates agricultural commodities domestically and overseas for famine or other relief requirements, to combat malnutrition, and sells or donates commodities to promote economic development. AMS issues invitations to purchase or sell agricultural commodities and services for use in domestic and export programs. Vendors respond by making offers using various AMS commodity offer forms through the Web-based Supply Chain Management System (WBSCM). The AMS Commodity Procurement Program contracts for discharge survey services conducted at the foreign destinations to ascertain count and condition of the commodities shipped. The form for discharge survey services is not in WBSCM.

The renewal to the information collection request is for the respondents to submit information electronically in WBSCM for all processes with the exception of the discharge/delivery survey summary and the rates schedule. Vendors will be able to access WBSCM to see the date and time the system shows for receipt of bid, bid modification, or bid cancellation information. At bid opening date and time, the bid information is evaluated through the system. Acceptances will be sent to the successful offerors electronically. Awarded contracts will be posted to the AMS website *https://www.ams.usda.gov/selling-food/solicitations* and also to the WBSCM portal and *https://sam.gov/content/opportunities,* Contract Opportunities. The discharge/delivery survey summary (KC–334) will be collected electronically and by mail, and the rate schedule (KC–337) will be collected electronically and by mail.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hours is the estimated average time per responses multiplied by the estimated total annual of responses.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 29 minutes per response.

Respondents: Business and other for-profit organizations.

Estimated Number of Respondents: 41.

Estimated Total Annual Responses: 485.

Estimated Number of Responses per Respondent: 11.83.

Estimated Total Annual Burden on Respondents: 234 hours.

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

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

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–08595 Filed 4–21–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2023–0013]

Notice of Request To Renew an Approved Information Collection: Modernization of Poultry Slaughter Inspection

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, FSIS is announcing its intention to request renewal of the approved information collection regarding poultry slaughter inspection. There are no changes to the existing information collection. The approval for this information collection will expire on August 31, 2023.

DATES: Submit comments on or before June 23, 2023.

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

- *Federal eRulemaking Portal:* This website provides commenters the ability

to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to *https://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.

- *Mail:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.
- *Hand- or Courier-Delivered Submittals:* Deliver to 1400 Independence Avenue SW, Jamie L. Whitten Building, Room 350–E, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2023–0013. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *https://www.regulations.gov.*

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

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

SUPPLEMENTARY INFORMATION:

Title: Modernization of Poultry Slaughter Inspection.

OMB Number: 0583–0156.

Expiration Date of Approval: August 31, 2023.

Type of Request: Renewal of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*). This statute provides that FSIS is to protect the public by verifying that poultry products are safe, wholesome, and properly labeled and packaged.

FSIS is requesting renewal of the approved information collection regarding poultry slaughter inspection. The approval for this information collection will expire on August 31, 2023. There are no changes to the existing information collection.

FSIS requires that all official poultry slaughter establishments, other than establishments that slaughter ratites, maintain as part of their HACCP plan, sanitation SOP, or other prerequisite program, written procedures addressing: (1) The prevention throughout the entire slaughter and dressing operation of contamination of carcasses and parts by enteric pathogens (*e.g., Salmonella* and *Campylobacter*) and by fecal material, including microbial test results; and (2) the prevention of carcasses and parts contaminated by visible fecal material from entering the chiller (9 CFR 381.65(g)). All establishments that slaughter poultry other than ratites are required to develop, implement, and maintain as part of their HACCP plan, sanitation SOP, or other prerequisite program written procedures for chilling poultry (9 CFR 381.66).

Each establishment operating under the New Poultry Inspection System (NPIS) is required to maintain records to document that the products resulting from slaughter operations meet the definition of ready-to-cook poultry (9 CFR 381.76(b)(6)).

Additionally, each establishment operating under the NPIS also needs to submit on an annual basis an attestation to the management member of the local FSIS circuit safety committee stating that it maintains a program to monitor and document any work-related conditions of establishment workers.

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

Estimate of Burden: FSIS estimates that it will take respondents an average of .125 hours to record results and maintain necessary documentation.

Respondents: Official poultry establishments.

Estimated No. of Respondents: 289.

Estimated No. of Annual Responses per Respondent: 5,291.3.

Estimated Total Annual Burden on Respondents: 191,204 hours.

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

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

Additional Public Notification

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

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

USDA Non-Discrimination Statement

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.ocio.usda.gov/document/ad-3027,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410;
(2) *Fax:* (833) 256–1665 or (202) 690–7442; or
(3) *Email: program.intake@usda.gov.*

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Paul Kiecker,

Administrator.

[FR Doc. 2023–08553 Filed 4–21–23; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Flathead Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Flathead Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act as well as to make recommendations on recreation fee proposals for sites on the Flathead National Forest within Flathead County, consistent with the Federal Lands Recreation Enhancement Act.

DATES: An in-person and virtual meeting will be held on May 25, 2023, 4:30 p.m.–6:00 p.m. and May 31, 2023—4:30–6:00 p.m. Mountain Standard Time (MST).

Written and Oral Comments: Anyone wishing to provide in-person or virtual oral comments must pre-register by 11:59 p.m. MST on May 23, 2023. Written public comments will be accepted by 11:59 p.m. MST on May 23, 2023. Comments submitted after this date will be provided to the Agency, but the Committee may not have adequate time to consider those comments prior to the meeting.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting will be held in-person and virtually at the Flathead National Forest Supervisor's Office located at 650 Wolfpack Way, Kalispell, Montana 59901. The public may also join virtually via webcast, teleconference, videoconference and/or Homeland Security Information Network (HSIN) virtual meeting by calling 1–202–650–0124 and when prompted enter #497251381. RAC information and meeting details can be found at the following website: *https://www.fs.usda.gov/main/flathead/workingtogether/advisorycommittees or* by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to *ivy.gehling@usda.gov or* via mail (*i.e.,* postmarked) to Ivy Gehling, 650 Wolfpack Way, Kalispell, Montana 59901. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. MST, May 23, 2023, and speakers can only register for one speaking slot. Oral comments must be sent by email to *ivy.gehling@usda.gov* or via mail (*i.e.,* postmarked) to Ivy Gehling, 650 Wolfpack Way, Kalispell, MT 59901.

FOR FURTHER INFORMATION CONTACT: Tami MacKenzie, Designated Federal Officer (DFO), by phone at 406–758–5252 or email at *tamara.mackenzie@usda.gov* or Ivy Gehling, RAC Coordinator, at 406–758–5251 or email at *ivy.gehling@usda.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Hear from Title II project proponents and discuss Title II project proposals;
2. Make funding recommendations on Title II projects;
3. Approve meeting minutes;
4. Schedule the next meeting; and
5. Other.

The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Written comments may be submitted to the Forest Service up to 14 days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at (202) 720–2600 (voice and TTY) or USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the

Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: April 18, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–08535 Filed 4–21–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials and Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials and Equipment Technical Advisory Committee will meet on May 11, 2023, 10:00 a.m., Eastern Daylight Time, in the Herbert C. Hoover Building, Room 48019, 1401 Constitution Avenue NW, Washington, DC (enter through Main Entrance on 14th Street between Constitution and Pennsylvania Avenues). The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

Open Session

1. Opening Remarks and Introduction by BIS Senior Management.
2. Report from working groups.
3. Report by regime representatives.

Closed Session

4. Discussion of matters determined to be exempt from the open meeting and public participation requirements found in sections 1009(a)(1) and 1009(a)(3) of the Federal Advisory Committee Act (FACA) (5 U.S.C. 1001–1014). The exemption is authorized by Section 1009(d) of the FACA, which permits the closure of advisory committee meetings, or portions thereof, if the head of the agency to which the advisory committee reports determines such meetings may be closed to the public in accordance with subsection (c) of the Government in the Sunshine Act (5 U.S.C. 552b(c)). In this case, the applicable provisions of 5 U.S.C. 552b(c) are subsection 552b(c)(4), which permits closure to protect trade secrets and commercial or financial information that is privileged or confidential, and subsection 552b(c)(9)(B), which permits closure to protect information that would be likely to significantly frustrate implementation of a proposed agency action were it to be disclosed prematurely. The closed session of the meeting will involve committee discussions and guidance regarding U.S. Government strategies and policies.

The open session will be accessible via teleconference. To join the conference, submit inquiries to Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than May 4, 2023.

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

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on April 12, 2023, pursuant to 5 U.S.C. 1009(d) of the FACA, that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. 1009(a)(1) and 1009(a)(3). The remaining portions of the meeting will be open to the public.

For more information, contact Ms. Springer.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2023–08540 Filed 4–21–23; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on May 10, 2023, 9:30 a.m., Eastern Standard Time, in the Herbert C. Hoover Building, Room 3884, 1401 Constitution Avenue NW, Washington, DC (enter through Main Entrance on 14th Street between Constitution and Pennsylvania Avenues). The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

Public Session

1. Welcome and Introductions.
2. Status reports by working group chairs.
3. Public comments and Proposals.

Closed Session

4. Discussion of matters determined to be exempt from the open meeting and public participation requirements found in Sections 1009(a)(1) and 1009(a)(3) of the Federal Advisory Committee Act (FACA) (5 U.S.C. 1001–1014). The exemption is authorized by section 1009(d) of the FACA, which permits the closure of advisory committee meetings, or portions thereof, if the head of the agency to which the advisory committee reports determines such meetings may be closed to the public in accordance with subsection (c) of the Government in the Sunshine Act (5 U.S.C. 552b(c)). In this case, the applicable provisions of 5 U.S.C. 552b(c) are subsection 552b(c)(4), which permits closure to protect trade secrets and commercial or financial information that is privileged or confidential, and subsection 552b(c)(9)(B), which permits closure to protect information that would be likely to significantly frustrate implementation of a proposed agency action were it to be disclosed prematurely. The closed session of the meeting will involve committee discussions and guidance regarding U.S. Government strategies and policies.

The open session will be accessible via teleconference. To join the conference, submit inquiries to Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than May 3, 2023.

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

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel,

formally determined on April 12, 2023, pursuant to 5 U.S.C. 1009(d) of the FACA, that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. 1009(a)(1) and 1009(a)(3). The remaining portions of the meeting will be open to the public.

For more information, contact Ms. Springer.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2023–08539 Filed 4–21–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–808]

Invitation for Comment on the Agreement Suspending the Antidumping Duty Investigation of Certain Cut-to-Length Carbon Steel Plate From the Russian Federation

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

SUMMARY: On March 30, 2023, Nucor Corporation, Cleveland-Cliffs Inc., and SSAB Enterprises LLC (collectively, domestic interested parties), filed with the U.S. Department of Commerce (Commerce) a request to terminate the 2003 Agreement Suspending the Antidumping Duty Investigation of Certain Cut-to-Length Carbon Steel Plate from the Russian Federation (Agreement). For the reasons stated in this notice, Commerce is requesting comments on whether the Agreement is no longer meeting its statutory requirements.

DATES: Applicable April 24, 2023.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or David Cordell, Bilateral Agreements Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0162 or (202) 482–0408, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 23, 2003, Commerce and producers/exporters accounting for substantially all imports of certain cut-to-length carbon steel plate (CTL plate) from the Russian Federation entered into the Agreement under section 734(b) of the Tariff Act of 1930, as amended (the Act).[1] In entering into the Agreement, Commerce determined, under section 734(b) of the Act, that the Agreement would eliminate completely sales at less than fair value of the imported subject merchandise and, under section 734(d) of the Act, that the Agreement was in the public interest and could be monitored effectively.

On March 30, 2023, the domestic interested parties filed a request that Commerce terminate the Agreement and impose an antidumping duty order on imports of CTL plate from the Russia Federation.[2] The domestic interested parties argue that the Agreement is no longer meeting the requirements of sections 734(b) and section 734(d) of the Act.

Scope of Agreement

The products covered by the Agreement are CTL plate from the Russian Federation. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of the Agreement is dispositive. For a full description of the scope of this Agreement, see Appendix B of the Agreement.

Invitation for Comment

As discussed above, Commerce has received a request to terminate the Agreement from the domestic interested parties and is currently evaluating the request. The Agreement, at Section F, provides that ''{i}f the Department determines that the Agreement is being or has been violated or no longer meets the requirements of section 734(b) or (d) of the Act, Commerce shall take action it determines appropriate under section 734(i) of the Act and the regulations.''

Section 734(i) of the Act provides that where, as here, the investigation was completed,[3] Commerce shall suspend liquidation and issue an antidumping duty order under section 736(a) of the Act if Commerce determines that there has been a violation of the Agreement, or if the Agreement no longer meets the statutory requirements. Pursuant to 19 CFR 351.209(c)(1), if Commerce has reason to believe that a suspension agreement no longer meets the requirements of section 734(d) of the Act, it will publish a notice inviting comment on the suspension agreement. Based on the domestic interested parties' request to terminate, we find that the requirements of 19 CFR 351.209(c)(1) have been met, and as such, are issuing this notice to seek comments to determine if suspension of the investigation no longer meets the statutory requirements.

After consideration of comments received, Commerce will determine whether the Agreement no longer meets the statutory requirements and, if appropriate, take necessary action in accordance with section 734(i) of the Act and 19 CFR 351.209(c).

Public Comment

Interested parties may submit comments via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than 30 days after the date of publication of this notice. ACCESS is available to registered users at *https://access.trade.gov.* Rebuttal comments, limited to issues raised in the affirmative comments, may be submitted via ACCESS no later than seven days after the deadline for comments. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[4]

When submitting comments via ACCESS, interested parties must upload their submissions to the segment in ACCESS entitled ''Suspension Agreement'' and Segment Specific Information identified as ''2003.''

Notification to Interested Parties

Commerce is issuing this notice in accordance with 734(i) of the Act and 19 CFR 351.209(c).

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[1] *See Suspension of Antidumping Duty Investigation of Certain Cut-to-Length Carbon Steel Plate from the Russian Federation,* 68 FR 3859 (January 27, 2003).

[2] *See* Domestic Interested Parties' Letter, ''Request to Terminate Suspension Agreement,'' dated March 30, 2023.

[3] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation,* 62 FR 61787 (November 19, 1997).

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

Dated: April 19, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–08604 Filed 4–21–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Circular Welded Carbon Steel Pipes and Tubes From Turkey: Final Results of the Expedited Sunset Review of the Countervailing Duty Order

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

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on circular welded carbon steel pipes and tubes (pipe and tube) from Turkey would be likely to lead to continuation or recurrence of countervailable subsidies at the levels indicated in the ''Final Results of the Sunset Review'' section of this notice.

DATES: Applicable April 24, 2023.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1986, Commerce published the order on pipe and tube from Turkey.[1] On January 3, 2023, Commerce published the notice of initiation of the fifth sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On January 17 and 18, 2023, Commerce received timely-filed notices of intent to participate in this review from Nucor Tubular Products Inc. and from Bull Moose Tube Company, Maruichi American Corporation, and Zekelman Industries, respectively, (collectively, the domestic interested parties), within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] The domestic interested parties claim that they have interested party status within the meaning of section 771(9)(C) of the Act and 19 CFR 351.102(b)(29)(v) as a producers of the domestic like product.[4]

On February 2, 2023, Commerce received an adequate substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[5] Commerce did not receive a substantive response from the Government of Turkey or any respondent interested party to this proceeding, nor was a hearing requested. On February 24, 2023, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[6] As a result, Commerce conducted an expedited (120-day) sunset review of the *Order,* pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B)(2) and (C)(2).

Scope of the Order

The merchandise covered by this *Order* is certain circular welded carbon steel pipes and tubes. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.[7]

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of subsidization in the event of revocation of the *Order* and the countervailable subsidy rates likely to prevail if the *Order* were to be revoked, is provided in the accompanying Issues and Decision Memorandum. A list of the topics discussed in the Issues and Decision Memorandum is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), which is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Sunset Review

Pursuant to sections 751(c) and 752(b) of the Act, we determine that revocation of the *Order* would be likely to lead to continuation or recurrence of a countervailable subsidies at the following net countervailable subsidy rates:

Producers/exporters	Net countervailable subsidy rate *ad valorem* (percent)
Bant Boru Sanayi ve Ticaret A.S	4.10
Borusan Group[8]	1.80
Erbosan[9]	4.10
Yucel Boru Group[10]	2.04
All Others	4.10

Administrative Protective Order

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

Notification to Interested Parties

Commerce is issuing and publishing these final results and this notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: April 18, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

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

I. Summary

[1] *See Countervailing Duty Order: Certain Welded Carbon Steel Pipe and Tube Products from Turkey,* 51 FR 7984 (March 7, 1986) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 88 FR 63 (January 3, 2023).

[3] *See* Nucor Tubular Products Inc.'s Letter, ''Notice of Intent to Participate in Sunset Review,'' dated January 17, 2023 (Nucor Tubular's Notice of Intent); *see also* Bull Moose, *et al.'s* Letter, ''Notice of Intent to Participate,'' dated January 18, 2023 (Bull Moose, *et al.'s* Notice of Intent).

[4] *See* Nucor Tubular's Notice of Intent at 2; *see also* Bull Moose, *et al.'s* Notice of Intent at 2.

[5] *See* Domestic Interested Parties' Letter, ''Domestic Interested Parties' Substantive Response to the Notice of Initiation,'' dated February 2, 2023 (Domestic Interested Parties' Substantive Response).

[6] *See* Commerce's Letter, ''Sunset Reviews for January 2023,'' dated February 24, 2023.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Countervailing Duty Order on Circular Welded Carbon Steel Pipes and Tubes from Turkey,'' dated concurrently with and adopted by this notice (Issues and Decision Memorandum).

[8] The Borusan Group includes the following entities: Borusan Group, Borusan Holding, A.S., Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Istikbal Ticaret, A.S., and Borusan Lojistik Dagitim Pepolama Tasimacilik ve Tic A.S.

[9] Erbosan includes Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan AS) and Erbosan Erciyas Pipe Industry and Trade Co. Kayseri Free Zone Branch (Erbosan FZB).

[10] The Yucel Boru Group includes Yucel Boru ye Profil Endustrisi A.S, Yucelboru Ihracat Ithalat ye Pazarlama A.S, and Cayirova Born Sanayi ye Ticaret A.S.

[FR Doc. 2023–08605 Filed 4–21–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–889]

Dioctyl Terephthalate From the Republic of Korea: Rescission of Antidumping Administrative Review; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on dioctyl terephthalate (DOTP) from the Republic of Korea (Korea), covering the period of review (POR) August 1, 2021, through July 31, 2022.

DATES: Applicable April 24, 2023.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4243.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 2022, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on DOTP from Korea, covering the POR.[1] On August 31, 2022, Eastman Chemical Company (Eastman, a domestic producer) timely requested that Commerce conduct an administrative review.[2]

On October 11, 2022, Commerce published in the **Federal Register** a notice of initiation of an administrative review with respect to Aekyung Petrochemical (AKP), Hanwha Chemical Corporation (Hanwha Chemical), and LG Chem, Ltd. (LG Chem) in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).[3] On November 10, 2022, Aekyung Chemical Co., Ltd. (AKC) filed a letter explaining that AKP, one of the three companies subject to this review, changed its business name to AKC, effective November 1, 2021.[4] As a result, AKC explained that the operations related to DOTP during the review period by the legal entity formerly known as AKP were conducted under the name of AKP until November 1, 2021, and then under the name of AKC after that date.[5] In addition, AKC certified that neither AKP nor AKC had exports, sales, or entries of DOTP into the United States during the POR.[6]

On November 8, 2022, we requested from U.S. Customs and Border Protection (CBP) a data file of entries of subject merchandise imported into the United States during the POR for those companies for which a review was initiated. On November 16, 2022, we received the CBP entry data[7] that demonstrated that there were no entries during the POR from companies covered by the review (*i.e.,* AKP, Hanwha Chemical, and LG Chem).[8] Consequently, we stated that we intended to rescind the review and solicited comments regarding the CBP data, respondent selection, and our intent to rescind the review.[9] None of the parties to the proceeding provided comments regarding the CBP data, respondent selection, or the rescission of the review.

On March 7, 2023, we issued a memorandum to clarify our intent to rescind the review in full.[10] We reiterated that the record of this review demonstrates that none of the companies upon which we initiated the review (*i.e.,* AKP, Hanwha Chemical, and LG Chem) had entries of the subject merchandise during the instant POR.[11] In addition, we noted that AKP had stated for the record that it made no entries during the POR.[12] We explained further that because the CBP data demonstrates that there were no suspended entries for the companies under review during the POR, and, none of the parties to the proceeding have provided information or argument to the contrary, we confirmed that it was our intention to rescind this review.[13] We provided all interested parties an additional opportunity to comment on Commerce's intent to rescind the review.[14] No party to the proceeding provided comments on Commerce's intent to rescind the review.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), it is Commerce's practice to rescind an administrative review of an antidumping duty order where it concludes that there were no suspended entries of subject merchandise during the POR.[15] Normally, upon completion of an administrative review, the suspended entries are liquidated at the antidumping duty assessment rate for the review period.[16] Therefore, for an administrative review to be conducted, there must be a reviewable, suspended entry that Commerce can instruct CBP to liquidate at the calculated antidumping duty assessment rate for the review period.[17] As noted above,

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List,* 87 FR 47187 (August 2, 2022).

[2] *See* Eastman's Letter, ''Dioctyl Terephthalate (DOTP) from Korea: Administrative Review Request,'' dated August 31, 2022.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 61278 (October 11, 2022).

[4] *See* AKP's Letter, ''Administrative Review of the Antidumping Order on Dioctyl Terephthalate from Korea for the 2021–22 Review Period—No Shipments Letter,'' dated November 10, 2022 (AKP's No Shipments Letter).

[5] *Id.*

[6] *Id.* at 2. We clarify that this review was initiated on and covers AKP. AKC has not requested that we conduct a successor-in-interest analysis in this review and Commerce has not considered whether AKC is the successor-in-interest to AKP.

[7] *See* Memorandum, ''Antidumping Duty Administrative Review of Dioctyl Terephthalate from the Republic of Korea: Release of Customs Data from U.S. Customs and Border Protection,'' dated November 16, 2022 (Customs Data Memorandum).

[8] *Id.*

[9] *Id.*

[10] *See* Memorandum, ''Antidumping Duty Administrative Review of Dioctyl Terephthalate from the Republic of Korea: Statement of Intent to Rescind this Administrative Review,'' dated March 7, 2023.

[11] *Id.* (citing Customs Data Memorandum).

[12] *Id.* (citing AKP's No Shipments Letter).

[13] *Id.* at 2.

[14] *Id.*

[15] *See, e.g., Certain Carbon and Alloy Steel Cut-to Length Plate from the Federal Republic of Germany: Recission of Antidumping Administrative Review; 2020–2021,* 88 FR 4157 (January 24, 2023).

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

[17] *See, e.g., Shanghai Sunbeauty Trading Co.* v. *United States,* 380 F. Supp. 3d 1328, 1335–36 (CIT 2019), at 12 (referring to section 751(a) of the Act, the CIT held: ''While the statute does not explicitly require that an entry be suspended as a prerequisite for establishing entitlement to a review, it does explicitly state the determined rate will be used as the liquidation rate for the reviewed entries. This result can only obtain if the liquidation of entries has been suspended. . . . ''; *see also Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019,* 86 FR 36102, and accompanying Issues and Decision Memorandum at Comment 4; and *Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation: Notice of Rescission of Antidumping Duty Administrative Review,* 77 FR 65532 (October 29, 2012) (noting that ''for an administrative review to be conducted, there must be a reviewable, suspended entry to be liquidated at the newly calculated assessment rate'').

there were no suspended entries of subject merchandise from AKP, Hanwha Chemical, or LG Chem during the POR. Accordingly, in the absence of suspended entries of subject merchandise during the POR, we are rescinding this administrative review for AKP, Hanwha Chemical, and LG Chem in accordance with 19 CFR 351.213(d)(3).

Assessment

Commerce will instruct CBP to assess antidumping duties on all appropriate entries. Because Commerce is rescinding this review in its entirety, the entries to which this administrative review pertained shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this rescission notice in the **Federal Register**.

Cash Deposit Requirements

As Commerce has proceeded to a final rescission of this administrative review, no cash deposit rates will change. Accordingly, the current cash deposit requirements shall remain in effect until further notice.

Administrative Protective Order

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

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(l) of the Act, and 19 CFR 351.213(d)(4).

Dated: April 17, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–08538 Filed 4–21–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–042, C–570–043]

Stainless Steel Sheet and Strip From the People's Republic of China: Final Scope Ruling and Final Affirmative Determination of Circumvention for Exports From the Socialist Republic of Vietnam; Correction

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

ACTION: Notice; correction.

SUMMARY: On March 29 and 30, 2023, the U.S. Department of Commerce (Commerce) inadvertently published duplicate copies of a **Federal Register** notice. This notice serves as a notification of, and correction to, this inadvertent duplicate publication.

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse, Office of the Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6345.

SUPPLEMENTARY INFORMATION:

Correction

Commerce published in the **Federal Register** of March 29, 2023, in FR Doc 2023–06500, on page 18521, in the third column, a notice entitled, ''*Stainless Steel Sheet and Strip From the People's Republic of China: Final Scope Ruling and Final Affirmative Determination of Circumvention for Exports from the Socialist Republic of Vietnam.*'' [1] Commerce has discovered that this notice was also inadvertently published to the **Federal Register** on March 30, 2023, in FR Doc 2023–06582, on page 19070, in the second column.[2] The inadvertent duplicate publication of this notice does not constitute redetermination of this proceeding. This notice serves as a notification of, and correction to, this inadvertent duplicate publication.

[1] *See Stainless Steel Sheet and Strip from the People's Republic of China: Final Scope Ruling and Final Affirmative Determination of Circumvention for Exports from the Socialist Republic of Vietnam,* 88 FR 18521 (March 29, 2023).

[2] *See Stainless Steel Sheet and Strip from the People's Republic of China: Final Scope Ruling and Final Affirmative Determination of Circumvention for Exports From the Socialist Republic of Vietnam,* 88 FR 19070 (March 30, 2023).

Dated: April 18, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–08537 Filed 4–21–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2023–HQ–0007]

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Air Force announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 23, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to 59th Medical Wing Office of Science and Technology, 1632 Nellis Street, Bldg. 5406, Joint Base San Antonio-Lackland, TX 78236–7517, ATTN: Capt William R. Hoffman, USAF MC, or call 210–916–2203.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Semi-Structured Interview Guide of Self-Reported Qualitative Factors that Influence Healthcare Utilization in Trainee and Civilian Airline Pilots; OMB Control Number 0701–TPHB.

Needs and Uses: The information collection requirement is necessary to receive verbal feedback from U.S. civilian, collegiate aviation trainee, and U.S. Air Force trainee pilots on their experiences seeking healthcare services. These interviews are part of a study examining experiences of military and civilian pilot healthcare seeking behaviors. The results of this study will be used to inform the Federal Aviation Administration (FAA) and U.S. Air Force line and medical leadership of (1) the perceived barriers pilots face when seeking medical care, (2) current effective measures already in place that address the subjective barrier pilots face when seeking medical care, and (3) potential interventions that should be prospectively researched to meet that study question.

Affected Public: Individuals or households.

Annual Burden Hours: 110.

Number of Respondents: 200.

Responses per Respondent: 1.

Annual Responses: 200.

Average Burden per Response: 33 minutes.

Frequency: Once.

Dated: April 18, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–08525 Filed 4–21–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents, Uniformed Services University of the Health Sciences; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Department of Defense (DoD).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Board of Regents, Uniformed Services University of the Health Sciences (BoR USUHS) will take place.

DATES: Friday, May 19, 2023, open to the public from 8:00 a.m. to 12:00 p.m. eastern time.

ADDRESSES: Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Everett Alvarez Jr. Board of Regents Room (D3001), Bethesda, MD 20814. The meeting will be held both in-person and virtually. To participate in the meeting, see the Meeting Accessibility section for instructions.

FOR FURTHER INFORMATION CONTACT: Annette Askins-Roberts, Designated Federal Officer (DFO), at (301) 295–3066 or *annette.askins-roberts@usuhs.edu.* Mailing address is 4301 Jones Bridge Road, Bethesda, MD 20814. Website: *https://www.usuhs.edu/ao/board-of-regents.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5, U.S.C. (commonly known as the ''Federal Advisory Committee Act'' or ''FACA''), section 552b of title 5, U.S.C. (commonly known as the ''Government in the Sunshine Act''), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to provide advice and recommendations to the Secretary of Defense, through the USD(P&R), on academic and administrative matters critical to the full accreditation and successful operation of the Uniformed Services University (USU). These actions are necessary for USU to pursue its mission, which is to educate, train and comprehensively prepare uniformed services health professionals, officers, scientists, and leaders to support the Military and Public Health Systems, the National Security and National Defense Strategies of the United States, and the readiness of our Uniformed Services.

Agenda: The schedule includes opening comments from the Chair; a report by the Assistant Secretary of Defense for Health Affairs; a report by the USU President; an End of the Academic Year Summary; an overview of the Liaison Committee on Medical Education Study; and a report from the Center for Global Health Engagement.

Meeting Accessibility: Pursuant to Federal statutes and regulations (5 U.S.C. appendix, 5 U.S.C. 552b, and 41 CFR 102–3.140 through 102–3.165), the meeting will be held in-person and virtually and is open to the public from 8:00 a.m. to 12:00 p.m. Seating is on a first-come basis. Members of the public wishing to attend the meeting in-person or virtually should contact Dr. Clarice Waters via email at *clarice.waters.ctr@usuhs.edu* no later than five business days prior to the meeting.

Written Statements: Pursuant to section 10(a)(3) of the FACA and 41 CFR 102–3.140, the public or interested organizations may submit written comments to the BoR USUHS about its approved agenda pertaining to this meeting or at any time regarding the Board's mission. Individuals submitting a written statement must submit their statement to Ms. Askins-Roberts at the address noted in the **FOR FURTHER INFORMATION CONTACT** section. Written statements that do not pertain to a scheduled meeting of the BoR USUHS may be submitted at any time. If individual comments pertain to a specific topic being discussed at the planned meeting, then these statements must be received at least five calendar days prior to the meeting. Otherwise, the comments may not be provided to or considered by the Board until a later date. The DFO will compile all timely submissions with the BoR USUHS' Chair and ensure such submissions are provided to BoR USUHS members before the meeting.

Dated: April 18, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–08515 Filed 4–21–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21–60]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at *neil.g.hedlund.civ@mail.mil* or (703) 697–9214.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the

House of Representatives, Transmittal 21–60 with attached Policy Justification and Sensitivity of Technology.

Dated: April 19, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

December 20, 2021

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 21-60, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Australia for defense articles and services estimated to cost $108 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Jedidiah P. Royal
Acting Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 21–60

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Australia

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$102 million
Other	$ 6 million
TOTAL	$108 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Up to eight hundred (800) Hellfire AGM–114R2 Missiles

Non-MDE:

Also included is Tactical Aviation Ground Munition Program Office Technical Assistance; Security Assistance Management Directorate, Joint Attack Munition Systems Technical Assistance; classified and unclassified publications; spare parts; repair and return; storage; and other related elements of program and logistical support.

(iv) *Military Department:* Army (AT–B–UMB)

(v) *Prior Related Cases, if any:* AT–B–ULO

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* December 20, 2021

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Australia—Hellfire AGM–114R2 Missiles

The Government of Australia has requested to buy up to eight hundred (800) Hellfire AGM–114R2 Missiles. Also included is Tactical Aviation Ground Munition Program Office Technical Assistance; Security Assistance Management Directorate, Joint Attack Munition Systems Technical Assistance; classified and unclassified publications; spare parts; repair and return; storage; and other related elements of program and logistical support. The total estimated case value is $108 million.

This proposed sale will support the foreign policy and national security objectives of the United States. Australia is one of our most important allies in the Western Pacific. The strategic location of this political and economic power contributes significantly to ensuring peace and economic stability in the region. It is vital to the U.S. national interest to assist our ally in developing and maintaining a strong and ready self-defense capability.

This proposed sale will improve Australia's capability to meet current and future threats by enhancing the Australian Navy's armed reconnaissance and anti-tank warfare mission capabilities. Australia will have no difficulty absorbing these missiles into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Lockheed Martin Corporation, Orlando, Florida. The purchaser typically requests offsets. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will not require the assignment of any U.S. Government or contractor representatives. There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 21–60

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The Hellfire AGM–114R2 is a precision strike, semi-active laser-guided missile and is the principal air-to-ground weapon for the U.S. Army AH–64 Apache. The Hellfire R model incorporates a multi-purpose warhead with selectable effects appropriate for engagement of a wide range of targets including heavily or lightly armored targets, thin-skinned vehicles, urban structures, caves, and personnel.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the Government of Australia can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal are authorized for release and export to the Government of Australia.

[FR Doc. 2023–08577 Filed 4–21–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Deputy Secretary of Defense, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Business Board (''the Board'') will take place.

DATES: Closed to the public Tuesday, May 9, 2023 from 8:05 a.m. to 11:15 a.m., from 1:15 p.m. to 3:35 p.m., and from 5:30 p.m. to 7:35 p.m. and on May 10, 2023 from 10:58 a.m. to 11:50 a.m. Open to the public Wednesday, May 10, 2023 from 8:30 a.m. to 10:47 a.m. All times are in Eastern Time.

ADDRESSES: The open and closed portions of the meeting will be in rooms 1E840 and 4D880 in the Pentagon, Washington, DC, and at the National Reconnaissance Office, Chantilly, VA. The public portions of the meeting will be conducted by teleconference only. To participate in the public portion of the meeting, see the Meeting Accessibility section for instructions.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Hill, Designated Federal Officer (DFO) of the Board in writing at Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155; or by email at *jennifer.s.hill4.civ@mail.mil;* or by phone at 571–342–0070.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5, U.S.C. (commonly known as the ''Federal Advisory Committee Act'' or ''FACA''), section 552b of title 5, U.S.C. (commonly known as the ''Government in the Sunshine Act''), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The mission of the Board is to examine and advise the Secretary of Defense on overall DoD management and governance. The Board provides independent, strategic-level, private sector and academic advice and counsel on enterprise-wide business management approaches and best practices for business operations and achieving National Defense goals.

Agenda: The Board will begin in closed session on May 9 from 8:05 a.m. to 11:15 a.m. The DFO will open the closed session followed by a welcome by Board Chair, Hon. Deborah James. The Board will receive a classified brief

on Resourcing the Future Workforce by Chief of Staff of the Air Force, Gen Charles Q. Brown. It will then be followed by a classified brief on the DoD Budget from Deputy Secretary of Defense, Hon. Kathleen Hicks and Director of Cost Assessment and Program Evaluation Office, Hon. Susanna V. Blume. Next, the Board will have a classified panel discussion on Preparing the Industrial Base for Future Conflicts by Principal Deputy Assistant Secretary of the Army for Acquisition, Logistics & Technology, Mr. Young Bang; Principal Deputy Assistant Secretary of the Air Force Acquisition, Technology & Logistics, Mrs. Darlene Costello; and Former Commander of U.S. Transportation Command, GEN Stephen Lyons, USA (Ret.). The DFO will then adjourn the closed session. The Board will travel to the National Reconnaissance Office in Chantilly, VA and reconvene in closed session on May 9 at 1:15 p.m. with a classified panel discussion on the Current Challenges in Space Operations by Assistant Secretary of the Air Force for Space Acquisitions and Integration, Hon. Frank Calvelli; and National Reconnaissance Office Principal Deputy Director, Dr. Troy Meink; and an additional Space Operations representative. This will be followed up with a classified brief on Space Authorities by Dr. Meink. The DFO will adjourn the closed session, and the Board will return to the Pentagon. The Board will meet in closed session May 9 from 5:30 p.m. to 7:35 p.m. The DFO will open the closed session followed by remarks by Board Chair, Hon. Deborah James and Deputy Secretary of Defense, Hon. Kathleen Hicks. Next, the board will hear a classified brief on Marine Corps Modernization and Force Design 2030 by Assistant Commandant of the Marine Corps, Gen Eric M. Smith. The DFO will adjourn the closed session. The Board will begin in open session on May 10 from 8:30 a.m. to 10:47 a.m. The DFO will open the session and Hon. Deborah James will provide a Chair's welcome to members and guests. Next, the Board will receive a brief by the Chief Talent Management Officer, Office of the Undersecretary of Defense for Personnel & Readiness, Mr. Brynt Parmeter. This will then be followed with a panel discussion on Improving How We Do Business by Director of U.S. Army Office of Business Transformation, Mr. Robin Swan; Deputy Under Secretary of the Air Force, Management and Deputy Chief Management Officer, Mr. Richard Lombardi; Senior Advisor, United States Department of the Navy, Mr. Roger Dean Huffstetler; and Deputy Performance Improvement Officer, U.S. Department of Defense, Dr. Silvana Rubino-Hallman. The DFO will then adjourn the open session. After a short break, the DFO will open the closed session followed by a classified brief on DoD Current Affairs from Secretary of Defense, Hon. Lloyd Austin. Board Chair, Hon. Deborah James will provide closing remarks, and the DFO will adjourn the closed session. The latest version of the agenda will be available on the Board's website at: *https://dbb.defense.gov/Meetings/Meeting-May-2023/.*

Meeting Accessibility: In accordance with 5 U.S.C. 1009(d) and 41 CFR 102–3.155, it is hereby determined that portions of the May 9–10 meeting of the Board will include classified information and other matters covered by 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public on May 9, 2023 from 8:05 a.m. to 11:15 a.m., from 1:15 p.m. to 3:35 p.m., and from 5:30 p.m. to 7:35 p.m., and on May 10, 2023 from 10:58 a.m. to 11:50 a.m. This determination is based on the consideration that it is expected that discussions throughout these periods will involve classified matters of national security. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of these portions of the meeting. To permit these portions of the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the Board's findings and recommendations to the Secretary of Defense and to the Deputy Secretary of Defense. Pursuant to section 5 U.S.C. 1009(a)(1) and 41 CFR 102–3.140, the portion of the meeting on May 10 from 8:30 a.m. to 10:47 a.m. is open to the public via teleconference. Persons desiring to attend the public session are required to register. To attend the public session, submit your name, affiliation/organization, telephone number, and email contact information to the Board at *osd.pentagon.odam.mbx.defense-business-board@mail.mil.* Requests to attend the public session must be received no later than 4:00 p.m. on Monday, May 8, 2023. Upon receipt of this information, the Board will provide further instructions for telephonically attending the meeting.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, the public or interested organizations may submit written comments or statements to the Board in response to the stated agenda of the meeting or regarding the Board's mission in general. Written comments or statements should be submitted to Ms. Jennifer Hill, the DFO, via electronic mail (the preferred mode of submission) at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The DFO must receive written comments or statements submitted in response to the agenda set forth in this notice by Monday, May 8, 2023, to be considered by the Board. The DFO will review all timely submitted written comments or statements with the Board Chair and ensure the comments are provided to all members of the Board before the meeting. Written comments or statements received after this date may not be provided to the Board until its next scheduled meeting. Please note that all submitted comments and statements will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board's website.

Dated: April 18, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–08521 Filed 4–21–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21–63]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at *neil.g.hedlund.civ@mail.mil* or (703) 697–9214.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 21–63 with attached Policy Justification and Sensitivity of Technology.

Dated: April 19, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

December 10, 2021

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 21-63, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Greece for defense articles and services estimated to cost $6.9 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Jedidiah P. Royal
Acting Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Section 620C(d) Certification

BILLING CODE 5001–06–C

Transmittal No. 21–63

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Greece

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$5.4 billion
Other	$1.5 billion
TOTAL	

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Four (4) Multi-Mission Surface Combatant (MMSC) Ships

Five (5) COMBATSS–21 Combat Management Systems (4 installed, 1 spare)

Five (5) Vertical Launch Systems (VLS), MK 41 (4 installed, 1 spare; 8 cells per set)

Two hundred (200) Rolling Airframe Missiles (RAM) BLK 2 (84 installed, 10 test and training rounds, 106 spares)

Five (5) MK 49 Guided Missile Launcher Systems (4 installed, 1 spare)

Eight (8) RAM BLK 2 Telemetry Missiles

Thirty-two (32) Vertical Launch Anti-Submarine Rocket (ASROC) Missiles (VLA) (12 installed (3 per ship), 8 test and training rockets, 12 spares)

Sixteen (16) 7.62mm M240B Machine Guns with ammunition (8 installed (2 per ship), 8 spares)

Thirty-two (32) MK–54 All Up Round Lightweight Torpedoes (16 installed (4 per ship), 16 spares)

Non-MDE:

Also included are additional single, VLS cells for VLA; ordnance; testing; training; follow-on support; TRS–4D radars; Common Anti-Air Modular Missile (CAMM); Common Anti-Air Modular Missile-Extended Range (CAMM–ER); Naval Strike Missile (NSM) RGM–184B and launchers; MK 46 Lightweight Upgrade to MK 54 Lightweight Torpedo; torpedo containers; Recoverable Exercise Torpedoes (REXTORP) with containers; Exercise Torpedoes (EXTORP) with containers; Expendable Mobile A-size Antisubmarine Warfare (ASW) Training Targets (EMATTs); Fleet Exercise Section (FES) and fuel tanks to be used with MK 54 conversion kits; air launch accessories for fixed wing; 76mm OTO STRALES gun with ordnance; Fire Control Radar; Gun Computer System; 20mm Narwhal gun system with ordnance; M2A1 .50 caliber machine gun with ammunition; NIXIE SLQ–25 Surface Ship Torpedo Defense System; Sylena MK 2 Decoy Launching System with CANTO torpedo countermeasure; Elta Electronic Warfare suite with counter-unmanned aerial system capability; Compact Low Frequency Active Passive Variable Depth Sonar-2 (CAPTAS–2); Low Frequency Active Towed Sonar (LFATS); SQQ–89; AN/ARC–210 (RT–2036(C)) radios; Identification Friend or Foe (IFF) Equipment; Infrared Search and Track/E.O. director; Naval Laser Warning System; chemical, biological and radiological threat detectors; and 7 meter Rigid Hull Inflatable Boat (RHIB). Also included are support and test equipment; spare and repair parts; communications equipment, including Link 16 communications equipment; Battlefield Information Collection and Exploitation System (BICES); AN/SRQ–4 Tactical Common Datalink; Global Command and Control System-Joint (GCCS–J); Air Defense Systems Integrator (ADSI); cryptographic equipment including SY–150, SY–117G, and KYV–5M; Defense Advance GPS Receiver (DAGR); software delivery and support; facilities and construction support; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering, technical and logistics support services; test and trials support; studies and surveys; and other related elements of logistical and program support.

(iv) *Military Department:* Navy (GR–P–SCM)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* December 10, 2021

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Greece—Multi-Mission Surface Combatant (Hellenic Future Frigate (HF2))

The Government of Greece has requested to buy four (4) Multi-Mission Surface Combatant (MMSC) ships; five (5) COMBATSS–21 Combat Management Systems (4 installed, 1 spare); five (5) Vertical Launch Systems (VLS), MK 41 (4 installed, 1 spare; 8 cells per set); two hundred (200) Rolling Airframe Missiles (RAM) BLK 2 (84 installed, 10 test and training rounds, 106 spares); five (5) MK 49 Guided Missile Launcher Systems (4 installed, 1 spare); eight (8) RAM BLK 2 telemetry missiles; thirty-two (32) Vertical Launch Anti-Submarine Rocket (ASROC) missiles (VLA) (12 installed (3 per ship), 8 test and training rockets, 12 spares); sixteen (16) 7.62mm M240B machine guns with ammunition (8 installed (2 per ship), 8 spares), and thirty-two (32) MK–54 All Up Round Lightweight Torpedoes (16 installed (4 per ship), 16 spares). Also included are additional single, VLS cells for VLA; ordnance; testing; training; follow-on support; TRS–4D radars; Common Anti-Air Modular Missile (CAMM); Common Anti-Air Modular Missile-Extended Range (CAMM–ER); Naval Strike Missile (NSM) RGM–184B and launchers; MK 46 Lightweight Upgrade to MK 54 Lightweight Torpedo; torpedo containers; Recoverable Exercise Torpedoes (REXTORP) with containers; Exercise Torpedoes (EXTORP) with containers; Expendable Mobile A-size Antisubmarine Warfare (ASW) Training Targets (EMATTs); Fleet Exercise Section (FES) and fuel tanks to be used with MK 54 conversion kits; air launch accessories for fixed wing; 76mm OTO STRALES gun with ordnance; Fire Control Radar; Gun Computer System; 20mm Narwhal gun system with ordnance; M2A1 .50 caliber machine gun with ammunition; NIXIE SLQ–25 Surface Ship Torpedo Defense System; Sylena MK 2 Decoy Launching System with CANTO torpedo countermeasure; Elta Electronic Warfare suite with counter-unmanned aerial system capability; Compact Low Frequency Active Passive Variable Depth Sonar-2 (CAPTAS–2); Low Frequency Active Towed Sonar (LFATS); SQQ–89; AN/ARC–210 (RT–2036(C)) radios; Identification Friend or Foe (IFF) Equipment; Infrared Search and Track/E.O. director; Naval Laser Warning System; chemical, biological and radiological threat detectors; and 7 meter Rigid Hull Inflatable Boat (RHIB). Also included are support and test equipment; spare and repair parts; communications equipment, including Link 16 communications equipment; Battlefield Information Collection and Exploitation System (BICES); AN/SRQ–4 Tactical Common Datalink; Global Command and Control System-Joint

(GCCS–J); Air Defense Systems Integrator (ADSI); cryptographic equipment including SY–150, SY–117G, and KYV–5M; Defense Advance GPS Receiver (DAGR); software delivery and support; facilities and construction support; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering, technical and logistics support services; test and trials support; studies and surveys; and other related elements of logistical and program support. The estimated total cost is $6.9 billion.

This proposed sale will support the foreign policy and national security objectives of the United States by helping to improve the security of a NATO ally, which is an important partner for political stability and economic progress in Europe.

The proposed sale will improve Greece's capability to meet current and future threats by providing an effective combatant deterrent capability to protect maritime interests and infrastructure in support of its strategic location on NATO's southern flank. This acquisition, which will be awarded to the winner of an international competition for Hellenic Navy (HN) frigate modernization, will enhance stability and maritime security in the Eastern Mediterranean region and contribute to security and strategic objectives of NATO and the United States. Greece contributes to NATO operations in Kosovo, as well as to counterterrorism and counter-piracy maritime efforts. Greece will have no difficulty absorbing these articles and services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Lockheed Martin of Bethesda, MD. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of approximately 8 additional U.S. Government and 22 U.S. contractor representatives to Greece to support engineering and logistics support for the production and integration of Hellenic Future Frigates into the Hellenic Navy Fleet.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 21–63

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The Multi-Mission Surface Combatant Ships (MMSC) or Hellenic Future Frigate (HF2), a derivative of the Freedom variant of the USN Littoral Combat Ship, will provide Greece with an effective combatant deterrent capability to protect maritime interests and infrastructure. The sensitive technologies include:

a. COMBATSS–21 is the ship's battle management system, which is produced by Lockheed Martin and derived from the USN's latest AEGIS combat management system. The COMBATSS–21 Combat Management System is the backbone of the Freedom-variant self-defense suite and integrates the radar, electro-optical infrared cameras, gun fire control system, countermeasures and short-range anti-air missiles. COMBATSS–21 provides a flexible, reliable next generation defense system.

b. TRS–4D radar is a three-dimensional, air volume surveillance radar with fast target alert, which provides target designation to the combat management system for anti-air warfare (AAW) and anti-surface warfare (ASuW). The TRS–4D radar is manufactured by Hensoldt, a German company. It provides sensor support for surface gun fire control with splash detection, ship-controlled helicopter approach support, jammer detection, tracking and suppression, cued search with enhanced detection performance for a dedicated sector, cued track with high-accuracy target tracking for missile guidance, target classification, integrated IFF, and is integrated with the combat management system. The system is available internationally through Hensoldt.

c. MK–41 Vertical Launch System (VLS) is a multi-cell, vertical missile launcher that accommodates multiple VLS-capable missiles, including CAMM, CAMM–ER and the Vertical Launch Anti-Submarine Rocket (ASROC) (VLA) Lightweight Torpedo. Each HF2 will be configured for eight (8) VLS tactical length cells, delivering up to thirty-two (32) quad-pack missiles, with an additional three (3) single VLS cells for a total of eleven (11) cells per ship. VLS exchanges guidance data with COMBATSS–21.

d. Common Anti-Air Modular Missile (CAMM) is designed to counter highly sophisticated sea skimming anti-ship cruise missiles. It incorporates inertial navigation with uplink/downlink and active RF final homing that requires no target illumination. Sea Ceptor controls missile targeting and flight profiles before launch through to termination. CAMM are quad-packed and could be configured for a thirty-two (32)-missile ship loadout. CAMM is available internationally from MBDA. The CAMM system exchanges guidance data between Sea Ceptor and COMBATSS–21.

e. Common Anti-Air Modular Missile-Extended Range (CAMM–ER) also counters highly sophisticated sea skimming anti-ship cruise missiles with additional range compared to CAMM. It incorporates inertial navigation with uplink/downlink and active RF final homing that requires no target illumination. Sea Ceptor controls missile targeting and flight profiles before launch through to termination. CAMM–ER are quad-packed and could be configured for a thirty-two (32)-missile ship loadout. CAMM–ER is available internationally from MBDA. The CAMM–ER system exchanges guidance data between Sea Ceptor and COMBATSS–21.

f. Vertical Launch Anti-Submarine Rocket (ASROC) missile (VLA) is an all-weather, 360-degree quick-reaction, standoff anti-submarine weapon. VLA are fired from VLS with support from the SQQ–89 ASW combat system. Guidance data is exchanged with COMBATSS–21.

g. The MK 54 All Up Round Lightweight (LWT) Torpedo is a conventional torpedo that can be launched from surface ships, rotary and fixed wing aircraft. The MK 54 is an upgrade to the MK 46 Torpedo. The upgrade to the MK 54 entails replacement of the torpedo's sonar, guidance and control systems with modern technology. The new guidance and control system uses a mixture of commercial-off-the-shelf and custom-built electronics. The warhead, fuel tank and propulsion system from the MK 46 torpedo are re-used in the MK 54 configuration with minor modifications. Greece has not requested, nor will it be provided with the source code for MK 54 operational software.

h. MK 46 LWT Upgrade to MK 54 LWT. All MK 54 LWTs are produced by converting a MK 46 LWT and installing a MK 54 LWT upgrade kit. MK 46 LWT and MK 54 LWT programs have many common components; however, the majority of the MK 54 LWT is assembled with new production hardware.

i. Naval Strike Missile (NSM), RGM–184B, is an anti-ship cruise missile that

provides anti-surface, over-the-horizon engagement capability against small-to-medium sized vessels. NSM incorporates an Intelligent Imaging Infrared (I3R) Seeker and Automatic Target Recognition (ATR). NSM is available internationally from Kongsberg Defence & Aerospace (KDA)—partnered with Raytheon. NSM telemetry missiles will also be procured for testing. NSM will not be integrated with COMBATSS–21.

j. The 76mm OTO STRALES gun is a multi-mission, rapid-fire naval gun for primary defense against air and surface threats and for employment in naval fire support missions. The 76mm OTO STRALES provides an accurate, sustained rate of fire of 1 to 120 rounds per minute, and is capable against subsonic, anti-ship missiles. OTO STRALES includes a radio frequency guidance system that increases system accuracy. The 76mm gun is available internationally from Leonardo/OTO Melara; STRALES from Leonardo. The 76mm gun is connected to the fire control radar and gun computer system, which is, in turn, connected to COMBATSS–21.

k. The medium-to-long range fire-control radar system interfaces with the gun computer system and COMBATSS–21.

l. The gun computer system directs the actions of the ship's main gun battery and receives orders for engagement and firing authorization from the Combat Management System. The gun computer system takes target data from ship sensors for air and surface targets, or operator-entered data for targets ashore, and calculates ballistic solutions and outputs gun positioning orders, ammunition loading and firing orders for the mount.

m. Infrared Search and Track (IRST) is a 360-degree, panoramic, day and night, passive air and surface surveillance system. The IRST system provides long-range detection with tracking of conventional, asymmetric and emerging threats.

n. The 20mm Narwhal gun system is a gyro-stabilized mount armed with a 20mm automatic cannon, an electro-optic, charge-coupled device camera, and a closed loop, fire-control system, which can be controlled remotely to enable system operation, target acquisition and tracking, and fire opening by the gun operator. Optional add-ons include a thermal camera, laser rangefinder and target automatic tracking video system. The 20mm gun has a rate of fire of 800 rounds per minute of NATO standard ammunition and is produced by the French Government-owned Nexter Systems. The Narwhal gun will not be integrated with COMBATSS–21.

o. The 7.62mm M240B Machine Gun is an air-cooled, belt-fed and gas-operated weapon.

p. The M2A1 .50 Caliber Machine Gun is an air-cooled, belt-fed machine gun that fires from a closed bolt, operated on the short recoil principle.

q. Rolling Airframe Missile (RAM) BLK 2 is a lightweight, quick-reaction, fire-and-forget missile designed to destroy anti-ship cruise missiles and asymmetric air and surface threats. The BLK 2 provides kinematic and guidance improvements for countering maneuvering and low probability of intercept threats. RAM missiles are launched from the MK 49 Guided Missile Launcher System (GMLS). No shipboard support is required after shipboard launch. RAM telemetry missiles will also be procured for testing.

r. MK 49 GMLS is used to deploy RAM.

s. Low Frequency Active Towed Sonar (LFATS) is a low frequency, variable depth sonar used to detect, track and engage submarines. LFATS incorporates active and passive processing with 360-degree coverage. The VDS–100 system is designed for high performance at a lower operating frequency for improved performance.

t. Compact Low Frequency Active Passive Variable Depth Sonar-2 (CAPTAS–2) is a key sensor technology for identifying conventional, diesel-powered submarines operating in difficult sonar environments, such as littoral waters. CAPTAS–2 employs a single winch to tow the transmit tow body and receiver array.

u. The NIXIE SLQ–25 Surface Ship Torpedo Defense System is a digitally controlled, electro-acoustic, soft kill countermeasure decoy system capable of countering wake homing torpedoes, acoustic homing torpedoes, and wire guided torpedoes. NIXIE provides active/passive detection, location, threat identification of torpedoes and other acoustic targets. NIXIE's towed body, the decoy which diverts the threat from the ship, connects to the management system using a fiber optic cable to control the signals emitted by the decoy.

v. Sylena MK 2 Decoy Launching System with CANTO is a torpedo countermeasure. The Sylena MK 2 launches the CANTO decoy, which generates a high-level, 360-degree acoustic signal to jam the full frequency range of an attacking torpedo. Sylena MK 2 is available internationally from Lacroix; CANTO from Naval Group. The Sylena MK 2 decoy launching system and CANTO decoy will exchange data with COMBATSS–21.

w. Elta Electronic Warfare (EW) suite provides Radar Electronic Support Measures (RESM), Communications Electronic Support Measures (CESM), and Electronic Countermeasures (ECM) with Counter-Unmanned Aerial System capability. The Elta EW suite is available internationally through ELTA Systems, a subsidiary of Israel Aerospace Industries. The Elta EW suite will exchange data with COMBATSS–21.

x. Naval Laser-Warning System (NLWS) provides real time situational awareness of laser-based threats to enhance the tactical picture. NLWS interfaces with the ship's CMS, electronic support measures and the onboard countermeasure system. NLWS is available internationally from SAAB.

y. Identification Friend or Foe (IFF) Mode 5 is an identification system designed for command and control. It enables military and national (civilian air traffic control) interrogation systems to identify aircraft, vehicles or forces as friendly. Mode 5 provides a cryptographically secured version of Mode S and ADS–8 GPS position.

z. AN/ARC–210 GEN 6 (RT–2036(C)) version is a radio that provides two-way, multi-mode voice and data communications with military aircraft over Very High Frequency (VHF) and Ultra High Frequency (UHF) range using U.S. Type 1 encryption. ARC–210 radios contain embedded sensitive encryption algorithms, keying material and integrated waveforms.

aa. SY–117G is a combat manpack radio with Type 1 encryption for secure voice communication. In the HF2 configuration, the radio will be used for interoperable, secure Satellite Communications (SATCOM). The SY–117G COMSEC device is a Controlled Cryptographic Item (CCI).

bb. SY–150 is a combat manpack radio with Type 1 encryption. The SY–150 COMSEC device is CCI.

cc. KYV–5M supports tactical secure voice communications. The KYV–5M COMSEC device is CCI.

dd. Air Defense Systems Integrator (ADSI) is a tactical command and control system that integrates land, air and sea domains to report real-time sensor information across the battlespace.

ee. The AN/SRQ–4 provides the Tactical Common Data Link (TCDL) to serve COMBATSS–21 for command and control (C2) functions for radar, FLIR, and ESM data. Also, as the TCDL terminal on the ship, the AN/SRQ–4 exchanges the classified acoustic data with AN/SQQ–89 for real-time

shipboard processing of MH–60R deployed sonobuoys, increased sonobuoy processing, updated sonobuoy control and increased ASW tracks. The AN/SQQ–89 accepts MH–60R ASW data and processes the data shipboard as a coordinated tactical ASW picture with the Variable Depth Sonar. ASW Operators, at AN/SQQ–89 consoles, analyze classified data and integrate with COMBATSS–21 to provide full implementation and access to the capabilities of the MH–60R. The MH–60R Multi-Mission Helicopters, procured by the Hellenic Navy under a separate FMS case, introduce dipping sonar, upgraded radar, electronic warfare, weapons including MK 54 torpedoes and external command and control systems. With the MH–60R comes the need for a Ku-Band Common Data Link via a shipboard AN/SRQ–4 Radio Terminal System to support the high data rate requirements associated with systems onboard the aircraft.

ff. The Battlefield Information Collection and Exploitation System (BICES) is a web-enabled, multi-national intelligence system that provides near real-time, correlated, situation and order of battle information.

gg. Global Command and Control System-Joint (GCCS–J) is a command, control, communications, computers, and intelligence system consisting of hardware, software (commercial-off-the-shelf and government-off-the-shelf), procedures, standards, and interfaces that provide an integrated near real-time picture of the battlespace necessary to conduct joint and multinational operations. For the HF2 configuration, GCCS–J will use Type 1 encryption.

hh. Defense Advance GPS Receiver (DAGR) provides secure, military Selective Availability/Anti-Spoofing Module (SAASM)-based GPS in the most reliable and proven handheld form available today. It is a military-grade, dual-frequency receiver, and has the security hardware necessary to decode encrypted P(Y)-code GPS signals. Features include: graphical screen, with the ability to overlay map images, 12-channel continuous satellite tracking for ''all-in-view'' operation, simultaneous L1/L2 dual frequency GPS signal reception, extended performance in a diverse jamming environment, and SAASM compatibility.

ii. Improved Point Detection System-Lifecycle Replacement (IPDS–LR) is a ship-based Chemical Warfare Agent (CWA) detector designed for chemical detection of chemical warfare agent vapors onboard navy ships. The detector units have special interference rejection built into the detection algorithm and meets specifications for false alarm thresholds with sensitivity requirements. The sampling system includes specially designed sampling lines, filters, and bulkhead adapters to operate in marine environments.

jj. Enhanced Maritime Biological Detection (EMBD) is an automated biological point detection and identification system that provides near real time biological detection, warning, and presumptive identification against Biological Warfare Agents (BWAs). EMBD will provide an early indication that a BWA attack has occurred and provide identification information allowing ship commanding officers to select from an array of countermeasures that can prevent or limit exposure to the ship and other ships in the naval task force.

kk. Link 16 is an advanced command, control, communications, and intelligence (C3I) system incorporating high capacity, jam-resistant, digital communication links for exchange of near real-time tactical information, including both data and voice, among air, ground, and sea elements. It provides the warfighter key theater functions such as surveillance, identification, air control, weapons engagement coordination, and direction for all services and allied forces. With modernized cryptography, Link 16 will ensure interoperability into the future.

2. The highest overall level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness, or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Greece can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Greece.

[FR Doc. 2023–08580 Filed 4–21–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21–65]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at *neil.g.hedlund.civ@mail.mil* or (703) 697–9214.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 21–65 with attached Policy Justification and Sensitivity of Technology.

Dated: April 19, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

December 21, 2021

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 21-65, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of France for defense articles and services estimated to cost $1.321 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Jedidiah P. Royal
Acting Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 21–65

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of France

(ii) *Total Estimated Value:*

Major Defense Equipment *	$ .848 billion
Other	$ .473 billion
TOTAL	$1.321 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):
One (1) Electromagnetic Aircraft Launch System (EMALS), 2 Launcher Configuration
One (1) Advanced Arresting Gear (AAG), 3 Engine Configuration

Non-MDE:
Also included are land-based testing and test spares; shipboard install; testing and certification support; shipboard spares; peculiar support equipment; government furnished equipment; multi-purpose reconfigurable training system; operator and maintainer training; integrated electronic technical manuals; drawings and interface control documents; technical assistance; contractor engineering technical services; and other related

elements of logistical and program support.

(iv) *Military Department:* Navy (FR–P–LID)

(v) *Prior Related Cases, if any:* FR–P–LIE, FR–P–GAG, FR–P–GXG

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* December 21, 2021

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

France—Electromagnetic Aircraft Launch System (EMALS) and Advanced Arresting Gear (AAG)

The Government of France has requested to buy one (1) Electromagnetic Aircraft Launch System (EMALS), 2 launcher configuration; and one (1) Advanced Arresting Gear (AAG), 3 engine configuration. Also included are land-based testing and test spares; shipboard install; testing and certification support; shipboard spares; peculiar support equipment; government furnished equipment; multi-purpose reconfigurable training system; operator and maintainer training; integrated electronic technical manuals; drawings and interface control documents; technical assistance; contractor engineering technical services; and other related elements of logistical and program support. The estimated total cost is $1.321 billion.

This proposed sale will support the foreign policy and national security of the United States by helping to improve security of a NATO ally which is an important force for political stability and economic progress in Europe.

The proposed sale will result in continuation of interoperability between the United States and France. EMALS and AAG will be incorporated in France's next-generation aircraft carrier program. France will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be General Atomics-Electromagnetic Systems Group, San Diego, CA; and Huntington Ingalls Industries, Newport News, VA. There are no known offset agreements proposed in conjunction with this potential sale.

Implementation of this proposed sale will require the assignment of approximately (40) U.S. Government and contractor representatives to France for 10 weeks per year in calendar years 2033–2038, to support shipboard system installation, commissioning, certification, aircraft compatibility testing, flight deck certification and sea trials.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 21–65

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. Electromagnetic Aircraft Launch System/Advanced Arresting Gear (EMALS/AAG) are two separate but complementary systems that enhance operational capability and improve maintenance and logistics support onboard conventional catapult and arresting gear (CATOBAR) aircraft carriers.

2. The highest level of classification of defense articles, components, and services included in this potential sale is UNCLASSIFIED.

3. If a technologically advanced adversary obtains knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that France can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of France.

[FR Doc. 2023–08578 Filed 4–21–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0034]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the OUSD(P&R) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 23, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Military Community Advocacy, 4800 Mark Center Drive, Suite 3G15, Alexandria, VA 22350, Lee Kelley, (703) 380–9477.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Evaluation of the Family Advocacy Program's Domestic Violence Awareness and Child Abuse Prevention Campaigns; OMB Control Number 0704–EFAC.

Needs and Uses: This project is needed to evaluate the effectiveness of the Family Advocacy Program's (FAP), Domestic Violence Awareness (DVA), and Child Abuse Prevention (CAP) campaigns at increasing knowledge and awareness. The Department of Defense, Service branches, and the Family Advocacy Program (FAP) have historically applied child abuse prevention and domestic violence awareness efforts during annual awareness months to leverage increased visibility and media coverage. Evaluation of the reach and penetration of these campaigns is imperative to assess the effectiveness of the messaging developed and delivered by the FAP.

Affected Public: Individuals or households.

Annual Burden Hours: 600.

Number of Respondents: 2,400.

Responses per Respondent: 1.

Annual Responses: 2,400.

Average Burden per Response: 15 minutes.

Frequency: Once.

Dated: April 18, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–08524 Filed 4–21–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Diversity and Inclusion; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Diversity and Inclusion (DACODAI) will take place.

DATES: DACODAI will hold an open to the public meeting—Thursday, May 11, 2023 from 11:45 a.m. to 4:30 p.m. (EST) and Friday, May 12, 2023 from 8:15 a.m. to 12:45 p.m.

ADDRESSES: The meeting will be held in person at the Association of the United States Army (AUSA) Convention Center, Arlington, VA, 2425 Wilson Blvd., Arlington, VA 22201; *https://www.ausa.org/directions.* The meeting will also be available via videoconference at *https://defenseculture-mil.zoomgov.com/j/16155802842* and via telephone at +1 551 285 1373; Meeting ID: 161 5580 2842. Participant access information will be provided after registering. Pre-meeting registration is required. See guidance in **SUPPLEMENTARY INFORMATION**, ''Meeting Accessibility.''

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Raguindin, (571) 645–6952 (voice), *osd.mc-alex.ousd-p-r.mbx.dacodai@mail.mil* (email). The most up-to-date changes to the meeting agenda can be found on the website: *https://www.dhra.mil/DMOC/DACODAI.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5, U.S.C. (commonly known as the ''Federal Advisory Committee Act'' or ''FACA''), section 552b of title 5, U.S.C. (commonly known as the ''Government in the Sunshine Act''), and 41 CFR 102–3.140 and 102–3.150.

Availability of Materials for the Meeting: Additional information, including the agenda or any updates to the agenda, is available on the DACODAI website *https://www.dhra.mil/DMOC/DACODAI.* Materials presented in the meeting may also be obtained on the DACODAI website.

Purpose of the Meeting: The purpose of the meeting is for the DACODAI to receive briefings and have discussions on topics related to the racial/ethnic diversity, inclusion, and equal opportunity within the Armed Forces of the United States.

Agenda: Thursday May 11, 2023, from 11:45 a.m. to 4:30 p.m. DACODAI will begin in open session with opening remarks by Ms. Shirley Raguindin, the Designated Federal Officer (DFO) and the DACODAI's Chair, Gen. (Ret.) Lester Lyles. The DACODAI will receive briefings by the Military Components on the progress of diversity and inclusion. Closing remarks by the Chair, Gen. (Ret.) Lyles and the DFO will adjourn the meeting for the day. Friday, May 12, 2023, from 8:15 a.m. to 12:45 p.m. will include continued briefings by the Military Components on the progress of diversity and inclusion, a briefing on the Status of Forces Survey Findings on Why Military Members Leave the Armed Forces by Ms. Carol Newell, Deputy Director, Retention & Readiness Center, of the Defense Personnel Analytics Center. Closing remarks by the Chair, Gen. (Ret.) Lyles and the DFO will adjourn the meeting.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public from 11:45 a.m. to 4:30 p.m. (EST) on May 11, 2023 and from 8:15 a.m. to 12:45 p.m. (EST) on May 12, 2023. The meeting will be held in person at the AUSA Convention Center, 2425 Wilson Blvd., Arlington, VA 22201, with directions at *https://www.ausa.org/directions.* The meeting will also be available via by videoconference at *https://defenseculture-mil.zoomgov.com/j/16155802842* and via telephone at +1 551 285 1373; Meeting ID: 161 5580 2842. Participant access information will be provided after registering. The number of participants is limited and is on a first-come basis. Any member of the public who wish to participate must register by contacting DACODAI at *osd.mc-alex.ousd-p-r.mbx.dacodai@mail.mil* or by contacting Ms. Shirley Raguindin at (571) 645–6952 no later than Thursday, May 4, 2023 (by 5:00 p.m. EST). Once registered, the videoconference information and/or audio number will be provided.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Shirley Raguindin at *shirley.s.raguindin.civ@mail.mil* (email) or (571) 645–6952 (voice) no later than Thursday, May 4, 2023, so that appropriate arrangements can be made.

Written Statements: Pursuant to 41 CFR 102–3.140(c), and section 10(a)(3) of the FACA, the public or interested parties may submit a written statement to the DACODAI. Individuals submitting a written statement must submit their statement no later than 5:00 p.m., Thursday, May 4, 2023, to Ms. Shirley Raguindin (571) 645–6952 (voice) or to *shirley.s.raguindin.civ@mail.mil* (email).

Mailing address is Attention DACODAI, Ms. Shirley Raguindin, 4800 Mark Center Drive, Suite 06E22, Alexandria, VA 22350. Members of the public interested in making an oral statement, must submit a written statement. If a statement is not received by Thursday, May 4, 2023, it may not be provided to, or considered by the DACODAI during this biannual business meeting. After reviewing the written statements, the Chair and the DFO will determine if the requesting persons are permitted to make an oral presentation. The DFO will review all timely submissions with the DACODAI Chair and ensure they are provided to the members of the DACODAI.

Members of the public may also email written statements at *osd.mc-alex.ousd-p-r.mbx.dacodai@mail.mil.* Written statements pertaining to the meeting agenda for the DACODAI's meeting on May 11–12, 2023, must be submitted no later than 5:00 p.m. EST, Thursday, May

4, 2023, to be considered by the DACODAI membership prior to its May 11–12, 2023 meeting.

Dated: April 18, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–08517 Filed 4–21–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 20–0I]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at *neil.g.hedlund.civ@mail.mil* or (703) 697–9214.

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 20–0I.

Dated: April 19, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

DEC 0 8 2021

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 20-0I. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 16-58 of November 17, 2016.

Sincerely,

Jedidiah P. Royal
Acting Director

Enclosures:
1. Transmittal
2. Regional Balance (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 20–0I

REPORT OF ENHANCEMENT OR UPGRADE OF SENSITIVITY OF TECHNOLOGY OR CAPABILITY (SEC. 36(B)(5)(C), AECA)

(i) (U) *Prospective Purchaser:* Government of Qatar

(ii) (U) Sec. 36(b)(1), AECA Transmittal No.: 16–58

Date: November 17, 2016

Military Department: Air Force

(U) *Description:* On November 17, 2016, Congress was notified by Congressional certification transmittal number 16–58 of the possible sale under Section 36(b)(l) of the Arms Export Control Act of weapons, equipment, and support for: seventy-two (72) F–15QA aircraft, one hundred forty-four (144) F–110–GE–129 aircraft engines, eighty (80) Advanced Display Core Processor II (ADCP II), eighty (80) Digital Electronic Warfare Suites (DEWS), eighty (80) M61A ''Vulcan'' gun systems, eighty (80) Link-16 systems, one hundred sixty (160) Joint Helmet Mounted Cueing Systems (JHMCS), three hundred twelve (312) LAU–128 missile launchers, eighty (80) AN/APG–82(V)l Active Electronically Scanned Array (AESA) radars, one hundred sixty (160) Embedded OPS/Inertial Navigation Systems (INS) (EGI), eighty (80) AN/AAQ–13 LANTIRN navigation pods w/ containers, eighty (80) AN/AAQ–33 SNIPER Advanced Targeting Pods w/ containers, eighty (80) AN/AAS–42 Infrared Search and Track Systems (IRST), two hundred (200) AIM–9X Sidewinder missiles, seventy (70) AIM–9X Captive Air Training Missiles (CATM), eight (8) AIM–9X special training missiles, twenty (20) CATM AIM–9X missile guidance units, twenty (20) AIM–9X tactical guidance kits, two hundred fifty (250) AIM–120C7 Advanced Medium Range Air-to-Air Missiles (AMRAAM), five (5) AIM–120C7 spare guidance kits, one hundred (100) AGM–88 High Speed Anti-Radiation Missiles (HARM), forty (40) AGM–88 HARM CATMs, two hundred (200) AGM–154 Joint Standoff Weapons (JSOW), eighty (80) AGM–84L–1 Standoff Strike anti-ship missiles (Harpoon), ten (10) Harpoon exercise missiles, two hundred (200) AGM–65G2 (Maverick) missiles, five hundred (500) GBU–38 Joint Direct Attack Munitions (JDAM) guidance kits, five hundred (500) GBU–31(Vl) JDAM guidance kits, two hundred fifty (250) GBU–54 Laser JDAM guidance kits, two hundred fifty (250) GBU–56 Laser JDAM guidance kits, five hundred (500) BLU–117B bombs, five hundred (500) BLU–117B bombs, six (6) MK–82 Inert bombs, and one thousand (1,000) FMU–152 Joint programmable fuzes. Also included were ACMI (P5) Training Pods, Reece Pods (DB–110), Conformal Fuel Tanks (CFTs), Identification Friend/Foe (IFF) system, AN/AVS–9 Night Vision Goggles (NVG), ARC–210 UHF/UVF radios, LAU–118(v)1/A, LAU–117–AV2A, associated ground support, training materials, mission critical resources and maintenance support equipment, the procurement for various weapon support and test equipment spares, technical publications, personnel training, simulators, and other training equipment, U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistical and program support. The estimated total cost was $21.1 billion. Major Defense Equipment (MDE) constituted $11.5 billion of this total.

On January 5, 2018, Congress was notified by Congressional certification transmittal number 0C–17 for the replacement of the previously notified two hundred (200) AGM–65H/K (Maverick) missiles (MDE), with two hundred (200) AGM–65G (Maverick) missiles (MDE); the inclusion of eighty (80) AAR–57A Common Missile Warning Systems (MDE), which were included in the total value of the DEWS systems previously notified, but not enumerated as MDE in the original notification; the replacement of five hundred (500) BLU–111B bombs, five hundred (500) BLU–117B bombs, and six (6) MK–82 Inert bombs (all MDE), with five hundred (500) BLU–111B or MK–82 (500lbs) bombs, five hundred (500) BLU–117B or MK–84 (2,000lbs) bombs, and six (6) MK–82 Inert bombs (all MDE); and the inclusion of the following sub-components of JDAM and Laser JDAM guidance kits. The MDE sub-components were included in the total value previously notified, but not enumerated in the original notification:

a. Two hundred fifty (250) GBU–38 JDAMs with KMU–572 Air Foil Groups (AFG) (MDE),

b. Two hundred fifty (250) GBU–31 JDAMs with KMU–557 AFG (MDE),

c. Two hundred fifty (250) GBU–54 Laser JDAMs with KMU–572 AFG (MDE) and DSU–38 Laser Seeker, and

d. Two hundred fifty (250) GBU–56 Laser JDAMs with KMU–557 AFG (MDE) and DSU–40 Laser Seeker

The replacement or upgrading of the equipment to MDE did not result in a change to the estimated cost of MDE of $11.5 billion. The total estimated case value remained $21.1 billion.

On November 28, 2018, Congress was notified by Congressional certification transmittal number 0L–18 reported the inclusion of additional training assets as MDE to support the previously notified AGM–65 (Maverick) missiles: five (5) TGM–65 Maverick-Missile Aircrew Trainer; one (1) TGM–65 Maverick-Missile Load Trainer; and one (1) TGM–65 Maverick-Missile Maintenance Trainer. The estimated value of the additional MDE items was $3.5 million but its addition did not result in a net increase in the MDE value notified. The total estimated case value remained $21.1 billion.

This transmittal reports the inclusion of up to five hundred (500) GBU–39/B Small Diameter Bombs Increment I (SDB I) (MDE); one (1) GBU–39 A/B Focused Lethality Munition (FLM) practice bomb (MDE); one (1) GBU–39 B/B Laser SDB practice bomb (MDE); four (4) MS–110 Reconnaissance Pod Retrofit Kits (non-MDE); two (2) Transportable Ground Station Upgrades (non-MDE); one (1) Fixed Ground Station Upgrade (non-MDE); and associated spares; systems/materiel; support; and services. These additional MDE and non-MDE items are valued at $35 million in MDE and $220 million in non-MDE. However, the total estimated case value will remain $21.1 billion.

(iii) (U) *Significance:* This notification is being provided to report the inclusion of MDE that were not enumerated at the time of the original notification. Inclusion of these items of MDE/non-MDE results in an increase in capability over what was originally notified. This equipment will support the requested weapon system, support the capabilities of Qatar's F–15QA fleet, and contribute to interoperability with the United States.

(iv) (U) *Justification:* This proposed sale will support the foreign policy and national security objectives of the United States. Qatar is an important force for political stability and economic progress in the Arabian Gulf region. The procurement of SDBs, MS–110 Retrofit Kits, and associated materiel/services will significantly improve Qatar's defense capabilities to meet current and future threats and deter regional aggression.

(v) (U) *Sensitivity of Technology:*

1. The GBU–39/B Small Diameter Bomb Increment I (SDB I) is a 250-pound weapon designed as a small, all weather, autonomous, conventional, air-to-ground, precision glide weapon able to strike fixed and stationary re-locatable targets from standoff range. The SDB I weapon system consists of the weapons, the BRU–61/A (4- place pneumatic carriage system), shipping and handling containers for a single weapon and the BRU–61/A either empty

or loaded, and a weapon planning module. It has integrated diamond-back type wings that deploy after release, which increase the glide time and therefore maximum range. The SDB I Anti-Jam Global Positioning System aided Inertial Navigation System (AJGPS/INS) provides guidance to the coordinates of a stationary target. The payload/warhead is a very effective multipurpose penetrating and blast fragmentation warhead couples with a cockpit selectable electronic fuze. Its size and accuracy allow for an effective munition with less collateral damage. A proximity sensor provides height of burst capability.

2. An MS–110 Retrofit kit converts a DB–110 into an MS–110. The MS–110 is a Non-Program of Record tactical reconnaissance pod with long range, day/night, multi-spectral sensor technology. The multi-spectral sensor lets the end user see color and better distinguish subtle features that a DB–110's dual band imagery cannot. The pod can transmit imagery via a datalink to ground-stations for near-real time analysis and exploitation. The pod is designed for carriage on fighter jets. There are no advanced technologies in the system, subsystems, equipment or technical manuals that could be exploited by a technologically-advanced adversary.

(vi) (U) *Date Report Delivered to Congress:* December 8, 2021

[FR Doc. 2023–08576 Filed 4–21–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Reserve Forces Policy Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Reserve Forces Policy Board (RFPB) will take place.

DATES: The RFPB will hold a two-day open meeting to the public on Tuesday, May 9, 2023, from 8:30 a.m. to 5:30 p.m. at the U.S. Capitol Visitor Center, Washington, DC, and on Wednesday, May 10, 2023, from 8:45 a.m. to 4 p.m. at the American Legion, Washington, DC.

ADDRESSES: The RFPB meeting address is the Capitol Visitor Center, First Street SE, Washington, DC, on May 9, 2023, and the American Legion Headquarters, 1608 K Street NW, Washington, DC, on May 10, 2023.

FOR FURTHER INFORMATION CONTACT: Colonel Rich Sudder, Designated Federal Officer (DFO) at *richard.m.sudder.mil@mail.mil* or (571) 236–7991. Mailing address: Reserve Forces Policy Board, 5109 Leesburg Pike, Suite 501, Falls Church, VA 22041. Website: *https://rfpb.defense.gov/.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5, U.S.C. (commonly known as the ''Federal Advisory Committee Act'' or ''FACA''), section 552b of title 5, U.S.C. (commonly known as the ''Government in the Sunshine Act''), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to obtain, review, and evaluate information related to strategies, policies, and practices designed to improve and enhance the capabilities, efficiency, and effectiveness of the Reserve Components.

Agenda: The RFPB will hold a two-day open meeting to the public on Tuesday, May 9, 2023, from 8:30 a.m. to 5:30 p.m., and Wednesday, May 10, 2023, from 8:45 a.m. to 4 p.m. The May 9 meeting at the Capitol Visitor Center will focus on discussions with: the Secretary of Defense (invited), or designee, will address key National Defense Strategy challenges facing our Nation, and the priorities for the Total Force integrating the Reserve Component; representatives from the Reserve Organization of America will provide an update on their priorities involving the Reserve Component, families, and veterans; National Guard Association of the United States representatives will discuss priorities to improve the relevance, readiness, and modernization of the National Guard, to include quality of life initiatives; a representative of the Blue Star Families will discuss their priorities to strengthen military families and programs to solve the unique challenges of military family life; a representative from Women in Military Service will present on military women and their service, courage, patriotism, and leadership; National Guard and Reserve Component representatives will provide updates on the status of current legislative proposals and their impacts to the Reserve Components; the RFPB subcommittee break-out sessions with the Subcommittee for Integration of Total Force Personnel Policy, the Subcommittee for the Reserve Components' Role in Homeland Defense and Support to Civil Authorities, and the Subcommittee for Total Force Integration will conduct discussions on their subcommittees' priorities and focus areas received from this meeting's discussions and other areas where the Board can best provide support to the taskings of the Secretary of Defense and the sponsor, the Under Secretary of Defense for Personnel and Readiness (USD(P&R)); key representatives from the Senate Armed Services Committee's (SASC) Personnel Subcommittee and Airland Subcommittee, the Senate Committee on Homeland Security and Governmental Affairs, the House Armed Services Committee's (HASC) Military Personnel Subcommittee and Tactical Air and Land Forces Subcommittee, the House Committee on Homeland Security, the Guard and Reserve Components Caucus, and the For Country Caucus, will discuss their respective committee and subcommittee initiatives, policies, and programs directly related to the National Guard and Reserve Components; and lastly, end of day remarks by the RFPB Chair.

The May 10 meeting at the American Legion, Washington, DC, will focus on discussions with: key representatives from the Office of Secretary of Defense (OSD) and the Military Services will discuss recruiting initiatives, marketing strategies, and projections from each Service's end-strength goals; key representatives from the Office for Diversity, Equity, and Inclusion, Office of the USD(P&R), will discuss Department of Defense's initiatives and priorities to ensure a diverse workforce; the RFPB subcommittee break-out sessions with the Subcommittee for Integration of Total Force Personnel Policy, the Subcommittee for the Reserve Components' Role in Homeland Defense and Support to Civil Authorities, and the Subcommittee for Total Force Integration will conduct discussions on their subcommittees' priorities and focus areas received from this meeting's discussions and other areas where the Board can provide support to the taskings of the Secretary of Defense and the sponsor, USD(P&R), involving the Reserve Component; Major General Anne Gunter, Special Assistant to the Chief, Air Force Reserve for Reserve Space Personnel Policy and Integration, will provide updates on the status of the Space Force legislative proposals and consideration for the

part-time force of a single Space Component; Honorable Debra Wada, Chair of the RFPB's Subcommittee on Integration of Total Force Personnel Policy, will provide updates to the Board on subcommittee discussion and deliberations to determine where the RFPB can provide support to the taskings of the Secretary of Defense and the sponsor, USD(P&R); and will conclude with the RFPB Chair's closing remarks.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, the meeting is open to the public from 8:30 a.m. to 5:30 p.m. on May 9, 2023, and from 8:45 a.m. to 4 p.m. on May 10, 2023. Seating is based on a first-come, first-served basis. All members of the public who wish to attend the public meeting must contact Colonel Rich Sudder, the DFO, no later than 12 p.m. on Monday, May 1, 2023, as listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, interested persons may submit written statements to the RFPB at any time about its approved agenda or at any time on the Board's mission. Written statements should be submitted to the RFPB's DFO at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section. If statements pertain to a specific topic being discussed at the planned meeting, then these statements must be submitted no later than 5 business days prior to the meeting in question. Written statements received after this date may not be provided to or considered by the RFPB until its next meeting. The DFO will review all timely submitted written statements and provide copies to all the committee members before the meeting that is the subject of this notice. Please note that since the RFPB operates under the provisions of the FACA, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to being posted on the RFPB's website.

Dated: April 19, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–08618 Filed 4–21–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21–0N]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at *neil.g.hedlund.civ@mail.mil* or (703) 697–9214.

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 21–0N.

Dated: April 19, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

December 20, 2021

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 21-0N. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 12-27 of May 22, 2012.

Sincerely,

Jedidiah P. Royal
Acting Director

Enclosures:
1. Transmittal

BILLING CODE 5001–06–C

Transmittal No. 21–0N

REPORT OF ENHANCEMENT OR UPGRADE OF SENSITIVITY OF TECHNOLOGY OR CAPABILITY (SEC. 36(B)(5)(C), AECA)

(i) *Purchaser:* Government of Australia

(ii) *Sec. 36(b)(l), AECA Transmittal No.:* 12–27
Date: May 22, 2012
Military Department: Navy

(iii) *Description:* On May 22, 2012, Congress was notified by Congressional certification transmittal number 12–27 of the possible sale, under Section 36(b)(l) of the Arms Export Control Act, of 12 EA–18G Modification Kits to convert F/A–18F aircraft to G configuration, (34) AN/ALQ–99F(V) Tactical Jamming System Pods, (22) CN–1717/A Interference Cancellation Systems (INCANS), (22) R–2674(C)/A Joint Tactical Terminal Receiver (JTTR) Systems, (30) LAU–118 Guided Missile Launchers, Command Launch Computer (CLC) for High Speed Anti-Radiation Missile (HARM) and Advanced Anti-Radiation Guided Missile (AARGM, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government (USG) and contractor engineering, technical, and logistics support services, and other related elements of logistical and program support. The estimated total cost was $1.7 billion. Major Defense Equipment (MDE) constituted $1 billion of this total.

This transmittal notifies the inclusion of the following MDE items: three (3) R–2718(C)/A Joint Tactical Terminal Receivers (JTTR); AN/ALQ–99 components, two (2) Low Band transmitters; two (2) Low Band transmitter VPOL antennas; eighteen (18) Band 4 transmitters; nine (9) Band 5/6 transmitters; twenty (20) Band 7 transmitters; thirteen (13) Band 8 transmitters; three (3) hardbacks; six (6) Universal High Band Radomes (UHBR); and one (1) G Extended Low Band

Radomes (GELBR). Non-MDE items include transmitter shipping containers and VPOL shipping containers.

The overall MDE value will increase by $50 million to $1.05 billion. The total estimated case value will increase to $1.75 billion.

(iv) *Significance:* This proposed sale will allow Australia to effectively maintain its current force projection capability that enhances interoperability with U.S. forces well into the future.

(v) *Justification:* This proposed sale supports the foreign policy and national security objectives of the United States by improving the security of a Major Non-NATO Ally that is a key partner of the United States in ensuring peace and stability around the world.

(vi) *Sensitivity of Technology:*

The R–2718(C)/A JTTR System and associated hardware provides eight receive channels that enable the aircraft to access near real-time threat, survivor and Blue Force Tracking data that will be transmitted to the pilot, thereby increasing the users' critical situational awareness.

AN/ALQ–99F(V) Tactical Jamming System pod is equipped with a hardback that supports fore and aft transmitters, a nose-mounted Ram Air Turbine (RAT), a centrally-mounted Universal Exciter Unit (UEU), a pod control unit, and two steerable high-gain transmission arrays. The TJS Pod receives threat parameter data and generates an appropriate response by modulating a radio frequency oscillator.

The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

(vii) *Date Report Delivered to Congress:* December 20, 2021

[FR Doc. 2023–08581 Filed 4–21–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare an Environmental Impact Statement for the North of Lake Okeechobee Storage Reservoir Section 203 Study, Highlands County, Florida

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

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement for South Florida Water Management District's (SFWMD) North of Lake Okeechobee Storage Reservoir (also known as the ''Lake Okeechobee Component A Reservoir (LOCAR) Section 203 Study''), Highlands County, Florida.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers (Corps) intends to prepare a National Environmental Policy Act (NEPA) assessment for the North of Lake Okeechobee Storage Reservoir Section 203 Study that is being conducted by the Non-Federal Interest, the SFWMD. The SFWMD is beginning preparation of a feasibility study pursuant to section 203 of the Water Resources Development Act (WRDA) of 1986, as amended, for submission to the Assistant Secretary of the Army for Civil Works (ASA(CW)). The Corps intends to support the ASA(CW) review of the SFWMD's study by preparing a NEPA assessment concurrent with the SFWMD feasibility study and prior to the ASA(CW)'s review. The SFWMD Section 203 feasibility study will be for Component A, a 200,000 acre-foot above ground storage reservoir to capture water from the Kissimmee River prior to it flowing into Lake Okeechobee, to pull water in from Lake Okeechobee during high water levels, and to take in basin flows. The purpose of the study is to document anticipated improvements to the quantity, timing, and distribution of water flows to help manage lake levels and improve lake ecology by detaining water during wet periods for later use in the dry periods and to enhance water supply reliability to realize the benefits envisioned in the Comprehensive Everglades Restoration Plan (CERP). The purpose of the associated NEPA is to complete the Federal compliance requirements related to the Section 203 study for use by the Non-Federal Interest in completing the Section 203 Report.

DATES: Written comments must be submitted by May 24, 2023. A scoping meeting will be held on April 27, 2023.

ADDRESSES: To ensure the Corps has sufficient time to consider public input in the preparation of the Draft EIS, scoping comments should be submitted by email to *LOCAR@usace.army.mil* or by surface mail to U.S. Army Corps of Engineers, Planning and Policy Division, Environmental Branch, 701 San Marco Blvd., Jacksonville, FL 32207.

FOR FURTHER INFORMATION CONTACT: Gretchen Ehlinger at 904–232–1665 or email at *LOCAR@usace.army.mil.* Additional information is also available at *www.sfwmd.gov/LOCAR.*

SUPPLEMENTARY INFORMATION:

Background: The Everglades ecosystem, including Lake Okeechobee, encompasses a system of diverse surface water and wetland landscapes that are hydrologically and ecologically connected across more than 200 miles from north to south and across 18,000 square miles of southern Florida. In 2000, the U.S. Congress authorized the Federal government, in partnership with the State of Florida, to embark upon a multi-decade, multi-billion-dollar Comprehensive Everglades Restoration Plan (CERP) to further protect and restore the remaining Everglades ecosystem while providing for other water-related needs of the region. CERP involves modification of the existing network of drainage canals and levees that make up the Central and Southern Florida (C&SF) Project by implementation of 68 project components. Since CERP was approved, progress has been made in the planning, design, construction, and operation of south Florida ecosystem restoration projects. To enable further progress, additional storage north of Lake Okeechobee located in the Kissimmee River Region is critically important for benefits to Lake Okeechobee, such as improved water levels, lake ecology, and additional required water storage and water supply as identified in the C&SF Project Comprehensive Review Study Final Integrated Feasibility Report and Programmatic Environmental Impact Statement (Yellow Book 1999) component A. There is an ongoing effort in the implementation of CERP to identify opportunities to restore the quantity, quality, timing, and distribution of flows into Lake Okeechobee. Water inflows into Lake Okeechobee greatly exceed outflow capacity; thus, many times there is too much water within Lake Okeechobee that needs to be released to ensure the ecological integrity of the lake, which affects the estuaries that receive the water. Lake levels that are too high or too low, and inappropriate recession and ascension rates, can adversely affect native vegetation and fish and wildlife species that depend upon the lake for foraging and reproduction. The volume and frequency of undesirable freshwater releases to the east and west lowers salinity in the estuaries, severely impacting oysters, seagrasses, and fish. Additionally, high nutrient levels adversely affect in-lake water quality, estuary habitat, and habitat throughout the greater Everglades.

Proposed Action: The objectives of the LOCAR study are to develop a plan to improve the quality, quantity, timing, and distribution of water entering Lake Okeechobee; provide for better management of lake water levels; reduce

damaging releases to the Caloosahatchee and St. Lucie estuaries; and improve system-wide operational flexibility.

Alternatives: The study will identify, evaluate, and recommend to decision makers an appropriate and coordinated solution for additional above ground storage of 200,000 acre-feet to capture water from the Kissimmee River prior to it flowing into Lake Okeechobee, to pull water in from Lake Okeechobee during high water levels, and to take in basin flows. Alternatives will include no action and alternatives that include several reservoir footprints and associated improvements, levees, pump stations, water control structures, emergency overflow and recreational features. By this Notice, the public is invited to identify potential alternatives, information, and analyses relevant to the proposed action.

Summary of Expected Impacts: Long-term beneficial and adverse impacts are expected. Adverse impacts are expected from conversion of habitat that may be used by certain threatened and endangered species (for example, the crested caracara, Florida grasshopper sparrow, bonneted bats, and Florida panther) to reservoir storage and other components. Significant beneficial impacts to Lake Okeechobee and the Northern Estuaries are expected from the additional 200,000 acre-feet of water storage north of Lake Okeechobee. Therefore, an EIS is being proposed.

Environmental Review and Consultation Requirements: The proposed project will be reviewed for compliance with laws that would be applicable to a Federal project, including but not limited to the following: the Coastal Zone Management Act, Endangered Species Act, Fish and Wildlife Coordination Act, Clean Water Act, Clean Air Act, Farmland Protection Policy Act, and National Historic Preservation Act.

NEPA Schedule: The Draft Environmental Impact Assessment is expected to be available for public review in fall 2023. A 45-day public review period will be provided for interested parties and agencies to review and comment on this draft document. All interested parties are encouraged to respond to this notice and provide a current address if they wish to be notified of the Draft EIS circulation. A Record of Decision would be approved and signed no earlier than 30 days after the published Final EIS.

Public Involvement and Scoping: A scoping letter will be used to invite comments from Federal, State, and local agencies; affected Federally recognized Native American groups; and other interested private organizations and individuals. A scoping meeting will be held on April 27, 2023, from 2:00 to 4:00 p.m. and again from 6:00 to 8:00 p.m. at the Indian River State College Dixon Hendry Campus, 2229 NW 9th Ave., Okeechobee, Florida 34972. The formal portion of the workshop will begin at 3:00 p.m. and 7:00 p.m. respectively. Following the scoping meeting, individuals who have not already submitted their comments should submit them within 30 days of publication of this Notice for consideration in the draft Section 203 report/environmental documentation by either email to *LOCAR@usace.army.mil* or mail to U.S. Army Corps of Engineers, Planning and Policy Division, Environmental Branch, 701 San Marco Blvd., Jacksonville, FL 32207.

Daniel H. Hibner,

Brigadier General, U.S. Army, Commanding.

[FR Doc. 2023–08522 Filed 4–21–23; 8:45 am]

BILLING CODE 3720–58–P

DELAWARE RIVER BASIN COMMISSION

Notice of Public Hearing and Business Meeting

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, May 10, 2023. A business meeting will be held the following month on Wednesday, June 7, 2023. Both the hearing and the business meeting are open to the public. The public hearing will be conducted virtually, and the business meeting will be held in person.

Public Hearing. The Commission will conduct the public hearing virtually on May 10, 2023, commencing at 1:30 p.m. Hearing items will include draft dockets for withdrawals, discharges, and other projects that could have a substantial effect on the basin's water resources, as well as resolutions to: (a) adopt the 2024–2026 Water Resources Program; (b) adopt the Commission's annual current expense and capital budgets for the fiscal year ending June 30, 2024; (c) apportion among the signatory parties the amounts required for the support of the current expense and capital budgets for the fiscal year ending June 30, 2024; and (d) reauthorize the Toxics Advisory Committee. A list of the projects scheduled for hearing, including project descriptions, along with links to draft docket approvals, will be posted on the Commission's website, *www.drbc.gov,* in a long form of this notice at least ten days before the hearing date. Links to drafts of the noted resolutions will be posted at the same time.

Written comments on matters scheduled for hearing on May 10, 2023 will be accepted through 5 p.m. on Monday, May 15, 2023.

The public is advised to check the Commission's website periodically during the ten days prior to the hearing date, as items scheduled for hearing may be postponed if additional time is needed to complete the Commission's review. Items also may be added up to ten days prior to the hearing date. In reviewing docket descriptions, the public is asked to be aware that the details of projects may change during the Commission's review, which is ongoing.

Public Meeting. The public business meeting on June 7, 2023 will begin at 1 p.m. and will include: adoption of the Minutes of the Commission's March 8, 2023 business meeting; announcements of upcoming meetings and events; a report on hydrologic conditions; reports by the Executive Director and the Commission's General Counsel; and consideration of any items for which a hearing has been completed or is not required. The agenda is expected to include consideration of the draft dockets for withdrawals, discharges, and other projects that were subjects of the public hearing on May 10, 2023.

After all scheduled business has been completed and as time allows, the business meeting will be followed by up to one hour of Open Public Comment, an opportunity to address the Commission on any topic concerning management of the Basin's water resources outside the context of a duly noticed, on-the-record public hearing.

There will be no opportunity for additional public comment for the record at the June 7, 2023 business meeting on items for which a hearing was completed on May 10, 2023 or a previous date. Commission consideration on June 7, 2023 of items for which the public hearing is closed may result in approval of the item (by docket or resolution) as proposed, approval with changes, denial, or deferral. When the Commissioners defer an action, they may announce an additional period for written comment on the item, with or without an additional hearing date, or they may take additional time to consider the input they have already received without requesting further public input. Any deferred items will be considered for action at a public meeting of the Commission on a future date.

Advance Registration and Sign-Up for Oral Comment. Registration links for those who wish to attend and speak

during the (virtual) public hearing and for those who wish to speak during the (in-person) Open Public Comment session immediately following the business meeting will be posted at *www.drbc.gov* at least ten days before each meeting date. The Commission's hearing, business meeting and Open Public Comment session will also be livestreamed on YouTube at *https://www.youtube.com/@DRBC_1961.* For assistance, please contact Ms. Patricia Hausler of the Commission staff, at *patricia.hausler@drbc.gov.*

Addresses for Written Comment. Written comment on items scheduled for hearing may be made through the Commission's web-based comment system, a link to which is provided at *www.drbc.gov.* Use of the web-based system ensures that all submissions are captured in a single location and their receipt is acknowledged. Exceptions to the use of this system are available based on need, by writing to the attention of the Commission Secretary, DRBC, P.O. Box 7360, 25 Cosey Road, West Trenton, NJ 08628–0360. For assistance, please contact Patricia Hausler at *patricia.hausler@drbc.gov.*

Accommodation for Special Needs. Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the meeting or hearing should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how we can accommodate your needs.

Those with limited internet access may listen and speak at virtual public meetings of the DRBC using any of several toll-free phone numbers that will be provided to all virtual meeting registrants.

Additional Information, Contacts. Additional public records relating to hearing items may be examined at the Commission's offices by appointment by contacting Denise McHugh, 609–883–9500, ext. 240. For other questions concerning hearing items, please contact David Kovach, Project Review Section Manager, at 609–883–9500, ext. 264.

Authority. Delaware River Basin Compact, Public Law 87–328, Approved September 27, 1961, 75 Statutes at Large, 688, sec. 14.4.

Dated: April 17, 2023.

Pamela M. Bush,

Commission Secretary and Assistant General Counsel.

[FR Doc. 2023–08619 Filed 4–21–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

Docket No.: ED–2023–SCC–0019]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Teacher and Principal Survey of 2023–2024 (NTPS 2023–24) Data Collection

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before May 24, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, (202) 245–6347.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Teacher and Principal Survey of 2023–2024 (NTPS 2023–24) Data Collection.

OMB Control Number: 1850–0598.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: Individuals or households. *Total Estimated Number of Annual Responses:* 108,478.

Total Estimated Number of Annual Burden Hours: 52,092.

Abstract: The National Teacher and Principal Survey (NTPS), conducted every two or three years by the National Center for Education Statistics (NCES), is a system of related questionnaires that provides descriptive data on the context of elementary and secondary education. Redesigned from the Schools and Staffing Survey (SASS) with a focus on flexibility, timeliness, and integration with other ED data, the NTPS system allows for school, principal, and teacher characteristics to be analyzed in relation to one another. NTPS is an in-depth, nationally representative survey of first through twelfth grade public and private school teachers, principals, and schools. Kindergarten teachers in schools with at least a first grade are also surveyed. NTPS utilizes core content and a series of rotating modules to allow timely collection of important education trends as well as trend analysis. Topics covered include characteristics of teachers, principals, schools, teacher training opportunities, retention, retirement, hiring, and shortages. NTPS also functions as the base-year for the longitudinal studies Teacher Follow-up Survey (TFS) and Principal Follow-up Survey (PFS).

A previous request (OMB #1850–0598 v.41) to conduct the NTPS 2023–24 preliminary activities, namely special district recruitment, recruitment of endorsers, and Screener Survey for the NTPS and the NTPS follow-up surveys, was approved in December 2022. This request for public comment and OMB review is for the NTPS 2023–24 Main Study final procedures and materials, including all contact materials and survey questionnaires. Public comment and OMB approval for the follow-up surveys to NTPS 2023–24—the Teacher Follow-up Survey (TFS) and the Principal Follow-up Survey (PFS)—will be requested in an additional package in winter 2023–24.

Dated: April 19, 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. 2023–08550 Filed 4–21–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Modeling and Simulation Program

AGENCY: Office of Postsecondary Education, 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 the Modeling and Simulation Program (MSP), Assistance Listing Number 84.116S. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES:

Applications Available: April 24, 2023.

Deadline for Transmittal of Applications: June 23, 2023.

Deadline for Intergovernmental Review: August 22, 2023.

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 *www.federalregister.gov/d/2022-26554.* Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Robin M. Dabney, U.S. Department of Education, 400 Maryland Avenue SW, Room 2B117, Washington, DC 20202–4260. Telephone: (202) 453–7908. Email: *Robin.Dabney@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 MSP is designed to promote the study of modeling and simulation at institutions of higher education (IHEs) through collaboration with new and existing programs, and specifically to promote the use of technology through the creation of accurate models that can simulate processes or recreate real life, by—

(a) Establishing a task force at the Department to raise awareness of and define the study of modeling and simulation;

(b) Providing grants to IHEs to develop new modeling and simulation degree programs; and

(c) Providing grants for IHEs to enhance existing modeling and simulation degree programs.

Background: According to House Report 117–403, which accompanied the FY 2023 appropriations bill for the Departments of Labor, Health and Human Services, and Education, and related agencies, ''modeling and simulation technology has numerous applications for Federal and State governments and their partners in the defense, education, gaming, shipbuilding, and workforce training sectors, allowing them to generate data to help make decisions or predictions about their systems.'' [1] Modeling and simulation programs can develop tools or techniques in numerous industries to support education and training where they otherwise would be high risk or hazardous in a real-world scenario. Programs can also leverage modeling simulation and technology, such as, but not limited to, experiential learning models, economic and predictive modeling, and advanced data science and analytics. This program seeks to fund the development or enhancement of degree programs focused on modeling and simulation technology. Through grant support, we hope to increase the availability and capacity of such programs in today's world. In FY 2022, the Department provided funding to three IHEs to develop degree programs in this field. Given the additional funding for this program in FY 2023, the Department will fund new projects to expand opportunities for students who are interested in pursuing this type of degree program.

In addition, under the MSP, a task force provides input into the development of curriculum and research on the instructional methods and pedagogy needed to further develop modeling and simulation programs. In accordance with section 891(b)(1) of the Higher Education Opportunity Act of 2008, as amended (HEA), the task force will help to define the study of modeling and simulation (including the content of modeling and simulation classes and programs), identify best practices for such study, identify core knowledge and skills that individuals who participate in modeling and simulation programs should acquire, and provide recommendations to the Secretary on these topics and on grants distribution. Grantees under this program will be members of the task force.

Priorities: This notice contains two absolute priorities and one invitational priority. Applicants may only apply under one of the two absolute priorities. In accordance with 34 CFR 75.105(b)(2)(iv), the absolute priorities are from section 891 of the HEA, 20 U.S.C. 1161v.

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 one of these priorities. Applicants must specify which absolute priority they are responding to in their application abstract and must respond to each element of the selected absolute priority.

These priorities are:

Absolute Priority 1—Enhancing Modeling and Simulation at Institutions of Higher Education.

To be considered for a grant under this absolute priority, an eligible institution must propose to enhance an existing modeling and simulation degree program, including a major, minor, or career-track program, or an existing certificate or concentration program, and must include in its application—

(a) A letter from the president or provost of the eligible institution that demonstrates the institution's commitment to the enhancement of the modeling and simulation program at the institution of higher education;

(b) An identification of designated faculty responsible for the enhancement of the institution's modeling and simulation program; and

(c) A detailed plan for how the grant funds will be used to enhance a modeling and simulation program of the institution.

Absolute Priority 2—Establishing Modeling and Simulation Programs.

To be considered for a grant under this absolute priority, an eligible institution must propose to establish, or work toward the establishment of, a modeling and simulation program, including a major, minor, career-track, certificate, or concentration program, and must include in its application—

(a) A letter from the president or provost of the eligible institution that demonstrates the institution's

[1] H. Rept. 117–403 at p. 291 (2023).

commitment to the establishment of a modeling and simulation program at the institution of higher education;

(b) A detailed plan for how the grant funds will be used to establish a modeling and simulation program at the institution; and

(c) A description of how the modeling and simulation program established under this priority will complement existing programs and fit into the institution's current program and course offerings.

Invitational Priority: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Promoting Equity in Student Access to Educational Resources and Opportunities.

Under this priority, an application must demonstrate that the project will be implemented by or in partnership with one or more of the following entities:

(a) Community colleges (as defined in this notice).

(b) Historically Black colleges and universities (as defined in this notice).

(c) Tribal Colleges and Universities (as defined in this notice).

(d) Minority-serving institutions (as defined in this notice).

Definitions: The definition of ''modeling and simulation'' is from section 891 of the HEA. The definitions of ''demonstrates a rationale,'' ''logic model,'' ''project component,'' and ''relevant outcome'' are from 34 CFR 77.1.

Community college means ''junior or community college'' as defined in section 312(f) of the HEA, as amended.

Demonstrates a rationale means 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.

Historically Black colleges and universities means colleges and universities that meet the criteria set out in 34 CFR 608.2.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Note: In developing logic models, applicants may want to use resources such as the Regional Educational Laboratory Program's (REL Pacific) Education Logic Model Application, available at *https://ies.ed.gov/ncee/edlabs/regions/pacific/elm.asp.* Other sources include: *https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014025.pdf, https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014007.pdf,* and *https://ies.ed.gov/ncee/edlabs/regions/northeast/pdf/REL_2015057.pdf.*

Minority-serving institution means an institution that is eligible to receive assistance under sections 316 through 320 of part A of title III, under part B of title III, or under title V of the HEA.

Modeling and simulation means a field of study related to the application of computer science and mathematics to develop a level of understanding of the interaction of the parts of a system and of a system as a whole.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Tribal College or University has the meaning ascribed it in section 316(b)(3) of the HEA.

Program Authority: 20 U.S.C. 1161v; 20 U.S.C. 1138–1138d; and the Consolidated Appropriations Act, 2023 (Pub. L. 117–328).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 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.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $7,920,000.

Approximately 50 percent of available funds will be used to fund awards under Absolute Priority 1, and approximately 50 percent of available funds will be used to fund awards under Absolute Priority 2.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $750,000 to $1,155,000.

Estimated Average Size of Awards: $990,000.

Maximum Award: We will not make an award exceeding $1,155,000 for the entire budget period of 36 months.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Note: Applicants must set aside sufficient funds to carry out activities related to task force participation. A listing of line-item costs associated with task force activities must include travel for at least two or three grantee representatives for two or three annual meetings to be held in Washington, DC, and/or site visits to organizations using modeling and simulation technologies to help expand awareness, and costs associated with a white paper outlining lessons learned from the enhanced or established modeling and simulation program.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* A public or private nonprofit institution of higher education as defined in section 101(a) of the HEA. Applicants must be eligible to apply under either Absolute Priority 1 or Absolute Priority 2 as outlined in the *Absolute Priorities* section. Applicants applying under Absolute Priority 1 must also be an institution of higher education that has—

(a) An established modeling and simulation degree program, including a major, minor, or career-track program; or

(b) An established modeling and simulation certificate or concentration program.

2. a. *Cost Sharing or Matching:* In accordance with the requirements in section 891(c)(1)(D) and (d)(1)(D) of the HEA, each eligible institution receiving a grant under this program must provide, from non-Federal sources, in cash or in-kind, an amount equal to 25

percent of the amount of the grant to carry out the activities supported by the grant.

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 Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

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 *www.federalregister.gov/d/2022-26554,* 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. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the MSP, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended). Because we plan to post on our website the application narrative sections of all MSP applications, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *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.

4. *Funding Restrictions:* In accordance with section 891(c)(4) of the HEA, a grant awarded under Absolute Priority 1, Enhancing Modeling and Simulation at Institutions of Higher Education, must be used by an eligible institution to carry out a plan to enhance the modeling and simulation program of the institution, which may include—

(a) Introducing activities to assist in the establishment of a major, minor, or career-track modeling and simulation program at the eligible institution;

(b) Expanding the multidisciplinary nature of the institution's modeling and simulation programs;

(c) Recruiting students into the field of modeling and simulation through the provision of fellowships or assistantships;

(d) Creating new courses to complement existing courses and reflect emerging developments in the modeling and simulation field;

(e) Conducting research to support new methodologies and techniques in modeling and simulation; and

(f) Purchasing equipment necessary for modeling and simulation programs.

In accordance with section 891(d)(3) of the HEA, a grant awarded under Absolute Priority 2, Establishing Modeling and Simulation Programs, may be used by an eligible institution to—

(a) Establish, or work toward the establishment of, a modeling and simulation program, including a major, minor, career-track, certificate, or concentration program at the eligible institution;

(b) Provide adequate staffing to ensure the successful establishment of the modeling and simulation program, which may include the assignment of full-time dedicated or supportive faculty; and

(c) Purchase equipment necessary for modeling and simulation program.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *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, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch).
- 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 one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. The points assigned to each criterion are indicated in parentheses next to the criterion. An application may earn up to a total of 100 points based on the selection criteria. All applications will be evaluated based on the selection criteria as follows:

(a) *Significance.* (Maximum 25 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 extent to which the proposed project is likely to yield findings that may be utilized by other appropriate agencies and organizations. (up to 5 points)

(ii) 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. (up to 10 points)

(iii) The extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies. (up to 10 points)

(b) *Quality of the project design.* (Maximum 50 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which there is a conceptual framework underlying the

proposed research or demonstration activities and the quality of that framework. (up to 10 points)

(ii) The extent to which the proposed activities constitute a coherent, sustained program of training in the field. (up to 10 points)

(iii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance. (up to 10 points)

(iv) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition. (up to 10 points)

(v) The extent to which the proposed project demonstrates a rationale (as defined in this notice). (up to 10 points)

(c) *Quality of project personnel.* (Maximum 5 points)

(1) The Secretary considers 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. (up to 2 points)

(3) In addition, the Secretary considers the qualifications, including relevant training and experience, of the project director or principal investigator. (up to 3 points)

(d) *Adequacy of resources.* (Maximum 5 points)

(1) The Secretary considers the adequacy of the resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(e) *Quality of the management plan.* (Maximum 5 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 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.

(f) *Quality of the project evaluation.* (Maximum 10 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. (up to 5 points)

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (up to 5 points)

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).

For this competition, a panel of external reviewers will read, prepare a written evaluation of, and score all eligible applications using the selection criteria provided in this notice. The individual scores of the reviewers will be added and the sum divided by the number of reviewers to determine the peer review score. The Department may use more than one tier of reviews in evaluating grantees. The Department will prepare a rank order of applications based solely on the evaluation of their quality according to the selection criteria.

In the event there are two or more applications with the same final score in the rank order listing, and there are insufficient funds to fully support each of these applications, the Department will apply the following procedure to determine which application or applications will receive an award:

First Tiebreaker: The first tiebreaker will be the highest average score for the selection criterion ''Quality of the Project Design.'' If a tie remains, the second tiebreaker will be utilized.

Second Tiebreaker: The second tiebreaker will be the highest average score for the selection criterion ''Significance.'' If a tie remains, the third tiebreaker will be utilized.

Third Tiebreaker: The third tiebreaker will be the highest average score for the selection criterion ''Quality of the Project Evaluation.'' If a tie remains, the fourth tiebreaker will be utilized.

Fourth Tiebreaker: The fourth tiebreaker will be the highest average score for the selection criterion ''Adequacy of Resources.'' If a tie remains, the fifth tiebreaker will be utilized.

Fifth Tiebreaker: The fifth tiebreaker will be the application that proposes to provide the highest non-Federal share percentage, or the highest total dollar match if non-Federal share percentages are determined to be equal.

3. *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.

4. *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.

5. *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 or subgrantee 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.*

5. *Performance Measures:* For the purposes of the Department reporting under 34 CFR 75.110, the Department will use the following performance measures to evaluate the success of the MSP:

(a) The number of students enrolled in the established and enhanced modeling and simulation programs, including major, minor, career-track, certificate, and concentration programs.

(b) The number of new modeling and simulation courses in established and enhanced programs developed under the MSP that reflect emerging developments in the modeling and simulation field.

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 the program contact person 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.

Nasser H. Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2023–08586 Filed 4–21–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0068]

Agency Information Collection Activities; Comment Request; Vocational Rehabilitation Financial Report (RSA–17)

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before June 23, 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–0068. 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 David Steele, (202) 245–6520.

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: Vocational Rehabilitation Financial Report (RSA–17).

OMB Control Number: 1820–0017.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: State, local, and Tribal governments.

Total Estimated Number of Annual Responses: 312.

Total Estimated Number of Annual Burden Hours: 10,193.

Abstract: The Vocational Rehabilitation Financial Report (RSA–17) collects data on the State Vocational Rehabilitation (VR) Services program activities for agencies funded under the Rehabilitation Act of 1973 (Rehabilitation Act), as amended by title IV of the Workforce Innovation and Opportunity Act (WIOA). The Rehabilitation Services Administration (RSA) of the Office of Special Education and Rehabilitative Services (OSERS), U.S. Department of Education (Department) uses the data to evaluate and monitor the financial and programmatic performance of VR agencies. The data collected via the RSA 17 are necessary to ensure Federal requirements imposed by the Rehabilitation Act and its implementing Federal regulations are satisfied.

Dated: April 18, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–08526 Filed 4–21–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, May 18, 2023; 5:30 p.m.–7:00 p.m. CDT.

ADDRESSES: West Kentucky Community and Technical College, Emerging Technology Center, Room 109, 5100 Alben Barkley Drive, Paducah, Kentucky 42001.

Attendees should check with the Board Support Manager (below) for any meeting format changes due to COVID–19 protocols.

FOR FURTHER INFORMATION CONTACT: Eric Roberts, Board Support Manager, by phone: (270) 554–3004 or email: *eric@pgdpcab.org.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Review of Agenda
- Administrative Issues
- Public Comment Period

Public Participation: The meeting is open to the public. The EM SSAB, Paducah, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Eric Roberts as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Comments received by no later than 5:00 p.m. CDT on Monday, May 15, 2023 will be read aloud during the meeting. Comments will also be accepted after the meeting, by no later than 5:00 p.m. CDT on Friday, May 26, 2023. Please submit comments to Eric Roberts at the aforementioned email address. Please put ''Public Comment'' in the subject line. Individuals who wish to make oral statements pertaining to agenda items should contact Eric

Roberts at the telephone number listed above. Requests must be received as soon as possible prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. The EM SSAB, Paducah, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Eric Roberts, Board Support Manager, Emerging Technology Center, Room 221, 4810 Alben Barkley Drive, Paducah, KY 42001; Phone: (270) 554–3004. Minutes will also be available at the following website: *https://www.energy.gov/pppo/pgdp-cab/listings/meeting-materials.*

Signed in Washington, DC, on April 18, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–08520 Filed 4–21–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Advisory Committee for Nuclear Security

AGENCY: Department of Energy, National Nuclear Security Administration.

ACTION: Notice of closed meeting.

SUMMARY: This notice announces a closed meeting of the Advisory Committee for Nuclear Security (ACNS). The Federal Advisory Committee Act requires that public notice of meetings be announced in the **Federal Register**. Due to national security considerations, the meeting will be closed to the public and matters to be discussed are exempt from public disclosure under Executive Order 13526, and the Atomic Energy Act of 1954.

DATES: May 11, 2023; 9:00 a.m. to 5:00 p.m.

ADDRESSES: Microsoft Teams Video Conferencing.

FOR FURTHER INFORMATION CONTACT: Ms. Watti Hill, Office of Strategic Partnerships & Engagements, National Nuclear Security Administration, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585, (202) 586–8266; *watti.hill@nnsa.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background: The ACNS provides advice and recommendations to the Under Secretary Nuclear Security & Administrator, NNSA on topics related to the stewardship, governance, and maintenance of the Nation's nuclear deterrent; nuclear security; nonproliferation; counterterrorism; counterproliferation; and other activities and operations of NNSA, as the Administrator may direct.

Purpose of the Meeting: The Quarterly meeting of the Advisory Committee for Nuclear Security (ACNS) will cover the current status of Committee activities as well as additional charges and is expected to contain discussions of a sensitive nature.

Type of Meeting: In the interest of national security, the meeting will be closed to the public. The Federal Advisory Committee Act, 5 U.S.C. App. 2, section 10(d), and the Federal Advisory Committee Management Regulation, 41 CFR 102–3.155, incorporate by reference the Government in the Sunshine Act, 5 U.S.C. 552b, which, at 552b(c)(1) and (c)(3) permits closure of meetings where restricted data or other classified matters will be discussed.

Tentative Agenda: Welcome; Headquarters and ACNS Updates; discussion of reports and current reviews; discussion of next charges; NNSA leadership out brief; conclusion.

Public Participation: There will be no public participation in this closed meeting. Those wishing to provide written comments or statements to the Committee are invited to send them to Ms. Watti Hill at the address listed above.

Minutes: The minutes of the meeting will not be available.

Signed in Washington, DC, on April 18, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–08541 Filed 4–21–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas & Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR23–45–000.

Applicants: Moss Bluff Hub, LLC.

Description: § 284.123 Rate Filing: Moss Bluff Address Change Filing to be effective 4/18/2023.

Filed Date: 4/18/23.

Accession Number: 20230418–5053.

Comment Date: 5 p.m. ET 5/9/23.

Docket Numbers: RP23–688–000.

Applicants: Centra Pipelines Minnesota Inc.

Description: § 4(d) Rate Filing: Updated Index of Shippers April 2023 to be effective 6/1/2023.

Filed Date: 4/18/23.

Accession Number: 20230418–5079.

Comment Date: 5 p.m. ET 5/1/23.

Docket Numbers: RP23–689–000.

Applicants: Exxon Mobil Corporation, Par Montana Holdings, LLC.

Description: Joint Petition for Limited Waiver of Capacity Release Regulations, et al. of Exxon Mobil Corporation, et al.

Filed Date: 4/17/23.

Accession Number: 20230417–5271.

Comment Date: 5 p.m. ET 5/1/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 18, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08611 Filed 4–21–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Staff Attendance at North American Electric Reliability Corporation Standard Drafting Team Meeting

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and/or Commission staff may attend the following meetings:

North American Electric Reliability Corporation Project 2021–07 Extreme Cold Weather Grid Operations, Preparedness, and Coordination Standard Drafting Team Meeting on: April 25, 2023 (1:00 p.m.–3:00 p.m. eastern time)

Further information regarding these meetings may be found at: *https://www.nerc.com/Pages/Calendar.aspx*.

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceeding:

Docket No. RD23–1–000 Extreme Cold Weather Reliability Standards EOP–011–3 and EOP–012–1

For further information, please contact Chanel Chasanov, 202–502–8569, or *chanel.chasanov@ferc.gov.*

Dated: April 18, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08608 Filed 4–21–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RD23–2–001; AD21–15–000]

North American Electric Reliability Corporation, Joint Federal-State Task Force on Electric Transmission; Notice of North American Electric Reliability Corporation Physical Security Reliability Standards Study and Inviting Post-Meeting Comments

On February 15, 2023, in Docket No. AD21–15–000, the Joint Federal-State Task Force on Electric Transmission (Task Force) convened for a public meeting to discuss physical security of the transmission system.

On April 14, 2023, in Docket No. RD23–2–001, the North American Electric Reliability Corporation (NERC) submitted its report on its study evaluating Reliability Standard CIP–014–3, as directed by the Commission's December 15, 2022 order.[1]

All interested persons are invited to file comments no later than May 15, 2023. Submitting a single document for both dockets is encouraged but not required.

Comments may be filed electronically via the internet.[2] Instructions are available on the Commission's website *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, submissions sent via the U.S. Postal Service must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, MD 20852.

For more information related to NERC's study report, please contact Leigh Anne Faugust, (202) 502–6396, or *leigh.faugust@ferc.gov.* For more information related to the Task Force, please contact Gretchen Kershaw, (202) 502–8213, or *gretchen.kershaw@ferc.gov.*

Dated: April 18, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08610 Filed 4–21–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD23–4–000]

Commission Information Collection Activities (FERC–725G); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on proposed revisions of the currently approved information collection, FERC–725G, (Mandatory Reliability Standards for the Bulk-Power System).

DATES: Comments on the collection of information are due June 23, 2023.

ADDRESSES: You may submit copies of your comments (identified by Docket No. RD23–4–000) by one of the following methods:

Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:
  - *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov*. For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov*.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–725G (Mandatory Reliability Standards for the Bulk-Power System: Approval of PRC Reliability Standard PRC–002–4.

OMB Control No.: 1902–0252.

Type of Request: Approval of FERC–725G information collection requirements associated with proposed PRC Reliability Standard PRC–002–4.

Abstract: This Notice pertains to the FERC–725G information collection requirements associated with PRC Reliability Standard PRC–002–4, (Disturbance Monitoring and Reporting Requirements), the associated Violation Risk Factors and Violation Severity Levels, and the proposed implementation plan including the retirement of the currently effective Reliability Standard PRC–002–3, proposed by the North American Electric Reliability (NERC) in a petition dated March 10, 2023. NERC also

[1] *N. Am. Elec. Reliability Corp.,* 181 FERC ¶ 61,230 (2022).

[2] *See* 18 CFR 385.2001(a)(1)(iii) (2022).

proposed the retirement of Reliability Standard PRC–002–3. The Commission included the petition in a Combined Notice of Filings published on March 23, 2023, at 88 FR 17564.

On March 4, 2022, the Commission's Office of Electric Reliability approved PRC–002–3 in Docket No. RD22–2–000. The FERC submitted an information collection request to OMB on October 25, 2022, in association with that Order, and that request is currently pending review at OMB under the heading ''FERC–725G (DLO in RD22–2–000), Mandatory Reliability Standards for the Bulk-Power System: PRC Rel Stds.''

NERC's proposed revisions: (1) clarify requirements for notifications under the standard, including when generator owners and transmission owners must have data for an applicable transformer or transmission line; (2) clarify and make consistent terminology used in the Standard; (3) incorporate the implementation timeframe for newly-identified facilities; and (4) add a criterion defining substantial changes in fault current levels requiring changing the locations for which certain data is recorded.

The information collection requirements contained in this Notice are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[1] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[2] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

The number of respondents below is based on an estimate of the NERC compliance registry for balancing authority, transmission operator, generator operator, generator owner and reliability coordinator. The Commission based its paperwork burden estimates on the NERC compliance registry as of February 10, 2023. According to the registry, there are 325 transmission owners, 1,117 generator owners and 12 reliability coordinators. The estimates are based on the change in burden from the currently pending standard (*i.e.,* PRC–002–3) to the standard approved in this Docket (*i.e.,* PRC–002–4). The Commission based the burden estimates on staff experience, knowledge, and expertise.

The estimates are based combination on one-time (years 1 and 2) obligations to follow the revised Reliability Standard.

Proposed Reliability Standard PRC–002–4 (Disturbance Monitoring and Reporting Requirements) would advance the reliability of the BES by providing needed clarity regarding the application of the standard's requirements. First, proposed Reliability Standard PRC–002–4 would clarify requirements for notifications under the standard, including when Generator Owners and Transmission Owners must have data for an applicable transformer or transmission line. Second, the proposed Reliability Standard clarifies and promotes consistency in terminology used in the standard. Third, the proposed Reliability Standard brings the implementation timeframe for newly identified facilities into the standard. Last, the proposed Reliability Standard adds a criterion that defines what constitutes a substantial change in fault current levels that would require changing the locations for which sequence of events (SER) and fault recording (FR) data is recorded. The revisions and supporting rationale are discussed in further detail below.

Proposed Reliability Standard PRC–002–4, the subject of this Notice, contains a number of revisions intended to clarify the standard, aid in its administration, and reduce ambiguities and unnecessary burdens. The proposed change to Attachment 1 Step 7 allows the possibility of significant change over time without a required change in data recording location. The Reliability Standard PRC–002–4 would provide necessary clarifications to the standard in the requirements R1, R3 and R5 and promotes consistency in terminology used in the standard. The new requirement R13 brings the implementation timeframe for newly identified facilities into the standard. These changes would clarify the extent of the required notifications and data collection requirements consistent with other provisions in the currently effective and approved versions of the PRC–002 standard.

PROPOSED CHANGES DUE TO ORDER IN DOCKET NO. RD23–4–000

Reliability standard & requirement	Type[3] and number of entity	Number of annual responses per entity	Total number of responses	Average number of burden hours per response[4]	Total burden hours
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)
FERC–725G					
PRC–002–4:					
TO	325	1	325	16 hrs., $978.72.	5,200 hrs., $318,084.
GO	1,117	1	1,117	16 hrs., $978.72.	17,872 hrs., $1,093,230.24.
RC	12	1	12	8 hrs., $489.36.	96 hrs., $5,872.32.
Total for PRC–002, One Time Estimate—Years 1 and 2.			1,454	40 hrs., $2,446.8	23,168 hrs., $1,417,186.56.

[1] 44 U.S.C. 3507(d).

[2] 5 CFR part 1320.

[3] TO=Transmission Owner, GO=Generator Owner and RC=Reliability Coordinator.

[4] The estimated hourly cost (salary plus benefits) derived using the following formula: Burden Hours per Response * $/hour = Cost per Response. based on the Bureau of Labor Statistics (BLS), as of February 10, 2023, of an Electrical Engineer (17–2071)—$77.02,—and for Information and Record Clerks (43–4199) $42.35, The average hourly burden cost for this collection is [($77.02 + $42.35)/2 = $61.17)] rounded to $61.17 an hour.

The one-time burden of 23,168 hours that only applies for Year 1 and 2 will be averaged over three years (23,168 hours ÷ 3 = 7,722.667 (7,722.67 − rounded) hours/year over three years). The number of responses is also averaged over three years (1,454 responses ÷ 3 = 484.667 (484.67 − rounded) responses/year).

The responses and burden hours for Years 1–3 will total respectively as follows for Year 1 one-time burden:

Year 1: 484.67 responses; 7,722.67 hours
Year 2: 484.67 responses; 7,722.67 hours
Year 3: 484.67 responses; 7,722.67 hours

Comments concerning the information collection and retirement approved by the Commission in this Docket and the associated burden estimates, should be sent to the Commission in this docket and may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at the following email address: *oira_submission@omb.eop.gov*.

Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[5] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[6] The actions approved here fall within this categorical exclusion in the Commission's regulations.

Document Availability

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*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov*.

By direction of the Commission.

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: April 17, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–08512 Filed 4–21–23; 8:45 am]

BILLING CODE 6717–01–P

[5] *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[6] 18 CFR 380.4(a)(2)(ii).

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: EC23–74–000.
Applicants: Energy Harbor Corp.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Energy Harbor Corp.
Filed Date: 4/17/23.
Accession Number: 20230417–5260.
Comment Date: 5 p.m. ET 6/16/23.

Docket Numbers: EC23–75–000.
Applicants: Northern Indiana Public Service Company LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Northern Indiana Public Service Company LLC.
Filed Date: 4/17/23.
Accession Number: 20230417–5263
Comment Date: 5 p.m. ET 5/8/23.

Docket Numbers: EC23–76–000.
Applicants: Sunrise Power Company, LLC, Hull Street Energy, LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Sunrise Power Company, LLC, et al.
Filed Date: 4/17/23.
Accession Number: 20230417–5264.
Comment Date: 5 p.m. ET 5/8/23.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23–5–000; QF22–1120–002; QF22–1121–002; QF22–1122–002.
Applicants: CSU 2020 Renewable Energy, LLC, CSU 2020 Renewable Energy, LLC, CSU 2020 Renewable Energy, LLC, Standard Solar, Inc.
Description: Errata to October 18, 2022 Petition for Declaratory Order of Standard Solar, Inc.
Filed Date: 4/5/23.
Accession Number: 20230405–5198.
Comment Date: 5 p.m. ET 5/5/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1435–002.
Applicants: Energy Harbor LLC.
Description: Compliance filing: Informational Filing Regarding Planned Transfer to be effective N/A.
Filed Date: 4/17/23.
Accession Number: 20230417–5161.
Comment Date: 5 p.m. ET 5/8/23.

Docket Numbers: ER20–1721–002.
Applicants: Energy Harbor LLC.
Description: Compliance filing: Informational Filing Regarding Generation Facilities Sale ER20–1721 to be effective N/A.
Filed Date: 4/17/23.
Accession Number: 20230417–5163.
Comment Date: 5 p.m. ET 5/8/23.

Docket Numbers: ER23–1038–001.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Compliance to Clarify Future Extensions of Non-Performance Charges ER23–1038 to be effective 4/4/2023.
Filed Date: 4/18/23.
Accession Number: 20230418–5127.
Comment Date: 5 p.m. ET 5/9/23.

Docket Numbers: ER23–1158–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Request to Defer Action on SA Filing Original NSA SA No. 6788; Queue No. AC2–136 to be effective 12/31/9998.
Filed Date: 4/18/23.

Accession Number: 20230418–5051.
Comment Date: 5 p.m. ET 5/9/23.
Docket Numbers: ER23–1165–000.
Applicants: McFarland Solar A, LLC.
Description: McFarland Solar A, LLC submits Supplement to Application and Request for Shortened Comment Period.
Filed Date: 4/10/23.
Accession Number: 20230410–5045.
Comment Date: 5 p.m. ET 4/28/23.
Docket Numbers: ER23–1246–001.
Applicants: Generac Grid Services LLC.
Description: Tariff Amendment: Supplement to Application for MBR Authority to be effective 4/1/2023.
Filed Date: 4/17/23.
Accession Number: 20230417–5172.
Comment Date: 5 p.m. ET 5/8/23.
Docket Numbers: ER23–1656–000.
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: Magnolia Energy Park LGIA Filing to be effective 4/5/2023.
Filed Date: 4/18/23.
Accession Number: 20230418–5106.
Comment Date: 5 p.m. ET 5/9/23.
Docket Numbers: ER23–1657–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEC–NCMPA1 SA No. 212 to be effective 5/1/2023.
Filed Date: 4/18/23.
Accession Number: 20230418–5111.
Comment Date: 5 p.m. ET 5/9/23.

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: April 18, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08607 Filed 4–21–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1927–140]

PacifiCorp; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 CFR part 380, Commission staff reviewed PacifiCorp's application for an amendment to the license of the North Umpqua Hydroelectric Project No. 1927 and have prepared an Environmental Assessment (EA) for the proposed amendment. The licensee proposes to amend the project license to include the construction, operation, and maintenance of new pumped storage facilities connecting the existing Toketee and Fish Creek developments. The North Umpqua project consists of eight developments located on the North Umpqua River and two of its tributaries, the Clearwater River and Fish Creek, in Douglas County, Oregon and is partially located on lands administered by the U.S. Department of Agriculture's Forest Service and the U.S. Department of the Interior's Bureau of Land Management.

The EA contains Commission staff's analysis of the potential environmental effects of the proposed amendment to the license, and concludes that the proposed amendment, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA may be viewed on the Commission's website at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket number (P–1927) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

For further information, contact Brian Bartos at 202–502–6679 or *Brian.bartos@ferc.gov.*

Dated: April 17, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–08514 Filed 4–21–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2572–133, 2458–247]

Great Lakes Hydro America, LLC; Notice of Environmental Site Review

The Federal Energy Regulatory Commission and Great Lakes Hydro America, LLC will conduct, in conjunction with the Initial Study Report meeting(s), an environmental site review of the Ripogenus and Penobscot Mills Projects. The projects are located on the West Branch of the Penobscot River and Millinocket Stream, in Piscataquis and Penobscot Counties, Maine. The site review will focus on Ripogenus Dam and McKay Station, Millinocket Lake Pump Station, and Stone Dam, as well as the West Branch Penobscot River in those areas. As time permits, other areas that may toured include the Holbrook Side Channel; boat launches, including the Ambajejus Boat Launch; transmission line corridors; Millinocket Gate House; and Millinocket battery bank.

Date and Time: Friday, May 5, 2023; 8:00 a.m.–about 12:00 p.m. (EST).

Location: Meet at the Millinocket Office, 1024 Central St., Millinocket, Maine 04462.

The site review is open to the public and resource agencies. All participants interested in attending the site review should provide their own transportation.

Questions about the site review should be directed to Allan Creamer at (202) 502–8365, or *allan.creamer@ferc.gov.* If you plan to attend, please notify Randy Dorman at (207) 775–5605, or *randy.dorman@brookfieldrenewable.com,* as well as Allan Creamer, no later than April 28, 2023.

Dated: April 17, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–08513 Filed 4–21–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2023–0075; FRL–10887–01–OCSPP]

Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registrations have been cancelled only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before October 23, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2023–0075, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Christopher Green, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–2707; email address: *green.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides.

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

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

II. What action is the Agency taking?

This notice announces receipt by the Agency of requests from registrants to cancel certain pesticide products registered under FIFRA section 3 (7 U.S.C. 136a) or 24(c) (7 U.S.C. 136v(c)). These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit.

Unless the Agency determines that there are substantive comments that warrant further review of the requests or the registrants withdraw their requests, EPA intends to issue a cancellation order in the **Federal Register** canceling all of the affected registrations.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Company No.	Product name	Active ingredients
264–328	264	Sevin Brand 80% Dust Base	Carbaryl (056801/63–25–2)—(80%).
432–885	432	Sevin Brand Granular Carbaryl Insecticide	Carbaryl (056801/63–25–2)—(7%).
432–1213	432	Sevin Granules (1% Sevin) Ant, Flea, Tick & Grub Killer.	Carbaryl (056801/63–25–2)—(1%).
432–1226	432	Sevin 80 WSP Carbaryl Insecticide	Carbaryl (056801/63–25–2)—(80%).

The registrants of the products listed in Table 1 of Unit II, have requested 18-months after cancellation to sell existing stocks.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in this unit.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA company No.	Company name and address
264	Bayer CropScience, LP, Agent Name: Bayer CropScience, LLC, 801 Pennsylvania Avenue, Suite 900, Washington, DC 20004.
432	Bayer Environmental Science, A Division of Bayer CropScience, LP, 700 Chesterfield Parkway West, Chesterfield, MO 63017.

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

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA (7 U.S.C. 136d(f)(1)(B)) requires that before acting on a request for voluntary cancellation,

EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) (7 U.S.C. 136d(f)(1)(C)) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants in Table 2 of Unit II, have not requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 180-day comment period on the proposed requests.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. If the requests for voluntary cancellation are granted, the Agency intends to publish the cancellation order in the **Federal Register**.

In any order issued in response to these requests for cancellation of product registrations, listed in Table 1 of Unit II, EPA proposes to include the following provisions for the treatment of any existing stocks of the products listed in Table 1 of Unit II.

For: 264–328, 432–885, 432–1213, and 432–1226

For 264–328, 432–885, 432–1213, and 432–1226, listed in Table 1 of Unit II, the registrants have requested 18-months after cancellation to sell existing stocks. Thereafter, registrants will be prohibited from selling or distributing the pesticides identified in Table 1 of Unit II, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

Authority: 7 U.S.C. 136 *et seq.*

Dated: April 17, 2023.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2023–08582 Filed 4–21–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2023–0247; FRL–10917–01–OGC]

Proposed Settlement Agreement, Clean Water Act and Administrative Procedure Act Claims

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with the Environmental Protection Agency (EPA) Administrator's March 18, 2022, memorandum regarding ''Consent Decrees and Settlement Agreements to resolve Environmental Claims Against the Agency,'' notice is hereby given of a proposed settlement agreement in *Center for Biological Diversity* v. *EPA and FWS,* No. 21–71306 (9th Cir.). In October 2021, Center for Biological Diversity (Plaintiff) filed a petition in the U.S. Court of Appeals for the Ninth Circuit challenging EPA's issuance of the 2021 Pesticide General Permit (PGP), a permit issued by EPA pursuant to the Clean Water Act (CWA). The petition alleged that EPA failed to comply with the CWA in issuing the 2021 PGP, and that EPA and the U.S. Fish and Wildlife Service (FWS) failed to comply with the Endangered Species Act (ESA) in issuing the 2021 PGP. EPA seeks public input on a proposed settlement agreement prior to its final decision-making with regard to potential settlement of the litigation.

DATES: Written comments on the proposed settlement agreement must be received by May 24, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2023–0247 online at *https://www.regulations.gov* (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number 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, see the ''Additional Information About Commenting on the Proposed Settlement Agreement'' heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Alec Mullee, Water Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone: (202) 564–9616; email address: *mullee.alec@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

The PGP covers discharges to waters of the United States from the following pesticide use patterns: mosquito and other flying insect pest control; weed and algae pest control; animal pest control; and forest canopy pest control. Shortly after EPA issued the 2021 PGP, Plaintiff filed a petition for review in the Ninth Circuit. The parties requested a stay before briefing commenced, which the court granted. During the stay, the Parties negotiated this proposed settlement agreement. Under the proposed agreement, EPA would take specified steps with respect to implementation of the 2021 PGP. EPA and FWS would complete ESA consultation on EPA's next issuance of the PGP (the 2026 PGP) by October 31, 2024. When EPA proposes the 2026 PGP, EPA would propose for public comment certain changes to its monitoring and recordkeeping provisions. EPA would issue the 2026 PGP by December 17, 2024, to be effective in October 2026.

For a period of thirty (30) days following the date of publication of this notice, EPA will accept written comments relating to the proposed settlement agreement from persons who are not parties to the litigation. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments received disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the CWA, ESA or APA.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How can I get a copy of the proposed settlement agreement?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2023–0247 contains a

copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

The electronic version of the public docket for this action contains a copy of the proposed settlement agreement and is available through *https://www.regulations.gov.* You may use *https://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.''

B. How and to whom do I submit comments?

Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2023–0247 via *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from this docket. 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *https://www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. We strongly encourage you to send your comments electronically to ensure that they are received prior to the close of the comment period. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA does not plan to consider these late comments.

Steven M. Neugeboren,

Associate General Counsel.

[FR Doc. 2023–08606 Filed 4–21–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10866–01–OLEM]

Forty-Third Update of the Federal Agency Hazardous Waste Compliance Docket

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Since 1988, the Environmental Protection Agency (EPA) has maintained a Federal Agency Hazardous Waste Compliance Docket (''Docket'') under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). CERCLA requires EPA to establish a Docket that contains certain information reported to EPA by Federal facilities that manage hazardous waste or from which a reportable quantity of hazardous substances has been released. This notice identifies the Federal facilities not previously listed on the Docket and identifies Federal facilities reported to EPA since the last update on October 24, 2022. In addition to the list of additions to the Docket, this notice includes a section with revisions of the previous Docket list and a section of Federal facilities that are to be deleted from the Docket. Thus, the revisions in this update include one addition, zero deletions, and zero corrections to the Docket since the previous update.

DATES: This list is current as of March 27, 2023.

FOR FURTHER INFORMATION CONTACT: Electronic versions of the Docket and more information on its implementation can be obtained at *http://www.epa.gov/fedfac/federal-agency-hazardous-waste-compliance-docket* by clicking on the link for *Cleanups at Federal Facilities* or by contacting Jonathan Tso (*Tso.Jonathan@epa.gov*), Federal Agency Hazardous Waste Compliance Docket Coordinator, Federal Facilities Restoration and Reuse Office. Additional information on the Docket and a complete list of Docket sites can be obtained at: *https://www.epa.gov/fedfac/federal-agency-hazardous-waste-compliance-docket-1.*

SUPPLEMENTARY INFORMATION:

Table of Contents

1.0 Introduction

Section 120(c) of CERCLA, 42 U.S.C. 9620(c), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires EPA to establish the Federal Agency Hazardous Waste Compliance Docket. The Docket contains information on Federal facilities that manage hazardous waste and such information is submitted by Federal agencies to EPA under sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6925, 6930, and 6937. Additionally, the Docket contains information on Federal facilities with a reportable quantity of hazardous substances that has been released and such information is submitted by Federal agencies to EPA under section 103 of CERCLA, 42 U.S.C. 9603. Specifically, RCRA section 3005 establishes a permitting system for

certain hazardous waste treatment, storage, and disposal (TSD) facilities; RCRA section 3010 requires waste generators, transporters and TSD facilities to notify EPA of their hazardous waste activities; and RCRA section 3016 requires Federal agencies to submit biennially to EPA an inventory of their Federal hazardous waste facilities. CERCLA section 103(a) requires the owner or operator of a vessel or onshore or offshore facility to notify the National Response Center (NRC) of any spill or other release of a hazardous substance that equals or exceeds a reportable quantity (RQ), as defined by CERCLA section 101. Additionally, CERCLA section 103(c) requires facilities that have ''stored, treated, or disposed of'' hazardous wastes and where there is ''known, suspected, or likely releases'' of hazardous substances to report their activities to EPA.

CERCLA section 120(d) requires EPA to take steps to assure that a Preliminary Assessment (PA) be completed for those sites identified in the Docket and that the evaluation and listing of sites with a PA be completed within a reasonable time frame. The PA is designed to provide information for EPA to consider when evaluating the site for potential response action or inclusion on the National Priorities List (NPL).

The Docket serves three major purposes: (1) To identify all Federal facilities that must be evaluated to determine whether they pose a threat to human health and the environment sufficient to warrant inclusion on the National Priorities List (NPL); (2) to compile and maintain the information submitted to EPA on such facilities under the provisions listed in section 120(c) of CERCLA; and (3) to provide a mechanism to make the information available to the public. Previous Docket updates are available at *https://www.epa.gov/fedfac/previous-federal-agency-hazardous-waste-compliance-docket-updates.*

This notice provides some background information on the Docket. Additional information on the Docket requirements and implementation are found in the Docket Reference Manual, Federal Agency Hazardous Waste Compliance Docket found at *http://www.epa.gov/fedfac/docket-reference-manual-federal-agency-hazardous-waste-compliance-docket-interim-final* or obtained by calling the Regional Docket Coordinators listed below. This notice also provides changes to the list of sites included on the Docket in three areas: (1) Additions, (2) Deletions, and (3) Corrections. Specifically, additions are newly identified Federal facilities that have been reported to EPA since the last update and now are included on the Docket; the deletions section lists Federal facilities that EPA is deleting from the Docket.[1] The information submitted to EPA on each Federal facility is maintained in the Docket repository located in the EPA Regional office of the Region in which the Federal facility is located; for a description of the information required under those provisions, *see* 53 FR 4280 (February 12, 1988). Each repository contains the documents submitted to EPA under the reporting provisions and correspondence relevant to the reporting provisions for each Federal facility.

In prior updates, information was also provided regarding No Further Remedial Action Planned (NFRAP) status changes. However, information on NFRAP and NPL status is no longer being provided separately in the Docket update as it is now available at: *http://www.epa.gov/fedfacts/federal-facility-cleanup-sites-searchable-list* or by contacting the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

2.0 Regional Docket Coordinators

Contact the following Docket Coordinators for information on Regional Docket repositories:

- *US EPA Region 1.* Alyssa Sierra (HBS), 5 Post Office Square, Suite 100, Mail Code: 01–5, Boston MA 02109–3912, (617) 918–1603.
- *US EPA Region 2.* Cathy Moyik (ERRD), 290 Broadway, New York, NY 10007–1866, (212) 637–4339.
- *US EPA Region 3.* Joseph Vitello (3SD12), 1600 John F. Kennedy Blvd., Philadelphia, PA 19103, (215) 814–3354.
- *US EPA Region 3.* Dawn Fulsher (3SD12), 1600 John F. Kennedy Blvd., Philadelphia, PA 19103, (215) 814–3270.
- *US EPA Region 4.* Alayna Famble (9T25), 61 Forsyth St. SW, Atlanta, GA 30303, (404) 562–8444.
- *US EPA Region 5.* David Brauner (SR–6J), 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–1526.
- *US EPA Region 6.* Philip Ofosu (6SF–RA), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–3178.
- *US EPA Region 7.* Todd H Davis (SUPRERSB), 11201 Renner Blvd., Lenexa, KS 66219, (913) 551–7749.
- *US EPA Region 8.* Ryan Dunham (EPR–F), 1595 Wynkoop Street, Denver, CO 80202, (303) 312–6627.
- *US EPA Region 9.* Leslie Ramirez (SFD–6–1), 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3978.
- *US EPA Region 10.* Ken Marcy, Oregon Operations Office, 805 SW Broadway, Suite 500, Portland, OR 97205, (503) 326–3269.

3.0 Revisions of the Previous Docket

This section includes a discussion of the additions, deletions and corrections to the list of Docket facilities since the previous Docket update.

3.1 Additions

These Federal facilities are being added primarily because of new information obtained by EPA (for example, recent reporting of a facility pursuant to RCRA sections 3005, 3010, or 3016 or CERCLA section 103). CERCLA section 120, as amended by the Defense Authorization Act of 1997, specifies that EPA take steps to assure that a Preliminary Assessment (PA) be completed within a reasonable time frame for those Federal facilities that are included on the Docket. Among other things, the PA is designed to provide information for EPA to consider when evaluating the site for potential response action or listing on the NPL. This notice includes one addition.

3.2 Deletions

There are no statutory or regulatory provisions that address deletion of a facility from the Docket. However, if a facility is incorrectly included on the Docket, it may be deleted from the Docket. The criteria EPA uses in deleting sites from the Docket include: a facility for which there was an incorrect report submitted for hazardous waste activity under RCRA (*e.g.,* 40 CFR 262.44); a facility that was not Federally-owned or operated at the time of the listing; a facility included more than once (*i.e.,* redundant listings); or when multiple facilities are combined under one listing. (*See* Docket Codes (*Reasons for Deletion of Facilities*) for a more refined list of the criteria EPA uses for deleting sites from the Docket.) Facilities being deleted no longer will be subject to the requirements of CERCLA section 120(d). This notice includes zero deletions.

3.3 Corrections

Changes necessary to correct the previous Docket are identified by both EPA and Federal agencies. The corrections section may include changes in addresses or spelling, and corrections of the recorded name and ownership of a Federal facility. In addition, changes in the names of Federal facilities may be made to establish consistency in the

[1] See section 3.2 for the criteria for being deleted from the Docket.

Docket or between the Superfund Enterprise Management System (SEMS) and the Docket. For the Federal facility for which a correction is entered, the original entry is as it appeared in previous Docket updates. The corrected update is shown directly below, for easy comparison. This notice includes zero corrections.

4.0 Process for Compiling the Updated Docket

In compiling the newly reported Federal facilities for the update being published in this notice, EPA extracted the names, addresses, and identification numbers of facilities from four EPA databases—the WebEOC, the Biennial Inventory of Federal Agency Hazardous Waste Activities, the Resource Conservation and Recovery Act Information System (RCRAInfo), and SEMS—that contain information about Federal facilities submitted under the four provisions listed in CERCLA section 120(c).

EPA assures the quality of the information on the Docket by conducting extensive evaluation of the current Docket list and contacts the other Federal Agency (OFA) with the information obtained from the databases identified above to determine which Federal facilities were, in fact, newly reported and qualified for inclusion on the update. EPA is also striving to correct errors for Federal facilities that were previously reported. For example, state-owned or privately-owned facilities that are not operated by the Federal government may have been included. Such problems are sometimes caused by procedures historically used to report and track Federal facilities data. Representatives of Federal agencies are asked to contact the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice if revisions of this update information are necessary.

5.0 Facilities Not Included

Certain categories of facilities may not be included on the Docket, such as: (1) Federal facilities formerly owned by a Federal agency that at the time of consideration was not Federally-owned or operated; (2) Federal facilities that are small quantity generators (SQGs) that have not, more than once per calendar year, generated more than 1,000 kg of hazardous waste in any single month; (3) Federal facilities that are very small quantity generators (VSQGs) that have never generated more than 100 kg of hazardous waste in any month; (4) Federal facilities that are solely hazardous waste transportation facilities, as reported under RCRA section 3010; and (5) Federal facilities that have mixed mine or mill site ownership.

An EPA policy issued in June 2003 provided guidance for a site-by-site evaluation as to whether ''mixed ownership'' mine or mill sites, typically created as a result of activities conducted pursuant to the General Mining Law of 1872 and never reported under section 103(a) of CERCLA, should be included on the Docket. For purposes of that policy, mixed ownership mine or mill sites are those located partially on private land and partially on public land. This policy is found at *http://www.epa.gov/fedfac/policy-listing-mixed-ownership-mine-or-mill-sites-created-result-general-mining-law-1872.* The policy of not including these facilities may change; facilities now omitted may be added at some point if EPA determines that they should be included.

6.0 Facility NPL Status Reporting, Including NFRAP Status

EPA tracks the NPL status of Federal facilities listed on the Docket. An updated list of the NPL status of all Docket facilities, as well as their NFRAP status, is available at *https://www.epa.gov/fedfacts/federal-facility-cleanup-sites-searchable-list* or by contacting the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. In prior updates, information regarding NFRAP status changes was provided separately.

7.0 Information Contained on Docket Listing

The information is provided in three tables. The first table is a list of additional Federal facilities that are being added to the Docket. The second table is a list of Federal facilities that are being deleted from the Docket. The third table is for corrections.

The Federal facilities listed in each table are organized by the date reported. Under each heading is listed the name and address of the facility, the Federal agency responsible for the facility, the statutory provision(s) under which the facility was reported to EPA, and a code.[2]

The statutory provisions under which a Federal facility is reported are listed in a column titled ''Reporting Mechanism.'' Applicable mechanisms are listed for each Federal facility: for example, Sections 3005, 3010, 3016, 103(c), or Other. ''Other'' has been added as a reporting mechanism to indicate those Federal facilities that otherwise have been identified to have releases or threat of releases of hazardous substances. The National Contingency Plan at 40 CFR 300.405 addresses discovery or notification, outlines what constitutes discovery of a hazardous substance release, and states that a release may be discovered in several ways, including: (1) A report submitted in accordance with section 103(a) of CERCLA, *i.e.,* reportable quantities codified at 40 CFR 302; (2) a report submitted to EPA in accordance with section 103(c) of CERCLA; (3) investigation by government authorities conducted in accordance with section 104(e) of CERCLA or other statutory authority; (4) notification of a release by a Federal or State permit holder when required by its permit; (5) inventory or survey efforts or random or incidental observation reported by government agencies or the public; (6) submission of a citizen petition to EPA or the appropriate Federal facility requesting a preliminary assessment, in accordance with section 105(d) of CERCLA; (7) a report submitted in accordance with section 311(b)(5) of the Clean Water Act; and (8) other sources. As a policy matter, EPA generally believes it is appropriate for Federal facilities identified through the CERCLA discovery and notification process to be included on the Docket.

The complete list of Federal facilities that now make up the Docket and the NPL and NFRAP status are available to interested parties and can be obtained at *https://www.epa.gov/fedfacts/federal-facility-cleanup-sites-searchable-list* or by contacting the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. As of the date of this notice, the total number of Federal facilities that appear on the Docket is 2,392.

Gregory Gervais,

Director, Federal Facilities Restoration and Reuse Office, Office of Land and Emergency Management.

7.1 Docket Codes/Reasons for Deletion of Facilities

- *Code 1.* Small-Quantity Generator and Very Small Quantity Generator. Show citation box.
- *Code 2.* Never Federally Owned and/or Operated.
- *Code 3.* Formerly Federally Owned and/or Operated but not at time of listing.
- *Code 4.* No Hazardous Waste Generated.

[2] Each Federal facility listed in the update has been assigned a code that indicates a specific reason for the addition or deletion. The code precedes this list.

• *Code 5.* (This code is no longer used.)
• *Code 6.* Redundant Listing/Site on Facility.
• *Code 7.* Combining Sites Into One Facility/Entries Combined.
• *Code 8.* Does Not Fit Facility Definition.

7.2 Docket Codes/Reasons for Addition of Facilities

• *Code 15.* Small-Quantity Generator with either a RCRA 3016 or CERCLA 103 Reporting Mechanism.
• *Code 16.* One Entry Being Split Into Two (or more)/Federal Agency Responsibility Being Split.
• *Code 16A.* NPL site that is part of a Facility already listed on the Docket.
• *Code 17.* New Information Obtained Showing That Facility Should Be Included.
• *Code 18.* Facility Was a Site on a Facility That Was Disbanded; Now a Separate Facility.
• *Code 19.* Sites Were Combined Into One Facility.
• *Code 19A.* New Currently Federally Owned and/or Operated Facility Site.

7.3 Docket Codes/Types of Corrections of Information About Facilities

• *Code 20.* Reporting Provisions Change.
• *Code 20A.* Typo Correction/Name Change/Address Change.
• *Code 21.* Changing Responsible Federal Agency. (If applicable, new responsible Federal agency submits proof of previously performed PA, which is subject to approval by EPA.)
• *Code 22.* Changing Responsible Federal Agency and Facility Name. (If applicable, new responsible Federal Agency submits proof of previously performed PA, which is subject to approval by EPA.)
• *Code 24.* Reporting Mechanism Determined To Be Not Applicable After Review of Regional Files.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #43—ADDITIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code	Date
USPS SEATTLE BULK MAIL CTR.	34301 9TH AVE S	FEDERAL WAY.	WA	98003	UNITED STATES POSTAL SERVICE.	RCRA 3010	17	UPDATE #43

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #43—DELETIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code	Date
					I.			

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #43—CORRECTIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code	Date

[FR Doc. 2023–08255 Filed 4–21–23; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0127]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collection described below (OMB Control No. 3064–0127).

DATES: Comments must be submitted on or before June 23, 2023.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:
• *Agency website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*
• *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
• *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information:

1. *Title:* Fast-Track Generic Qualitative Surveys.
OMB Number: 3064–0127.
Forms: None.
Affected Public: Private sector; insured state nonmember banks and state savings associations and members of the public interacting with the FDIC.
Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN
[OMB No. 3064–0127]

Information collection (obligation to respond)	Type of burden (frequency of response)	Average number of respondents	Frequency	Average time per response (hours)	Estimated annual burden (hours)
Generic Quality of Service Qualitative Surveys (Voluntary).	Reporting (Occasional)	850	20	1	17,000
Total Estimated Annual Burden (Hours):					17,000

Source: FDIC.

General Description of Collection: This information collection establishes ongoing authority for FDIC to conduct yet-to-be-determined occasional quality-of service surveys under OMB's generic survey program. Once this information collection extension request is approved by OMB, FDIC will be able to obtain expedited approval of individual surveys by following a special submission process that does not require the publication of **Federal Register** notices for each individual survey. Generic clearance requests should be approved by OMB within five business days of submission. FDIC estimates that the generic surveys to be deployed under this information collection each will involve an average of 850 respondents, generally should not require more than one hour per respondent to complete, and are always voluntary in nature. FDIC estimates that it will deploy approximately 20 such surveys annually. The purpose of the surveys is, in general terms, to obtain anecdotal information on a voluntary basis about quality of service, regulatory burden, problems or successes in the bank supervisory process (including exams related to both safety and soundness, and compliance with consumer protection laws and regulations), the perceived need for regulatory or statutory change, and similar concerns. There is no change in the substance or methodology of this information collection and the estimated annual burden remains unchanged.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on April 19, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–08552 Filed 4–21–23; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION NOTICE OF PREVIOUS ANNOUNCEMENT: 88 FR 21674.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, April 19, 2023 at 10:30 a.m.

Hybrid meeting: 1050 First Street NE, Washington, DC (12th floor) and virtual.

CHANGES IN THE MEETING: *The following matter was also considered:* Press Office Acknowledgement of Complaints.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b.)

Vicktoria J. Allen,

Deputy Secretary of the Commission.

[FR Doc. 2023–08658 Filed 4–20–23; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meetings

TIME AND DATE: May 3, 2023; 10:00 a.m.

PLACE: This meeting will be held at the Federal Maritime Commission at the address below and also streamed live at Federal Maritime Commission's YouTube Channel.

Federal Maritime Commission: 800 North Capitol St. NW, 1st Floor Hearing Room, Washington, DC 20573.

STATUS: Part of the meeting will be open to the public: held in-person at the Federal Maritime Commission for public attendants and also available to view streamed live on the Federal Maritime Commission's YouTube Channel. The rest of the meeting will be closed to the public. The hearing previously scheduled for April 19, 2023, will now be held on May 3, 2023, at 10:00 a.m. in the Hearing Room of the Federal Maritime Commission and will be open for public observation. If technical issues prevent the Commission from live streaming, the Commission will post a recording of the public portion of the meeting on the Commission's YouTube Channel. Requests to register to attend the meeting in-person should be submitted to *secretary@fmc.gov* and contain ''May 3, 2023, Commission Meeting'' in the subject line. Interested members of the public have until 5:00 p.m. (Eastern) Monday, May 1, 2023, to register to attend in-person. Seating for members of the public is limited and will be available on a first-come, first-served basis for those who have registered in advance. Health and safety protocols for meeting attendees will depend on the COVID–19 Community Transmission Level for Washington, DC as determined on Friday, April 28, 2023. Pre-registered attendees will be notified of any required health and safety protocols before the meeting and no later than Tuesday, May 2, 2023.

MATTERS TO BE CONSIDERED: The Commission's agenda includes portions open and closed to the public. These items are described below.

PORTIONS OPEN TO THE PUBLIC:

1. Commissioner Bentzel, Update on Maritime Transportation Data Initiative
2. Staff Briefing on Ocean Shipping Reform Act of 2022
3. Staff Briefing, Bureau of Enforcement, Investigations, and Compliance Update

PORTIONS CLOSED TO THE PUBLIC:

1. Staff Briefing, Bureau of Enforcement, Investigations, and Compliance Update

CONTACT PERSON FOR MORE INFORMATION: William Cody, Secretary, (202) 523–5725.

William Cody,

Secretary.

[FR Doc. 2023–08654 Filed 4–20–23; 11:15 am]

BILLING CODE 6730–02–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meetings; Withdrawal

AGENCY: Federal Maritime Commission

ACTION: Notice; withdrawal.

SUMMARY: The Federal Maritime Commission published a document in the **Federal Register** of April 17, 2023 concerning the Sunshine Act Meetings for our April 19, 2023 Commission Meeting. The April 17, 2023 document contained dates and information for the meeting that was rescheduled.

FOR FURTHER INFORMATION CONTACT: William Cody, 202–523–5725.

SUPPLEMENTARY INFORMATION:

Withdrawal

This action withdraws the notice in the **Federal Register** of April 17, 2023, FR Doc. 2023–07907, at 88 FR 23422 concerning Sunshine Act Meetings.

The Sunshine Act Meeting was rescheduled to May 3, 2023 by the Commission.

Dated: April 18, 2023.

William Cody,

Secretary.

[FR Doc. 2023–08655 Filed 4–20–23; 4:15 pm]

BILLING CODE 6730–02–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (FTC or Commission) is seeking public comment on its proposal to extend an additional three years the current Paperwork Reduction Act clearance to participate in the Office of Management and Budget program ''Generic Clearance for the Collection of Qualitative Feedback on Service Delivery.'' The current clearance expires on July 31, 2023.

DATES: Comments must be received on or before June 23, 2023.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Paperwork Reduction Act Comment: FTC File No. P072108'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Bridget Small, Federal Trade Commission, 600 Pennsylvania Avenue NW, CC–10402, Washington, DC 20580, (202) 326–3266.

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 3084–0159.

Current Actions: Extension of approval for a collection of information.

Affected Public: Individuals and households, businesses and organizations, State, local or Tribal government.

Estimated Number of Annual Respondents: 5,700.

Estimated Total Annual Burden Hours: 900.

Abstract: The FTC seeks renewed Office of Management and Budget approval of its generic clearance to collect qualitative feedback on service delivery (*i.e.,* the products and services that the FTC provides to help consumers and businesses understand their rights and responsibilities, including websites, blogs, videos, print publications, and other content). ''Qualitative feedback'' denotes information that provides useful insight about public perceptions and opinions, but does not include statistical surveys that yield quantitative results that can be generalized to the population of study. The solicitation of feedback on service delivery will target areas such as timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. The FTC will collect, analyze, and interpret information it gathers through this generic clearance program to identify strengths and weaknesses of current services and make improvements in service delivery based on feedback. This generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance.

The types of collections that the proposed generic clearance covers include, but are not limited to:

- Customer comment cards/complaint forms;
- Small discussion groups;
- Focus groups of customers, potential customers, delivery partners, or other stakeholders;
- Cognitive laboratory studies, such as those used to refine questions or assess usability of a website;
- Qualitative customer satisfaction surveys (*e.g.,* post-transaction surveys; opt-out web surveys);
- In-person observation testing (*e.g.,* website or software usability tests).

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.

As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Generic Clearance.

Request for Comments

Pursuant to section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of maintaining records and providing disclosures to consumers. All comments must be received on or before June 23, 2023.

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before June 23, 2023. Write ''Paperwork Reduction Act Comment: FTC File No. P072108'' on your comment. Your comment—including your name and your state—will be placed on the public

record of this proceeding, including the *https://www.regulations.gov* website.

Due to the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Paperwork Reduction Act Comment: FTC File No. P072108'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will become publicly available at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov,* we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before June 23, 2023. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2023–08533 Filed 4–21–23; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–23–0740; Docket No. CDC–2023–0026]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Medical Monitoring Project (MMP). The purpose of this data collection is to guide national and local HIV-related service organization and delivery, and monitor receipt of HIV treatment and prevention services and clinical outcomes.

DATES: CDC must receive written comments on or before June 23, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0026 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. 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;

2. 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;

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

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 submissions of responses; and

5. Assess information collection costs.

Proposed Project

Medical Monitoring Project (MMP) (OMB Control No. 0920–0740, Exp. 5/31/2024)—Revision—National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC), Division of HIV Prevention (DHP) requests a revision of the currently approved Information Collection Request: Medical Monitoring Project (MMP) which expires 5/31/2024. This data collection addresses the need for national estimates of access to, and utilization of HIV-related medical care and services, the quality of HIV-related ambulatory care, and HIV-related behaviors and clinical outcomes. For the proposed project, the same data collection methods will be used as for the currently approved project. Data would be collected from a probability sample of HIV-diagnosed adults in the U.S. who consent to an interview and abstraction of their medical records. As for the currently approved project, deidentified information would also be extracted from HIV case surveillance records for a dataset (referred to as the minimum dataset), which is used to assess non-response bias, for quality control, to improve the ability of MMP to monitor ongoing care and treatment of people with HIV, and to make inferences from the MMP sample to persons with diagnosed HIV nationally. No other Federal agency collects such nationally representative population-based information from adults with diagnosed HIV. The data are expected to have significant implications for policy, program development, and resource allocation at the state/local and national levels. The changes proposed in this request update the data collection system to meet prevailing information needs and enhance the value of MMP data, while remaining within the scope of the currently approved project purpose. The burden hours of the project remain the same as in the previously approved project. Changes made, that did not affect the burden, are listed below:

- Revisions to the interview questionnaire were made to improve coherence, boost the efficiency of the data collection, and increase the relevance and value of the information. These changes did not affect the average burden per response.
- Revisions to the medical record abstraction data elements were made to streamline the information collected and add important questions related to M-Pox vaccination. Because the medical records are abstracted by MMP staff, these changes do not affect the burden of the project.

This proposed data collection would supplement the National HIV Surveillance System (NHSS, OMB Control No. 0920–0573, Exp. 02/28/2026) in 23 selected state and local health departments, which collect information on persons diagnosed with, living with, and dying from HIV infection and AIDS. The participation of respondents is voluntary. There is no cost to the respondents other than their time. Total estimated annual burden requested is 5,707 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Sampled, Eligible Persons with HIV	Interview Questionnaire	7,760	1	45/60	5,173
Facility office staff looking up contact information.	Look up contact information	1,940	1	2/60	65
Facility office staff approaching sampled persons for enrollment.	Approach persons for Enrollment	970	1	5/60	81
Facility office staff pulling medical records.	Pull medical records	7,760	1	3/60	388
Total					5,707

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–08569 Filed 4–21–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–23–22IU]

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 ''Evaluation of Healthcare Worker Mental Health Campaign'' 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 received three 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

Evaluation of Healthcare Worker Mental Health Campaign—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

As part of the COVID–19 American Rescue Plan of 2021, in response to a congressional mandate, and on the heels of the passage of the Dr. Lorna Breen Health Care Provider Protection Act, the National Institute for Occupational Safety and Health (NIOSH), within the Centers for Disease Control and Prevention (CDC), is taking an active stance to address mental health concerns among the more than 20 million workers in the nation's healthcare sector. For many years now, health workers have reported feeling undervalued, overworked, and overwhelmed. A 2012 study that surveyed more than 7,000 physicians found that nearly half of them had symptoms of burnout. The COVID–19 pandemic has only exacerbated the strain and pressure facing health workers as they endure unprecedented challenges that make working in this field exponentially harder on their own health and wellbeing. So much so that the wellbeing of those who dedicate their days and nights to keeping us healthy has surpassed a point of crisis. Depression, anxiety, and PTSD are highly prevalent among health workers across the United States. A systematic review of studies addressing burnout among nurses found that more than a third (34.1%) had emotional exhaustion. A 2020 survey of healthcare workers found that 86% reported experiencing anxiety, and 39% did not feel like they had adequate emotional support.

NIOSH, the federal agency tasked with conducting research to contribute to reductions in occupational illnesses, injuries, and hazards, and its contractor, JPA Health, plan to develop, implement, and evaluate a social marketing campaign that aims to raise health worker and healthcare executive awareness of mental health risks, promote help seeking and treatment among health workers experiencing burnout and job-related distress, reduce stigma associated with health workers' mental health help seeking, and establish organizational policies and practices that support worker mental health. For NIOSH, this project requires more than a messaging campaign and aims to marry communications best practices with behavior and systems change strategies to start addressing the working conditions that contribute to job-related distress, structural barriers that prevent health workers from seeking help, and healthcare executives from providing mental health services and supports.

While many individual-level interventions specific to healthcare and healthcare workers exist, very few interventions address the organizational level causes of health worker burnout. It is for this reason that we are proposing a one year approval to collect follow-up survey data. This will allow us to examine whether hospital leader and healthcare worker exposure to, and engagement with, campaign activities and messages contribute to changes in their knowledge, beliefs, and practices thought to promote healthcare worker mental health and well-being.

The surveys will include a representative sample of healthcare workers and hospital leaders that hail from relevant partner network organizations of the *All In: Wellbeing First for Healthcare* network. The goal is a representative sample of 3,000 healthcare workers and 500 hospital leaders. Assuming a 25% response rate, JPA/EDC must include 12,000 healthcare workers and 2,000 hospital leaders in the initial sample. The survey will be completed at eight and 10 months after campaign launch. Half the representative sample will be drawn at each data collection period. Both the healthcare worker and hospital leader surveys should take no more than 10 minutes to complete.

The version of the information collection available during previous public comment period included a quasi-experimental study with 12 hospitals (six intervention and six comparison) and pre-post surveys and interviews. Due to logistical challenges and time constraints, the quasi-experimental study has been discontinued. CDC now requests OMB approval for an estimated 2,333 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Healthcare Worker	Follow-up Survey	12,000	1	10/60
Hospital Leader	Follow-up Survey	2,000	1	10/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–08570 Filed 4–21–23; 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 OH–23–004, NIOSH Miner Safety and Health Program—Western Mining States Review, and RFA OH–23–005, NIOSH Robotic Mining Review; 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 OH–23–004, NIOSH Miner Safety and Health Program—Western Mining States Review, and RFA OH–23–005, NIOSH Robotic Mining Review; May 25, 2023, 1 p.m.–5 p.m., EDT, teleconference, in the original **Federal Register** notice. The meeting was published in the **Federal Register** on February 22, 2023, Volume 88, Number 35, page 10905.

The meeting is being amended to change the Notice of Funding Opportunity (NOFO) titles and should read as follows:

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–OH–23–004, Miner Safety and Health Training Program—Western United States, and RFA–OH–23–005, NIOSH Robotics and Intelligent Mining Technology and Workplace Safety Research (U60).

The meeting is closed to the public.

FOR FURTHER INFORMATION CONTACT: Michael Goldcamp, Ph.D., Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 1905 Willowdale Road, Morgantown, West Virginia, 26506. Telephone: (304) 285–5951; Email: *MGoldcamp@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. 2023–08579 Filed 4–21–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–23–0666]

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 Healthcare Safety Network (NHSN)'' 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 August 26, 2022 to obtain comments from the public and affected agencies. CDC received one comment 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 Healthcare Safety Network (NHSN) (OMB Control No. 0920–0666, Exp. 7/31/2023)—Revision—National Center for Emerging and Zoonotic Infection Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Division of Healthcare Quality Promotion (DHQP), National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC) collects data from healthcare facilities in the National Healthcare Safety Network (NHSN) under OMB Control Number 0920–0666. NHSN provides facilities, states, regions, and the nation with data necessary to identify problem areas, measure the progress of prevention efforts, and ultimately eliminate healthcare-associated infections (HAIs) nationwide. NHSN allows healthcare facilities to track blood safety errors and various healthcare-associated infection prevention practice methods such as healthcare personnel influenza vaccine status and corresponding infection control adherence rates. NHSN currently has seven components:

Patient Safety (PS), Healthcare Personnel Safety (HPS), Biovigilance (BV), Long-Term Care Facility (LTCF), Outpatient Procedure (OPC), Dialysis Component, and the Neonatal Component. NHSN has increasingly served as the operating system for HAI reporting compliance through legislation established by the states. As of April 2020, 36 states, the District of Columbia and the City of Philadelphia, Pennsylvania have opted to use NHSN as their primary system for mandated reporting. Reporting compliance is completed by healthcare facilities in their respective jurisdictions, with

emphasis on those states and municipalities acquiring varying consequences for failure to use NHSN. Additionally, healthcare facilities in five U.S. territories (Puerto Rico, American Samoa, the U.S. Virgin Islands, Guam, and the Northern Mariana Islands) are voluntarily reporting to NHSN. Additional territories are projected to follow with similar use of NHSN for reporting purposes.

NHSN data is used to aid in the tracking of HAIs and guide infection prevention activities/practices that protect patients. The Centers for Medicare and Medicaid Services (CMS) and other payers use these data to determine incentives for performance at healthcare facilities across the US and surrounding territories, and members of the public may use some protected data to inform their selection among available providers. Each of these parties is dependent on the completeness and accuracy of the data. CDC and CMS work closely and are fully committed to ensuring complete and accurate reporting, which are critical for protecting patients and guiding national, state, and local prevention priorities. CMS collects some HAI data and healthcare personnel influenza vaccination summary data, which is done on a voluntary basis as part of its Fee-for-Service Medicare quality reporting programs, while others may report data required by a federal mandate. Facilities that fail to report quality measure data are subject to partial payment reduction in the applicable Medicare Fee-for-Service payment system. CMS links their quality reporting to payment for Medicare-eligible acute care hospitals, inpatient rehabilitation facilities, long-term acute care facilities, oncology hospitals, inpatient psychiatric facilities, dialysis facilities, and ambulatory surgery centers. Facilities report HAI data and healthcare personnel influenza vaccination summary data to CMS via NHSN as part of CMS's quality reporting programs to receive full payment. Still, many healthcare facilities, even in states without HAI reporting legislation, submit limited HAI data to NHSN voluntarily.

NHSN's data collection updates continue to support the incentive programs managed by CMS. For example, survey questions support requirements for CMS' quality reporting programs. Additionally, CDC has collaborated with CMS on a voluntary National Nursing Home Quality Collaborative, which focuses on recruiting nursing homes to report HAI data to NHSN and to retain their continued participation.

In January 2023, CDC obtained emergency OMB approval for a number of changes, effective immediately (Exp. 7/31/2023). These changes included the addition of a new Monthly Survey on Patient Days & Nurse Staffing, as well as minor changes to 14 information collection forms. The changes primarily supported clarifications to use of CIDTs, HAI forms with susceptibility reporting requirements, vendor information, testing options for UTI events, and all y-types of hepatitis B vaccines administered to patients and staff members at outpatient dialysis centers. The changes increased total annualized burden for NHSB from 1,584,651 hours to 1,616,151 hours.

In this Revision, CDC requests OMB approval to continue those changes for three years. In addition, CDC requests OMB approval to begin phased implementation of two new questions on Sex at Birth and Gender Identity, which will replace the current Gender question. The new questions will be voluntary for the remainder of 2023 and required in 2024. The proposed change will be used to help assess the true impact of sex at birth and gender identify on HAIs, individually and in combination with other risk factors, and to inform public health programs. The new questions will add one minute of burden to 31 forms that are currently in use, a total of 77,064 annualized burden hours. The total estimated annualized burden hours for NHSN will increase to 1,693,215 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Form number/name	Number of respondents	Number of responses per respondent	Average burden per response (min/hour)
57.100 NHSN Registration Form	2,000	1	5/60
57.101 Facility Contact Information	2,000	1	10/60
57.103 Patient Safety Component—Annual Hospital Survey	6,765	1	90/60
57.104 Facility Administrator Change Request Form	800	1	5/60
57.105 Group Contact Information	1,000	1	5/60
57.106 Patient Safety Monthly Reporting Plan	7,821	12	15/60
57.108 Primary Bloodstream Infection (BSI)	5,775	5	39/60
57.111 Pneumonia (PNEU)	1,800	2	31/60
57.112 Ventilator-Associated Event	5,463	8	29/60
57.113 Pediatric Ventilator-Associated Event (PedVAE)	334	1	31/60
57.114 Urinary Tract Infection (UTI)	6,000	5	21/60
57.115 Custom Event	600	91	36/60
57.116 Denominators for Neonatal Intensive Care Unit (NICU)	1,100	12	4/60
57.117 Denominators for Specialty Care Area (SCA)/Oncology (ONC)	500	12	5/60
57.118 Denominators for Intensive Care Unit (ICU)/Other locations (not NICU or SCA)	5,500	60	5/60
57.120 Surgical Site Infection (SSI)	6,000	9	36/60
57.121 Denominator for Procedure	6,000	602	11/60
57.122 HAI Progress Report State Health Department Survey	55	1	28/60
57.123 Antimicrobial Use and Resistance (AUR)—Microbiology Data Electronic Upload Specification Tables	2,500	12	5/60
57.124 Antimicrobial Use and Resistance (AUR)—Pharmacy Data Electronic Upload Specification Tables	4,000	12	5/60
57.125 Central Line Insertion Practices Adherence Monitoring	500	213	26/60
57.126 MDRO or CDI Infection Form	720	11	31/60
57.127 MDRO and CDI Prevention Process and Outcome Measures Monthly Monitoring	5,500	29	15/60
57.128 Laboratory-identified MDRO or CDI Event	4,800	79	21/60
57.129 Adult Sepsis	50	250	25/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form number/name	Number of respondents	Number of responses per respondent	Average burden per response (min/hour)
57.135 Late Onset Sepsis/Meningitis Denominator Form: Data Table for monthly electronic upload	300	6	5/60
57.136 Late Onset Sepsis/Meningitis Event Form: Data Table for Monthly Electronic Upload	300	6	5/60
57.137 Long-Term Care Facility Component—Annual Facility Survey	17,700	1	120/60
57.138 Laboratory-identified MDRO or CDI Event for LTCF	1,998	24	20/60
57.139 MDRO and CDI Prevention Process Measures Monthly Monitoring for LTCF	1,998	12	20/60
57.140 Urinary Tract Infection (UTI) for LTCF	339	36	35/60
57.141 Monthly Reporting Plan for LTCF	2,011	12	5/60
57.142 Denominators for LTCF Locations	339	12	35/60
57.143 Prevention Process Measures Monthly Monitoring for LTCF	130	12	5/60
57.150 LTAC Annual Survey	620	1	82/60
57.151 Rehab Annual Survey	1,340	1	82/60
57.200 Healthcare Personnel Safety Component Annual Facility Survey	50	1	480/60
57.204 Healthcare Worker Demographic Data	50	200	20/60
57.205 Exposure to Blood/Body Fluids	50	50	60/60
57.206 Healthcare Worker Prophylaxis/Treatment	50	30	15/60
57.207 Follow-Up Laboratory Testing	50	50	15/60
57.210 Healthcare Worker Prophylaxis/Treatment—Influenza	50	50	10/60
57.300 Hemovigilance Module Annual Survey	500	1	86/60
57.301 Hemovigilance Module Monthly Reporting Plan	500	12	60/60
57.303 Hemovigilance Module Monthly Reporting Denominators	500	12	70/60
57.305 Hemovigilance Incident	500	10	10/60
57.306 Hemovigilance Module Annual Survey—Non-acute care facility	500	1	36/60
57.307 Hemovigilance Adverse Reaction—Acute Hemolytic Transfusion Reaction	500	4	21/60
57.308 Hemovigilance Adverse Reaction—Allergic Transfusion Reaction	500	4	21/60
57.309 Hemovigilance Adverse Reaction—Delayed Hemolytic Transfusion Reaction	500	1	21/60
57.310 Hemovigilance Adverse Reaction—Delayed Serologic Transfusion Reaction	500	2	21/60
57.311 Hemovigilance Adverse Reaction—Febrile Non-hemolytic Transfusion Reaction	500	4	21/60
57.312 Hemovigilance Adverse Reaction—Hypotensive Transfusion Reaction	500	1	21/60
57.313 Hemovigilance Adverse Reaction—Infection	500	1	21/60
57.314 Hemovigilance Adverse Reaction—Post Transfusion Purpura	500	1	21/60
57.315 Hemovigilance Adverse Reaction—Transfusion Associated Dyspnea	500	1	20/60
57.316 Hemovigilance Adverse Reaction—Transfusion Associated Graft vs. Host Disease	500	1	21/60
57.317 Hemovigilance Adverse Reaction—Transfusion Related Acute Lung Injury	500	1	21/60
57.318 Hemovigilance Adverse Reaction—Transfusion Associated Circulatory Overload	500	2	21/60
57.319 Hemovigilance Adverse Reaction—Unknown Transfusion Reaction	500	1	21/60
57.320 Hemovigilance Adverse Reaction—Other Transfusion Reaction	500	1	21/60
57.400 Outpatient Procedure Component—Annual Facility Survey	700	1	10/60
57.401 Outpatient Procedure Component—Monthly Reporting Plan	700	12	15/60
57.402 Outpatient Procedure Component Same Day Outcome Measures	200	1	41/60
57.403 Outpatient Procedure Component—Monthly Denominators for Same Day Outcome Measures	200	400	40/60
57.404 Outpatient Procedure Component—SSI Denominator	700	100	41/60
57.405 Outpatient Procedure Component—Surgical Site (SSI) Event	700	5	41/60
57.500 Outpatient Dialysis Center Practices Survey	7,200	1	12/60
57.501 Dialysis Monthly Reporting Plan	7,200	12	5/60
57.502 Dialysis Event	7,200	30	26/60
57.503 Denominator for Outpatient Dialysis	7,200	30	10/60
57.504 Prevention Process Measures Monthly Monitoring for Dialysis	1,730	12	75/60
57.505 Dialysis Patient Influenza Vaccination	615	50	10/60
57.506 Dialysis Patient Influenza Vaccination Denominator	615	5	10/60
57.507 Home Dialysis Center Practices Survey	430	1	30/60
Weekly Healthcare Personnel Influenza Vaccination Cumulative Summary for Non-Long-Term Care Facilities	125	52	60/60
Weekly Healthcare Personnel Influenza Vaccination Cumulative Summary for Long-Term Care Facilities	1,200	52	60/60
Weekly Resident Influenza Vaccination Cumulative Summary for Long-Term Care Facilities	2,500	52	60/60
Annual Healthcare Personnel Influenza Vaccination Summary	5,000	1	120/60
Monthly Survey Patient Days & Nurse Staffing	2,500	12	60/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–08571 Filed 4–21–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10844]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by May 24, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain* . Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Small Biotech Exception; *Use:* Under the authority in sections 11001 and 11002 of the Inflation Reduction Act of 2022 (Pub. L. 117–169), the Centers for Medicare & Medicaid Services (CMS) is implementing the Medicare Drug Price Negotiation Program, codified in sections 1191 through 1198 of the Social Security Act (the Act). In accordance with section 1192(d)(2) of the Act, the term ''negotiation-eligible drug'' excludes, with respect to the initial price applicability years 2026, 2027, and 2028, a qualifying single source drug that meets the requirements for the exception for small biotech drugs (the ''Small Biotech Exception'').

This information is required in order for CMS to accurately identify whether a given drug meets the criteria for the Small Biotech Exception in accordance with section 1192(d)(2) of the Act. To ensure that only covered Part D drugs that meet the requirements for the Small Biotech Exception are excluded from the term ''negotiation-eligible drug,'' a manufacturer that seeks the Small Biotech Exception for its covered Part D drug (''Submitting Manufacturer'') must submit information to CMS about the company and its products in order for the drug to be considered for the exception. If the Submitting Manufacturer seeks the Small Biotech Exception for a covered Part D drug it acquired after December 31, 2021, the Submitting Manufacturer must also submit information related to the separate entity that had the Medicare Coverage Gap Discount Program agreement for the drug on December 31, 2021. The Information Collection Request Form for the Small Biotech Exception must be submitted to CMS before CMS establishes the selected drug list for initial price applicability year 2026. *Form Number:* CMS–10844 (OMB control number: 0938-New); *Frequency:* Once; *Affected Public:* Private sector, Business or other for-profit; *Number of Respondents:* 10; *Total Annual Responses:* 10; *Total Annual Hours:* 68.5. (For policy questions regarding this collection contact Corey Rosenberg at 410–786–9763.)

Dated: April 19, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–08600 Filed 4–21–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Intent To Award a Single-Source Supplement To Provide the National Aging Network With Timely, Relevant, High-Quality Opportunities To Further Enhance Knowledge, Awareness and Models Related to Falls Prevention

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) announces the intent to award a single-source supplement to the current cooperative agreement held by the National Council on Aging (NCOA) for the National Falls Prevention Resource Center. The purpose of this program is to advance the development and expansion of technical assistance, education, and resources to increase public awareness about the risk of falls and how to prevent them; increase the number of older adults and adults with disabilities who participate in evidence-based community falls prevention programs; and support the integration and sustainability of evidence-based falls prevention programs within community integrated health networks.

FOR FURTHER INFORMATION CONTACT: For further information or comments regarding this program supplement, contact Donna Bethge, U.S. Department of Health and Human Services, Administration for Community Living, Administration on Aging, Office of Nutrition and Health Promotion Programs, 202–795–7659, *donna.bethge@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this supplement is to:

- support the development of a survey of key stakeholders to determine falls prevention gaps, opportunities, and priorities in the aging network and expand the Falls Summit to capture strategies and action steps to address those gaps with nationally recognized experts in falls prevention, organizations from the health, nutrition, and aging sectors, select federal and state agencies, professional associations, corporations, and foundations that have an interest in healthy aging;
- expand upon the reach of the Falls Prevention Awareness Week to incorporate additional messaging regarding healthy aging, independence and quality of life that can be realized by moving from falls prevention awareness to action. This will include crafting new messages that will be disseminated to a broader audience to better resonate with older adults and their caregivers;
- provide further development of leaders in the falls prevention network through a fellowship program to focus on systems change to reduce falls, falls risk factors, and fall related injuries to ultimately improve the lives of older adults and save health care dollars; and
- cultivate and leverage partnerships with traditional and new partners, such as emergency medical services, paramedicine, transportation, housing, nutrition, and primary care providers to develop clinical and community collaborative best-practice frameworks and models designed to address multiple risk factors in innovative and scalable ways that would include a strong focus on increasing participation in evidence-based falls prevention programs and embedding those programs into the aging network in order to support healthy and active opportunities for older adults. This supplement would provide the resources necessary to pilot test these frameworks and models in communities.

The administrative supplement for FY 2023 will be in the amount of $2,000,000, bringing the total award for FY 2023 to $3,000,000.

The additional funding will not be used to begin new projects, but it will be used to enhance existing efforts. The grantee will continue to provide appropriate, quality falls prevention resources, increase public awareness about falls prevention and the risk of falls, support the implementation of evidence-based falls prevention programs, and seek new opportunities to embed falls prevention evidence-based programs in the community.

Program Name: National Falls Prevention Resource Center.

Recipient: National Council on Aging (NCOA).

Period of Performance: The supplement award will be issued for the third year of a five-year project period of August 1, 2021, to July 31, 2026.

Total Award Amount: $3,000,000 in FY 2023.

Award Type: Cooperative Agreement Supplement.

Statutory Authority: The Older Americans Act, Title IV; and the Patient Protection and Affordable Care Act, 42 U.S.C. 300u–11 (Prevention and Public Health Fund).

Basis for Award

National Council on Aging (NCOA) is currently funded to carry out the objectives of this project through its current cooperative agreement entitled, *National Falls Prevention Resource Center* for the period of August 1, 2021, through July 31, 2026. Since the project's implementation, the grantee has made satisfactory progress toward its approved work plan. The supplement will enable the grantee to carry their work even further, enhancing the support they provide to the Aging Network Falls Prevention Providers. The additional funding will not be used to begin new projects or activities, but rather to enhance efforts.

NCOA is uniquely positioned to complete the work called for under this project. They have an already established infrastructure and are a known and trusted organization in the Aging Network. Prior to this current award, NCOA competed and was twice awarded the *National Falls Prevention Resource Center* for the past 7 years. They have an established presence within the Aging Network. They have a comprehensive, interactive web-based repository (*https://ncoa.org/professionals/health/center-for-healthy-aging/national-falls-prevention-resource-center*) with tools and resources, including—best practices tip sheets, program and fidelity guidance, Falls Prevention Awareness Week toolkit, educational webinars, Grand Rounds recordings, articles covering topics from program implementation through sustainability, resource hubs, policy and practice models, the Falls Free Checkup online screening tool and they maintain the national falls prevention database. Under this current award period, they are providing technical assistance and educational opportunities for the Aging Network's Falls Prevention efforts, including workgroups, webinars, and live trainings. They collaborate nationally with state falls prevention collaboratives and host the annual Age + Action Conference, a grantee gathering to explore solutions to ensure equitable aging for all, connecting with colleagues, sharing innovative ideas, and discussing policy solutions that can be achieved together on behalf of older adults. They have reached thousands of providers using their comprehensive database of SUAs, AAAs, and other Falls Prevention Program stakeholders. In addition, they have developed partnerships with organizations, universities, and other entities to provide technical assistance, education, and support for the Aging Network.

Establishing an entirely new grant project at this time would be potentially disruptive to the current work already well under way. More importantly, it could cause confusion among the Aging Network Falls Prevention Program Providers and stakeholders, which could have a negative effect on training, implementation, and support opportunities. If this supplement were not provided, the project would be unable to address the significant unmet needs of the Aging Network Falls Prevention Program.

Dated: April 18, 2023.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2023–08546 Filed 4–21–23; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0026]

Issuance of Priority Review Voucher; Rare Pediatric Disease Product

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of a priority review voucher to the sponsor of a rare pediatric disease product application. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Food and Drug

Administration Safety and Innovation Act (FDASIA), authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the award of the priority review voucher. FDA has determined that JOENJA (leniolisib), approved March 24, 2023, and manufactured by Pharming Technologies B.V., meets the criteria for a priority review voucher.

FOR FURTHER INFORMATION CONTACT: Cathryn Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1394, email: *Cathryn.Lee@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is announcing the issuance of a priority review voucher to the sponsor of an approved rare pediatric disease product application. Under section 529 of the FD&C Act (21 U.S.C. 360ff), which was added by FDASIA, FDA will award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA has determined that JOENJA (leniolisib), manufactured by Pharming Technologies B.V., meets the criteria for a priority review voucher.

JOENJA (leniolisib) is a kinase inhibitor indicated for the treatment of activated phosphoinositide 3-kinase delta (PI3Kδ) syndrome (APDS) in adult and pediatric patients 12 years of age or older.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to *https://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm.* For further information about JOENJA (leniolisib), go to the ''Drugs@FDA'' website at *https://www.accessdata.fda.gov/scripts/cder/daf/.*

Dated: April 18, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–08518 Filed 4–21–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–1259]

Advancing the Utilization and Supporting the Implementation of Innovative Manufacturing Approaches; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we), in cosponsorship with the Duke-Margolis Center for Health Policy, is announcing a public workshop entitled ''Advancing the Utilization and Supporting the Implementation of Innovative Manufacturing Approaches.'' This workshop will address innovative manufacturing technologies for drug and biological products and will include a discussion of potential best practices, case studies from previous submissions, potential barriers to adoption, corresponding regulatory strategies, and the Advanced Manufacturing Technologies Designation Program.

DATES: The public workshop will be held on June 8, 2023, from 9 a.m. to 4:30 p.m. Eastern Time. Either electronic or written comments on this public workshop must be submitted by July 8, 2023. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held at the National Press Club, 529 14th Street NW, Washington, DC 20045.

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 on July 8, 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–2023–N–1259 for ''Advancing the Utilization and Supporting the Implementation of Innovative Manufacturing Approaches.'' 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: Luke Durocher, Duke-Margolis Center for Health Policy, 1201 Pennsylvania Ave., Suite 500, Washington, DC 20004, 202–621–2800, *margolisevents@duke.edu.*

SUPPLEMENTARY INFORMATION:

I. Background

There is significant interest in the use, implementation, and advancement of innovative drug manufacturing approaches and technologies. In accordance with commitments described in the Prescription Drug User Fee Act (PDUFA) VII commitment letter ''PDUFA Reauthorization Performance Goals and Procedures Fiscal Years 2023 through 2027,'' [1] FDA agreed to conduct a public workshop by the end of fiscal year 2023 on the use of innovative manufacturing technologies for products regulated by the Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER).

Additionally, section 506L of the Federal Food, Drug, and Cosmetic Act (FD&C Act, 21 U.S.C. 356l), as added by section 3213 of the Food and Drug Omnibus Reform Act of 2022 (FDORA), authorizes the Advanced Manufacturing Technologies Designation Program and requires FDA to publish a **Federal Register** notice announcing a public meeting to solicit industry and public feedback regarding this program.

FDA is holding a public workshop entitled ''Advancing the Utilization and Supporting the Implementation of Innovative Manufacturing'' to fulfill both the PDUFA VII commitment and the FD&C Act requirement described above. The purpose of the public workshop is to discuss potential best practices for drug applications that include innovative manufacturing technologies, sponsor-presented case studies from previous submissions involving innovative technology, potential barriers to the adoption of innovative manufacturing technologies, corresponding regulatory strategies, ways in which FDA will support the use of innovative manufacturing technologies and approaches for drug and biological products, and the Advanced Manufacturing Technologies Designation Program.

II. Topics for Discussion at the Public Workshop

The public workshop will include the following topics for discussion:

- Best practices and lessons learned from the CDER Emerging Technology Team and the CBER Advanced Technology Team programs from both industry and regulatory perspectives.
- Case studies from previous innovative technology submissions presented by industry sponsors.
- Potential barriers (*e.g.,* technical, regulatory) to the adoption of innovative manufacturing technologies.
- Regulatory strategies for the adoption of innovative manufacturing technologies, including submission strategies for the implementation of certain innovative technologies across multiple commercial products or multiple manufacturing sites.
- Science- and risk-based approaches for developing and accessing innovative technologies across platform products and sites to streamline adoption.
- Input and recommendations from stakeholders regarding initiation and implementation of the Advanced Manufacturing Technologies Designation Program, including the process and information needed to request a designation, the evaluation of designation requests, and the review of applications that involve use of designated advanced manufacturing technologies.[2]

III. Participating in the Public Workshop

Registration: Persons interested in attending this public workshop must register online at *https://duke.is/8zckq* by 9 a.m. Eastern Time, June 8, 2023. Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public workshop must register by 9 a.m. Eastern Time, June 8, 2023. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. Registrants will receive confirmation when they have been accepted.

If you need special accommodations due to a disability, please contact Luke Durocher, Duke-Margolis Center for Health Policy, 202–621–2800, *margolisevents@duke.edu,* no later than 5 p.m. Eastern Time, May 25, 2023.

Streaming Webcast of the Public Workshop: This public workshop will also be webcast. Refer to registration information online at *https://duke.is/8zckq.*

Transcripts: Please be advised that as soon as a transcript of the public workshop is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff.

Dated: April 18, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–08545 Filed 4–21–23; 8:45 am]

BILLING CODE 4164–01–P

[1] See section I.N.5, ''Advancing Utilization and Implementation of Innovative Manufacturing'' at *https://www.fda.gov/media/151712/download.*

[2] In the context of this program, *application* refers to an application submitted under section 505 of the FD&C Act (21 U.S.C. 355), or section 351 of the Public Health Service Act (42 U.S.C. 262).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0624]

Food Labeling in Online Grocery Shopping; Request for Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for information.

SUMMARY: The Food and Drug Administration (FDA or we) is requesting information to help empower consumers with accurate, informative, and accessible food labeling. The purpose of this request is to obtain current information on the content, format, and accuracy of food label information that is presented to consumers through online grocery

shopping platforms. We intend to use the information submitted in response to this notice to help improve consumer access to consistent and accurate nutrition, ingredient, and allergen information for packaged foods sold through e-commerce.

DATES: Either electronic or written comments on the notice must be submitted by July 24, 2023.

ADDRESSES: You may submit comments and information as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before July 24, 2023. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of July 24, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–N–0624 for ''Food Labeling in Online Grocery Shopping; Request for Information.'' 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.'' We will review this copy, including the claimed confidential information, in our 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: Pedro A. Cruz, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2371 or Carrol Bascus, Center for Food Safety and Applied Nutrition, Office of Regulations and Policy (HFS–024), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION:

I. Background

FDA seeks to improve dietary patterns in the United States to help reduce the burden of diet-related chronic diseases and advance health equity. We are committed to accomplishing this, in part, by empowering consumers with accurate, informative, and accessible food labeling to help them in choosing healthier diets.

For purposes of this document, ''e-commerce'' refers to commercial transactions conducted on the internet. The Coronavirus Disease 2019 (COVID–19) pandemic greatly increased the use of e-commerce in the United States, including online grocery food shopping, which is the focus of this request for information (RFI). In 2019, consumers in the United States spent $62.2 billion on online grocery sales (Ref. 1). In 2020, online grocery sales grew 54 percent, reaching $95.8 billion, and accounted for 7.4 percent of all grocery sales (Ref. 1). Between 2019 and 2020, consumer use of online platforms to purchase at least some of their groceries rose from 19 percent to 79 percent, and this number is expected to grow (Ref. 3). Online grocery orders are expected to make up 21.5 percent of all U.S. grocery sales in 2023 (Ref. 3).

Online grocery shopping could change consumer behavior for the long-term, given the shift in how people are purchasing groceries. The increase in online grocery shopping is an opportunity to ensure consumers are able to find and view label information that will help them make more informed and healthier food choices. In this document, the term ''online grocery'' refers to foods ordered through grocery retailer (*e.g.,* supermarket) websites, directly from the manufacturer's websites, and third-party online grocery providers (*e.g.,* a grocery fulfillment service that offers food products from various grocery retailers). It does not include ready-to-eat meals (*e.g.,* salad or hot food bar) that are ordered online from grocery providers for pick-up or delivery.

We are interested in the nutrition (*e.g.,* Nutrition Facts label), ingredient, and major food allergens label information that is available to consumers through online grocery shopping platforms. We are also seeking feedback about consumer experiences in

viewing food labeling information when grocery shopping online. In particular, we would like data on how consumers use food label information and the extent to which different consumer groups (*e.g.,* racial and ethnic minority groups, those living in rural communities, those with lower socioeconomic status, and persons with disabilities) access and use the information when shopping for groceries online.

II. Regulatory Framework for Food Labeling Requirements

FDA is responsible for assuring that foods sold in the United States are safe, wholesome, and properly labeled. FDA is responsible for implementing and enforcing the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 301 *et seq.*), the Fair Packaging and Labeling Act (15 U.S.C. 1451 *et seq.*), and the Public Health Service Act (42 U.S.C. 201 *et seq.*). In carrying out our responsibilities under these laws, we ensure that food is safe, not adulterated, and not misbranded.

The Nutrition Labeling and Education Act of 1990 (Pub. L. 101–535) amended the FD&C Act to require most foods to bear nutrition labeling and to require food labels that bear nutrient content claims and certain health messages to comply with specific requirements (21 U.S.C. 343(q) and (r)). In addition, the 2016 Nutrition Facts Label final rule (81 FR 33741, May 27, 2016) updated the nutrition labeling requirements for packaged foods to reflect new scientific information and dietary recommendations.

The Food Allergen Labeling and Consumer Protection Act of 2004 (Pub. L. 108–282) amended the FD&C Act to require that the label of a food that contains an ingredient that is or contains protein from a ''major food allergen'' declare the presence of the allergen in a manner described by the law (section 403(w) of the FD&C Act) 21 U.S.C. 343(w)). The Food Allergy Safety, Treatment, Education, and Research Act of 2021 (Pub. L. 117–11) amended the food allergen labeling requirements to add sesame to the definition of major food allergens.

FDA's food labeling regulations are found in Title 21 of the Code of Federal Regulations, part 101 (21 CFR part 101) and include requirements for nutrition information (§ 101.9), ingredient information (§ 101.4), statement of identity (§ 101.3), net quantity of contents (§ 101.7), and name and place of business (§ 101.5). The major food allergen labeling requirements are in section 403(w) of the FD&C Act.

III. Food Labeling and Online Grocery Shopping

FDA addressed the issue of online labeling of food products in a 2007 ''Dear Manufacturer'' letter. At that time, for consistency and to avoid consumer confusion, FDA recommended that the nutrition information presented online be similar to FDA's Nutrition Facts label requirements under § 101.9.[1] FDA maintained that, in some circumstances, information disseminated online by, or on behalf of, a regulated company met the definition of labeling in section 201(m) of the FD&C Act (21 U.S.C. 321(m)) and therefore is subject to the requirements of the FD&C Act. We recommended that, if manufacturers and distributors made claims or provided label information on their food products online, they ensure that the claims and other information is consistent with FDA's current laws and regulations (Ref. 2).

The primary purpose of food labeling is to provide consumers with information to make informed decisions about the food they are purchasing, to make safe choices, and to maintain healthy dietary practices. For this to be possible, consumers need accurate, informative, and accessible food labeling when shopping for groceries online.

We are aware that many grocery retailers, manufacturers, and third-party online grocery providers present some label information online, such as nutrition and ingredient information. However, there may be inconsistencies in how and where this information is being displayed between the different types of online platforms (*e.g.,* website, mobile application, etc.) and online grocery businesses (Ref. 3). For example, the Nutrition Facts label and ingredient information may not be consistently available for the same food packaged and sold through the different online grocery providers (Ref. 4). In some cases, there may be differences between the label on the food package and the information that is being made available online. This may include inconsistent nutrient values and differences in the format of the nutrition information presented online compared to the nutrition information that is declared on the package label.

In October 2021, FDA hosted the ''New Era of Smarter Food Safety Summit on E-Commerce: Ensuring the Safety of Foods Ordered Online and Delivered Directly to Consumers'' (Summit). Part of the Summit was designed to help us learn more about labeling of food products offered for sale through e-commerce. One session focused on food labeling. The session specifically addressed the nutrition, ingredient, and allergen information that is displayed through online grocery shopping platforms. We also established a public docket for the Summit and received limited comments that discussed food labeling issues associated with grocery foods sold through e-commerce. To ensure we have current data and information to inform our work to empower consumers with consistent and accurate nutrition, ingredient, and allergen information when grocery shopping online, we are providing additional opportunity for comment through this RFI. To inform next steps, we will consider comments from the Summit as well as data and information submitted in response to this RFI.

IV. Request for Information

We request information on whether and how online grocery retailers, food manufacturers, and third-party online grocery providers are displaying nutrition, ingredient, and allergen information through online grocery shopping platforms. When responding, please identify the question by its number (such as 1.1) so that we can associate your response with a specific question. Specifically, we request data and information regarding:

1. Food Labeling Information Provided Through Online Grocery Shopping

1.1 The mandatory label requirements on most packaged foods include, in part, nutrition information (*e.g.,* Nutrition Facts label), ingredient information, and major food allergens information (when applicable). What mandatory label information is currently available through online grocery shopping platforms? How consistently is mandatory label information presented across online grocery shopping platforms? Please provide any data and evidence to support your response.

1.2 How is nutrition, ingredient, and major food allergens information presented through online grocery shopping platforms? For example, where is the information available on the web page in relation to the product? Please provide any data and evidence to support your response.

1.3 When provided, is the nutrition, ingredient, and major food allergens

[1] We consistently maintain that online labeling cannot be used in place of labeling that is required on the actual package. The regulations require all food in packaged form to be fully labeled on the package, regardless of how the product is sold (internet vs. retail store).

information in the same format as on the packaged product (*e.g.,* Nutrition Facts label format)? If pictures of the product are used, how does the manufacturer, retailer, or third-party online grocery provider ensure the information in the picture is consistent with the package label, readable, and accessible on all devices (*e.g.,* laptops, smartphones etc.)? Please provide any data and evidence to support your response.

2. Industry Considerations and Logistics of Food Labeling in Online Grocery Shopping

2.1 Grocery foods may be sold in various ways through e-commerce, (*e.g.,* directly from the manufacturer, a retailer, or through a third-party online grocery provider). How do manufacturers, grocery retailers, and third-party online grocery providers decide what label information to display for grocery foods sold through online platforms (websites, mobile applications, etc.)? Please provide any data and evidence to support your response.

2.2 What challenges and limitations do online grocery retailers, manufacturers and third-party online grocery providers encounter when seeking to display food labeling information on their respective platforms? Please provide any data and evidence to support your response. Also, what, if any, are the labeling challenges for international websites selling groceries online?

2.3 How do manufacturers, retailers, and third-party online grocery providers ensure that information online is consistent with the actual product package and that the information is accurate and up to date? Please provide any data and evidence to support your response.

2.4 How do online retailers and third-party online grocery providers address manufacturer reformulations that may alter a product's nutrition, ingredient, or major food allergens information? If there is a change or error detected, how do online grocery shopping platforms collect the information and update the website (*e.g.,* is there a customer feedback loop or internal quality assurance process to detect and correct online labeling errors)? Please provide any data and evidence to support your response.

2.5 What measures are online grocery shopping platforms taking to ensure that consumers can access accurate nutrition, ingredient, and major food allergens information when purchasing groceries online? Have online grocery shopping platforms identified or capitalized on opportunities to leverage online platforms (*e.g.,* interactive labeling) to improve consumer engagement with and accessibility to food labeling information? Please provide any data and evidence to support your response.

2.6 How are online grocery shopping platforms seeking to ensure online access to labeling information is equitable for consumers? Do current online labeling presentations present barriers to accessing labeling information for certain consumers? Please provide any data and evidence to support your response.

3. Consumer Use of Food Label Information in Online Grocery Shopping

3.1 What food label information do consumers expect to see when shopping for groceries online? For example, do consumers expect all the information presented online to be the same as the retail food package label? When there is a picture of a product label online, do consumers expect the picture of the label to be the same as the label on the retail food package? Please provide any data and evidence to support your response.

3.2 To what extent, and how, do consumers use nutrition, ingredient, and major food allergens information when grocery shopping online? For example, what percentage of consumers use the label to get information to support eating healthier? What percentage of consumers use the label information because of specific dietary concerns? We would be especially interested in demographic data on consumers who view label information when grocery shopping online. Please provide any data and evidence to support your response.

3.3 What do consumers find most challenging about navigating online shopping platforms for specific label information needs? Please provide any data and evidence to support your response.

3.4 What data are available on the most effective ways for presenting nutrition, ingredient, and major food allergens information specifically through online grocery shopping platforms (websites, mobile applications, etc.), so that consumers can easily access the information? For example, is there a specific format (*e.g.,* Nutrition Facts label format) that consumers find useful in an online grocery shopping platform? What are effective means of displaying this information on the platform (*e.g.,* link to additional product information, viewable on the top 50 percent of the web page) to ensure consumers have ready access? Please provide any data and evidence to support your response.

V. References

The following references are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. eMarketer Editors. ''In 2021, Online Grocery Sales Will Surpass $100 Billion'' Insider Intelligence, February 24, 2021, available at: *https://www.emarketer.com/content/2021-online-grocery-sales-will-surpass-100-billion.* Accessed on October 3, 2022.
2. FDA. ''Guidance for Industry and FDA: Dear Manufacturer Letter Regarding Food Labeling.'' January 2007. Available at: *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-and-fda-dear-manufacturer-letter-regarding-food-labeling.* Accessed on October 3, 2022.
3. Pomeranz, Jennifer L., et al., ''Opportunities to Address the Failure of Online Food Retailers to Ensure Access to Required Food Labelling Information in the USA'', March 2022. Available at: *https://www.cambridge.org/core/journals/public-health-nutrition/article/opportunities-to-address-the-failure-of-online-food-retailers-to-ensure-access-to-required-food-labelling-information-in-the-usa/9520BF4CB0E2CDDF9760276729F0DBE2.* Accessed on October 3, 2022.
4. Olzenak, Kelly, et al., ''How Online Grocery Stores Support Consumer Nutrition Information Needs'', March 2022. Available at: *https://www.sciencedirect.com/science/article/pii/S1499404620305248.* Accessed on October 3, 2022.

Dated: April 18, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–08543 Filed 4–21–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–new]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork

Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before June 23, 2023.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 264–0041 and *PRA@HHS.GOV.*

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–New–60D and project title for reference, to Sherrette A. Funn, email: *Sherrette.Funn@hhs.gov, PRA@HHS.GOV* or call (202) 264–0041 the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Customer Experience in The Office of the Assistant Secretary for Financial Resources Service Delivery.

Type of Collection: Quantitative & Qualitative.

OMB No.: 0990–new.

Abstract: The U.S. Department of Health and Human Services (HHS) Office of the Assistant Secretary for Financial Resources (ASFR) is requesting OMB approval for the Customer Experience in The Office of the Assistant Secretary for Financial Resources Service Delivery initiative. The proposed information collection activity provides a means to garner quantitative and qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving access to and service delivery. This feedback will (1) provide insights into customer or stakeholder perceptions, experiences and expectations; (2) provide a warning of issues that create barriers to funding or the system to deliver them; and (3) focus attention on areas where communication, training or changes in operations might improve delivery of such opportunities and services. These voluntary collections will allow for ongoing, collaborative and actionable communications between HHS and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: (1) legibility, readability, comprehension, and accessibility and inclusion of ASFR services; (2) timeliness, appropriateness, and accuracy of information within services delivered by ASFR; (3) efficiency of service delivery, and resolution of issues with service delivery; and (4) any other reasonable area of exploration engendered by this review. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public.

The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government. Moreover, Personally identifiable information (PII) will be collected only to the extent necessary. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable. Such assessments would better equip HHS to develop policies and programs that deliver resources and benefits equitably to all.

ANNUALIZED BURDEN HOUR TABLE

Forms (if necessary)	Respondents (if necessary)	Number of respondents	Number of responses per respondents	Average burden per response within hrs.	Total burden hours
Applicant Survey	HHS Potential Applicant	1,000	1	15/60	250
Testing Session	HHS Potential Applicant	300	1	1.5	450
Individual In-Depth Interviews	HHS Applicant/HHS Staff	200	1	1	200
Focus Group	HHS Applicant/HHS Staff	200	1	1	200
Total					1,100

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2023–08568 Filed 4–21–23; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Produce Prescription Pilot Program

Announcement Type: New.

Funding Announcement Number: HHS–2023–IHS–PPPP–0001.

Assistance Listing (Catalog of Federal Domestic Assistance or CFDA) Number: 93.933.

Key Dates

Application Deadline Date: June 8, 2023.

Earliest Anticipated Start Date: June 23, 2023.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting applications for a cooperative agreement for the Produce Prescription Pilot Program (P4). This program is authorized under the Snyder Act, 25 U.S.C. 13; the Transfer Act, 42 U.S.C. 2001(a); and the Consolidated Appropriations Act, 2022, Public Law 117–103, 136 Stat. 49, 398 (2022). The Assistance Listings section of *SAM.gov* (*https://sam.gov/content/home*) describes this program under 93.933.

Background

Social determinants of health (SDOH) are the conditions in the environments where individuals are born, live, learn, work, play, worship, and age, that affect health and quality of life risks and outcomes. One of the SDOH that can contribute significantly to various health disparities and inequities is access to nutritious foods. If people or communities do not have nutrition

security, they are less likely to have good nutrition, placing them at risk for health problems, such as heart disease, diabetes, and obesity (*https://health.gov/healthypeople/priority-areas/social-determinants-health*). Studies have shown that people and communities of color, families with children, and people who live in remote areas, including Tribal communities, have a higher rate of diet-related chronic diseases (*https://www.usda.gov/media/press-releases/2022/03/17/usda-announces-actions-nutrition-security*). For example, according to the 2022 Centers for Disease Control National Diabetes Statistics Report, the prevalence of diagnosed diabetes was highest among American Indians and Alaska Natives (14.5 percent), followed by non-Hispanic Blacks (12.1 percent), people of Hispanic origin (11.8 percent), non-Hispanic Asians (9.5 percent) and non-Hispanic Whites (7.4 percent), compared to 8.7 percent of the United States (U.S.) population (*https://www.cdc.gov/diabetes/data/statistics-report/index.html*).

The food security survey conducted in 2021 by the U.S. Department of Agriculture (USDA) found 10.2 percent (13.5 million) of U.S. households were food insecure (*https://www.ers.usda.gov/webdocs/publications/104656/err-309.pdf?v=8250.2*). American Indian and Alaskan Native (AI/AN) people are at a greater risk for food insecurity than White Americans, Black Americans, or Hispanic Americans. About one in four AI/AN people experience food insecurity, compared to 1 in 9 Americans overall, and 1 in 12 White/non-Hispanic individuals. The higher rates of food insecurity among AI/AN people have been attributed to limited income, employment, and resources, such as lack of access to full-service grocery stores or living in food deserts (*https://moveforhunger.org/native-americans-food-insecure#:~:text=About%20one%20in%20four%20Native,access%20to%20sufficient%2C%20affordable%20food*). Other SDOH in Tribal communities, such as education, transportation, income etc., contribute to food insecurity. This forces many AI/AN people to choose cheaper foods that have a long shelf life instead of buying fresh foods, which are more expensive and harder to access. To help address food insecurity, many AI/AN communities utilize federally funded food programs, such as the Supplemental Nutrition Assistance Program (SNAP) and the USDA Food Distribution Program on Indian Reservations (FDPIR). Despite these assistance programs, AI/AN communities continue to struggle with high rates of food insecurity and diet-related chronic diseases.

According to the National Produce Prescription Collaborative (2021), Produce Prescription Programs have been shown to increase access to nutritious foods in communities at risk for food insecurity (*https://www.nppc.health/*). Produce Prescription Programs help individuals/families who are experiencing food insecurity and/or diet-related health problems more easily obtain fresh fruits and vegetables by obtaining a prescription from a health care provider. Individuals/families obtain a prescription from their health care provider for fresh fruits and vegetables that is filled by food retailers with produce. When appropriately implemented, Produce Prescription Programs improve health care outcomes, optimize medical spending, and increase patient engagement and satisfaction.

Congress has authorized funding for the IHS to create a Produce Prescription Pilot Program (P4) to increase access to produce and traditional foods within AI/AN communities. This pilot program is part of the IHS's efforts to implement the Administration's National Strategy on Hunger, Nutrition, and Health (*https://www.whitehouse.gov/wp-content/uploads/2022/09/White-House-National-Strategy-on-Hunger-Nutrition-and-Health-FINAL.pdf*), which aims to end hunger and increase healthy eating and physical activity by 2030 so fewer Americans experience diet-related diseases, while also reducing disparities (such as those seen in AI/AN communities). The program provides an opportunity to engage Tribal communities in addressing food insecurity and decreasing the risk for diet-related illness. By including traditional foods, it also provides an opportunity to deliver culturally appropriate nutrition education.

Purpose

The purpose of this program is to help establish Produce Prescription Programs through collaborations with stakeholders from various health care and food industries in Tribal communities. The P4 will help increase access to fruits, vegetables, and healthy traditional foods for AI/AN people by allowing eligible individuals to receive a fruit and vegetable voucher from a participating health care provider to redeem at a local market. The goal of this pilot is to demonstrate and evaluate the impact of Produce Prescription Programs on AI/AN people and their families, specifically by:

1. Reducing food insecurity;
2. Improving overall dietary health by increasing fruits, vegetables, and traditional food consumption; and
3. Improving health care outcomes.

Required Activities

(1) All recipients must implement a P4 in their communities, by:

(a) Developing the infrastructure to implement and maintain a Produce Prescription Program that fosters ongoing collaboration with one or more Tribal, Federal, or urban health care facilities and local markets/organizations/services that provide fresh fruits and vegetables and/or traditional foods (stores, markets, farmers, mobile unit, etc.);

(b) Identifying an eligible AI/AN population or Urban Indian Organization (*e.g.,* people with diabetes or individuals with Body Mass Index (BMI)>30) that can be significantly impacted. Indicating how many eligible individuals and their families can be served with the current budget and services available.

(i) Using the U.S. Adult Food Security Survey Module (*https://www.ers.usda.gov/media/8279/ad2012.pdf*) to identify eligible participants to be enrolled in this program. Participants must be food insecure at baseline to participate, as defined by the U.S. Adult Food Security Survey Module.

(c) Implementing a nutrition education program that teaches program participants about proper nutrition and the impact it has on disease risk reduction and overall health. A nutrition education program should include information on cultivation and preparation for consumption of traditional foods; and

(d) Developing an evaluation plan that tracks and trends data to demonstrate the impact P4 has on the community. Data must show:

(i) Measurement of food insecurity over time using the U.S. Adult Food Security Survey Module (*https://www.ers.usda.gov/media/8279/ad2012.pdf*). Did food insecurity rates decrease, increase, or remain unchanged by participating in P4?

(ii) Participant's use of services offered by the program. How is the implementation of P4 measured? What percentage of participants redeem the produce vouchers? How is consumption of produce measured and what percentage of participants consume the produce? How much fruit and vegetables are consumed at baseline and how did that amount change over time,

in comparison to the number of vouchers prescribed by the health care provider? Did the participants attend the education program?

(iii) Evidence of improvement in health outcomes. Are healthcare facility records available and accessible, in accordance with privacy laws, to track changes in participant's clinical parameters such as A1C and lipid levels? Are anthropometric measures also available through the healthcare facility or measured in separate facilities and made available for analysis?

(iv) Changes in access to healthy and traditional foods.

(2) Recipients must:

(a) Consult with and accept guidance from the IHS Division of Diabetes Treatment and Prevention (DDTP), the IHS Division of Grants Management (DGM), and their Federal Program Officer(s) and/or designated assignee(s);

(b) Attend quarterly conference calls established by DDTP, and provide update on the progress of P4 implementation;

(c) Respond promptly to requests for information;

(d) Provide short presentations on their processes and successes, as requested;

(e) Keep DDTP informed of emerging issues, developments, and challenges that may affect the recipient's ability to comply with the award Terms and Conditions and/or any requirements;

(f) Have an officially approved Project Director (approved by the Grants Management Officer in consultation with the Program Official) to plan/initiate and maintain the P4, who has the following qualifications:

(i) Relevant health or wellness education and/or experience;

(ii) Experience with award program management, including skills in program coordination, budgeting, reporting, and staff supervision; and

(iii) Working knowledge of nutrition and nutrition challenges in AI/AN communities.

(g) Complete and submit an annual progress report to the IHS by attaching it as a Grant Note in GrantSolutions. Instructions, template(s), and other information will be provided;

(h) Submit baseline, semi-annual, and annual/final data to the IHS; and

(i) Participate in trainings provided by DDTP.

II. Award Information

Funding Instrument—Cooperative Agreement

Estimated Funds Available

The total funding identified for fiscal year (FY) 2023 is approximately $2.5 million. This $2.5 million will be divided into individual award amounts. Each of these award amounts are anticipated to be less than $500,000 per year (applications requesting more than $500,000 will be rejected). The applicant, based on capacity, need, size of target AI/AN population, and proposed program, will request an individual award amount of $500,000 or less. For example, smaller programs will request less funding than their larger counterparts. The funding available for competing and subsequent continuation awards issued under this announcement is subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement. Selections will be made based on community needs, objectives, and outcomes that align with the goals of this pilot program.

Anticipated Number of Awards

The IHS anticipates issuing approximately six to eight awards under this program announcement.

Period of Performance

The project period is for 5 years.

Cooperative Agreement

Cooperative agreements awarded by the Department of Health and Human Services (HHS) are administered under the same policies as grants. However, the funding agency, IHS, is anticipated to have substantial programmatic involvement in the project during the entire period of performance. Below is a detailed description of the level of involvement required of the IHS.

Substantial Agency Involvement Description for Cooperative Agreement

(1) Identify a core group of IHS staff to work with the recipient in providing technical assistance and guidance.

(2) Regularly meet with the recipient to review P4 work plan and provide guidance and feedback on implementation, program evaluation, and data collection strategy and tools.

(3) Establish and convene quarterly conference calls to provide P4 updates and discuss recipient progress.

(4) Work with the recipient to display the results of this project by publishing on shared websites as well as in jointly authored publications.

(5) Use the evidence-based program(s), framework(s), and data collection requirement(s) to develop an evaluation plan to collect national program aggregate and local evidence-based practice fidelity data.

III. Eligibility Information

1. Eligibility

To be eligible for this funding opportunity, an applicant must be one of the following as defined under 25 U.S.C. 1603:

- A federally recognized Indian Tribe as defined by 25 U.S.C. 1603(14). The term ''Indian Tribe'' means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or group, or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

- A Tribal organization as defined by 25 U.S.C. 1603(26). The term ''Tribal organization'' has the meaning given in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(l)): ''Tribal organization'' means the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: provided that, in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant. Applicants shall submit letters of support and/or Tribal Resolutions from the Tribes to be served.

- An Urban Indian organization, as defined by 25 U.S.C. 1603(29). The term ''Urban Indian organization'' means a nonprofit corporate body situated in an urban center, governed by an Urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in 25 U.S.C. 1653(a). Applicants must provide proof of nonprofit status with the application, *e.g.,* 501(c)(3).

The DGM will notify any applicants deemed ineligible.

2. Additional Information on Eligibility

The IHS does not fund concurrent projects. If an applicant is successful under this announcement, any subsequent applications in response to other P4 announcements from the same applicant will not be funded. Applications on behalf of individuals (including sole proprietorships) and foreign organizations are not eligible and will be disqualified from competitive review and funding under this funding opportunity.

Note: Please refer to Section IV.2 (Application and Submission Information/ Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required, such as Tribal Resolutions, proof of nonprofit status, etc.

3. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

4. Other Requirements

Applications with budget requests that exceed $500,000 outlined under Section II Award Information, Estimated Funds Available, or exceed the period of performance outlined under Section II Award Information, Period of Performance, are considered not responsive and will not be reviewed. The DGM will notify the applicant.

The following documentation is required (if applicable):

Tribal Resolution

The DGM must receive an official, signed Tribal Resolution prior to issuing a Notice of Award (NoA) to any Tribe or Tribal organization selected for funding. An applicant that is proposing a project affecting another Indian Tribe must include resolutions from all affected Tribes to be served. However, if an official signed Tribal Resolution cannot be submitted with the application prior to the application deadline date, a draft Tribal Resolution must be submitted with the application by the deadline date in order for the application to be considered complete and eligible for review. The draft Tribal Resolution is not in lieu of the required signed resolution but is acceptable until a signed resolution is received. If an application without a signed Tribal Resolution is selected for funding, the applicant will be contacted by the Grants Management Specialist (GMS) listed in this funding announcement and given 90 days to submit an official signed Tribal Resolution to the GMS. If the signed Tribal Resolution is not received within 90 days, the award will be forfeited. Applicants organized with a governing structure other than a Tribal council may submit an equivalent document commensurate with their governing organization.

Proof of Nonprofit Status

Organizations claiming nonprofit status must submit a current copy of the 501(c)(3) Certificate with the application.

IV. Application and Submission Information

Grants.gov uses a Workspace model for accepting applications. The Workspace consists of several online forms and three forms in which to upload documents—Project Narrative, Budget Narrative, and Other Documents. Give your files brief descriptive names. The filenames are key in finding specific documents during the merit review and in processing awards. Upload all requested and optional documents individually, rather than combining them into a package. Creating a package creates confusion when trying to find specific documents. Such confusion can contribute to delays in processing awards and could lead to lower scores during the merit review.

1. Obtaining Application Materials

The application package and detailed instructions for this announcement are available at *https://www.Grants.gov.*

Please direct questions regarding the application process to *DGM@ihs.gov.*

2. Content and Form Application Submission

Mandatory documents for all applicants include:

a. Application forms:

1. SF–424, Application for Federal Assistance.

2. SF–424A, Budget Information—Non-Construction Programs.

3. SF–424B, Assurances—Non-Construction Programs.

4. Project Abstract Summary form.

b. Project Narrative (not to exceed 25 pages). See Section IV.2.A, Project Narrative for instructions.

c. Budget Justification/Narrative (not to exceed 5 pages). See Section IV.2.B, Budget Narrative for instructions.

d. Tribal Resolution(s) as described in Section III, Eligibility.

e. 501(c)(3) Certificate, if applicable.

f. Biographical sketches for all Key Personnel.

g. Contractor/Consultant resumes or qualifications and scope of work.

h. Disclosure of Lobbying Activities (SF–LLL), if applicant conducts reportable lobbying.

i. Certification Regarding Lobbying (GG-Lobbying Form).

j. Copy of current Negotiated Indirect Cost (IDC) rate agreement (required in order to receive IDC).

k. Documentation of current Office of Management and Budget (OMB) Financial Audit (if applicable).

Acceptable forms of documentation include:

1. Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or

2. Face sheets from audit reports. Applicants can find these on the FAC website at *https://facdissem.census.gov/.*

Public Policy Requirements

All Federal public policies apply to IHS grants and cooperative agreements. Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of their exclusion from benefits limited by Federal law to individuals eligible for benefits and services from the IHS. See *https://www.hhs.gov/grants/grants/grants-policies-regulations/index.html.*

Requirements for Project and Budget Narratives

A. Project Narrative

This narrative should be a separate document that is no more than 25 pages and must: (1) have consecutively numbered pages; (2) use black font 12 points or larger (applicants may use 10 point font for tables); (3) be single-spaced; and (4) be formatted to fit standard letter paper (8½ × 11 inches). Do not combine this document with any others.

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation Criteria) and place all responses and required information in the correct section noted below or they will not be considered or scored. If the narrative exceeds the overall page limit, the reviewers will be directed to ignore any content beyond the page limit. The 25-page limit for the project narrative does not include standard forms, Tribal Resolutions, budget, budget narratives, and/or other items. Page limits for each section within the project narrative are guidelines, not hard limits.

There are four parts to the project narrative: Part 1—Needs Assessment; Part 2—Program Description/ Operational Plan; Part 3—Evaluation; and Part 4—Organizational Capabilities. See below for details about what to include in each section, and suggested page limits for each section.

Part 1: Needs Assessment (Limit—5 Pages)

Provide a description of the need for a Produce Prescription Program for the

community to be served. Applicant should describe the:

(1) Profile of community socioeconomic and demographic characteristics;

(2) Profile of community diet-related health status and diseases, if available. For example, is there a higher rate of diabetes, obesity, cardiac disease, etc. in the community, due potentially to the lack of access to nutritious food;

(3) Profile of community food resources;

(4) Assessment of food resource accessibility; and

(5) Assessment of food availability, affordability, and insecurity.

Part 2: Program Description/Operational Plan (Limit—10 Pages)

Applicant should describe:

(1) The health care facility being used for this program (can be more than one facility or collective of health care providers);

(2) The local markets/organizations/services/vendors providing fresh fruits and vegetables and/or traditional foods;

(3) The screening and enrollment process—how will the participants be selected? Who (*e.g.,* participants with diabetes, only pregnant moms, only adults, youth/adults/both, etc.) and how many will be eligible?

(a) What is the recruitment process for participants into P4? Based on estimates, how many participants can be accommodated during the budget year?

(b) What will the prescription/voucher look like? Vouchers or actual fresh produce or other means? How long is the prescription/voucher for and what is the dollar value?

(c) How will the prescription be filled? Is it a voucher redemption at a participating vendor? Or a Farmer's Market arrangement with weekly pick up or delivery? How are the participating vendors reimbursed?

(4) What are the plans for encouraging and providing fruits and vegetables and traditional foods in P4? Are there resources that can provide bulk supplies or will participants seek these foods on their own? What are the plans to provide fruits and vegetables, along with traditional foods, to help ensure a balance of both?

(5) The implementation process—how will participants navigate the system? What is required of each participant that enrolls in the program? What will the nutrition education program look like? Will it be individual and/or group sessions? Who will conduct the training and how often? Will there be a pre-test/post-test for the participants and what will it include? If not, how will effectiveness of the education program be measured over time?

(6) Participant and staff nutrition training process;

(7) Duration of program; and is there a participant retention plan?

(8) Staffing plan; and

(9) Anticipated barriers/challenges and possible solutions—geographic accessibility/food deserts, considerations for disability, transportation, etc.

Part 3: Evaluation (Limit—5 Pages)

Program Evaluation

Describe the plan for collecting data, monitoring, and assuring quality and quantity of data and the plan for evaluating and reporting the program's outcomes.

(1) Evaluation plan should include tracking and trending outcome data, such as (but not limited to):

(a) Prescription redemption and dollar amount or other value;

(b) Fruit and vegetable consumption (at baseline and at regular intervals throughout the participants involvement);

(c) Participant recruitment and retention;

(d) Food security, based on the outcomes of the U.S. Adult Food Security Survey Module (*https://www.ers.usda.gov/media/8279/ad2012.pdf*);

(e) Patient experience/satisfaction;

(f) Nutrition knowledge assessments over time;

(g) Implementation cost;

(h) Health outcomes/clinical markers (*e.g.* HbA1c, blood pressure, BMI, waist circumference, etc.) at baseline and then annually; and

(i) Health care utilization patterns.

Part 4: Organizational Capabilities (Limit—5 Pages)

Describe the broader capacity of the organization to complete the project outlined in the work plan, including:

(1) Identification and biosketches for key personnel responsible for completing tasks;

(2) Description of the structure of the organization and chain of responsibility for successful completion of the project outline in the work plan;

(3) Description of financial and project management capacity, including information regarding similarly sized projects in scope and financial assistance as well as other awards and projects successfully completed;

(4) Description of national experience in providing administrative and support services to Tribal programs, education agencies, and other Tribal programs for the benefit of AI/AN people and Tribal communities (indicate experience in national partnerships or national support efforts on behalf of AI/AN communities especially as it pertains to nutrition concerns);

(5) Description of equipment and space available for use during the proposed project; and

(6) Description of specialized experience working with Produce Prescription programs.

B. Budget Narrative (Limit—5 Pages)

Provide a budget narrative that explains the amounts requested for each line item of the budget from the SF–424A (Budget Information for Non-Construction Programs) for the first year of the project. The applicant can submit with the budget narrative a more detailed spreadsheet than is provided by the SF–424A (the spreadsheet will not be considered part of the budget narrative). The budget narrative should specifically describe how each item would support the achievement of proposed objectives. Be very careful about showing how each item in the ''Other'' category is justified. Do NOT use the budget narrative to expand the project narrative.

3. Submission Dates and Times

Applications must be submitted through *Grants.gov* by 11:59 p.m. Eastern Time on the Application Deadline Date. Any application received after the application deadline will not be accepted for review. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the application process, contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*). If problems persist, contact Mr. Paul Gettys, Deputy Director, DGM, by email at *DGM@ihs.gov.* Please be sure to contact Mr. Gettys at least 10 days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

The IHS will not acknowledge receipt of applications.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are not allowable.
- The available funds are inclusive of direct and indirect costs.

• Only one cooperative agreement may be awarded per applicant.

6. Electronic Submission Requirements

All applications must be submitted via *Grants.gov*. Please use the *https://www.Grants.gov* website to submit an application. Find the application by selecting the ''Search Grants'' link on the homepage. Follow the instructions for submitting an application under the Package tab. No other method of application submission is acceptable.

If you cannot submit an application through *Grants.gov*, you must request a waiver prior to the application due date. You must submit your waiver request by email to *DGM@ihs.gov.* Your waiver request must include clear justification for the need to deviate from the required application submission process. The IHS will not accept any applications submitted through any means outside of *Grants.gov* without an approved waiver.

If the DGM approves your waiver request, you will receive a confirmation of approval email containing submission instructions. You must include a copy of the written approval with the application submitted to the DGM. Applications that do not include a copy of the waiver approval from the DGM will not be reviewed. The Grants Management Officer of the DGM will notify the applicant via email of this decision. Applications submitted under waiver must be received by the DGM no later than 5:00 p.m. Eastern Time on the Application Deadline Date. Late applications will not be accepted for processing. Applicants that do not register for both the System for Award Management (SAM) and *Grants.gov* and/or fail to request timely assistance with technical issues will not be considered for a waiver to submit an application via alternative method.

Please be aware of the following:

• Please search for the application package in *https://www.Grants.gov* by entering the Assistance Listing number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.

• If you experience technical challenges while submitting your application, please contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*).

• Upon contacting *Grants.gov*, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.

• Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to 20 working days.

• Please follow the instructions on *Grants.gov* to include additional documentation that may be requested by this funding announcement.

• Applicants must comply with any page limits described in this funding announcement.

• After submitting the application, you will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The IHS will not notify you that the application has been received.

System for Award Management

Organizations that are not registered with the System for Award Management (SAM) must access the SAM online registration through the SAM home page at *https://sam.gov.* Organizations based in the U.S. will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2 to 5 weeks to become active. Please see *SAM.gov* for details on the registration process and timeline. Registration with the SAM is free of charge but can take several weeks to process. Applicants may register online at *https://sam.gov.*

Unique Entity Identifier

Your *SAM.gov* registration now includes a Unique Entity Identifier (UEI), generated by *SAM.gov*, which replaces the DUNS number obtained from Dun and Bradstreet. *SAM.gov* registration no longer requires a DUNS number.

Check your organization's *SAM.gov* registration as soon as you decide to apply for this program. If your *SAM.gov* registration is expired, you will not be able to submit an application. It can take several weeks to renew it or resolve any issues with your registration, so do not wait.

Check your *Grants.gov* registration. Registration and role assignments in *Grants.gov* are self-serve functions. One user for your organization will have the authority to approve role assignments, and these must be approved for active users in order to ensure someone in your organization has the necessary access to submit an application.

The Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''), requires all HHS recipients to report information on sub-awards. Accordingly, all IHS recipients must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its UEI number to the prime recipient organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

Additional information on implementing the Transparency Act, including the specific requirements for SAM, are available on the DGM Grants Management, Policy Topics web page at *https://www.ihs.gov/dgm/policytopics/.*

V. Application Review Information

Possible points assigned to each section are noted in parentheses. The project narrative and budget narrative should include only the first year of activities. The project narrative should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to fully understand the project. Attachments requested in the criteria do not count toward the page limit for the narratives. Points will be assigned to each evaluation criteria adding up to 100 possible points. Points are assigned as follows:

1. Evaluation Criteria

A. Introduction and Needs Assessment (20 Points)

This section should provide a clear description of the need for a Produce Prescription Program in the AI/AN community.

(1) Did the applicant describe the profile of community socioeconomic and demographic and diet-related health illness characteristics, as well as the community food resources?

(2) Did the applicant provide information about food resource accessibility, availability, and affordability?

B. Program Description and Operational Plan (30 Points)

This section should demonstrate a sound and effective program operational plan that will support accomplishment of deliverables and milestones of the P4. A clear and concise description of the following should be provided:

(1) The health care facility and local markets, organizations, services, and/or vendors providing fresh fruits and vegetables and/or traditional foods;

(2) The recruitment, screening, and enrollment process;

(3) The program implementation of prescribing by health care providers and redeeming fresh fruits and vegetables and/or traditional foods (if applicable) by participants (the target group);

(4) The staffing plan to implement the program as well as the process for

nutrition training and education to participants and program staff; and

(5) Anticipated barriers/challenges and possible solutions.

C. Evaluation Plan (20 Points)

This section should describe the plan for collecting data, monitoring, and assuring quality and quantity of data, and the plan for evaluating and reporting the program's outcomes.

D. Organizational Capabilities (20 Points)

This section should outline the broader capacity of the organization to complete the project outlined in the work plan. It includes the identification of personnel responsible for completing tasks and the chain of responsibility for successful completion of the project outline in the work plan. The section should clearly described the following:

(1) The structure of the organization;

(2) The ability of the organization to manage the proposed project and included information regarding similarly sized projects in scope and financial assistance as well as other awards and projects successfully completed;

(3) What equipment (*e.g.,* phone, websites, etc.) and facility space (*e.g.,* office space) will be available for use during the proposed project. Include information about any equipment not currently available that will be purchased throughout the agreement;

(4) Provide a list and biographical sketches for key personnel who will work on the project; and

(5) Demonstrate knowledge in:

(i) Providing administrative and support services to Tribal programs, education agencies, and other programs for the benefit of AI/AN people and Tribal communities (indicate experience in national partnerships or national support efforts on behalf of AI/AN communities especially as it pertains to health concerns); and

(ii) Financial and project management.

E. Categorical Budget and Budget Justification (10 Points)

This section should provide a clear estimate of the project program costs and justification for expenses for the entire cooperative agreement period. The budget and budget justification should be consistent with the tasks identified in the work plan.

(1) Categorical budget (Form SF–424A, Budget Information Non-Construction Programs) completed for the first budget period.

(2) Narrative justification for all costs, explaining why each line item is necessary or relevant to the proposed project. Include sufficient details to facilitate the determination of cost allowability.

(3) Indication of any special start-up costs.

(4) Budget justification should include a description of the planned costs and how those costs relate to or support the proposed project activities.

Additional documents can be uploaded as Other Attachments in *Grants.gov*. These can include:

- Timeline for proposed objectives.
- Current Indirect Cost Rate Agreement.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.,* data tables, key news articles, etc.).
- Additional letters of support and assistance
- Financial statements
- Other similar project documents (*e.g.,* budgets)

2. Review and Selection

Each application will be prescreened for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the Review Committee (RC) based on the evaluation criteria. Incomplete applications and applications that are not responsive to the administrative thresholds (budget limit, period of performance limit) will not be referred to the RC and will not be funded. The DGM will notify the applicant of this determination.

Applicants must address all program requirements and provide all required documentation.

3. Notifications of Disposition

All applicants will receive an Executive Summary Statement from the IHS DDTP within 30 days of the conclusion of the RC outlining the strengths and weaknesses of their application. The summary statement will be sent to the Authorizing Official identified on the face page (SF–424) of the application.

A. Award Notices for Funded Applications

The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the award, the terms and conditions of the award, the effective date of the award, the budget period, and period of performance. Each entity approved for funding must have a user account in GrantSolutions in order to retrieve the NoA. Please see the Agency Contacts list in Section VII for the systems contact information.

B. Approved But Unfunded Applications

Approved applications not funded due to lack of available funds will be held for 1 year. If funding becomes available during the course of the year, the application may be reconsidered.

Note: Any correspondence, other than the official NoA executed by an IHS grants management official announcing to the project director that an award has been made to their organization, is not an authorization to implement their program on behalf of the IHS.

VI. Award Administration Information

1. Administrative Requirements

Awards issued under this announcement are subject to, and are administered in accordance with, the following regulations and policies:

A. The criteria as outlined in this program announcement.

B. Administrative Regulations for Grants:

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards currently in effect or implemented during the period of award, other Department regulations and policies in effect at the time of award, and applicable statutory provisions. At the time of publication, this includes 45 CFR part 75, at *https://www.govinfo.gov/content/pkg/CFR-2021-title45-vol1/pdf/CFR-2021-title45-vol1-part75.pdf.*
- Please review all HHS regulatory provisions for Termination at 45 CFR 75.372, at the time of this publication located at *https://www.govinfo.gov/content/pkg/CFR-2021-title45-vol1/pdf/CFR-2021-title45-vol1-sec75-372.pdf.*

C. Grants Policy:

- HHS Grants Policy Statement, Revised January 2007, at *https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf.*

D. Cost Principles:

- Uniform Administrative Requirements for HHS Awards, ''Cost Principles,'' at 45 CFR part 75 subpart E, at the time of this publication located at *https://www.govinfo.gov/content/pkg/CFR-2021-title45-vol1/pdf/CFR-2021-title45-vol1-part75-subpartE.pdf.*

E. Audit Requirements:

- Uniform Administrative Requirements for HHS Awards, ''Audit Requirements,'' at 45 CFR part 75 subpart F, at the time of this publication located at *https://www.govinfo.gov/content/pkg/CFR-2021-title45-vol1/pdf/*

CFR-2021-title45-vol1-part75-subpartF.pdf.

F. As of August 13, 2020, 2 CFR part 200 was updated to include a prohibition on certain telecommunications and video surveillance services or equipment. This prohibition is described in 2 CFR 200.216. This will also be described in the terms and conditions of every IHS grant and cooperative agreement awarded on or after August 13, 2020.

2. Indirect Costs

This section applies to all recipients that request reimbursement of IDC in their application budget. In accordance with HHS Grants Policy Statement, Part II–27, the IHS requires applicants to obtain a current IDC rate agreement and submit it to the DGM prior to the DGM issuing an award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable award activities under the current award's budget period. If the current rate agreement is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate agreement is provided to the DGM.

Per 2 CFR 200.414(f) Indirect (F&A) costs,

> any non-Federal entity (NFE) [*i.e.,* applicant] that does not have a current negotiated rate, . . . may elect to charge a de minimis rate of 10 percent of modified total direct costs which may be used indefinitely. As described in Section 200.403, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as the NFE chooses to negotiate for a rate, which the NFE may apply to do at any time.

Electing to charge a de minimis rate of 10 percent can be used by applicants that have received an approved negotiated indirect cost rate from HHS or another cognizant Federal agency. Applicants awaiting approval of their indirect cost proposal may request the 10 percent de minimis rate. When the applicant chooses this method, costs included in the indirect cost pool must not be charged as direct costs to the award.

Available funds are inclusive of direct and appropriate indirect costs. Approved indirect funds are awarded as part of the award amount, and no additional funds will be provided.

Generally, IDC rates for IHS recipients are negotiated with the Division of Cost Allocation at *https://rates.psc.gov/* or the Department of the Interior (Interior Business Center) at *https://ibc.doi.gov/ICS/tribal.* For questions regarding the indirect cost policy, please write to *DGM@ihs.gov.*

3. Reporting Requirements

The recipient must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active award, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in the imposition of special award provisions and/or the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the recipient organization or the individual responsible for preparation of the reports. Per DGM policy, all reports must be submitted electronically by attaching them as a ''Grant Note'' in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please use the form under the Recipient User section of *https://www.grantsolutions.gov/home/getting-started-request-a-user-account/.* Download the Recipient User Account Request Form, fill it out completely, and submit it as described on the web page and in the form.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required annually. The progress reports are due within 90 days after the reporting period ends (specific dates will be listed in the NoA Terms and Conditions). These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 120 days of expiration of the period of performance.

B. Financial Reports

Federal Financial Reports are due 90 days after the end of each budget period, and a final report is due 120 days after the end of the period of performance.

Recipients are responsible and accountable for reporting accurate information on all required reports: the Progress Reports and the Federal Financial Report.

Failure to submit timely reports may result in adverse award actions blocking access to funds.

C. Data Collection and Reporting

The pilot program will develop their own unique plan for collecting data, monitoring, and assuring quality and quantity of data and the plan for evaluating and reporting the program's outcomes. The plan should include tracking and trending outcome data at baseline, semiannually, and annually. Data should include (but is not limited to):

(1) Prescription redemption and dollar amounts;

(2) Fruit and vegetable consumption;

(3) Participant retention rates;

(4) Food security via a validated measurement tool/survey;

(5) Patient experience/satisfaction results;

(6) Nutrition knowledge assessments over time;

(7) Implementation cost;

(8) Health outcomes/clinical markers (*e.g.* HbA1c, blood pressure, weight, BMI, waist circumference, etc.); and

(9) Health care utilization patterns.

D. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal awards to report information about first-tier sub-awards and executive compensation under Federal assistance awards.

The IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs, and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 sub-award obligation threshold met for any specific reporting period.

For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Management website at *https://www.ihs.gov/dgm/policytopics/.*

E. Non-Discrimination Legal Requirements for Awardees of Federal Financial Assistance

The recipient must administer the project in compliance with Federal civil rights laws, where applicable, that prohibit discrimination on the basis of race, color, national origin, disability, age, and comply with applicable conscience protections. The recipient must comply with applicable laws that prohibit discrimination on the basis of sex, which includes discrimination on the basis of gender identity, sexual orientation, and pregnancy. Compliance with these laws requires taking reasonable steps to provide meaningful access to persons with limited English proficiency and providing programs that are accessible to and usable by persons with disabilities. The HHS Office for Civil Rights provides guidance on complying with civil rights laws enforced by HHS. See *https://www.hhs.gov/civil-rights/for-providers/provider-obligations/index.html* and *https://www.hhs.gov/civil-rights/for-individuals/nondiscrimination/index.html.*

- Recipients of FFA must ensure that their programs are accessible to persons with limited English proficiency. For guidance on meeting your legal obligation to take reasonable steps to ensure meaningful access to your programs or activities by limited English proficiency individuals, see *https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/fact-sheet-guidance/index.html* and *https://www.lep.gov.*
- For information on your specific legal obligations for serving qualified individuals with disabilities, including reasonable modifications and making services accessible to them, see *https://www.hhs.gov/civil-rights/for-individuals/disability/index.html.*
- HHS funded health and education programs must be administered in an environment free of sexual harassment. See *https://www.hhs.gov/civil-rights/for-individuals/sex-discrimination/index.html.*
- For guidance on administering your program in compliance with applicable Federal religious nondiscrimination laws and applicable Federal conscience protection and associated anti-discrimination laws, see *https://www.hhs.gov/conscience/conscience-protections/index.html* and *https://www.hhs.gov/conscience/religious-freedom/index.html.*
- Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of their exclusion from benefits limited by Federal law to individuals eligible for benefits and services from the IHS.

F. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the FAPIIS at *https://www.fapiis.gov/fapiis/#/home* before making any award in excess of the simplified acquisition threshold (currently $250,000) over the period of performance. An applicant may review and comment on any information about itself that a Federal awarding agency previously entered. The IHS will consider any comments by the applicant, in addition to other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants, as described in 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, NFEs are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive Federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than $10 million for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, the IHS must require an NFE or an applicant for a Federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

All applicants and recipients must disclose in writing, in a timely manner, to the IHS and to the HHS Office of Inspector General all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. 45 CFR 75.113.

Disclosures must be sent in writing to:

U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Marsha Brookins, Director, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, (Include ''Mandatory Grant Disclosures'' in subject line), Office: (301) 443–5204, Fax: (301) 594–0899, Email: *DGM@ihs.gov*

AND

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW, Cohen Building, Room 5527, Washington, DC 20201, URL: *https://oig.hhs.gov/fraud/report-fraud/*, (Include ''Mandatory Grant Disclosures'' in subject line), Fax: (202) 205–0604 (Include ''Mandatory Grant Disclosures'' in subject line) or, Email: *MandatoryGranteeDisclosures@oig.hhs.gov*

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (see 2 CFR part 180 and 2 CFR part 376).

VII. Agency Contacts

1. *Questions on the programmatic issues may be directed to:* Ms. Carmen Licavoli Hardin, Director, Indian Health Service, Division of Diabetes Treatment and Prevention, 5600 Fishers Lane, Mail Stop: 08N34A&B, Rockville, MD 20897, Phone: 1–844–IHS–DDTP (1–844–447–3387), Fax: 301–594–6213, Email: *diabetesprogram@ihs.gov*.

2. *Questions on grants management and fiscal matters may be directed to:* Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Email: *DGM@ihs.gov*.

3. For technical assistance with *Grants.gov*, please contact the *Grants.gov* help desk at (800) 518–4726, or by email at *support@grants.gov*.

4. For technical assistance with GrantSolutions, please contact the GrantSolutions help desk at (866) 577–0771, or by email at *help@grantsolutions.gov.*

VIII. Other Information

The Public Health Service strongly encourages all grant, cooperative agreement, and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to

protect and advance the physical and mental health of the American people.

P. Benjamin Smith,

Deputy Director, Indian Health Service.

[FR Doc. 2023–08614 Filed 4–21–23; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Information (RFI) on Recommendations for Improving NRSA Fellowship Review

AGENCY: National Institutes of Health, HHS.

ACTION: Request for information.

SUMMARY: The purpose of this Request for Information (RFI) is to solicit public input on proposed changes to the peer review of Ruth L. Kirschstein National Research Service Award (NRSA) fellowship applications that would restructure the review criteria and modify some sections of the Public Health Service (PHS) Fellowship Supplemental Form within the application. The goal of this effort is to facilitate the mission of NRSA fellowship peer review: to identify the most promising trainees and the excellent, individualized training programs that will help them become the outstanding scientists of the next generation. The proposed changes will allow peer reviewers to better evaluate the applicant's potential and the quality of the scientific training plan without undue influence of the sponsor's or institution's reputation; and ensure that the information provided in the application is aligned with the restructured criteria and targeted to the fellowship candidate's specific training needs.

DATES: Comments must be received by June 23, 2023 to ensure consideration.

ADDRESSES: Submissions can be sent electronically to: *https://rfi.grants.nih.gov/?s=642ed5def0356688b20e6be3.* NIH is specifically requesting public comment on the proposed changes to the peer review of NRSA fellowship applications that would restructure the review criteria and modify some sections of the PHS Fellowship Supplemental Form within the application described above and at: *https://grants.nih.gov/policy/peer/improving-nrsa-fellowship.* Response to this RFI is voluntary.

FOR FURTHER INFORMATION CONTACT: Questions about this request for information should be directed to Kristin Kramer, 6701 Rockledge Drive, Bethesda, MD 20817, 301–437–0911, *NRSAreview@mail.nih.gov.*

SUPPLEMENTARY INFORMATION:

Current Process

The overall goal of the NIH Ruth L. Kirschstein National Research Service Award (NRSA) program is to help ensure that a diverse pool of highly trained scientists is available in appropriate scientific disciplines to address the Nation's biomedical, behavioral, and clinical research needs. NRSA fellowships support the training of pre-and postdoctoral scientists, dual-degree investigators, and senior researchers. The first stage of NIH peer review serves to provide expert advice to NIH by assessing the likelihood that the fellowship will enhance the candidate's potential for, and commitment to, a productive independent scientific research career in a health-related field. The criteria for the review of NRSA fellowship applications derive from the NRSA regulation at 42 CFR part 66.106 (*https://www.ecfr.gov/current/title-42/chapter-I/subchapter-E/part-66/subpart-A/section-66.106*):

(a) Within the limits of funds available, the Secretary shall make Awards to those applicants:

(1) Who have satisfied the requirements of § 66.105; and

(2) Whose proposed research or training would, in the judgment of the Secretary, best promote the purposes of section 487(a)(1)(A) of the Act, taking into consideration among other pertinent factors:

(i) The scientific, technical, or educational merit of the particular proposal;

(ii) The availability of resources and facilities to carry it out;

(iii) The qualifications and experience of the applicant; and

(iv) The need for personnel in the subject area of the proposed research or training.

The NIH peer review regulation does not address scoring. Scoring of all regulatory factors is determined by NIH policy. Currently, peer reviewers provide an Overall Impact Score (scored 1–9) that reflects their assessment of the likelihood that the fellowship will enhance the candidate's potential for, and commitment to, a productive independent scientific research career in a health-related field. Peer reviewers provide individual criterion scores for five criteria: (1) Applicant; (2) Sponsors and Collaborators; (3) Research Training Plan; (4) Training Potential; and (5) Institutional Environment and Commitment. Additional review criteria are evaluated and factored into the Overall Impact Score but are not given individual scores: Protections for Human Subjects; Inclusion of Women, Minorities, and Individuals Across the Lifespan; Vertebrate Animals; Biohazards; and Resubmission. Beyond these criteria, reviewers are asked to assess the following additional review considerations; these considerations are not considered in the Overall Impact Score: Training in the Responsible Conduct of Research, Applications from Foreign Organizations, Select Agents, Resource Sharing Plans, Budget and Period of Support, and Authentication of Key Biological and/or Chemical Resources.

Proposal Development

NIH gathered input from many sources in forming this proposal. Unsolicited comments over a period of years conveyed persistent concerns that the NRSA fellowship review process disadvantages some highly-qualified, promising applicants. In response, the Center for Scientific Review (CSR) formed a working group to the CSR Advisory Council. To inform that group, CSR published a Review Matters blog at: *https://www.csr.nih.gov/reviewmatters/2022/01/06/strengthening-fellowship-review/,* inviting comments, which was cross-posted on the Office of Extramural Research blog, Open Mike at: *https://nexus.od.nih.gov/all/2022/01/10/strengthening-fellowship-review/.* The working group presented an interim report at: *https://public.csr.nih.gov/sites/default/files/2019-10/Review_criteria_wg_CSRAC_interim_report_7April2020.pdf* to the CSR Advisory Council, which adopted the recommendations, at public CSR Advisory Council meetings (March 2022 video *https://videocast.nih.gov/watch=44677,* slides *https://public.csr.nih.gov/sites/default/files/2022-04/CSRAC_Fellowship_WG_interim_presentation.pdf;* September 2022 video *https://videocast.nih.gov/watch=45767,* slides *https://public.csr.nih.gov/sites/default/files/2022-09/CSRAC_WG_on_Fellowship_Review_Sept_2022.pdf*). Final recommendations from the CSR Advisory Council at: *https://public.csr.nih.gov/sites/default/files/2022-11/CSRAC_Fellowship_review_WG_report_September_2022_final.pdf* were considered by the CSR Director, as well as major internal NIH extramural-focused committees that included leadership from across NIH institutes and centers. Additional background information can be found at: *https://grants.nih.gov/policy/peer/improving-nrsa-fellowship.*

Recommendations for Improving NRSA Fellowship Review

Revise the Criteria Used To Evaluate NRSA Fellowship Applications

As is currently the case, the Overall Impact Score (scored 1–9) will reflect the scientific and educational merit of the proposal and an assessment of the likelihood that the fellowship will enhance the applicant's potential for, and commitment to, an independent, productive research career in a health-related field. However, the current 5 scored criteria that inform the Overall Impact Score will be restructured into the following 3 scored criteria. Additional detail on proposed reviewer guidance can be found here: *https://grants.nih.gov/policy/peer/improving-nrsa-fellowship/reviewer-instructions.*

Criterion 1: Scientific Potential, Fellowship Goals, and Preparedness of the Applicant (Scored 1–9)

- Evaluate the breadth and depth of scientific understanding the applicant conveys in their statements. To what extent does the candidate articulate the importance of their science and demonstrate an ability to study that problem in a rigorous scientific manner.
- Evaluate the preparedness of the applicant to undertake the proposed training and their capacity to benefit from the fellowship. Evaluate their accomplishments in the context of their stage of training and the scientific opportunities they have had.
- Evaluate the applicant's scientific potential. Consider their trajectory in the context of their opportunities. Also consider other factors that bear on their potential to succeed, such as determination, persistence, and creativity.

Criterion 2: Science and Scientific Resources (Scored 1–9)

- Evaluate the quality of the proposed science. Assess the depth of understanding of the scientific background and the scientific rigor and feasibility of the approach.
- Evaluate the extent to which needed technical, scientific, and clinical resources are specified and are realistically available to the applicant.
- Assess whether the scientific expertise of the mentorship team is appropriate for the proposed science and whether the role of each mentor is clearly defined.
- Evaluate how well the proposed scientific project serves the applicant's training goals.
- Note that peer review of financial support for the proposed research will be eliminated.

Criterion 3: Training Plan and Training Resources (Scored 1–9)

- Evaluate whether the applicant clearly defines their career goals and whether the training plan is linked to them.
- Evaluate whether the applicant has clearly defined areas of needed growth. These could include specific scientific skills and knowledge and other professional needs such as communication, teaching, and mentorship skills.
- Evaluate the training environment for this applicant. Assess whether the necessary institutional training resources are well-specified and available, specifically the practical availability of resources.
- Evaluate whether the trainee articulated a coherent and cohesive plan for interacting with sponsors and mentors.
- Assess whether the sponsor presents a strong pedagogical plan appropriate to the needs and goals of the applicant. Please include an evaluation of the training philosophy of the sponsor, their approach to training, time commitments and their accessibility.
- Evaluate and comment on what impact completion of the training plan will make in meeting the scientific development needs of the applicant and aid them in achieving their career goals.

The Additional Review Criteria (*e.g.,* Protections for Human Subjects; Inclusion of Women, Minorities and Individuals Across the Lifespan; etc.) would not change.

The Additional Review Considerations (*e.g.,* Training in the Responsible Conduct of Research, Resource Sharing Plans, Budget, etc.) would not change.

Revising the criteria simplifies the task of reviewers by focusing their attention on just three key assessments: the scientific potential of the applicant, the science and scientific resources, and the training plan and training resources. The criteria are defined to give applicants from heterogeneous backgrounds a fair chance; reviewers are asked to evaluate applicant accomplishments and trajectory in the context of the opportunities they have had. In addition to evaluating applicant accomplishments, reviewers are asked to evaluate personal characteristics that contribute to success in science, factors such as determination, persistence, and creativity. The revised criteria are also expected to reduce bias in review by reducing any consideration of sponsor and institutional reputation and instead focusing review on their specific, realistic, and current contributions to the scientific needs, goals, and training of the specific trainee. NIH believes these changes will better enable peer review to identify those applications with the highest potential for producing productive research scientists, regardless of where the applicant started or the applicant institution.

Revise the Fellowship Supplemental Section of PHS SF424

The NIH proposes to revise the following sections of the PHS 424 Fellowship Supplement (*https://grants.nih.gov/grants/how-to-apply-application-guide/forms-g/fellowship-forms-g.pdf*): (1) Fellowship Applicant; (2) Sponsor(s), Collaborator(s), and Consultant(s); and (3) Letters of Reference. There are no proposed changes to the Research Training Plan section. Additionally, the revision would allow an optional Statement of Special Circumstance.

The changes are intended to restructure the application so that the application content is better aligned with the review criteria, is less duplicative, and is easier for reviewers to assess. The changes emphasize substantive statements that pertain to the individual applicant trainee, require detailed accounts from sponsors explaining their preparation and approach to training, and their availability to the student. The changes would shorten the application by up to 2½ pages. The proposed changes for each section are described below:

1. Revised Applicant Section of the Fellowship Supplement

Applicants would be asked to submit five statements:

1. Statement of professional and fellowship goals.
2. Fellowship qualifications.
3. Self-assessment.
4. Statement of scientific perspective.
5. Activities planned under this award.

Additionally, grades would no longer be required or allowed, however, applicants would be requested to include the titles of relevant courses completed.

2. Revised Sponsor and Co-Sponsor Section of the Fellowship Supplement

Sponsors and Co-sponsors would be asked to submit three statements:

1. Training plan, environment, and research facilities.
2. Number of Fellows/Trainees to be supervised.
3. Applicant's qualifications and potential for a research career.

3. Revised Instructions for Reference Letters

NIH proposes to update the instructions for reference letters with more structure so that the resulting letters better assist reviewers in understanding the applicant's strengths, weaknesses, and potential to pursue a productive career in biomedical science. Writers would be instructed to respond to four questions addressing:

1. Two to four most important characteristics that will contribute to applicant's success.

2. Two to four areas of needed growth.

3. Intellectual contributions made by the applicant during training.

4. Overall assessment of readiness and potential.

4. Allow an Optional Statement of Special Circumstance

NIH recommends allowing fellowship applicants to submit an *optional* Statement of Special Circumstance to address situations that may have hindered the trainee's progress, such as harassment, the COVID–19 pandemic, or other personal or professional circumstances.

Additional detail on proposed changes to the Fellowship Supplement can be found at: *https://grants.nih.gov/policy/peer/improving-nrsa-fellowship/reviewer-instructions.*

Submitting a Response

Comments should be submitted electronically to the following web page at: *https://rfi.grants.nih.gov/?s=642ed5def0356688b20e6be3.*

This RFI is for planning purposes only and should not be construed as a policy, solicitation for applications, or as an obligation on the part of the Government to provide support for any ideas identified in response to it. Please note that the Government will not pay for the preparation of any information submitted or for its use of that information.

Please do not include any proprietary, classified, confidential, or sensitive information in your response. Responses will be compiled and a content analysis will be shared publicly after the close of the comment period. The NIH may use information gathered by this Notice to inform future policy development.

Dated: April 18, 2023.

Tara A. Schwetz,

Acting Principle Deputy Director, National Institutes of Health.

[FR Doc. 2023–08603 Filed 4–21–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 Institute on Drug Abuse Special Emphasis Panel; HEAL Initiative: Therapeutics Development for Opioid Use Disorder in Patients with Co-occurring Mental Disorders (UG3/UH3).

Date: May 23, 2023.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sindhu Kizhakke Madathil, Ph.D., Scientific Review Officer, Division of Extramural Research, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–5702, *sindhu.kizhakkemadathil@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Developed Regulated Therapeutic and Diagnostic Solutions for Patients Affected by Opioid and/or Stimulants Use Disorders.

Date: June 1, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shareen Amina Iqbal, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 443–4577, *shareen.iqbal@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; BRAIN Initiative: Brain-Behavior Quantification and Synchronization—Transformative and Integrative Models of Behavior at the Organismal Level.

Date: June 5, 2023.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Soyoun Cho, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 594–9460, *Soyoun.cho@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; BRAIN Initiative: Brain-Behavior Quantification and Synchronization—Transformative and Integrative Models of Behavior at the Organismal Level.

Date: June 7, 2023.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Soyoun Cho, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 594–9460, *Soyoun.cho@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Functional Validation and/or Characterization of Genes or Variants Implicated in SUD.

Date: June 5, 2023.

Time: 11:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ipolia R. Ramadan, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, Bethesda, MD 20892, (301) 827–4471, *ramadanir@mail.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; HEAL Initiative: Preventing Opioid Misuse and Co-Occurring Conditions by Intervening on Social Determinants (R01).

Date: June 8, 2023.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Marisa Srivareerat, Ph.D., Scientific Review Officer, Scientific Review Branch, Office of Extramural Policy, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 435–1258, *marisa.srivareerat@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist

Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 18, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08564 Filed 4–21–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; 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 of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

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 Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; Diversity and Technologies for Health Disparities RFAs review SEP.

Date: June 2, 2023.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Dem II, Suite 920, 6707 Democracy Blvd., Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Yoon-Young Jang, MD, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20817, (301) 827–3025, *yoon-young.jang@nih.gov.*

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 NCBIB Review E–SEP.

Date: June 21–23, 2023.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Dem II, Suite 920, 6707 Democracy Blvd., Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Tianhong Wang, MD, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd., Bethesda, MD 20892, (301) 435–1189, *wangt3@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health.)

Dated: April 18, 2023.

David W Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08559 Filed 4–21–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: May 22, 2023.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G56, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Maryam Rohani, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G56, Rockville, MD 20852, (301) 761–6656, *maryam.rohani@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 18, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08562 Filed 4–21–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NIDA.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Drug Abuse, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDA.

Date: May 2, 2023.

Closed: 9:15 a.m. to 5:30 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institute on Drug Abuse, NIH, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

Contact Person: Deon M. Harvey, Ph.D., Management Analyst, Office of the Scientific Director, National Institute on Drug Abuse, 251 Bayview Boulevard, Room 04A314, Baltimore, MD 21224, (443) 740–2466, *deon.harvey@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 18, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08556 Filed 4–21–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: May 18, 2023.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Richard G. Kostriken, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22, Rockville, MD 20852, 240–669–2075, *richard.kostriken@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 18, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08563 Filed 4–21–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Closed Meeting

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 Institute on Minority Health and Health Disparities Special Emphasis Panel; Research Centers in Minority Institutions (RCMI) (U54 Clinical Trials Optional).

Date: June 6–8, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIMHD, DEM II, Suite 800, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maryline Laude-Sharp, Ph.D., Scientific Review Officer, Office of Extramural Research Administration, National Institute on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, 301–451–9536, *mlaudesharp@mail.nih.gov.*

Name of Committee: National Institute on Minority Health and Health Disparities Special Emphasis Panel; NIMHD Mentored Career and Research Development Awards (Ks).

Date: June 8–9, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIMHD, DEM II, Suite 800, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Deborah Ismond, Ph.D., Scientific Review Officer, Office of Extramural Research Administration, National Institute on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 594–2704, *ismonddr@mail.nih.gov.*

Name of Committee: National Institute on Minority Health and Health Disparities Special Emphasis Panel; Technologies/Innovations for Improving Minority Health and Eliminating Health Disparities.

Date: June 22, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIMHD, DEM II, Suite 800, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jingsheng Tuo, Ph.D., Scientific Review Officer, Office of Extramural Research Administration, National Institute on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 451–5953, *jingsheng.tuo@nih.gov.*

Name of Committee: National Institute on Minority Health and Health Disparities Special Emphasis Panel; Promoting Viral Suppression and HIV Prevention Interventions Amongst Health Disparity Populations.

Date: June 29, 2023.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIMHD, DEM II, Suite 800, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ivan K. Navarro, Ph.D., Scientific Review Officer, Office of Extramural Research Administration, National Institute on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, 301–827–2061, *ivan.navarro@nih.gov.*

Dated: April 18, 2023.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08557 Filed 4–21–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 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: Center for Scientific Review Special Emphasis Panel; NIH Research Enhancement Award (R15) in Oncological Sciences.

Date: May 25, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Byung Min Chung, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–4056, *justin.chung@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–22–007: Pilot Projects Enhancing Utility and Usage of Common Fund Data Sets (R03 Clinical Trial Not Allowed).

Date: May 25, 2023.

Time: 10:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maureen Shuh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–4097, *maureen.shuh@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 18, 2023.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08558 Filed 4–21–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[2341A2100DD/AAKC001030/A0A501010.999900; OMB Control Number 1076–0161]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Tribal Transportation Program

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 May 24, 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=202302-1076-004* 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 *https://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=1076-0161.*

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 information submitted by Tribes allows them to participate in planning the development of transportation needs in their area; the information provides data for administration, documenting plans, and for oversight of the program by the Department. Some of the information such as the providing inventory updates (25 CFR 170.444), the development of a long-range transportation plan (25 CFR 170.411 and 170. 412), the development of a Tribal transportation improvement program (25 CFR 170.421), and annual report (25 CFR 170.420) are mandatory to determine how funds will allocated to implement the Tribal Transportation Program.

Title of Collection: Tribal Transportation Program, 25 CFR 170.

OMB Control Number: 1076–0161.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Federally recognized Indian Tribes.

Total Estimated Number of Annual Respondents: 281 on average.

Total Estimated Number of Annual Responses: 1,504 on average.

Estimated Completion Time per Response: Varies from 0.5 hours to 40 hours.

Total Estimated Number of Annual Burden Hours: 20,928 hours.

Respondent's Obligation: Some of the information, such as public hearing requirements, is necessary for public notification and involvement (25 CFR 170.437 and 170.438), while other information, such as a request for exception from design standards (25 CFR 170.456), is voluntary.

Frequency of Collection: On occasion.

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. 2023–08612 Filed 4–21–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AK_FRN_MO4500170070]

Notice of Intent To Establish Recreation Fees on Public Lands in the Anchorage District Office, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to applicable provisions of the Federal Lands Recreation Enhancement Act (FLREA), the Bureau of Land Management (BLM), Anchorage District Office, intends to establish recreation fees for expanded amenities at the Campbell Creek Science Center located in the Campbell Tract Facility in Anchorage, Alaska.

DATES: All new fees will take effect on October 23, 2023.

ADDRESSES: The business plan and information concerning the proposed fees may be reviewed at the Campbell Creek Science Center, 5600 Science Center Drive, Anchorage, AK 99507; or online at *www.blm.gov/programs/recreation/permits-and-fees/business-plans.*

FOR FURTHER INFORMATION CONTACT: Nancy Patterson, manager, Campbell Creek Science Center, telephone: (907) 267–1255, email: *npatterson@blm.gov.*

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Patterson. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The FLREA directs the Secretary of the Interior to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established. The BLM is proposing to establish recreation fees for expanded amenities at the Campbell Creek Science Center. The Center serves as the primary education, interpretation, and outreach entity for the BLM in Alaska. Since the Center was established in November 1996, it has provided environmental education and interpretive programs to the public and local schools. Its programming has expanded statewide to include increased interpretive experiences for the public, both virtually and in person. The Center provides outdoor education experiences for more than 41,000 annual visitors.

These facilities qualify as sites where visitors can be charged an ''Expanded Amenity Recreation Fee'' under 16 U.S.C. 6802(g) of FLREA. Section 6802 also authorizes the BLM to collect standard amenity and special recreation permit fees for specialized recreation uses of public lands. Pursuant to FLREA and implementing regulations at 43 CFR 2933, fees may be charged for day use of highly developed recreation sites, enhanced interpretive programs, and rental of audio tour devices, portable sanitation devices, binoculars, or other equipment.

Effective October 23, 2023, the Campbell Creek Science Center will initiate new fee collection at the facility unless the BLM publishes a **Federal Register** notice to the contrary. The BLM will begin collecting fees for distance learning (per individual per hour: $5; per group of maximum 30 persons per hour: $140) and the electric day-use site ($50 per day, for use by groups who exceed size limits for inside the science center. This site allows large groups to operate while continuing to offer the science center for the public).

In accordance with BLM recreation fee program policy, the Anchorage District Office has developed a recreational fee business plan that is available as listed in the **ADDRESSES** section. The business plan explains the fee collection process and outlines how fees will be used at the fee site. Any future adjustments in the fee amounts would be handled in accordance with the business plan, with public notice before any fee increase.

The BLM notified and involved the public at each stage of the planning process for the new fees. The BLM posted written notices of proposed fees at the fee site on January 13, 2022. It announced a 30-day public comment period on the draft business plan on January 13, 2022, through a BLM news release and the BLM website. The draft business plan was publicly available for review and comment at the BLM Campbell Creek Science Center and on the BLM Alaska business plan website from January 13, 2022, to February 12, 2022.

(Authority: 16 U.S.C. 6803(b) and 43 CFR 2933.)

Steven M. Cohn,

BLM Alaska State Director.

[FR Doc. 2023–08528 Filed 4–21–23; 8:45 am]

BILLING CODE 4331–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NV_FRN_MO 4500169399]

Notice of Intent To Prepare an Environmental Impact Statement and Notice of Segregation for the Proposed Libra Solar Project in Mineral and Lyon Counties, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent and segregation.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Carson City District Office intends to prepare an Environmental Impact Statement (EIS) to consider the effects of the proposed Libra Solar Project and by this notice is announcing the beginning of the scoping period to solicit public comments and identify issues, and is providing the planning criteria for public review. Through this notice the BLM is also announcing the segregation of public lands included in the right-of-way application for the Libra Solar Project from appropriation under the public land laws, including the Mining Law, but not the Mineral Leasing or Material Sales Acts, for a period of two (2) years from the date of publication of this notice, subject to valid existing rights. This segregation is to facilitate the orderly administration of the public lands while the BLM considers potential solar development on the described parcel.

DATES: This notice initiates the public-scoping process for the EIS. The BLM requests the public submit comments concerning the scope of the analysis, potential alternatives, and identification of relevant information, and studies by May 24, 2023. To afford the BLM the opportunity to consider issues raised by commenters in the Draft EIS, please ensure your comments are received prior to the close of the 30-day scoping period or 15 days after the public

meeting, whichever is later. The BLM will conduct a public scoping meeting (virtually) which will be held on May 8, 2023, from 6:00 p.m. to 8:00 p.m. PT. Additional information on the meeting, including how to register, can be found on the project ePlanning website at: *https://eplanning.blm.gov/eplanning-ui/project/2022592/510.*

The segregation for the public lands identified in this notice takes effect on April 24, 2023.

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

* *Email: blm_nv_ccdo_libra_solar@blm.gov*
* *Online via ePlanning: https://eplanning.blm.gov/eplanning-ui/project/2022592/510*
* *Mail:* BLM, Carson City District Office, Attn: Libra Solar Project, 5665 Morgan Mill Road, Carson City, NV 89701

Documents pertinent to this proposal may be examined online at the project ePlanning page: *https://eplanning.blm.gov/eplanning-ui/project/2022592/510* and at the Carson City District Office.

FOR FURTHER INFORMATION CONTACT: Melanie Hornsby, Project Manager, telephone 775–885–6024; address 5665 Morgan Mill Road, Carson City, Nevada 89701; email *blm_nv_ccdo_libra_solar@blm.gov*. Contact Melanie Hornsby to have your name added to our mailing list. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Melanie Hornsby. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: On September 16, 2020, Libra Solar LLC (Applicant) filed a right-of-way (ROW) application with the BLM Carson City District Office for the Libra Solar Project (Project), requesting authorization to construct, operate, maintain, and eventually decommission a 700-megawatt photovoltaic solar electric generating facility, battery storage facility, associated generation tie-line, and access road facilities.

The proposed project requests use of approximately 5,500 acres of Federal lands administered by the BLM. The proposed project is in Mineral and Lyon Counties, approximately 55 miles southeast of the Reno metropolitan area, and 11 miles southeast of the town of Yerington. U.S. Route 95 is 7 miles east of the site and State Route 208 is 8 miles west. The electricity generated would be collected at the onsite substation and conveyed to the NV Energy Fort Churchill Substation located northwest of the project site via a generation (gen-tie) transmission line. If approved, the duration for potential construction of the facilities is estimated to be approximately 12 to 18 months.

Segregation of Land

Regulations found at 43 CFR 2091.3–1(e) and 43 CFR 2804.25(f) allow the BLM to temporarily segregate public lands within a solar or wind application area from the operation of the public land laws, including the Mining Law, by publication of a **Federal Register** notice. The BLM uses this temporary segregation authority to preserve its ability to approve, approve with modifications, or deny proposed ROWs, and to facilitate the orderly administration of the public lands. This temporary segregation is subject to valid existing rights, including existing mining claims located before this segregation notice. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which would not impact lands identified in this notice may be allowed with the approval of an authorized officer of the BLM during the segregation period. The lands segregated under this notice are legally described as follows:

Mount Diablo Meridian, Mineral County, Nevada

Mount Diablo Meridian, Nevada

T. 12N., R. 27E.,
sec. 15 SW¼, SW¼SE¼, SW¼NW¼;
sec. 16 S½, NE¼;
sec. 17 S½;
sec. 20;
sec. 21;
sec. 22 S½, NW¼, W½NE¼;
sec. 23 SW¼SW¼;
sec. 25 SW¼SW¼;
sec. 26 S½, NW¼, SW¼NE¼;
sec. 27 N½, N½SW¼, N½SE¼, SW¼SW¼, SE¼SE¼, SE¼SW¼;
sec. 28;
sec. 29 E½, E½NW¼, E½SW¼;
sec. 32 NE¼, N½SW¼;
sec. 33 NW¼, N½SW¼, NW¼SE¼, SW¼NE¼, NE¼NE¼;
sec. 35 E½, E½NW¼, NW¼NW¼;
sec. 36 W1/2.

The area described contain 5,500 acres, according to the official plats of the surveys and protraction diagrams of the said lands on file with the BLM.

As provided in the regulations, the segregation of lands in this notice will not exceed 2 years from the date of publication unless extended for up to 2 additional years through publication of a new notice in the **Federal Register**. Termination of the segregation occurs on the earliest of the following dates: upon issuance of a decision by the authorized officer granting, granting with modifications, or denying the application for a ROW; automatically at the end of the segregation; or upon publication of a **Federal Register** notice of termination of the segregation.

Upon termination of the segregation of these lands, all lands subject to this segregation would automatically reopen to appropriation under the public land laws, including the mining laws.

Purpose and Need for the Proposed Action

The BLM's preliminary purpose and need for this Federal action is to respond to Libra Solar LLC's ROW application under title V of FLPMA (43 U.S.C. 1761) to construct, operate, maintain, and decommission a solar generation power plant and ancillary facilities on approximately 5,500 acres of BLM land in Mineral and Lyon Counties, Nevada. Pursuant to section 501(a)(4) of FLPMA, the BLM is authorized to grant ROWs on public lands for systems of generation, transmission, and distribution of electrical energy.

Preliminary Proposed Action and Alternatives

The proposed action is to approve a ROW to Libra Solar LLC to construct, operate, and eventually decommission the proposed solar photovoltaic project and associated facilities, including battery storage and a gen-tie transmission-line on approximately 5,500 acres of BLM administered lands. The project may have a generating capacity of up to 700 megawatts of alternating current energy.

Under the No Action Alternative, BLM would deny the ROW application for the solar project and associated facilities. The proposed project would not be constructed, and existing land uses in the project area would continue. Additional action alternatives have not been identified but may be developed through consideration of public comments and input received during the application evaluation determination process and scoping. The BLM welcomes comments on all preliminary alternatives as well as suggestions for additional alternatives.

Summary of Expected Impacts

The analysis in the EIS will be focused on the proposed solar project and associated facilities, including battery storage and gen-tie transmission line construction. The BLM decided to continue processing the proposed project application and complete

appropriate NEPA compliance per 43 CFR 2800 based on information provided by the Applicant and input from other parties. Through this process, the BLM conducted preliminary public outreach and coordination with agencies and Tribal Nations specific to the proposed project. From the input received, the expected impacts from construction, operation, and eventual decommissioning of the solar project and associated facilities could include:

* Potential effects to cultural resources in the project area from construction activities;
* Potential effects to basin groundwater resources from the proposed construction water needs for the project;
* Potential socioeconomic impacts from the proposed project to local communities;
* Potential air quality impacts from proposed construction activities;
* Potential impacts to vegetation and native plant communities from construction, operations, and decommissioning of the project and associated facilities;
* Potential impacts to rangeland resources from the construction and operation of the facility;
* Potential effects to recreational opportunities and public use of the proposed project area due to construction and operations of the solar facility; and
* Potential cumulative effects with other reasonably foreseeable actions in the area.

Preliminary issues for the project have been identified by the BLM, other Federal agencies, the State, local agencies, Tribes, and the public during the application evaluation process. The following issues may be impacted by the proposed project and will be considered for detailed analysis in the EIS: biological resources, vegetation resources, visual resources, cultural resources, Native American religious concerns, rangeland resources, air quality, climate change, noise, transportation, geology, mineral resources, hazards and hazardous materials, military and civilian aviation, recreation, environmental justice, socioeconomics, water resources, and cumulative effects from reasonably foreseeable actions in the area.

Anticipated Permits and Authorizations

Along with the requested ROW grant from the BLM, Libra Solar LLC anticipates needing the following authorizations and permits for the proposed project: consultation under Section 106 of the National Historic Preservation Act with the Advisory Council on Historic Preservation and Nevada State Historic Preservation Office; Section 404 Permit for Jurisdictional Waters Determination from the U.S. Army Corps of Engineers; Wildlife Special Purpose permit from the Nevada Department of Wildlife; Nevada Division of Environmental Protection Major Source Permit from the Prevention of Significant Deterioration Program, Stormwater and Groundwater Discharge permits and Temporary in Waterways Work permit; Obstruction Evaluation with Federal Aviation Administration in coordination with the U.S. Air Force; Nevada Division of Forestry Native Cacti and Yucca Commercial Salvaging and Transportation Permit; State List Endangered Species Take Permit; Nevada Public Utilities Commission Environmental Protection Act Permit; Nevada Division of Water Resources Groundwater Well Permit; Nevada State Fire Marshall Hazardous Materials Storage permit; Nevada Department of Transportation ROW Occupancy Permit; Mineral County Special Use Permit; and other County permits, as necessary. Further details on these permitting requirements may be found in the Plan of Development for the Libra Solar Project.

Schedule for the Decision-Making Process

The BLM will provide additional opportunities for public participation consistent with the NEPA and land use planning processes, including a 45-day comment period on the Draft EIS. The Draft EIS is anticipated to be available for public review December 2023 and the Final EIS is anticipated to be released in June 2024 with a Record of Decision expected in August 2024.

Public Scoping Process

This notice of intent initiates the scoping period, which will guide the development and analysis of the Draft EIS.

The BLM will be holding one virtual scoping meeting as specified in the Date section of this notice.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives and mitigation measures, and to guide the process for developing the EIS. Federal, State, and local agencies, along with other stakeholders that may be interested or affected by the BLM's decision on this project, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency. The BLM encourages comments concerning the proposed Libra Solar Project, possible measures to minimize and/or avoid adverse environmental impacts, and any other information relevant to the proposed action.

The BLM also requests assistance with identifying potential alternatives to the proposed action. As alternatives should resolve an issue with the proposed action, please indicate the purpose of the suggested alternative. In addition, the BLM requests the identification of potential issues that should be analyzed. Issues should be a result of the proposed action or alternatives; therefore, please identify the activity along with the potential issues.

Lead and Cooperating Agencies

The BLM Carson City District Office is the lead agency for this EIS. The BLM has initially invited 24 agencies and eight Tribal Nations to be cooperating agencies to participate in the environmental analysis of the project.

Of those invited to date, four agencies have agreed to participate as cooperating agencies: Mineral County, Lyon County, Department of Defense Hawthorne Army Depot, and the Nevada Department of Wildlife. Additional agencies and organizations may be identified as potential cooperating agencies to participate in the environmental analysis of the project.

Responsible Official

The Carson City District Manager is the deciding official for this proposed action.

Nature of Decision To Be Made

In accordance with the BLM's multiple use and sustained yield mandates, the District Manager will decide whether to approve, approve with modification(s), or deny issuance of a ROW grant to the Applicant for the proposed project. Pursuant to 43 CFR 2805.10, if the BLM issues ROW grant(s), the BLM decision maker may include terms, conditions, and stipulations determined to be in the public interest.

Interdisciplinary Team

The BLM will use an interdisciplinary approach to develop the EIS and consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in this process: air quality, archaeology, botany, climate change (greenhouse gases), environmental justice, fire and

fuels, geology/mineral resources and soils, hazardous materials, hydrology, groundwater, invasive/non-native species, jurisdictional delineations, lands and realty, rangelands, public health and safety, recreation/transportation, socioeconomics, soils, visual resources, and wildlife.

Additional Information

The BLM will identify, analyze, and consider mitigation to address the reasonably foreseeable impacts to resources from the proposed action and all analyzed reasonable alternatives and, in accordance with 40 CFR 1502.14(e), include appropriate mitigation measures not already included in the proposed plan amendment or alternatives. Mitigation may include avoidance, minimization, rectification, reduction, elimination over time, and compensation, and may be considered at multiple scales, including the landscape scale.

The BLM will continue to consult with Tribal Nations on a government-to-government basis in accordance with Executive Order 13175, BLM Manual 1780, and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with Tribal Nations and stakeholders that may be interested in or affected by the BLM's proposed action are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the EIS as a cooperating agency. The BLM intends to hold a series of government-to-government consultation meetings. The BLM will send invitations to potentially affected Tribal Nations prior to the meetings. The BLM will provide additional opportunities for government-to-government consultation during the NEPA process.

The BLM will also utilize and coordinate the NEPA process to help support compliance with applicable procedural requirements under Section 106 of the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.8(c). The identification of historic properties and the assessment of effects of the undertaking on these properties will be carried out in a manner consistent with the standards and criteria outlined in 36 CFR 800.4 through 800.5. BLM will consult on the effects of the undertaking on historic properties with the Nevada State Historic Preservation Office, Indian Tribes that might attach religious and cultural significance to affected historic properties, other consulting parties, and the Advisory Council on Historic Preservation. BLM will develop, in consultation with identified consulting parties, alternatives and proposed measures that might avoid, minimize, or mitigate any adverse effects of the undertaking on historic properties and describe them in the Draft EIS. The agency official will provide the Draft EIS to the Nevada State Historic Preservation Office, Tribal Nations that might attach religious and cultural significance to affected historic properties, the Advisory Council on Historic Preservation, and other consulting parties in accordance with 36 CFR 800.8(c) and the BLM's established NEPA Procedures.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR 1610.2, 2800, 43 CFR 2091.3–1(e).)

Kimberly D. Dow,

Carson City District Manager.

[FR Doc. 2023–08560 Filed 4–21–23; 8:45 am]

BILLING CODE 4331–21–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_ID_FRN_MO4500167850]

Notice of Temporary Road Closure on Public Lands in Nez Perce County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure.

SUMMARY: Notice is hereby given that a temporary closure will be in effect to all public use and entry on certain public lands administered by the Cottonwood Field Office, Bureau of Land Management (BLM), to provide for public health and safety during the reconstruction of the single-lane Eagle Creek Road.

DATES: The temporary closure will be in effect for up to one year, from 12:01 a.m. Mountain Time, May 24, 2023, or until the completion of construction, whichever is sooner.

ADDRESSES: The BLM will post closure signs at main entry points to this area. This closure order will be posted in the Cottonwood Field Office. Maps of the affected area and other documents associated with this closure are available at the Cottonwood Field Office, 2 Butte Dr., Cottonwood, ID 83522 and online at *https://eplanning.blm.gov/eplanning-ui/project/2005917/510.*

FOR FURTHER INFORMATION CONTACT: Richard White, Field Manager, Cottonwood Field Office, 2 Butte Drive, Cottonwood, ID 83522, or by phone at (208) 962–3245, or by email at *rwhite@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: During the temporary closure, access to public lands via Eagle Creek Road will be unavailable on weekdays and occasionally on weekends to protect public health and to address safety risks associated with the reconstruction of Eagle Creek Road. The road will be open for use by the public on most weekends, after 5 p.m. Mountain Time (MT) Fridays through 8 a.m. MT, Mondays, depending upon the work schedule.

This closure affects public lands in the Craig Mountain Wildlife Management Area. The affected public lands encompass Eagle Creek Road from mile post 0.0, T. 32 N., R. 4 W., Section 22, to its intersection with China Creek at T. 30 N., R. 3 W., Section 5, Boise Meridian, Nez Perce County, ID. The area described is approximately 15 miles in length.

A Decision Record was signed on March 18, 2022, for the Eagle Creek Road and Bridges Maintenance Project Categorical Exclusion (DOI–BLM–ID–C020–2020–0007–CX). Under the authority of section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.0–7, and 43 CFR 8364.1, the BLM will enforce the following temporary closure and restrictions of Eagle Creek Road.

Exemptions: This temporary closure does not apply to Federal, State, and local officers and employees in the performance of their official duties; members of organized rescue or firefighting forces in the performance of their official duties; and persons with written authorization from the BLM.

Enforcement: Any person who violates the temporary closures may be tried before a United States magistrate and fined in accordance with 18 U.S.C.

3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Idaho law.

Effect of Closure: The entire area described in this notice is temporarily closed to all public use, including but not limited to pedestrians, equestrians, motorized and non-motorized vehicles, unless specifically excepted as described above, until construction has been completed, or one year from date of publication of this notice, whichever is earlier.

(Authority: 43 CFR 8364.1)

Kurt Pindel,

BLM, Coeur d'Alene District Manager.

[FR Doc. 2023–08575 Filed 4–21–23; 8:45 am]

BILLING CODE 4331–19–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–35709; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before April 15, 2023, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by May 9, 2023.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before April 15, 2023. Pursuant to section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

Nominations submitted by State or Tribal Historic Preservation Officers.

Key: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

ARKANSAS

Garland County

Forrest Apartments, 204 Exchange St., Hot Springs, SG100008989

Sebastian County

Vinita Cemetery, Jenson Rd. approx. 925 ft. west of Hooper St., Hackett, SG100008993

NEW YORK

Steuben County

Prattsburgh Commercial Historic District, 10–28 West Main St. and 16 Federman Ln., Prattsburgh, SG100008996

OHIO

Tuscarawas County

Warther Family Home and Museum, 331 Karl Ave., Dover, SG100009003

SOUTH CAROLINA

Calhoun County

Culclasure-Geiger Farmstead, 1250 Great Circle Dr., St. Matthews vicinity, SG100008999

Clarendon County

Scott's Branch High School, 1102 4th St., Summerton vicinity, SG100008990

York County

York Graded School, 212 East Jefferson St., York, SG100008988

WISCONSIN

Milwaukee County

Underwriters Exchange Building, 828 North Broadway, Milwaukee, SG100008986

Milwaukee Protestant Home for the Aged, 2449 North Downer Ave., Milwaukee, SG100008987

Waukesha County

Melster, John and Florence, House, 316 Oxford Rd., Waukesha, SG100009002

Additional documentation has been received for the following resources:

NEW YORK

Orange County

Crabtree, John A., House (Additional Documentation), 15 Factory St., Montgomery, AD98001001

TENNESSEE

Grundy County

Firescald Creek Stone Arch Bridge (Additional Documentation) (Grundy County MRA), Northcutts Cove Rd. over Firescald Creek, Altamont vicinity, AD87000522

Hamblen County

Rose School (Additional Documentation), Jackson and West 2nd North Sts., Morristown, AD76001778

Sumner County

Trousdale Place, 183 West Main St., Gallatin, AD75001793

Nomination submitted by Federal Preservation Officer:

The State Historic Preservation Officer reviewed the following nomination and responded to the Federal Preservation Officer within 45 days of receipt of the nomination and supports listing the property in the National Register of Historic Places.

WASHINGTON

Clallam County

Slip Point Light Station, (Light Stations of the United States MPS), Address Restricted, Clallam Bay vicinity, MP100009001

Authority: Section 60.13 of 36 CFR part 60.

Dated: April 19, 2023.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2023–08572 Filed 4–21–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[DOI–2022–0014; PPWONRADD7/PPMRSNR1Y.NM0000]

Privacy Act of 1974; System of Records

AGENCY: National Park Service, Interior.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior (DOI) is issuing a public notice of its intent to create the National Park Service (NPS) system of records, INTERIOR/NPS–26, Integrated Resource Management

Applications. This system consists of applications that manage and deliver resource information to parks, partners, and the public. This newly established system will be included in DOI's inventory of record systems.

DATES: This new system will be effective upon publication. New routine uses will be effective May 24, 2023. Submit comments on or before May 24, 2023.

ADDRESSES: You may send comments identified by docket number [DOI–2022–0014] by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for sending comments.
- *Email: DOI_Privacy@ios.doi.gov*. Include docket number [DOI–2022–0014] in the subject line of the message.
- *U.S. mail or hand-delivery:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

Instructions: All submissions received must include the agency name and docket number [DOI–2022–0014]. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Felix Uribe, Associate Privacy Officer, National Park Service, 12201 Sunrise Valley Drive, Reston, VA 20192, *nps_privacy@nps.gov* or (202) 354–6925.

SUPPLEMENTARY INFORMATION:

I. Background

NPS is establishing the INTERIOR/NPS–26, Integrated Resource Management Applications, system of records. The Integrated Resource Management Applications (IRMA) is a web-based ''one-stop'' solution that provides park resource-related tools, data and information, including reports and other documents, data sets, species lists, and visitor use statistics, to help NPS Resource Managers make informed resource management decisions and to share natural resource data and research with members of the public. IRMA allows NPS to streamline and simplify how park resource data are entered, managed, discovered, and shared, and enables individuals to participate in natural resource conservation and research activities of parks and protected areas managed by the NPS.

IRMA subsystems allow users to find and download documents and datasets about natural and cultural resources in the parks; report and view invasive plant management data with the NPS system designed to standardize the collection of infestation and treatment data; enter and find Visual Resource Inventory records of scenic values and importance to NPS visitor experience and interpretive goals; get species lists with the occurrence and status of species in more than 300 NPS national parks; find species' common and scientific names, synonyms, and their associated taxonomic classification; retrieve comprehensive graphs, reports, and statistics on historic, current, or forecast park visitor use; search for names, codes, and affiliations of NPS units (parks, monuments, historic sites, regions, offices, etc.); and obtain interactive data driven reports for many NPS programs. Personally identifiable information (PII) may be collected from users conducting research or requesting information on park resources and preservation activities, authors of finalized documents, datasets and scientific products that are used to support natural resources research and reporting and to ensure proper citation of the authors, and from individuals reporting natural resources action(s) taken, such as an invasive species treatment or sampling collection. The information is used to support research and analysis of information to assess accuracy or determine need for further study and to facilitate communication between NPS and research partners and members of the public. To the extent permitted by law, information may be shared with Federal, state, local, and tribal agencies, and organizations as authorized and compatible with the purpose of this system, or when proper and necessary, consistent with the routine uses set forth in this system of records notice.

This notice does not cover the Research Permit and Reporting System (RPRS) that is also hosted within IRMA. RPRS provides information to parks, partners, and the public on applications for scientific studies and field work conducted in parks associated with the NPS Scientific Research and Collecting Permit, which is covered under the INTERIOR/NPS–25, Research Permit and Reporting System (RPRS), system of records notice (87 FR 33203, June 1, 2022).

II. Privacy Act

The Privacy Act of 1974, as amended, embodies fair information practice principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to records about individuals that are maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act regulations at 43 CFR part 2, subpart K, and following the procedures outlined in the Records Access, Contesting Record, and Notification Procedures sections of this notice.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the existence and character of each system of records that the agency maintains and the routine uses of each system. The INTERIOR/NPS–26, Integrated Resource Management Applications, system of records notice is published in its entirety below. In accordance with 5 U.S.C. 552a(r), DOI has provided a report of this system of records to the Office of Management and Budget and to Congress.

III. Public Participation

You should be aware your entire comment including your PII, such as your address, phone number, email address, or any other personal information in your comment, may be made publicly available at any time. While you may request to withhold your PII from public review, we cannot guarantee we will be able to do so.

SYSTEM NAME AND NUMBER:

INTERIOR/NPS–26, Integrated Resource Management Applications.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

National Information Service Center, National Park Service, 12795 West Alameda Parkway, Lakewood, CO 80228.

SYSTEM MANAGER(S):

Data and Systems Officer, Natural Resource Stewardship and Science Directorate, Immediate Office of the Associate Director, National Park Service, 1201 Oakridge Drive, Suite 200, Fort Collins, CO 80525.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

54 U.S.C. 100101, Promotion and regulation; 54 U.S.C. 100701, Protection,

Interpretation, and Research in System; 54 U.S.C. 100704, Inventory and Monitoring Program; 54 U.S.C. 100705, Availability of System Units for Scientific Study; 54 U.S.C. 100707, Confidentiality of Information; 54 U.S.C. 100751, Regulations; 36 CFR 1.6, Permits; 36 CFR 2.1, Preservation of Natural, Cultural and Archeological Resources; and 36 CFR 2.5, Research Specimens.

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the system is to streamline and simplify how park resource data are entered, managed, discovered, and shared. This data is representative of resource conditions and status of parks and protected areas managed by NPS. Project management and data workflows are also facilitated through the IRMA subsystems to ensure data and associated materials are available for resource management decisions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system include DOI employees, contractors, and volunteers; other Federal, state, or local government agency employees; partners of NPS that are involved in projects; universities, tribal communities and members of the public providing resource information or involved in projects related to conservation planning and NPS resource management. This system contains records concerning corporations and other business entities, which are not subject to the Privacy Act. However, records pertaining to individuals acting on behalf of corporations and other business entities may reflect personal information.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records describing or summarizing resource conditions in parks and protected areas managed by the NPS. Workflows established for decision-making or compliance with Federal rules and their associated documentation requirements are also moderated through IRMA applications. This data may include name, personal cell phone number and email address, mailing and home address, business email address, group or organizational affiliation, employment information, location information may be included with the first name and last name as incidental information regarding the geographic location of a specific action taken, such as the location of a study, invasive species treatment or sampling collection; and username, password, and answers to security questions for the creation and management of user accounts and to allow registered users to interact with NPS.

RECORD SOURCE CATEGORIES:

Records in IRMA are obtained from DOI employees, contractors and volunteers, other Federal, state, tribal, local government agency employees, contractors and volunteers, partners of NPS that are involved in projects, members of the public, and other individuals involved with projects related to conservation planning NPS resource management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOI as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

(1) DOI or any component of DOI;

(2) Any other Federal agency appearing before the Office of Hearings and

Appeals;

(3) Any DOI employee or former employee acting in his or her official capacity;

(4) Any DOI employee or former employee acting in his or her individual capacity when DOI or DOJ has agreed to represent that employee or pay for private representation of the employee; or

(5) The United States Government or any agency thereof, when DOJ determines that DOI is likely to be affected by the proceeding.

B. To a congressional office when requesting information on behalf of, and at the request of, the individual who is the subject of the record.

C. To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible with the reason for which the records are collected or maintained.

D. To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

E. To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

F. To Federal, state, territorial, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

G. To representatives of the National Archives and Records Administration (NARA) to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

H. To state, territorial and local governments and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

I. To an expert, consultant, grantee, shared service provider, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

J. To appropriate agencies, entities, and persons when:

(1) DOI suspects or has confirmed that there has been a breach of the system of records;

(2) DOI has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOI (including its information systems, programs, and operations), the Federal Government, or national security; and

(3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DOI's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

K. To another Federal agency or Federal entity, when DOI determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in:

(1) responding to a suspected or confirmed breach; or

(2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

L. To the Office of Management and Budget (OMB) during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

M. To the Department of the Treasury to recover debts owed to the United States.

N. To the news media and the public, with the approval of the Public Affairs Officer in consultation with counsel and the Senior Agency Official for Privacy, where there exists a legitimate public interest in the disclosure of the information, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

O. To authorized members of Federal, State, Local and Tribal agencies to share information on natural, cultural, and socioeconomic data such as species observations, research reports, environmental impact statements, mineral lands inventories and environmental and cultural compliance data for the purpose of supporting resource management decisions.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records are contained in computers, magnetic disks, computer tapes, removable drives, email, and electronic databases. Paper records are contained in file folders stored in file cabinets. Access is restricted through physical controls and system security practices.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system can be retrieved by either querying within the application or generating a report. The information may be retrieved by various fields including name, personal email address, business contact information, and group or organizational affiliation.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained in accordance with the NPS Records Schedule, Resource Management and Lands (Item 1), which has been approved by NARA (Job No. N1–79–08–1). The disposition of Cultural and Natural Resource Management Program and Planning records, including applications for permits, permits and investigator annual reports, is permanent. Periodic transfer of special media and electronic records along with any finding aids or descriptive information (including linkage to the original file) and related documentation by calendar year are transmitted to NARA when 3 years old. Final transfer of all permanent records to NARA occurs 15 years after closure. Digital records will be transferred according to standards applicable at the time.

The disposition of records with short-term operational value and not considered essential for ongoing management of land, cultural and natural resources is temporary, including account management records. These operational records are destroyed/deleted 15 years after closure. The disposition for routine housekeeping and supporting documentation is temporary and records are destroyed/deleted 3 years after closure. Detailed disposition procedures and processes are defined and published to internal system administration staff within the IRMA technical reference manuals.

Workflows are in place to manage the disposition of permanent records in conformance with requisite retention schedules. Periodic transfer is accomplished through delivery of permanent special media and electronic records along with any finding aids or descriptive information (including linkage to the original file) and related documentation by calendar year to the NARA when 3 years old.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The records contained in this system are safeguarded in accordance with 43 CFR 2.226 and other applicable security and privacy rules and policies. Computer servers on which electronic records are stored are in secured DOI controlled facilities with physical, technical, and administrative levels of security to prevent unauthorized access to the DOI network and information assets. Access to the NPS data on the internal IRMA website address is limited to authorized NPS users. Access granted to authorized personnel is password-protected, and each person granted access to the system must be individually authorized to use the system. A Privacy Act Warning Notice appears on computer monitor screens when records containing information on individuals are first displayed. Data exchanged between the servers and the system is encrypted. Backup tapes are encrypted and stored in a locked and controlled room in a secure, off-site location.

Computerized records systems follow the National Institute of Standards and Technology privacy and security standards as developed to comply with the Privacy Act of 1974, as amended, 5 U.S.C. 552a; Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.:* Federal Information Security Modernization Act of 2014, 44 U.S.C. 3551 *et seq.:* and the Federal Information Processing Standards 199: Standards for Security Categorization of Federal Information and Information Systems. Database tables are kept on separate file servers away from general file storage and other local area network usage. The data itself is stored in a password-protected, client-server database. Electronic transmissions of records are encrypted, and password protected. Security measures establish access levels for different types of users. Security controls include user identification, passwords, database permissions, encryption, firewalls, audit logs, and network system security monitoring, and software controls.

Access to records in the system is limited to authorized personnel who have a need to access the records in the performance of their official duties, and each user's access is restricted to only the functions and data necessary to perform that person's job responsibilities. System administrators and authorized users are trained and required to follow established internal security protocols and must complete all security, privacy, and records management training and sign the DOI Rules of Behavior. A Privacy Impact Assessment was conducted to ensure that Privacy Act requirements are met and appropriate privacy controls were implemented to safeguard the personally identifiable information contained in the system.

RECORD ACCESS PROCEDURES:

An individual requesting access to their records should send a written inquiry to the applicable System Manager identified above. DOI forms and instructions for submitting a Privacy Act request may be obtained from the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests.* The request must include a general description of the records sought and the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requestor's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance

with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS'' on both the envelope and letter. A request for access must meet the requirements of 43 CFR 2.238.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of their records should send a written request to the applicable System Manager as identified above. DOI instructions for submitting a request for amendment of records are available on the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests*. The request must clearly identify the records for which amendment is being sought, the reasons for requesting the amendment, and the proposed amendment to the record. The request must include the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requestor's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked ''PRIVACY ACT REQUEST FOR AMENDMENT'' on both the envelope and letter. A request for amendment must meet the requirements of 43 CFR 2.246.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records about them should send a written inquiry to the applicable System Manager as identified above. DOI instructions for submitting a request for notification are available on the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests.* The request must include a general description of the records and the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requestor's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked ''PRIVACY ACT INQUIRY'' on both the envelope and letter. A request for notification must meet the requirements of 43 CFR 2.235.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Teri Barnett,

Departmental Privacy Officer, Department of the Interior.

[FR Doc. 2023–08599 Filed 4–21–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0012; DS63644000 DRT000000.CH7000 234D1113RT]

Major Portion Prices and Due Date for Additional Royalty Payments on Gas Produced From Indian Lands in Designated Areas That Are Not Associated With an Index Zone

AGENCY: Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Notice.

SUMMARY: In accordance with regulations governing valuation of gas produced from Indian lands, ONRR is publishing this Notice in the **Federal Register** of the major portion prices applicable to calendar year 2021 and the date by which a lessee must pay any additional royalties due under major portion pricing.

DATES: The due date to pay additional royalties based on the major portion prices is June 30, 2023.

FOR FURTHER INFORMATION CONTACT: For questions regarding major portion prices, contact Robert Sudar, Market & Spatial Analytics, by telephone at (303) 231–3511 or email to *Robert.Sudar@onrr.gov*. For questions on *Reporting Information,* contact April Lockler, Data Intake, Solutioning, and Coordination, by telephone at (303) 231–3105 or email to *April.Lockler@onrr.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to 30 CFR 1206.174(a)(4)(ii), ONRR must publish major portion prices for each designated area that is not associated with an index zone for each production month, as well as the due date to submit any additional royalty payments. If a lessee owes additional royalties, it must submit an amended form ONRR–2014, Report of Sales and Royalty Remittance, to ONRR and pay the additional royalties due by the due date. If a lessee fails to timely pay the additional royalties, late payment interest begins to accrue pursuant to 30 CFR 1218.54. The interest will accrue from the due date until ONRR receives payment.

The table below lists major portion prices for designated areas that are not associated with an index zone.

GAS MAJOR PORTION PRICES ($/MMBTU) FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE

ONRR-designated areas	Jan 2021	Feb 2021	Mar 2021	Apr 2021
Fort Berthold Reservation	$1.96	$10.09	$2.10	$1.97
Fort Peck Reservation	2.23	5.08	2.06	2.06
Navajo Allotted Leases in the Navajo Reservation	2.63	8.50	2.86	2.63
Turtle Mountain Reservation	1.50	2.35	1.84	1.45

ONRR-designated areas	May 2021	Jun 2021	Jul 2021	Aug 2021
Fort Berthold Reservation	$2.25	$2.47	$2.94	$3.29
Fort Peck Reservation	2.59	2.65	3.38	5.66
Navajo Allotted Leases in the Navajo Reservation	2.68	2.93	3.53	3.79
Turtle Mountain Reservation	1.73	2.30	2.92	3.30

ONRR-designated areas	Sep 2021	Oct 2021	Nov 2021	Dec 2021
Fort Berthold Reservation	$3.61	$4.70	$4.97	$4.26
Fort Peck Reservation	6.44	7.85	7.51	6.35
Navajo Allotted Leases in the Navajo Reservation	4.10	5.06	5.22	5.04

ONRR-designated areas	Sep 2021	Oct 2021	Nov 2021	Dec 2021
Turtle Mountain Reservation	3.06	4.67	4.68	4.18

For information on how to report additional royalties due to major portion prices, please refer to ONRR's Dear Payor letter, dated December 1, 1999, which is available at *https://www.onrr.gov/reporter-letters/991201.pdf*.

Authorities: Indian Mineral Leasing Act, 25 U.S.C. 396a–g; Act of March 3, 1909, 25 U.S.C. 396; and the Indian Mineral Development Act of 1982, 25 U.S.C. 2103 *et seq.*

Howard Cantor,

Acting Director, Office of Natural Resources Revenue.

[FR Doc. 2023–08594 Filed 4–21–23; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Request for a New Collection; Lawful Access Data Collection

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation's (FBI's) Criminal Justice Information Services (CJIS) Division, 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 June 23, 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 Edward Abraham, Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services Division, Module D–1, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306 (phone: 304–625–4830).

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 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.

Abstract: This collection is needed to collect data on the volume of law enforcement investigations that are negatively impacted by device and software encryption.

Overview of This Information Collection

1. *Type of Information Collection:* New collection.

2. *The Title of the Form/Collection:* Lawful Access Data Collection.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The collection will include a form. The applicable component within the Department of Justice is the CJIS Division, in the FBI.

4. *Affected public who will be asked or required to respond as well as the obligation:* The affected public is Federal Government. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated the FBI Uniform Crime Reporting Program's Lawful Access Data Collection (LADC) estimates 950,000 respondents will respond to this collection once annually with an estimated three (3) minutes and 12 seconds per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 50,667 hours, annual burden, associated with this information collection.

TOTAL ANNUAL BURDEN

Activity	Number of respondents	Frequency	Total annual responses	Time per response	Total annual burden (hours)
New Collection Law Access Data	950,000	1	950,000	0.05333333 or 3 min 12 secs.	50,667
Unduplicated Totals	950,000		950,000		50,667

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: April 19, 2023.

John R. Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–08561 Filed 4–21–23; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0018]

Asbestos in General Industries Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements; Correction

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice; correction.

SUMMARY: The Occupational Safety and Health Administration (OSHA) published a document in the **Federal Register** on April 3, 2023 soliciting public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the regulation on Asbestos in General Industries Standard. The document contained incorrect docket numbers. This notice corrects these errors.

DATES: This correction is effective April 24, 2023.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone: (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Correction

In the **Federal Register** of April 3, 2023 (88 FR 19682), correct the Docket Number as described below.

1. On page 19682, in the third line, change the Docket Number to read:

[Docket No. OSHA–2010–0018]

2. On page 19682, in the paragraph titled ''Addresses, subheading Instructions'' change the Docket Number to read:

[Docket No. OSHA–2010–0018]

3. On page 19683, in the third column, in the first paragraph titled ''1V. Public Participation,'' change the Docket Number to read:

[Docket No. OSHA–2010–0018 (88 FR 19682)]

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC, on April 18, 2023.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–08592 Filed 4–21–23; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–23–0006; NARA–2023–026]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: We must receive responses on the schedules listed in this notice by June 9, 2023.

ADDRESSES: To view a records schedule in this notice, or submit a comment on one, use the following address: *https://www.regulations.gov/docket/NARA-23-0006/document*. This is a direct link to the schedules posted in the docket for this notice on *regulations.gov*. You may submit comments by the following method:

- *Federal eRulemaking Portal: https://www.regulations.gov.* On the website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice, in which we have posted the records schedules open for comment. Each schedule has a 'comment' button so you can comment on that specific schedule. For more information on *regulations.gov* and on submitting comments, see their FAQs at *https://www.regulations.gov/faq*.

If you are unable to comment via *regulations.gov*, you may email us at *request.schedule@nara.gov* for instructions on submitting your comment. You must cite the control number of the schedule you wish to comment on. You can find the control number for each schedule in parentheses at the end of each schedule's entry in the list at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Kimberly Richardson, Strategy and Performance Division, by email at *regulation_comments@nara.gov* or at 301–837–2902. For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov* or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we may or may not make changes to the proposed records schedule. The schedule is then sent for final approval by the Archivist of the United States. After the schedule is approved, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments,

responding to them, and noting any changes we made to the proposed schedule. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of Defense, Defense Threat Reduction Agency, Combating Weapons of Mass Destruction Modeling (DAA–0374–2022–0010).

2. Department of Defense, Office of the Secretary of Defense, General Counsel, Legal Advice and Opinions of OSD Components (DAA–0330–2022–0010).

3. Federal Communications Commission, Agency-wide, Emergency Broadband Benefit Program Records (DAA–0173–2021–0022).

4. Federal Communications Commission, Agency-wide, Emergency Connectivity Fund Program Records (DAA–0173–2021–0024).

5. Marine Mammal Commission, Agency-wide, Comprehensive Records Schedule (DAA–0592–2022–0001).

6. Peace Corps, Agency-wide, Volunteer Trainee Overseas Service Records (DAA–0490–2023–0001).

7. Peace Corps, Agency-wide, Volunteer Workers Compensation Case Files (DAA–0490–2022–0007).

8. Peace Corps, Office of Safety and Security, Security Incident Management System (DAA–0490–2022–0005).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2023–08542 Filed 4–21–23; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Biological Sciences (#1110).

Date and Time: May 02, 2023; 10 a.m.–5 p.m. (Eastern); May 03, 2023; 10 a.m.–3 p.m. (Eastern).

Place: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Hybrid).

The meeting will be held in a hybrid format, with some Advisory Committee members participating in person and others participating virtually. For members of NSF and the external community, livestreaming links will be available through the following page: *https://beta.nsf.gov/events/spring-2023-bio-advisory-committee-meeting.*

Type of Meeting: Open.

Contact Persons: Montona Futrell-Griggs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: (703) 292–7162.

Summary of Minutes: Minutes will be available on the BIO Advisory Committee website at *https://www.nsf.gov/bio/advisory.jsp* or can be obtained from the contact person listed above.

Purpose of Meeting: The Advisory Committee for the Directorate for Biological Sciences (BIO) provides advice and recommendations concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: Agenda items will include: a directorate business update; discussion of BIO programming relevant to NSF Strategic Plan Goal #2; updates on BIO responses to reports from Committees of Visitors for the Divisions of Molecular and Cellular Biosciences and Integrative Organismal Systems; update from the Advisory Committee on Environmental Research and Education; BIO's draft strategic framework for partnerships; BIO AC breakout group discussions; discussion with the NSF Chief Operating Officer; and other directorate matters.

Reason for Late Notice: This notice is being published less than 15 days prior to the meeting due to scheduling complications.

Dated: April 19, 2023.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2023–08597 Filed 4–21–23; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's Committee on Strategy's Subcommittee on Technology, Innovation and Partnerships hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business pursuant to the NSF Act and the Government in the Sunshine Act.

TIME AND DATE: Thursday, April 20, 2023, from 5:00–6:00 p.m. EDT.

PLACE: This meeting will be via videoconference through the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The agenda is: Committee Chair's opening remarks regarding the agenda: Approval of subcommittee minutes from March 23, 2023; Discussion of Regional Innovation Engine Type 2 portfolio construction principles and strategy; and Update on Regional Innovation Engine Type 1 award portfolio.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703/292–

7000. Meeting information and updates may be found at *www.nsf.gov/nsb.*

Christopher Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2023–08643 Filed 4–20–23; 11:15 am]

BILLING CODE 7555–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m., Thursday, April 20, 2023.

PLACE: 1255 Union Street NE, Fifth Floor, Washington, DC 20002.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Regular Board of Directors meeting.

The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (4) permit closure of the following portion(s) of this meeting:

- Executive Session

Agenda

I. CALL TO ORDER
II. Approval of Government in Sunshine Act Notice Waiver for a Meeting of the Board of Directors
III. FY2022 External Audit Discussion with BDO Auditors
IV. Sunshine Act Approval of Executive (Closed) Session
V. Executive Session with BDO Auditors
VI. Special Topic
VII. Executive Session: Report from CEO
VIII. Executive Session: Report from CFO
IX. Executive Session: General Counsel Report
X. Executive Session: NeighborWorks Compass Update
XI. Action Item Approval of Meeting Minutes
XII. Action Item Appointment of Adrianne Todman to Audit Committee
XIII. Action Item CIGNA Special Delegation
XIV. Action Item NW Compass: Strategy and Contracting Authority
XV. Discussion Item March 16 Audit Committee Report
XVI. Discussion Item Report from CIO
XVII. Discussion Item IT Tech Support Contract—Request to Increase Contract Amount
XVIII. Capital Corporation Update and Grant Request for June
XIX. Discussion Item Investment Policy Review
XX. Discussion Item Expanded Spending Authority for Large Events
XXI. Management Program Background and Updates
XXII. Adjournment

PORTIONS OPEN TO THE PUBLIC: Everything except the Executive Session.

PORTIONS CLOSED TO THE PUBLIC: Executive Session.

CONTACT PERSON FOR MORE INFORMATION: Lakeyia Thompson, Special Assistant, (202) 524–9940; *Lthompson@nw.org.*

Lakeyia Thompson,

Special Assistant.

[FR Doc. 2023–08681 Filed 4–20–23; 11:15 am]

BILLING CODE 7570–02–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97319; File No. SR–CboeBZX–2023–023]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

April 18, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 3, 2023, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX Options'') proposes to amend its fee schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule, effective April 3, 2023.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 17% of the market share and currently the Exchange represents only approximately 5% of the market share.[3] Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange's Fee Schedule sets forth standard rebates and rates applied per contract. For example, the Exchange provides a rebate of $0.29 per contract for Market Maker orders that add liquidity in Penny Securities, yielding fee code PM. The Fee Codes and

[3] *See* Cboe Global Markets U.S. Options Market Monthly Volume Summary (March 28, 2023), available at *https://www.cboe.com/us/options/market_statistics/.*

Associated Fees section of the Fees Schedule also provide for certain fee codes associated with certain order types and market participants that provide for various other fees or rebates. Additionally, the Fee Schedule offers tiered pricing which provides Members [4] opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. In response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

The Exchange proposes to update the Market Maker Penny Add Volume Tiers (*i.e.,* applicable to orders yielding fee code PM) set forth in footnote 6 of the Fee Schedule. The Exchange currently provides opportunities for rebates per contract to add liquidity in Penny Securities as follows:

Tier	Rebate per contract to add	Required criteria
Tier 1	($0.31)	Member has an ADAV [5] in Market Maker orders ≥0.15% of average OCV.[6]
Tier 2	(0.38)	Member has an ADAV in Market Maker orders ≥0.25% of average OCV.
Tier 3	(0.39)	Member has an ADAV in Market Maker orders ≥0.40% of average OCV.
Tier 4	(0.40)	(1) Member has an ADAV in Market Maker orders ≥0.45% of average OCV; and (2) Member has a Step-Up ADRV in Customer orders ≥0.05% of OCV from December 2022.
Tier 5	(0.43)	Member has an ADAV in Market Maker orders ≥0.60% of average OCV.
Tier 6	(0.44)	(1) Member has an ADAV in Market Maker orders ≥0.75% of average OCV; and (2) Member has an ADRV in Customer orders ≥0.50% of average OCV.

The Exchange proposes to amend these tiers to add new Tier 5 to provide a rebate of $0.41 per contract to add liquidity if a Member has (1) an ADAV in Market Maker orders greater than or equal to 0.50% of average OCV; and (2) a Step-Up ADAV in Market Maker orders in SPY greater than or equal to 0.05% of average OCV from December 2022.[7] The Exchange also proposes a corresponding non-substantive amendment to update current Tiers 5 and 6 to Tiers 6 and 7, respectively.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. Additionally, competing exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon similarly situated members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

The Exchange believes adding new Tier 5 to the Market Maker Penny Add Volume Tiers is reasonable as it is designed to encourage Market Makers to increase their order flow to the Exchange to achieve the proposed tier. More specifically, the Exchange believes that adopting a new tier may encourage Members to increase their ADAV in Market Makers orders, including in SPY, over a modestly higher percentage of average OCV, and that reducing the difficulty of achieving an existing tier offers alternative criteria to the Market Maker Penny Add Volume Tiers, as restructured, for Members to strive to achieve by submitting the requisite add volume order flow. An increase in Market Maker add volume, particularly, facilitates tighter spreads and an increase in overall liquidity provider activity, both of which signal additional corresponding increase in order flow from other market participants, contributing towards a robust, well-balanced market ecosystem. Indeed, increased overall order flow benefits investors by continuing to deepen the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Exchange also believes that the proposed criteria and rebate in new Tier 5 reasonably reflect the incremental difficulty in achieving the remaining

[4] *See* Exchange Rule 1.5(n).

[5] ''ADAV'' means average daily added volume calculated as the number of contracts added.

[6] ''OCC Customer Volume'' or ''OCV'' means the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation (''OCC'') for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

[7] The Exchange proposes to add this tier as described in the table in Footnote 6 and amend the amounts of the rebates in the Standard Rates table.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] 15 U.S.C. 78f(b)(4).

Market Maker Penny Add Volume Tiers, and are in line with the criteria and enhanced rebates offered under the remaining Market Maker Penny Add Volume Tiers.

The Exchange believes the proposed change is also equitable and not unfairly discriminatory because it applies uniformly to all Members, who will have the opportunity to meet the new tier's criteria and receive the corresponding rebate for the tier if such criteria is met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether these proposed changes would definitely result in any Members qualifying for the proposed rebates. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on trading activity from the prior months, the Exchange anticipates that up to two Members will achieve new Tier 5. Additionally, all Members are able to increase their Market Maker order flow to attempt to achieve the new tier. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposal to amend the Market Maker Penny Add Volume Tiers does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as they will apply to all Members and all Members will continue to have an opportunity to receive rebates through the program. All Market Maker Volume Add Tiers are generally designed to increase the competitiveness of BZX and incentivize participants to increase their order flow on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. An overall increase in add activity may provide for deeper, more liquid markets and execution opportunities at improved prices. Furthermore, greater overall order flow, trading opportunities, and pricing transparency benefit all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

The Exchange also believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues they may participate on and direct their order flow, including 15 other options exchanges. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 17% of the market share. Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchanges if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' The fact that this market is competitive has also long been recognized by the courts. *In NetCoalition* v. *Securities and Exchange Commission*, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''. Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[12] and Rule 19b–4(f)(2)[13] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2023–023 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2023–023. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2023–023 and should be submitted on or before May 15, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08523 Filed 4–21–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, April 27, 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: April 20, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–08706 Filed 4–20–23; 4:15 pm]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 12056]

Review of the Designations as a Foreign Terrorist Organizations of Islamic Jihad Union and Islamic Movement of Uzbekistan (and Other Aliases)

Based on a review of the Administrative Records assembled pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, amended (8 U.S.C. 1189(a)(4)(C))(''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the bases for the designations of the aforementioned organizations as a Foreign Terrorist Organizations have not changed in such a manner as to warrant revocation of the designations and that the national security of the United States does not warrant a revocation of the designations.

Therefore, I hereby determine that the designations of the aforementioned organizations as Foreign Terrorist Organizations, pursuant to section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: April 11, 2023.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2023–08613 Filed 4–21–23; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–1016]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Extended Operations (ETOPS) of Multi-Engine Airplanes

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 to renew an information collection. The collection involves practices that permitted certificated air carriers to operate two-engine airplanes over long range routes. The FAA uses this information collection to ensure that aircraft for long range flights are equipped to minimize diversions, to preclude and prevent diversions in remote areas, and to ensure that all personnel are trained to minimize any adverse impacts of a diversion.

DATES: Written comments should be submitted by June 23, 2023.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Sandra Ray, Federal Aviation Administration, AFS–260, 1187 Thorn Run Road, Suite 200, Coraopolis, PA 15108.

By fax: 412–239–3063.

FOR FURTHER INFORMATION CONTACT: Sandra L. Ray by email at: *Sandra.ray@faa.gov;* phone: 412–329–3088.

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: 2120–0718.

Title: Extended Operations (ETOPS) of Multi-Engine Airplanes.

Form Numbers: None.

Type of Review: Renewal of an information collection.

Background: The final rule codified the previous practices that permitted certificated air carriers to operate two-engine airplanes over these long-range routes and extended the procedures for extended operations to all passenger-carrying operations on routes beyond 180 minutes from an alternate airport. This option is voluntary for operators and manufacturers. The FAA uses this information collection to ensure that aircraft for long range flights are equipped to minimize diversions, to preclude and prevent diversions in remote areas, and to ensure that all personnel are trained to minimize any adverse impacts of a diversion.

Respondents: Approximately 22 Operators and 4 Manufacturers and 6 Future Operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: Burden varies per operator.

Estimated Total Annual Burden: 36,214 Hours.

Issued in Washington, DC, on April 19, 2023.

Sandra L. Ray,

Aviation Safety Inspector. AFS–260.

[FR Doc. 2023–08573 Filed 4–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Renewed and Amended Memorandum of Understanding (MOU) Assigning Environmental Responsibilities to the State of Utah; Correction

AGENCY: Utah Division Office, Federal Highway Administration (FHWA), DOT.

ACTION: Correction.

SUMMARY: This notice provides a corrected weblink to submit electronic comments on the proposed MOU.

DATES: Please submit comments by May 11, 2023.

ADDRESSES: You may submit comments by any of the methods described below.

Website: https://udot.utah.gov/connect/about-us/program-development-group/environmental-division/.

Fax: 1–202–493–2251.

Hand Delivery: U.S. Department of Transportation, Ground Floor Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. (EST), Monday through Friday, except Federal holidays.

Background: On April 11, 2023, at 88 FR 21735, FHWA invited public comment on the FHWA and Utah Department of Transportation's plan to renew and amend an existing MOU established pursuant to section 326 of amended chapter 3 of title 23, United States Code (23 U.S.C. 326). The Notice contained an incorrect weblink for submitting electronic comments. Electronic comments should be submitted to *Edward.Woolford@dot.gov* by May 11, 2023.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 326; 42 U.S.C. 4331, 4332; 23 CFR 771.117; 40 CFR 1507.3, 1508.4.

Issued on: April 18, 2023.

Ivan Marrero,

Division Administrator, Federal Highway Administration.

[FR Doc. 2023–08534 Filed 4–21–23; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for New Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

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

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 11, 2023.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21536–N	WAE Technologies Limited	172.101(j), 173.185(b)(6)	To authorize the transportation in commerce of lithium ion batteries exceeding 35 kg net weight aboard cargo-only aircraft. (mode 4).
21538–N	Evolve Renewable Materials, Inc.	107.107(a), 107.109, 107.601, 171.15, 171.16, 172.704, 172.304, 172.101, 172.102(c), 173.22(a), 173.185(a), 173.185(c).	To authorize the manufacture, mark, sale and use of specifically designed packaging for the transportation in commerce of certain batteries without shipping papers and certain marking and labeling when transported for recycling or disposal. (modes 1, 2).

SPECIAL PERMITS DATA—Continued

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21539–N	Rivian Automotive, Inc	173.185(c)(1)(iii)	To authorize the transportation in commerce of lithium batteries via motor vehicle using alternate hazard communication. (mode 1).
21540–N	Kidde Technologies Inc	173.302a	To authorize the manufacture, mark, sale, and use of non-DOT specification cylinders, similar to DOT 4DS, for the transportation of certain hazardous materials. (modes 1, 2, 3, 4, 5).
21541–N	S. C. Johnson & Son, Inc	178.33–7	To authorize the manufacture, mark, sale, and use of non-DOT specification inner receptacles similar to the 2P specification, except that the wall thickness is reduced. (modes 1, 2, 3, 4, 5).
21542–N	Samsung SDI. Co., Ltd	172.101(j)	To authorize the transportation in commerce of lithium batteries exceeding 35 kg by cargo-only aircraft. (mode 4).
21543–N	Consumer Product Safety Commission, United States.	173.185(a)(1)	To authorize the transportation in commerce of lithium batteries that are not of a type proven to meet the criteria of the UN Manual of Tests and Criteria 38.3, by motor vehicle. (mode 1).
21544–N	Astra Space Operations, Inc	173.301(f)(1)	To authorize the transportation in commerce of a specification cylinder containing a Division 2.2 gas (incorporated into a propulsion module) that is not equipped with a pressure relief device. (modes 1, 3, 4).

[FR Doc. 2023–08588 Filed 4–21–23; 8:45 am]
BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Actions on Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

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

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 11, 2023.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA—GRANTED

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
14546–M	Linde Gas & Equipment Inc	172.203(a), 180.209(a), 180.209(b), 180.209(b)(1)(iv).	To modify the special permit to extend the initial periodic requalification period of DOT 3AL and DOT–SP 12440 cylinders from 5 years to 10 years.
16016–M	Isi Automotive Austria Gmbh	173.301, 173.302a, 173.305	To modify the special permit to authorize an additional manufacturing location.
20333–M	Antonov, DP	172.101(j), 172.203(a), 172.301(c), 173.27(b)(2), 175.30(a)(1).	To modify the special permit to authorize an additional hazardous material and waive part of 49 CFR 107.109(a)(3).
20906–M	Nouryon Functional Chemicals LLC.	173.28(b)(2), 173.181	To modify the special permit to authorize an additional packaging.
21072–M	Isotek Systems, LLC	173.417(b)(1), 173.427(a)(3)	To modify the special permit to increase the total Uranium weight.
21114–M	Olin Winchester LLC	172.203(a), 173.63(b)(2)(i), 173.63(b)(2)(ii).	To modify the special permit to authorize rifle cartridge sizes up to 358 Winchester, to authorize an additional packaging, and to remove the requirement to mark the special permit number on inner packages other than bags.
21114–M	Federal Cartridge Company	172.203(a), 173.63(b)(2)(i), 173.63(b)(2)(ii), 173.63(b)(2)(iii).	To modify the special permit to authorize shotshells to be transported.

SPECIAL PERMITS DATA—GRANTED—Continued

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21136–M	Hanwha Cimarron LLC	173.302(a)(1)	To modify the special permit to amend paragraph 7.d.(5) to only refer to Tests Nos. 4, 5, and 6. of ISO 1496–3.
21240–M	Volkswagen Group Of America Chattanooga Operations, LLC.	172.101(j)	To modify the special permit to authorize additional lithium ion batteries.
21316–N	Cryoconcepts, LP	171.2(k), 172.200, 172.300, 172.400, 172.700(a).	To authorize the transportation in commerce of DOT 3AL cylinders containing carbon dioxide using alternative hazard communication. Additionally, the application requests authorization for cylinders charged to a pressure of less than 29.0 psig to be shipped as a hazardous material.
21328–N	Dragonfly Energy Corp.	173.6(a)(1)(ii), 173.6(d)	To authorize the transportation in commerce of lithium batteries exceeding 66 pounds as materials of trade.
21333–N	Cummins Inc	172.101(j), 173.185(b)(1)	To authorize the transportation in commerce of lithium ion batteries exceeding 35 kg by cargo-only aircraft.
21335–N	The Island Packers Corporation.		To authorize the transportation in commerce of certain hazardous materials aboard passenger vessels.
21355–N	Lake & Peninsula Airline Inc	172.101(j), 173.242, 173.202, 173.203, 175.310(a).	To authorize the transportation in commerce of certain flammable liquids in non-specification bulk packaging (bladders) by cargo-only aircraft.
21380–N	Tesla, Inc	173.21(c), 173.185(b)(1), 173.185(b)(2)(iii), 173.185(b)(4)(ii).	To authorize the transportation in commerce of lithium ion batteries with a spark arrestor system
21412–N	TN Americas LLC	173.163, 173.420	To authorize the transportation in commerce of uranium hexafluoride in packagings not meeting the packaging requirements of ANSI N14.1
21426–N	Spaceflight, Inc	173.185(a)(1)	To authorize the transportation in commerce of low production or prototype lithium batteries contain in equipment (spacecraft) via cargo-only aircraft.
21455–N	Huntington Ingalls Incorporated.	172.102	To authorize the transportation in commerce of radiation detectors that have not had a leak tightness test performed in accordance with special provision 238.
21498–N	Silk Way Aviasirketi, MMC	172.204(c)(3), 172.101(j)(1), 173.27, 175.30(a)(1).	To authorize the transportation in commerce of articles containing non-flammable, toxic gas, n.o.s. (contains ammonia, anhydrous) within the equipment
21499–N	Pollution Control Inc	172.320, 173.56(b)	To authorize the transportation in commerce of one package for the purpose of disposal of an explosive for the that has not been examined and classified in accordance with 49 CFR 173.56(b).
21500–N	American Ecycle Inc	173.185(f)	To authorize the transportation in commerce of damaged lithium ion batteries in alternative packaging for destruction or recycling.
21502–N	Tyco Fire Products LP	172.203(a), 172.301(c), 173.309(c)(2).	To authorize the transportation in commerce of non-specification cylinders exceeding 900 mL in capacity and containing a liquefied compressed gas as fire extinguishers.
21520–N	Reuter-Stokes, LLC	173.310(b)	To authorize the transportation in commerce of neutron detectors containing a Division 2.2 material that exceed the authorized pressure.
21521–N	Honda Motor Co., Ltd	173.302(a)(1)	To authorize the transportation in commerce of non-DOT specification composite overwrapped tanks (COPVs), containing compressed hydrogen. The COPVs must be shipped with a maximum hydrogen gas pressure of 58.0 psi/0.4 MPa.
21527–N	Alltranspack, Inc	173.185(a)(1)	To authorize the transportation in commerce of prototype lithium batteries via cargo-only aircraft.
21531–N	Environmental Restoration, LLC.	173.185(f)(1), 173.185(f)(3)	To authorize the transportation in commerce of damaged or defective lithium ion batteries for the purpose of disposal, recycling, or failure analysis.
21535–N	National Air Cargo Group, Inc	172.101(j)(1), 173.27(b)(2), 173.27(b)(3), 175.30(a)(1).	To authorize the transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo-only aircraft.
21537–N	Astro Digital US Inc	173.185(a)(1)	To authorize the transportation in commerce of prototype and low production lithium ion batteries contained in equipment (spacecraft).

SPECIAL PERMITS DATA—DENIED

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
11379–M	ZF Passive Safety Systems US Inc.	173.301(a), 173.302(a)(1)	To modify the special permit to authorize a reduced frequency of cylinder burst testing.

SPECIAL PERMITS DATA—DENIED—Continued

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
20418–M	Hanwha Cimarron LLC	173.302(a)	To modify the special permit to remove the 49 CFR Part 451 requirement in paragraph 7.d.(3).
21431–N	Philips Medical Systems MR, Inc.		To authorize the transportation in commerce of MRI scanners utilizing the newly adopted provisions of the ICAO TI prior to their incorporation into the HMR.
21448–N	ExxonMobil Chemical Company.	180.605(h)(3)	To authorize the transportation in commerce of portable tanks that have been pneumatically tested with nitrogen in lieu of hydrostatically tested with water.
20534–R	Energy Transport Solutions LLC.	172.101(i)(3)	To renew authorization for the transportation in commerce of methane, refrigerated liquid in DOT specification 113C120W tank cars.

SPECIAL PERMITS DATA—WITHDRAWN

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
20965–N	Autoliv Asp, Inc	173.166	To authorize the transportation in commerce of air bag inflators installed in apparel as ''safety devices''.
21373–M	Sigma-Aldrich Co. LLC	172.203(a), 172.203(c), 172.704.	To modify the special permit to authorize carriage by the grantee.
21511–N	Silk Way West Airlines, LLC	172.101(j), 173.27(b)(2)	To authorize the transportation of certain hazardous materials forbidden aboard cargo-only aircraft.

[FR Doc. 2023–08590 Filed 4–21–23; 8:45 am]
BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Modification to Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

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

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 4, 2023.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
10232–M	Illinois Tool Works Inc	173.304(d), 173.167, 173.306(i).	To modify the special permit to authorize additional hazardous materials. (modes 1, 2, 3, 4, 5).
11911–M	Transfer Flow, Inc	177.834(h), 178.700(c)(1)	To modify the special permit to redefine the ''safe zone'' line specified in paragraph 7.c.(2)(ii). (mode 1).
14232–M	Luxfer Inc	173.302(a), 173.304(a), 180.205.	To modify the special permit to authorize Modal Acoustic Emission testing of cylinders. (modes 1, 2, 3, 4, 5).
14266–M	GTM Manufacturing, LLC	173.302(a)(1), 173.304(a)	To modify the special permit to authorize a service life extension program for the cylinders. (mode 1).
21090–M	Shijiazhuang Enric Gas Equipment Co., Ltd.	180.205	To modify the special permit to authorize an additional location. (modes 1, 2, 3, 4, 5).

SPECIAL PERMITS DATA—Continued

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21144–M	Consolidated Nuclear Security LLC.	173.56(b)	To modify the special permit to waive certain marking requirements and to exempt the hazardous material from Class 3 desensitized explosive requirements. (modes 1, 4).
21179–M	Airgas USA, LLC	180.205(f), 180.205(g), 180.209(a).	To modify the special permit to modify the test method. (modes 1, 2, 3, 4, 5).
21531–M	Environmental Restoration, L.L.C.	173.185(f)	To modify the special permit to add a hazardous material and to remove the requirement in paragraph 7.c.(2). (mode 1).

[FR Doc. 2023–08589 Filed 4–21–23; 8:45 am]
BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable 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 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 Action(s)

On April 19, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

Individual

1. KHOSHGHADAM, Mehdi (Arabic: مهدی خوش قدم) (a.k.a. KHOSH GHADAM, Mehdi), A-1-5, Cita Damansara, PJU 3/27, Sunway Damansara, Petaling Jaya, Selangor 47810, Malaysia; Tehran, Iran; DOB 15 Dec 1983; POB Tehran, Iran; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Passport T19665422; National ID No. 0072155434 (Iran) (individual) [NPWMD] [IFSR] (Linked To: PARDAZAN SYSTEM NAMAD ARMAN).

   Designated pursuant to section 1(a)(iv) of Executive Order 13382 of June 28, 2005, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters," 70 FR 38567 (E.O. 13382) for acting or purporting to act for or on behalf of, directly or indirectly, PARDAZAN SYSTEM NAMAD ARMAN, a person whose property and interests in property are blocked pursuant to E.O. 13382.

Entities

1. AMVAJ NILGOUN BUSHEHR CO., 7th Unit, Ofogh Building, Baskoul Ghadim Alley, Dehghan St., Bushehr, Iran; Unit 4, Number 53, Boostan 5, Pasdaran Avenue, Tehran, Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Company Number 10980066290 (Iran) [NPWMD] [IFSR] (Linked To: PARDAZAN SYSTEM NAMAD ARMAN).

   Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, PARDAZAN SYSTEM NAMAD ARMAN, a person whose property and interests in property are blocked pursuant to E.O. 13382.

2. ARTTRONIX INTERNATIONAL HK LIMITED (Chinese Traditional: 億電國際香港有限公司) (a.k.a. ADERAL INDUSTRIAL HK LTD.), 15/B 15/F Cheuk Nang Plaza, 250 Hennessy Road, Hong Kong, China; 610 Nathan Road, Rooms 1318-20, 13/F, Hollywood Plaza, Mong Kok, Hong Kong, China; Rm3A25, Bldg A Zhihui Innovation CTR Huashenghui 2nd Qianjin Rd Baoan Dist, Shenzhen, Guangdong, China; Website www.arttronix.com; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 09 Nov 2012; Company Number 1823593 (Hong Kong) [NPWMD] [IFSR] (Linked To: PARDAZAN SYSTEM NAMAD ARMAN).

   Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, PARDAZAN SYSTEM NAMAD ARMAN, a person whose property and interests in property are blocked pursuant to E.O. 13382.

3. JOTRIN ELECTRONICS LIMITED (Chinese Traditional: 傑馳電子有限公司), Unit 3901, 39th Floor, Metropolitan Heights at Century Place, Number 3018, Shennan Middle Road, Futian District, Shenzhen 518031, China; Room G, 4th Floor, 1st Block, Golden Building, 152 Fuk Wah Street, Sham Shui Po, Kowloon, Hong Kong, China; Room 3702, Xinhao Edu, No. 7018, Caitian Road, Futian, Shenzhen 518038, China; A-2910, The Grand City, No. 386 East of Hanxi Avenue, Panyu District, Guangzhou 511400, China;

Room 803, Chevalier House, 45-51 Chatham Road South, Tsim Sha Tsui, Kowloon, Hong Kong, China; Website www.jotrin.com; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 26 Jul 2011; Company Number 1643642 (Hong Kong) [NPWMD] [IFSR] (Linked To: PARDAZAN SYSTEM NAMAD ARMAN).

Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, PARDAZAN SYSTEM NAMAD ARMAN, a person whose property and interests in property are blocked pursuant to E.O. 13382.

4. PASNA INTERNATIONAL GROUP SND. BHD, No. 42, Jalan Wira 4, Taman Maluri, Kuala Lumpur, Wilayah Persekutuan 55100, Malaysia; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 14 Oct 2011; Company Number 201101036156 (Malaysia) [NPWMD] [IFSR] (Linked To: PARDAZAN SYSTEM NAMAD ARMAN).

Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, PARDAZAN SYSTEM NAMAD ARMAN, a person whose property and interests in property are blocked pursuant to E.O. 13382.

5. VOHOM TECHNOLOGY HK CO., LIMITED (Chinese Traditional: 華弘科技香港有限公司), B25, 4/F, Huihuang Commerical Building, Dongcheng Road Middle, Dongcheng, Dongguan, Guangdong 523129, China; Hong Kong, China; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 21 May 2012; Company Number 1747585 (Hong Kong) [NPWMD] [IFSR] (Linked To: PARDAZAN SYSTEM NAMAD ARMAN).

Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, PARDAZAN SYSTEM NAMAD ARMAN, a person whose property and interests in property are blocked pursuant to E.O. 13382.

6. YINKE HK ELECTRONICS COMPANY LIMITED (Chinese Traditional: 盈科香港電子有限公司) (a.k.a. YINKE ELECTRONICS CO., LTD), Area A, 2nd Floor, Xinxin Building B, Zhenxing Road, Futian District, Shenzhen, Guangdong, China; Hong Kong, China; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 15 Apr 2008; Company Number 1227142 (Hong Kong) [NPWMD] [IFSR] (Linked To: PARDAZAN SYSTEM NAMAD ARMAN).

Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, PARDAZAN SYSTEM NAMAD ARMAN, a person whose property and interests in property are blocked pursuant to E.O. 13382.

On April 19, 2023, OFAC published revised information for the following person on OFAC's SDN List.

Entity:

1. PARDAZAN SYSTEM NAMAD ARMAN (a.k.a. FARAZ TEGARAT ERTEBAT COMPANY; a.k.a. PARDAZAN SYSTEM HOUSES ARMAN; a.k.a. PASNA; a.k.a. PASNA INDUSTRY CO.; a.k.a. PASNA INTERNATION TRADING CO.; a.k.a.

POUYAN ELECTRONIC CO.; a.k.a. SINO TRADER COMPANY), Number 8, Unit 14, Tavana Building, Khan Babaei Alley, Nik Zare Street, Akbari Street, Ashrafti Esfahani Avenue, Tehran, Iran; Ghodarzi Alley, Building No. 11, Alborz, Third Floor, No. 9, Monacoheri St., Saadi St., Tehran, Iran; Sa'di St., Manoucohehri St., Goodarzi Alley, Building No. 11, Alborz, Third Floor, No. 9, Tehran, Iran; website *http://www.pasnaindustry.com;* Additional Sanctions Information—Subject to Secondary Sanctions [NPWMD] [IFSR].

Designated pursuant to section 1(a)(iii) of E.O. 13382 on January 12, 2018, for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, ELECTRONIC COMPONENTS INDUSTRIES, a person whose property and interests in property are blocked pursuant to E.O. 13382.

Dated: April 19, 2023.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–08587 Filed 4–21–23; 8:45 am]

BILLING CODE 4810–AL–C

UNIFIED CARRIER REGISTRATION PLAN

Board of Directors; Request for Nominations

AGENCY: Unified Carrier Registration Plan.

ACTION: Notice.

SUMMARY: The Unified Carrier Registration (UCR) Plan Board of Directors is requesting nominations of qualified individuals in all four service areas of the Federal Motor Carrier Safety Administration (FMCSA) (as those areas were defined by FMCSA on January 1, 2005) for appointment by the FMCSA to the UCR Plan Board of Directors to fill four vacancies for terms which expire on May 31, 2026. The nominees must be from among the Chief Administrative Officers of State Agencies responsible for overseeing the administration of the UCR Agreement.

DATES: Nominations of or expressions of interest by qualified individuals to be considered by the FMCSA for appointment to fill these four vacancies in the Board of Directors of the Unified Carrier Registration Plan, along with accompanying resumes, must be received on or before May 10, 2023.

ADDRESSES: Nominations of or expressions of interest by qualified individuals to be considered by the FMCSA for appointment to the Board of the UCR Plan may be received by any of the following methods—internet, regular mail, courier, or hand-delivery.

Mail, Courier, or Hand-Delivery: Unified Carrier Registration Plan, Attention: Matt Mantione, 3200 Windy Hill Rd., Suite 600W, Atlanta, GA 30339, internet: *mmantione@plan.ucr.gov*.

FOR FURTHER INFORMATION CONTACT: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov*.

SUPPLEMENTARY INFORMATION:

Background: Section 4305(b) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) [Pub. L. 109–59, 119 Stat. 1144, August 10, 2005] enacted 49 U.S.C. 14504a, entitled ''Unified carrier registration system plan and agreement.'' Under the UCR Agreement, motor carriers, motor private carriers, brokers, freight forwarders, and leasing companies that are involved in interstate transportation register and pay certain fees. The UCR Plan's Board of Directors must issue rules and regulations to govern the UCR Agreement. Section 14504a(a)(9) defines the Unified Carrier Registration Plan as the organization of State, Federal, and industry representatives responsible for developing, implementing, and administering the UCRA. Section 14504a(d)(1)(B) directed the Secretary of Transportation to establish a Unified Carrier Registration Plan Board of Directors made up of 15 members from FMCSA, State Governments, and the motor carrier industry.

The Board also must recommend to the Secretary of Transportation annual fees to be assessed against carriers, leasing companies, brokers, and freight forwarders under the UCRA. Section 14504a(d)(1)(B) provides that the UCR Plan's Board of Directors must consist of directors from the following groups:

Federal Motor Carrier Safety Administration: One director must be selected from each of the FMCSA service areas (as defined by FMCSA on January 1, 2005) from among the chief administrative officers of the State agencies responsible for administering the UCRA.

State Agencies: The five directors selected to represent State agencies must be from among the professional staffs of State agencies responsible for overseeing the administration of the UCR Agreement.

Motor Carrier Industry: Five directors must be from the motor carrier industry.

At least one of the five motor carrier industry directors must be from ''a national trade association representing the general motor carrier of property industry'' and one of them must be from ''a motor carrier that falls within the smallest fleet fee bracket.''

U.S. Department of Transportation (the Department): One individual, either the FMCSA Deputy Administrator or such other Presidential appointee from the Department appointed by the Secretary, represents the Department.

The establishment of the Board was announced in the **Federal Register** on May 12, 2006 (71 FR 27777). This document serves as a notice from the UCR Plan Board of Directors soliciting nominations of and expressions of interest by qualified individuals who are interested in being considered by the FMCSA for appointment to the Board as a representative of a State agency responsible for overseeing the Unified Carrier Registration Agreement (UCR Agreement) from a State in each of the FMCSA's four service areas (again, as those service areas were defined on January 1, 2005). For purposes of Board appointments, on January 1, 2005, the Eastern service area included the UCR participating states of Connecticut, Delaware, Massachusetts, Maine, New Hampshire, New York, Pennsylvania, Rhode Island, Virginia, and West Virginia. The Midwestern service area included the UCR participating states of Iowa, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin. The Southern service area included the UCR participating states of Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. The Western service area included the UCR participating states of Alaska, California, Colorado, Idaho, Montana, New Mexico, North Dakota, South Dakota, Utah, and Washington. The term of this appointment expires on May 31, 2026.

All nominations of or expressions of interest by qualified individuals received for the four soon to be vacant positions described above and submitted on or before May 10, 2023, will be forwarded to FMCSA. The authority to appoint an individual to fill each of the four vacant positions lies with Secretary of Transportation, which has been delegated to FMCSA.

Nominations and expressions of interest should indicate that the individual nominated or interested meets the statutory requirements specified in 49 U.S.C. 14504a(d)(1)(B). All applications must include a current resume.

The UCR Plan Board may, but is not required to, recommend to FMCSA the appointment of individuals from among the nominations and expressions of interest received. If the Board does make such recommendation(s), it will do so after consideration during an open meeting in compliance with the Government in the Sunshine Act that includes such recommendation(s) as part of the subject matter of the open meeting.

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2023–08519 Filed 4–21–23; 8:45 am]

BILLING CODE 4910–EX–P

FEDERAL REGISTER

Vol. 88 Monday,
No. 78 April 24, 2023

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2018–0794; FRL–6716.3–01–OAR]

RIN 2060–AV53

National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to amend the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Coal- and Oil-Fired Electric Utility Steam Generating Units (EGUs), commonly known as the Mercury and Air Toxics Standards (MATS). Specifically, the EPA is proposing to amend the surrogate standard for non-mercury (Hg) metal HAP (filterable particulate matter (fPM)) for existing coal-fired EGUs; the fPM compliance demonstration requirements; the Hg standard for lignite-fired EGUs; and the definition of startup. These proposed amendments are the result of the EPA's review of the May 22, 2020 residual risk and technology review (RTR) of MATS.

DATES:

Comments. Comments must be received on or before June 23, 2023. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before May 24, 2023.

Public hearing. The EPA will hold a virtual public hearing on May 9, 2023. See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2018–0794, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2018–0794 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2018–0794.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2018–0794, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation 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 rulemaking. 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 **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Sarah Benish, Sector Policies and Programs Division (D243–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5620; and email address: *benish.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION:

Participation in virtual public hearing. The public hearing will be held via virtual platform on May 9, 2023 and will convene at 11 a.m. Eastern Time (ET) and conclude at 7 p.m. ET. If the EPA receives a high volume of registrations for the public hearing, we may continue the public hearing on May 10, 2023. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce further details at *https://www.epa.gov/stationary-sources-air-pollution/mercury-and-air-toxics-standards.*

The EPA will begin pre-registering speakers for the hearing no later than 1 business day following publication of this document in the **Federal Register**. The EPA will accept registrations on an individual basis. To register to speak at the virtual hearing, please use the online registration form available at *https://www.epa.gov/stationary-sources-air-pollution/mercury-and-air-toxics-standards* or contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov.* The last day to pre-register to speak at the hearing will be May 8, 2023. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers in approximate order at: *https://www.epa.gov/stationary-sources-air-pollution/mercury-and-air-toxics-standards.*

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 4 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony by submitting the text of your oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/stationary-sources-air-pollution/mercury-and-air-toxics-standards.* While the EPA expects the hearing to go forward as described in this section, please monitor our website or contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov* to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of an interpreter or special accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by May 1, 2023. The EPA may not be able to arrange accommodations without advanced notice.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2018–0794.[1] All documents in the docket are listed in *https://www.regulations.gov/.* Although listed, some information is not publicly available, *e.g.,* Confidential Business

[1] As explained in a memorandum to the docket, the docket for this action includes the documents and information, in whatever form, in Docket ID Nos. EPA–HQ–OAR–2009–0234 (National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-fired Electric Utility Steam Generating Units), EPA–HQ–OAR–2002–0056 (National Emission Standards for Hazardous Air Pollutants for Utility Air Toxics; Clean Air Mercury Rule (CAMR)), and Legacy Docket ID No. A–92–55 (Electric Utility Hazardous Air Pollutant Emission Study). See memorandum titled *Incorporation by reference of Docket Number EPA–HQ–OAR–2009–0234, Docket Number EPA–HQ–OAR–2002–0056, and Docket Number A–92–55 into Docket Number EPA–HQ–OAR–2018–0794* (Docket ID Item No. EPA–HQ–OAR–2018–0794–0005).

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. With the exception of such material, publicly available docket materials are available electronically in *Regulations.gov*.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2018–0794. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit electronically to *https://www.regulations.gov/* any information that you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted as discussed in the *Submitting CBI* section of this document.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, *etc.*) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/.* Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, note the Docket ID No., mark the outside of the digital storage media as CBI, and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* section of this document. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the Docket ID No. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.,* Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the OAQPS CBI Office at the email address *oaqpscbi@epa.gov,* and as described above, should include clear CBI markings and note the Docket ID No. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, or if you do not have your own file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2018–0794. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

Preamble acronyms and abbreviations. Throughout this document the use of ''we,'' ''us,'' or ''our'' is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

Btu British Thermal Units
CAA Clean Air Act
CBI Confidential Business Information
CEMS continuous emissions monitoring systems
CFR Code of Federal Regulations
CO_2 carbon dioxide
CPMS continuous parameter monitoring system
EAV equivalent annualized value
ECMPS Emissions Collection and Monitoring Plan System
EGU electric utility steam generating unit
EIA Energy Information Administration
EJ environmental justice
EPA Environmental Protection Agency
ESP electrostatic precipitator
FF fabric filter
FGD flue gas desulfurization
fPM filterable particulate matter
GWh gigawatt-hour
HAP hazardous air pollutant(s)
HCl hydrogen chloride
HF hydrogen fluoride
Hg mercury
Hg^0 elemental Hg vapor
HQ hazard quotient
IGCC integrated gasification combined cycle
IPM Integrated Planning Model
lb Pounds
LEE low emitting EGU
MACT maximum achievable control technology
MATS Mercury and Air Toxics Standards
MM million
MW megawatt
NAICS North American Industry Classification System
NEEDS National Electric Energy Data System
NESHAP National Emission Standards for Hazardous Air Pollutants
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
PDF Portable Document Format
PM particulate matter
ppm parts per million
PV present value
RIA regulatory impact analysis
RTR residual risk and technology review
$SC–CO_2$ social cost of carbon
SO_2 sulfur dioxide
tpy tons per year
TBtu trillion British thermal units
WebFIRE Web Factor Information Retrieval System

Organization of this document. The information in this preamble is organized as follows:

I. Executive Summary

A. Background and Purpose of the Regulatory Action

Exposure to hazardous air pollution (''HAP,'' sometimes known as toxic air pollution, including Hg, chromium, arsenic, and lead) can cause a range of adverse health effects including harming people's central nervous system; damage to their kidneys; and cancer. Recognizing the dangers posed by HAP, Congress enacted Clean Air Act (CAA) section 112. Under CAA section 112, the EPA is required to set standards (known as ''MACT'' (maximum achievable control technology) standards) for major sources of HAP that ''require the maximum degree of reduction in emissions of the hazardous air pollutants . . . (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable.'' 42 U.S.C. 7412(d)(2). To ensure a minimum level (or ''floor'') of emissions reductions, Congress required that MACT standards for existing sources ''shall not be less stringent than . . . the average emission limitation achieved by the best performing 12 percent of existing sources''; and MACT standards for new sources ''shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source[.]'' 42 U.S.C. 7412(d)(3). These requirements effectively obligated all sources to reduce emissions as well as the best sources in their category. Congress did not stop there, however. First, it required the EPA, 8 years after setting the standard, to address any residual risks posed by the source category (called the ''residual risk review''). Second, and as explained in more detail below, it required the EPA, at least every 8 years on an ongoing basis, to review and revise as necessary the MACT standard taking into account developments in practices, processes and control technologies (called the ''technology review''). For EGUs, Congress also required the EPA to make a one-time determination of whether it is ''appropriate and necessary'' to regulate this source category under CAA section 112. The EPA found regulation of EGUs ''appropriate and necessary'' in 2000 and reaffirmed that finding in 2012 and 2016. MACT standards were originally set for EGUs in 2012, and those standards remain in place today. In 2020, the EPA conducted the 8-year residual risk and technology review and determined not to update the MACT standard.

On January 20, 2021, President Biden signed Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis'' (86 FR 7037; January 25, 2021). The Executive order, among other things, instructed the EPA to review the 2020 final rule titled, ''National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review'' (85 FR 31286; May 22, 2020) (2020 Final Action) and to consider publishing a notice of proposed rulemaking suspending, revising, or rescinding that action. The 2020 Final Action included a finding that it is not appropriate and necessary to regulate coal- and oil-fired EGUs under CAA section 112 as well as the RTR for the MATS rule. The results of the EPA's review of the 2020 appropriate and necessary finding were proposed on February 9, 2022 (87 FR 7624) (2022 Proposal) and finalized on March 6, 2023 (88 FR 13956). In the 2022 Proposal, the EPA also solicited information on the performance and cost of new or improved technologies that control hazardous air pollutant (HAP) emissions, improved methods of operation, and risk-related information to further inform the EPA's review of the 2020 MATS RTR. This action presents the proposed results of the EPA's review of the MATS RTR.

In particular, with respect to the standard for fPM (as a surrogate for non-Hg metals), and the standard for Hg from EGUs that burn lignite coal, the EPA proposes to conclude that developments since 2012—and in particular the fact that the majority of sources are vastly outperforming the MACT standards with control technologies that are cheaper and more effective than the EPA forecast while a smaller number of sources' performance lags behind—warrant strengthening these standards. While the 2012 MATS drove critical HAP reductions at much lower cost than estimated, coal-fired EGUs still emit a substantial amount of HAP and developments since 2012 provide opportunities to address these emissions and ensure that all coal-fired EGUs are performing at levels achievable by the fleet. These proposed revisions would ensure that the EPA's standards continue to fulfill Congress's direction to require the maximum degree of reduction of HAP while taking into account the statutory factors.

B. Summary of the Major Provisions of the Regulatory Action

The 2012 MATS Final Rule established emission standards to limit emissions of HAP from coal- and oil-fired EGUs. The rule required that affected sources limit emissions of Hg, of non-Hg metal HAP (*e.g.,* chromium, nickel, arsenic, lead), acid gas HAP (*e.g.,* hydrogen chloride (HCl), hydrogen fluoride (HF), selenium dioxide (SeO_2)), and organic HAP (*e.g.,* formaldehyde, dioxins/furans). Since MATS was promulgated in 2012, power sector emissions of Hg, acid gas HAP, and non-Hg metal HAP have decreased by about 86 percent, 96 percent, and 81 percent, respectively, as compared to 2010 emissions levels (See Table 4 at 84 FR 2689, February 7, 2019). Still, coal- and oil-fired EGUs remain the largest domestic emitter of Hg and many other HAP, including many of the non-Hg HAP metals and HCl. Exposure to these HAP, at certain levels and duration, is associated with a variety of adverse health effects. These adverse health effects may include irritation of the lung, skin, and mucus membranes; detrimental effects on the central nervous system; damage to the kidneys; alimentary effects such as nausea and vomiting; and cancer.[2] See 77 FR 9310 for a fuller discussion of the health effects associated with these pollutants. Three of the key metal HAP emitted by EGUs (inorganic arsenic (As), hexavalent chromium (Cr), and nickel compounds (Ni)) have been classified as human carcinogens, while two others (cadmium (Cd) and selenium (Se)) are classified as probable human carcinogens.[3]

To address emissions of these non-Hg metal HAP, MATS sets individual emission limits for each of the 10 non-Hg metals emitted from coal- and oil-fired EGUs. Alternatively, affected sources may meet an emission standard for ''total non-Hg metals'' by summing the emission rates of each of the non-Hg metals. The MATS rule also allows affected sources to meet a filterable PM (fPM)[4] emission standard as a surrogate for the non-Hg metals. For existing coal-fired EGUs, most units have chosen to demonstrate compliance with the non-Hg metal HAP surrogate fPM emission standard of 3.0E–02 pounds of fPM per million British thermal units of heat input (lb/MMBtu).

CAA section 112(d)(2) directs the EPA to require the maximum degree of HAP emission reductions achievable, taking into account certain considerations, and CAA section 112(d)(3) sets the floor for emission standards based on the reductions achieved by the best performing sources. The MATS was based upon the EPA's analysis under CAA sections 112(d)(2) and (d)(3) in 2012. CAA section 112(d)(6) further requires the EPA, at least every 8 years, to review and revise standards taking into account developments in practices, processes and control technologies. After reviewing developments in the current emission levels of fPM from existing coal-fired EGUs, the costs of control technologies, and the effectiveness of those technologies, as well as the costs of meeting a standard that is more stringent than 3.0E–02 lb/MMBtu and the other statutory factors, the EPA is proposing to revise the non-Hg metal surrogate fPM emission standard for all existing coal-fired EGUs to a more stringent fPM emission standard of 1.0E–02 lb/MMBtu, which is comparable to the MATS new source standard for fPM.[5] The EPA is also soliciting comment on opportunities to revise the MATS fPM emission standard to an even more stringent level of 6.0E–03 lb/MMBtu.

The EPA is also proposing a revision to the requirements for demonstrating compliance with the fPM emission standard. Currently, EGUs that do not qualify for the low emitting EGU (LEE) program can demonstrate compliance with the fPM standard either by conducting quarterly performance testing (*i.e.,* quarterly stack testing) or by using PM continuous emission monitoring systems (PM CEMS). After considering updated information on the costs for quarterly performance testing compared to the costs of PM CEMS and on the measurement capabilities of PM CEMS, as well as other benefits of using PM CEMS, which include increased transparency and accelerated identification of anomalous emissions, the EPA is proposing to require that all coal-fired EGUs demonstrate compliance with the fPM emission standard by using PM CEMS. Accordingly, because almost all regulated sources have chosen to demonstrate compliance with the non-Hg HAP metal standards by demonstrating compliance with the surrogate fPM standard and because of the benefits of PM CEMS use for demonstrating compliance, the EPA is proposing to remove the total and individual non-Hg metals emission limits from MATS. Requiring the use of PM CEMS, if finalized, would also render the current compliance method for the LEE program superfluous, since LEE is an optional stack testing program and the considered fPM limits are both below the current fPM LEE program limit of 1.5E–02 lb/MMBtu (*i.e.,* 50 percent of the current fPM standard). Therefore, the EPA also proposes to remove fPM, as well as the total and individual non-Hg HAP metals, from the LEE program.

The EPA is also proposing to establish a more protective Hg emission standard for existing lignite-fired EGUs. Currently, existing lignite-fired EGUs must meet a Hg emission standard of 4.0E–06 lb/MMBtu[6] or an alternative output-based emission standard of 4.0E–02 pounds of Hg per gigawatt-hour output (lb/GWh). The EPA recently collected information on current Hg emission levels and controls for lignite-fired EGUs from information provided routinely to the EPA and to the Energy Information Administration (EIA) and by using the information collection authority provided under CAA section 114. That information showed developments that demonstrate that lignite-fired EGUs can achieve a Hg emission rate that is much lower than the current standard, and that there are cost-effective control technologies and methods of operation that are available to achieve a more stringent standard. Accordingly, the EPA is proposing that lignite-fired EGUs must meet the same Hg emission standard as EGUs firing other types of coal (*i.e.,* bituminous, and subbituminous) which is 1.2 lb/TBtu or an alternative output-based standard of 1.3E–02 lb/GWh. The EPA is not proposing to revise the current Hg emission standard for existing EGUs firing non-lignite coal.

Finally, the EPA is proposing to remove one of the two options for defining the startup period for MATS-affected EGUs. The first option defines

[2] 77 FR 9310.

[3] U.S. EPA. Table 1. Prioritized Chronic Dose-Response Values for Screening Risk Assessments. Available at: *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

[4] Total PM is composed of the filterable PM fraction (fPM) and the condensible PM fraction. In establishing fPM as a surrogate for the non-Hg metal HAP, the EPA explained that most of the non-Hg metal HAP are present overwhelmingly in the fPM fraction. Selenium may be present in both the fPM fraction and/or as the acid gas, SeO_2, in the condensible PM fraction. SeO_2 is an acid gas HAP and is well controlled by the emission limit for acid gas HAP. In addition, using fPM as the surrogate will allow the use of continuous PM monitoring systems, which measure filterable (but not total) PM, thereby providing a more continuous measure of compliance.

[5] The fPM standard for new coal-fired EGU is 9.0E–02 lb/MWh, which is an output-based emission standard. See 78 FR 24073. This emission is equivalent for a new coal-fired EGU with a heat rate of 9.0 MMBtu/MWh (9,000 Btu/kWh).

[6] The emission standard of 4.0E–06 lb/MMBtu is more often written as 4.0 lb/TBtu (pounds of Hg per trillion British thermal units).

startup as either the first-ever firing of fuel in a boiler for the purpose of producing electricity, or the firing of fuel in a boiler after a shutdown event for any purpose. Under the first option, startup ends when any of the steam from the boiler is used to generate electricity for sale over the grid or for any other purpose (including on-site use). In the second option, startup is defined as the period in which operation of an EGU is initiated for any purpose, and startup begins with either the firing of any fuel in an EGU for the purpose of producing electricity or useful thermal energy (such as heat or steam) for industrial, commercial, heating, or cooling purposes (other than the first-ever firing of fuel in a boiler following construction of the boiler) or for any other purpose after a shutdown event. Under the second option, startup ends 4 hours after the EGU generates electricity that is sold or used for any other purpose (including on-site use), or 4 hours after the EGU makes useful thermal energy (such as heat or steam) for industrial, commercial, heating, or cooling purposes, whichever is earlier. The EPA is proposing to remove the second option, which is currently being used by fewer than 10 EGUs as discussed in section V.D.1 of this preamble.

The EPA is not proposing to modify the HCl emission standard (nor the alternative sulfur dioxide (SO_2) emission standard), which serves as a surrogate for all acid gas HAP (HCl, HF, SeO_2) for existing coal-fired EGUs. An evaluation of recent compliance data for HCl and/or SO_2 emissions revealed that approximately two-thirds of coal-fired EGUs operate at or below the alternative SO_2 emission standard of 2.0E–01 lb SO_2/MMBtu (SO_2 may be used as an alternative surrogate for acid gas HAP at coal-fired EGUs with operational flue gas desulfurization (FGD) systems and SO_2 CEMS). Approximately one-third of coal-fired EGUs have a SO_2 emission rate above the current SO_2 standard, but instead operate in compliance with the primary acid gas HAP limit for HCl of 2.0E–03 lb HCl/MMBtu, with most using an FGD system and/or by firing coal with low chlorine content and high alkalinity. The EPA did not identify any new technologies or developments in existing technologies that would achieve additional emission reductions. Based on this review, the EPA is not proposing revisions to the acid gas HAP emission standards for coal-fired EGUs.

The EPA is unaware of any new coal- or oil-fired EGUs in development and has not projected any new coal- or oil-fired EGUs in EPA modeling to support various power sector-related rulemakings. For that reason, the EPA has not reviewed and is not proposing any revisions to the MATS new source emission standards. In some cases, however, proposed revisions to existing source emission standards may be more stringent than the corresponding new source emission standard. In those instances, the EPA has addressed that illogical outcome by proposing to revise the corresponding new source standard to be at least as stringent as the proposed revision to the existing source standard.

The EPA is also not proposing to revise MATS emission standards for existing Integrated Gasification Combined Cycle (IGCC) EGUs, nor to the MATS emission standards for any of the subcategories of existing oil-fired EGUs.

In addition to generally soliciting comments on all aspects of this proposed action, the EPA has identified several aspects of the proposal on which comments are specifically requested.

In selecting a proposed standard, as discussed in detail below, the EPA considered the statutory direction and factors laid out by Congress in CAA section 112. Separately, pursuant to E.O. 12866, the EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, ''Regulatory Impact Analysis for the Proposed National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review'' (Ref. EPA–452/R–23–002), is available in the docket, and is briefly summarized here and in section VI of this preamble.

II. General Information

A. Does this action apply to me?

The source category that is the subject of this proposal is coal- and oil-fired EGUs regulated under 40 CFR part 63, subpart UUUUU. The North American Industry Classification System (NAICS) codes for the coal- and oil-fired EGU industry are 221112, 221122, and 921150. This list of categories and NAICS codes is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal government entities that own and/or operate EGUs subject to 40 CFR part 63, subpart UUUUU would be affected by this proposed action. The coal- and oil-fired EGU source category was added to the list of categories of major and area sources of HAP published under section 112(c) of the CAA on December 20, 2000 (65 FR 79825). CAA section 112(a)(8) defines an EGU as any fossil fuel-fired combustion unit of more than 25 megawatts (MW) that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale is also considered an EGU.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/mercury-and-air-toxics-standards.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website.

A memorandum showing the rule edits that would be necessary to incorporate the changes proposed in this action to 40 CFR part 63, subpart UUUUU is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2018–0794). Following signature by the EPA Administrator, the EPA also will post a copy of this document to *https://www.epa.gov/stationary-sources-air-pollution/mercury-and-air-toxics-standards.*

III. Background

A. What is the authority for this action?

1. Statutory Authority

The statutory authority for this action is provided by sections 112 and 301 of the CAA, as amended (42 U.S.C. 7401 *et seq.*). Section 112 of the CAA establishes a multi-stage regulatory process to develop standards for emissions of HAP from stationary sources. Generally, during the first stage Congress directed the EPA to establish technology-based standards to ensure that all sources control pollution at the level achieved by the best-performing sources, referred to as the maximum achievable control technology (MACT). After the first stage, Congress directed the EPA to review those standards periodically to determine whether they should be strengthened. Within 8 years after promulgation of the standards, the EPA must evaluate the MACT standards to determine whether additional standards are needed to address any

remaining risk associated with HAP emissions. This second stage is commonly referred to as the ''residual risk review.'' In addition, the CAA also requires the EPA to review standards set under CAA section 112 on an ongoing basis no less than every 8 years and revise the standards as necessary taking into account any ''developments in practices, processes, and control technologies.'' This review is commonly referred to as the ''technology review,'' and is the subject of this proposal. The discussion that follows identifies the most relevant statutory sections and briefly explains the contours of the methodology used to implement these statutory requirements.

In the first stage of the CAA section 112 standard-setting process, the EPA promulgates technology-based standards under CAA section 112(d) for categories of sources identified as emitting one or more of the HAP listed in CAA section 112(b). Sources of HAP emissions are either major sources or area sources, and CAA section 112 establishes different requirements for major source standards and area source standards. ''Major sources'' are those that emit or have the potential to emit 10 tons per year (tpy) or more of a single HAP or 25 tpy or more of any combination of HAP. All other sources are ''area sources.'' For major sources, CAA section 112(d)(2) provides that the technology-based NESHAP must reflect ''the maximum degree of reduction in emissions of the [HAP] subject to this section (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable.'' These standards are commonly referred to as MACT standards. CAA section 112(d)(3) also establishes a minimum control level for MACT standards, known as the MACT ''floor.'' [7] In certain instances, as provided in CAA section 112(h), the EPA may set work practice standards in lieu of numerical emission standards. The EPA must also consider control options that are more stringent than the floor. Standards more stringent than the floor are commonly referred to as ''beyond-the-floor'' standards. For area sources, CAA section 112(d)(5) allows the EPA to set standards based on generally available control technologies or management practices (GACT standards) in lieu of MACT standards.[8]

For categories of major sources and any area source categories subject to MACT standards, the next stage in standard-setting focuses on identifying and addressing any remaining (*i.e.,* ''residual'') risk pursuant to CAA section 112(f)(2). The residual risk review requires the EPA to update standards if needed to provide an ample margin of safety to protect public health.

Concurrent with that review, and then at least every 8 years thereafter, CAA section 112(d)(6) requires the EPA to review standards promulgated under CAA section 112 and revise them ''as necessary (taking into account developments in practices, processes, and control technologies).'' *See Portland Cement Ass'n* v. *EPA,* 665 F.3d 177, 189 (D.C. Cir. 2011) (''Though EPA must review and revise standards 'no less often than every eight years,' 42 U.S.C. 7412(d)(6), nothing prohibits EPA from reassessing its standards more often.''). In conducting this review, which we call the ''technology review,'' the EPA is not required to recalculate the MACT floors that were established in earlier rulemakings. *Natural Resources Defense Council (NRDC)* v. *EPA,* 529 F.3d 1077, 1084 (D.C. Cir. 2008); *Association of Battery Recyclers, Inc.* v. *EPA,* 716 F.3d 667 (D.C. Cir. 2013). The EPA may consider cost in deciding whether to revise the standards pursuant to CAA section 112(d)(6). *See e.g., Nat'l Ass'n for Surface Finishing* v. *EPA,* 795 F.3d 1, 11 (D.C. Cir. 2015). The EPA is required to address regulatory gaps, such as missing MACT standards for listed air toxics known to be emitted from the source category. *Louisiana Environmental Action Network (LEAN)* v. *EPA,* 955 F.3d 1088 (D.C. Cir. 2020).

In this action, the EPA is proposing to reconsider the 2020 Final Action's risk and technology review pursuant to the EPA's inherent authority to reconsider previous decisions and to revise, replace, or repeal a decision to the extent permitted by law and supported by a reasoned explanation. *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009); *see also Motor Vehicle Mfrs. Ass'n* v. *State Farm Mutual Auto. Ins. Co.,* 463 U.S. 29, 42 (1983).

2. EGU Regulation Under CAA Section 112

Congress enacted a special provision concerning coal- and oil-fired EGU HAP emission regulations in the 1990 CAA Amendments under section 112(n)(1)(a) of the CAA that is not applicable to other source categories. This provision required the EPA to conduct a study to evaluate the hazards to public health that are reasonably anticipated to occur as a result of HAP emissions from EGUs, and to make a one-time finding of whether to regulate EGUs under CAA section 112 if the EPA found that doing so was ''appropriate and necessary.'' 42 U.S.C. 7412(n)(1)(A) (the ''appropriate and necessary finding''). Once this one-time finding was made, if the decision was to regulate, Congress subjected EGUs to the same standards and procedures as other source categories. *Id.* (''The Administrator shall regulate electric utility steam generating units under this section'' if he finds doing so is ''appropriate and necessary.''); *see also New Jersey* v. *EPA,* 517 F.3d 574 (D.C. Cir. 2008) (establishing that, on the applicability of CAA section 112(c)(9)'s delisting requirements, coal- and oil-fired EGUs are treated similarly as other CAA section 112 regulated sources once listed under CAA section 112(c)).

The EPA originally made the appropriate and necessary finding in 2000. This was followed by a series of affirmations and reversals of this finding, as well as a Supreme Court decision that required the EPA to consider the costs of regulation in making this finding. *See Michigan* v. *EPA,* 576 U.S. 743 (2015). On February 9, 2022, the EPA published a notice of proposed rulemaking reaffirming that it remains appropriate and necessary to regulate HAP, including Hg, from coal- and oil-fired EGUs after considering cost.[9] The EPA's consideration of costs in its decision to reaffirm the appropriate and necessary finding was based on estimated and realized costs from the first stage of CAA section 112 regulation, *i.e.,* establishing MACT-based standards and determining whether additional ''beyond-the-floor'' standards are needed to address remaining risk.

Consistent with Congress's direction, after making the appropriate and necessary finding, the EPA treated EGUs like all other source categories. As required by CAA section 112(d)(2), the EPA first set a floor based on the best 12 percent of performers, and then conducted a beyond-the-floor analysis. That inquiry led to the current MATS, established in 2012. As explained above, the CAA then required the EPA,

[7] Specifically, for existing sources, the MACT ''floor'' shall not be less stringent than the average emission reduction achieved by the best performing 12 percent of existing sources. For new sources MACT shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source.

[8] For categories of area sources subject to GACT standards, there is no requirement to address residual risk, but, similar to the major source categories, the technology review is required.

[9] For further discussion on the history of the CAA section 112(n)(1)(A) appropriate and necessary finding, please refer to the EPA's February 9, 2022 proposal (87 FR 7624).

within 8 years of promulgating the standards, to conduct the residual risk and technology reviews. Congress thus contemplated that well after the EPA determined the regulation of EGUs was appropriate and necessary and well after the EPA set initial standards in accordance with the floor and beyond-the-floor requirements in CAA section 112(d)(2), that at least every 8 years thereafter on a continuing basis, the EPA would review and revise those standards as necessary taking into account developments in practices, processes, and control technologies. The EPA has conducted over 100 technology reviews and has regularly updated emissions standards for HAP based upon the technology review.

3. Executive Order 13990

On January 20, 2021, President Biden signed Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.'' The Executive order, among other things, instructs the EPA to review the 2020 Final Action titled, ''National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review'' (85 FR 31286; May 22, 2020) and consider publishing a notice of proposed rulemaking suspending, revising, or rescinding that action.

B. What is this source category and how does the current NESHAP regulate its HAP emissions?

The NESHAP for the coal- and oil-fired EGU source category (commonly referred to as MATS) were initially promulgated on February 16, 2012 (77 FR 9304) (2012 MATS Final Rule), under title 40 part 63, subpart UUUUU. The MATS rule was amended on April 19, 2012 (77 FR 23399), to correct typographical errors and certain preamble text that was inconsistent with regulatory text; on April 24, 2013 (78 FR 24073), to update certain emission limits and monitoring and testing requirements applicable to new sources; on November 19, 2014 (79 FR 68777), to revise definitions for startup and shutdown and to finalize work practice standards and certain monitoring and testing requirements applicable during periods of startup and shutdown; and on April 6, 2016 (81 FR 20172), to correct conflicts between preamble and regulatory text and to clarify regulatory text. In addition, the electronic reporting requirements of the rule were amended on March 24, 2015 (80 FR 15510), to allow for the electronic submission of Portable Document Format (PDF) versions of certain reports until April 16, 2017, while the EPA's Emissions Collection and Monitoring Plan System (ECMPS) is revised to accept all reporting that is required by the rule, and on April 6, 2017 (82 FR 16736), and on July 2, 2018 (83 FR 30879), to extend the interim submission of PDF versions of reports through June 30, 2018, and July 1, 2020, respectively.

The MATS rule applies to coal- and oil-fired EGUs located at both major and area sources of HAP emissions. An existing affected source is the collection of coal- or oil-fired EGUs in a subcategory within a single contiguous area and under common control. A new affected source is each coal- or oil-fired EGU for which construction or reconstruction began after May 3, 2011. As previously stated in section II of this preamble, an EGU is a fossil fuel-fired combustion unit of more than 25 MW that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 MW electric output to any utility power distribution system for sale is also considered an EGU. The MATS rule defines additional terms for determining rule applicability, including, but not limited to, definitions for ''coal-fired electric utility steam generating unit,'' ''oil-fired electric utility steam generating unit,'' and ''fossil fuel-fired.'' Certain types of electric generating units are not subject to 40 CFR part 63, subpart UUUUU: any unit designated as a major source stationary combustion turbine subject to subpart YYYY of 40 CFR part 63 and any unit designated as an area source stationary combustion turbine, other than an IGCC unit; any EGU that is not a coal- or oil-fired EGU and that meets the definition of a natural gas-fired EGU in 40 CFR 63.10042; any EGU greater than 25 MW that has the capability of combusting either coal or oil, but does not meet the definition of a coal- or oil-fired EGU because it did not fire sufficient coal or oil to satisfy the average annual heat input requirement set forth in the definitions for coal-fired and oil-fired EGUs in 40 CFR 63.10042; and any electric steam generating unit combusting solid waste (*i.e.,* a solid waste incineration unit) subject to standards established under sections 129 and 111 of the CAA.

For coal-fired EGUs, the rule established standards to limit emissions of Hg, acid gas HAP (*e.g.,* HCl, HF), non-Hg HAP metals (*e.g.,* nickel, lead, chromium), and organic HAP (*e.g.,* formaldehyde, dioxin/furan). Emission standards for HCl serve as a surrogate for the acid gas HAP, with an alternate standard for SO_2 that may be used as a surrogate for acid gas HAP for those coal-fired EGUs with FGD systems and SO_2 CEMS installed and operational. Standards for fPM serve as a surrogate for the non-Hg HAP metals, with standards for total non-Hg HAP metals and individual non-Hg HAP metals provided as alternative equivalent standards. Work practice standards limit formation and emissions of organic HAP.

For oil-fired EGUs, the rule established standards to limit emissions of HCl and HF, total HAP metals (*e.g.,* Hg, nickel, lead), and organic HAP (*e.g.,* formaldehyde, dioxin/furan). Standards for fPM serve as a surrogate for total HAP metals, with standards for total HAP metals and individual HAP metals provided as alternative equivalent standards. Work practice standards limit formation and emissions of organic HAP.

The MATS rule includes standards for existing and new EGUs for seven subcategories: two for coal-fired EGUs, one for IGCC EGUs, one for solid oil-derived fuel-fired EGUs (*i.e.,* petroleum coke-fired), and three for liquid oil-fired EGUs. EGUs in six of the subcategories are subject to numeric emission limits for all the pollutants described above except for organic HAP. Emissions of organic HAP are regulated by a work practice standard that requires periodic combustion process tune-ups. EGUs in the subcategory of limited-use liquid oil-fired EGUs with an annual capacity factor of less than 8 percent of its maximum or nameplate heat input are also subject to a work practice standard consisting of periodic combustion process tune-ups but are not subject to any numeric emission limits. Emission limits for existing EGUs are summarized in Table 1.

TABLE 1—EMISSION LIMITS FOR EXISTING AFFECTED EGUS

Subcategory	Pollutant	Emission limit [1]
Any coal-fired unit firing any rank of coal	a. fPM	3.0E–2 lb/MMBtu or 3.0E–1 lb/MWh.
	OR	OR
	Total non-Hg HAP metals	5.0E–5 lb/MMBtu or 5.0E–1 lb/GWh.
	OR	OR
	Individual HAP metals:	
	Antimony, Sb	8.0E–1 lb/TBtu or 8.0E–3 lb/GWh.
	Arsenic, As	1.1 lb/TBtu or 2.0E–2 lb/GWh.
	Beryllium, Be	2.0E–1 lb/TBtu or 2.0E–3 lb/GWh.
	Cadmium, Cd	3.0E–1 lb/TBtu or 3.0E–3 lb/GWh.
	Chromium, Cr	2.8 lb/TBtu or 3.0E–2 lb/GWh.
	Cobalt, Co	8.0E–1 lb/TBtu or 8.0E–3 lb/GWh.
	Lead, Pb	1.2 lb/TBtu or 2.0E–2 lb/GWh.
	Manganese, Mn	4.0 lb/TBtu or 5.0E–2 lb/GWh.
	Nickel, Ni	3.5 lb/TBtu or 4.0E–2 lb/GWh.
	Selenium, Se	5.0 lb/TBtu or 6.0E–2 lb/GWh.
	b. HCl	2.0E–3 lb/MMBtu or 2.0E–2 lb/MWh.
	OR	OR
	SO_2 [2]	2.0E–1 lb/MMBtu or 1.5 lb/MWh.
Coal-fired unit low rank virgin coal	c. Hg	1.2 lb/TBtu or 1.3E–2 lb/GWh.
Coal-fired unit low rank virgin coal	c. Hg	4.0 lb/TBtu or 4.0E–2 lb/GWh.
IGCC unit	a. fPM	4.0E–2 lb/MMBtu or 4.0E–1 lb/MWh.
	OR	OR
	Total non-Hg HAP metals	6.0E–5 lb/MMBtu or 5.0E–1 lb/GWh.
	OR	OR
	Individual HAP metals:	
	Antimony, Sb	1.4 lb/TBtu or 2.0E–2 lb/GWh.
	Arsenic, As	1.5 lb/TBtu or 2.0E–2 lb/GWh.
	Beryllium, Be	1.0E–1 lb/TBtu or 1.0E–3 lb/GWh.
	Cadmium, Cd	1.5E–1 lb/TBtu or 2.0E–3 lb/GWh.
	Chromium, Cr	2.9 lb/TBtu or 3.0E–2 lb/GWh.
	Cobalt, Co	1.2 lb/TBtu or 2.0E–2 lb/GWh.
	Lead, Pb	1.9E+2 lb/MMBtu or 1.8 lb/MWh.
	Manganese, Mn	2.5 lb/TBtu or 3.0E–2 lb/GWh.
	Nickel, Ni	6.5 lb/TBtu or 7.0E–2 lb/GWh.
	Selenium, Se	2.2E+1 lb/TBtu or 3.0E–1 lb/GWh.
	b. HCl	5.0E–4 lb/MMBtu or 5.0E–3 lb/MWh.
	c. Hg	2.5 lb/TBtu or 3.0E–2 lb/GWh.
Liquid oil-fired unit—continental (excluding limited-use liquid oil-fired subcategory units).	a. fPM	3.0E–2 lb/MMBtu or 3.0E–1 lb/MWh.
	OR	OR
	Total HAP metals	8.0E–4 lb/MMBtu or 8.0E–3 lb/MWh.
	OR	OR
	Individual HAP metals:	
	Antimony, Sb	1.3E+1 lb/TBtu or 2.0E–1 lb/GWh.
	Arsenic, As	2.8 lb/TBtu or 3.0E–2 lb/GWh.
	Beryllium, Be	2.0E–1 lb/TBtu or 2.0E–3 lb/GWh.
	Cadmium, Cd	3.0E–1 lb/TBtu or 2.0E–3 lb/GWh.
	Chromium, Cr	5.5 lb/TBtu or 6.0E–2 lb/GWh.
	Cobalt, Co	2.1E+1 lb/TBtu or 3.0E–1 lb/GWh.
	Lead, Pb	8.1 lb/TBtu or 8.0E–2 lb/GWh.
	Manganese, Mn	2.2E+1 lb/TBtu or 3.0E–1 lb/GWh.
	Nickel, Ni	1.1E+2 lb/TBtu or 1.1 lb/GWh.
	Selenium, Se	3.3 lb/TBtu or 4.0E–2 lb/GWh.
	Hg	2.0E–1 lb/TBtu or 2.0E–3 lb/GWh.
	b. HCl	2.0E–3 lb/MMBtu or 1.0E–2 lb/MWh.
	c. HF	4.0E–4 lb/MMBtu or 4.0E–3 lb/MWh.
Liquid oil-fired unit—non-continental (excluding limited-use liquid oil-fired subcategory units).	a. fPM	3.0E–2 lb/MMBtu or 3.0E–1 lb/MWh.
	OR	OR
	Total HAP metals	6.0E–4 lb/MMBtu or 7.0E–3 lb/MWh.
	OR	OR
	Individual HAP metals:	
	Antimony, Sb	2.2 lb/TBtu or 2.0E–2 lb/GWh.
	Arsenic, As	4.3 lb/TBtu or 8.0E–2 lb/GWh.
	Beryllium, Be	6.0E–1 lb/TBtu or 3.0E–3 lb/GWh.
	Cadmium, Cd	3.0E–1 lb/TBtu or 3.0E–3 lb/GWh.
	Chromium, Cr	3.1E+1 lb/TBtu or 3.0E–1 lb/GWh.
	Cobalt, Co	1.1E+2 lb/TBtu or 1.4 lb/GWh.
	Lead, Pb	4.9 lb/TBtu or 8.0E–2 lb/GWh.
	Manganese, Mn	2.0E+1 lb/TBtu or 3.0E–1 lb/GWh.
	Nickel, Ni	4.7E+2 lb/TBtu or 4.1 lb/GWh.
	Selenium, Se	9.8 lb/TBtu or 2.0E–1 lb/GWh.

TABLE 1—EMISSION LIMITS FOR EXISTING AFFECTED EGUS—Continued

Subcategory	Pollutant	Emission limit [1]
Solid oil-derived fuel-fired unit	Hg	4.0E–2 lb/TBtu or 4.0E–4 lb/GWh.
	b. HCl	2.0E–4 lb/MMBtu or 2.0E–3 lb/MWh.
	c. HF	6.0E–5 lb/MMBtu or 5.0E–4 lb/MWh.
	a. fPM	8.0E–3 lb/MMBtu or 9.0E–2 lb/MWh.
	OR	OR
	Total non-Hg HAP metals	4.0E–5 lb/MMBtu or 6.0E–1 lb/GWh.
	OR	OR
	Individual HAP metals	
	Antimony, Sb	8.0E–1 lb/TBtu or 7.0E–3 lb/GWh.
	Arsenic, As	3.0E–1 lb/TBtu or 5.0E–3 lb/GWh.
	Beryllium, Be	6.0E–2 lb/TBtu or 5.0E–4 lb/GWh.
	Cadmium, Cd	3.0E–1 lb/TBtu or 4.0E–3 lb/GWh.
	Chromium, Cr	8.0E–1 lb/TBtu or 2.0E–2 lb/GWh.
	Cobalt, Co	1.1 lb/TBtu or 2.0E–2 lb/GWh.
	Lead, Pb	8.0E–1 lb/TBtu or 2.0E–2 lb/GWh.
	Manganese, Mn	2.3 lb/TBtu or 4.0E–2 lb/GWh.
	Nickel, Ni	9.0 lb/TBtu or 2.0E–1 lb/GWh.
	Selenium, Se	1.2 lb/TBtu 2.0E–2 lb/GWh.
	b. HCl	5.0E–3 lb/MMBtu or 8.0E–2 lb/MWh.
	OR	OR
	SO_2 [2]	3.0E–1 lb/MMBtu or 2.0 lb/MWh.
	c. Hg	2.0E–1 lb/TBtu or 2.0E–3 lb/GWh.

[1] Units of emission limits:
lb/MMBtu = pounds pollutant per million British thermal units fuel input;
lb/TBtu = pounds pollutant per trillion British thermal units fuel input;
lb/MWh = pounds pollutant per megawatt-hour electric output (gross); and
lb/GWh = pounds pollutant per gigawatt-hour electric output (gross).
[2] Alternate SO_2 limit may be used if the EGU has some form of FGD system and SO_2 CEMS installed.

C. What data collection activities were conducted to support this proposed action?

On February 9, 2022, the EPA published a notice of proposed rulemaking reaffirming that it remains appropriate and necessary to regulate coal- and oil-fired EGUs under CAA section 112 after considering the cost of regulation. In that same action, the EPA solicitated information on the cost and performance of new or improved technologies that control HAP emissions, on improved methods of operation, and on risk-related information to further inform the EPA's assessment of the MATS RTR. Generally, commenters were unaware of new technologies, but indicated that current technologies are more widely used, more effective, and cheaper than at the time of the adoption of MATS. Specific data or information used to support this action are discussed in more detail in section V of this preamble.

The EPA also issued a limited request for information pursuant to section 114 of the CAA to obtain information related to HAP emissions from coal- and oil-fired EGUs to inform the technology review under CAA section 112(d)(6). Specifically, the EPA collected information and data related to Hg emissions and control technologies for lignite-fired EGUs. The CAA section 114 survey and responses are available in the docket for this action.

D. What other relevant background information and data are available?

The EPA used multiple sources of information to support this proposed action. A comprehensive list of facilities and EGUs that are subject to the MATS rule was compiled primarily using the list from the 2020 Final Action and publicly available information reported to the EPA and information contained in the EPA's National Electric Energy Data System (NEEDS) database.[10] Affected sources are required to use the 40 CFR part 75-based ECMPS [11] for reporting emissions and related data either directly for EGUs that use Hg, HCl, HF, or SO_2 CEMS or Hg sorbent traps for compliance purposes or indirectly as PDF files for EGUs that use performance test results, PM continuous parameter monitoring system (CPMS) data, or PM CEMS for compliance purposes. Directly submitted data are maintained in ECMPS; indirectly submitted data are maintained in Web Factor Information Retrieval System (WebFIRE).[12] The NEEDS database contains generation unit information used in the EPA's power sector modeling. Other sources used include the U.S. Department of Energy's EIA list of fuel consumption reported for 2021 under Form EIA–923 [13] and emissions test data collected from an ICR in 2010 (2010 ICR) when promulgating the 2011 Proposal.[14]

In conducting the technology review, the EPA examined information submitted to the EPA's ECMPS as well as information that supports previous 40 CFR part 63, subpart UUUUU actions to identify technologies currently being used by affected EGUs and to determine if there have been developments in practices, processes, or control technologies. In addition to the ECMPS data, we reviewed regulatory actions for similar combustion sources and conducted a review of literature published by industry organizations, technical journals, and government organizations.

E. How does the EPA perform the technology review?

Our technology review primarily focuses on the identification and evaluation of developments in practices, processes, and control technologies that have occurred since the MACT standards were promulgated. Where we identify such developments, we analyze

[10] See *https://www.epa.gov/airmarkets/power-sector-modeling-platform-v515.*

[11] See *https://ampd.epa.gov/ampd/.*

[12] See *https://cfpub.epa.gov/webfire; https://www.epa.gov/electronic-reporting-air-emissions/webfire.*

[13] See *https://www.eia.gov/electricity/data/eia923/.*

[14] See *https://www3.epa.gov/airtoxics/utility/utilitypg.html.*

the technical feasibility, estimated costs, energy implications, non-air environmental impacts, and potential emissions reductions of more stringent standards, to ensure that the MACT standards continue to fulfill Congress's direction to require the maximum degree of reduction of HAP taking into account the statutory factors. This analysis informs our decision of whether it is ''necessary'' to revise the emissions standards. In addition, we typically consider the appropriateness of applying controls to new sources versus retrofitting existing sources. For this exercise, we consider any of the following to be a ''development'':

- Any add-on control technology or other equipment that was not identified and considered during development of the original MACT standards;
- Any improvements in add-on control technology or other equipment (that were identified and considered during development of the original MACT standards) that could result in additional emission reductions; [15]
- Any work practice or operational procedure that was not identified or considered during development of the original MACT standards;
- Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the original MACT standards; and
- Any significant changes in the cost (including cost effectiveness) of applying controls (including controls the EPA considered during the development of the original MACT standards).
- Any operational changes or other factors that were not considered during the development of the original MACT standards.

In addition to reviewing the practices, processes, and control technologies that were considered at the time we originally developed (or last updated) the NESHAP, we review a variety of data sources in our investigation of potential practices, processes, or controls to consider. We also review the NESHAP and the available data to determine if there are any unregulated emissions of HAP within the source category and evaluate this data for use in developing new emission standards. When reviewing MACT standards, the EPA is required to address regulatory gaps, such as missing standards for listed air toxics known to be emitted from the source category, and any new MACT standards must be established under CAA sections 112(d)(2) and (3), or, in specific circumstances, CAA sections 112(d)(4) or (h). *Louisiana Environmental Action Network (LEAN)* v. *EPA,* 955 F.3d 1088 (D.C. Cir. 2020). See sections III.C and III.D of this preamble for information on the specific data sources that were reviewed as part of the technology review.

IV. Review of 2020 Residual Risk and Technology Review

A. Summary of the 2020 Residual Risk Review

Pursuant to CAA section 112(f)(2), the EPA conducted a residual risk review (2020 Residual Risk Review) and presented the results of this review, along with our decisions regarding risk acceptability, ample margin of safety, and adverse environmental effects, in the 2020 Final Action. The results of the risk assessment are presented briefly in Table 2, and in more detail in the document titled *Residual Risk Assessment for the Coal- and Oil-Fired EGU Source Category in Support of the 2020 Risk and Technology Review Final Rule* (risk document for the final rule), available in the docket (Docket ID No. EPA–HQ–OAR–2018–0794–4553).

TABLE 2—COAL- AND OIL-FIRED EGU INHALATION RISK ASSESSMENT RESULTS IN THE 2020 FINAL ACTION
[85 FR 31286; May 22, 2020]

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Population at increased risk of cancer ≥1-in-1 million		Annual cancer incidence (cases per year)		Maximum chronic noncancer TOSHI [3]		Maximum screening acute noncancer HQ [4]
	Based on . . .		Based on . . .		Based on . . .		Based on . . .		
	Actual emissions level	Allowable emissions level	Actual emissions level	Allowable emissions level	Actual emissions level	Allowable emissions level	Actual emissions level	Allowable emissions level	Based on actual emissions level
332	9	10	193,000	636,000	0.04	0.1	0.2	0.4	HQ_{REL} = 0.09 (arsenic)

[1] Number of facilities evaluated in the risk analysis. At the time of the risk analysis there were an estimated 323 facilities in the Coal- and Oil-Fired EGU source category; however, one facility is located in Guam, which was beyond the geographic range of the model used to estimate risks. Therefore, the Guam facility was not modeled and the emissions for that facility were not included in the assessment.
[2] Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.
[3] Maximum target organ-specific hazard index (TOSHI). The target organ systems with the highest TOSHI for the source category are respiratory and immunological.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of hazard quotient (HQ) values. HQ values shown use the lowest available acute threshold value, which in most cases is the reference exposure level (REL). When an HQ exceeds 1, we also show the HQ using the next lowest available acute dose-response value.

1. Chronic Inhalation Risk Assessment Results

The results of the chronic inhalation cancer risk assessment based on actual emissions, as shown in Table 2 of this preamble, indicated that the estimated maximum individual lifetime cancer risk (cancer MIR) was 9-in-1 million, with nickel emissions from certain oil-fired EGUs as the major contributor to the risk. The total estimated cancer incidence from this source category was 0.04 excess cancer cases per year, or one excess case in every 25 years. Approximately 193,000 people were estimated to have cancer risks at or above 1-in-1 million from HAP emitted from the facilities in this source category.[16] The estimated maximum chronic noncancer TOSHI for the source category was 0.2 (respiratory), which was driven by emissions of nickel and cobalt from oil-fired EGUs. No one was exposed to TOSHI levels above 1 based on actual emissions from sources regulated under this source category.

The EPA also evaluated the cancer risk at the maximum emissions allowed by the MACT standard (*i.e.,* ''allowable emissions''). As shown in Table 2 of this preamble, based on allowable emissions, the estimated cancer MIR

[15] This may include getting new or better information about the performance of an add-on or existing control technology (*e.g.,* emissions data from affected sources showing an add-on control technology performs better than anticipated during development of the rule).

[16] There were four facilities in the source category with cancer risk at or above 1-in-1 million, and all of them were facilities with oil-fired EGUs located in Puerto Rico.

was 10-in-1 million, and, as before, nickel emissions from oil-fired EGUs were the major contributor to the risk. The total estimated cancer incidence from this source category, considering allowable emissions, was 0.1 excess cancer cases per year, or one excess case in every 10 years. Based on allowable emissions, approximately 636,000 people were estimated to have cancer risks at or above 1-in-1 million from HAP emitted from the facilities in this source category. The estimated maximum chronic noncancer TOSHI for the source category was 0.4 (respiratory) based on allowable emissions, driven by emissions of nickel and cobalt from oil-fired EGUs. No one was exposed to TOSHI levels above 1 based on allowable emissions.

2. Screening Level Acute Risk Assessment Results

Because of the conservative nature of the acute inhalation screening assessment and the variable nature of emissions and potential exposures, acute impacts are screened on an individual pollutant basis, not using the TOSHI approach. Table 2 of this preamble provides the worst-case acute HQ (based on the REL) of 0.09, driven by emissions of arsenic. There were no facilities that have acute HQs (based on the REL or any other reference values) greater than 1. For more detailed acute risk results, refer to the risk document available in the docket (Docket ID No. EPA–HQ–OAR–2018–0794–4553).

3. Multipathway Risk Screening and Site-Specific Assessment Results

Potential multipathway health risks under a fisher and gardener scenario were evaluated using a three-tier screening assessment of the HAP known to be persistent and bio-accumulative in the environment (PB–HAP) emitted by facilities in the coal- and oil-fired EGU source category. This evaluation resulted in a site-specific assessment of Hg using the EPA's Total Risk Integrated Methodology.Fate, Transport, and Ecological Exposure (TRIM.FaTE) model for one location (three facilities located in North Dakota) as further described below. Of the 322 MATS-affected facilities modeled, 307 facilities had reported emissions of carcinogenic PB–HAP (arsenic, dioxins, and polycyclic organic matter (POM)) that exceeded a Tier 1 cancer screening value of 1, which corresponds to an upper bound maximum excess lifetime cancer risk that may be greater than 1-in-1 million. This source category also had 235 facilities reporting emissions of non-carcinogenic PB–HAP (lead, Hg, and cadmium) that exceeded an upper bound Tier 1 noncancer screening value of 1, which corresponds to a HQ of 1 For facilities that exceeded a Tier 1 multipathway screening value of 1, we used additional facility site-specific information to perform a refined screening assessment through Tiers 2 and 3, as necessary, to determine the maximum chronic cancer and noncancer impacts for the source category. For cancer, the highest Tier 2 screening value for the gardener scenario (rural) was 200 driven by arsenic emissions. This screening value was reduced to 50 after accounting for plume rise in our Tier 3 screen. Because this screening value was much lower than 100-in-1 million, and because we expected the actual risk from a site-specific assessment to further lower the Tier 2 screening value by a factor of 50, we decided not to perform a site-specific assessment for cancer. For noncancer, the highest Tier 2 screening value was 30 (for Hg) for the fisher scenario, with four facilities having screening values greater than 20. These screening values were reduced to 9 or lower after the plume rise stage of Tier 3.

Because the final stage of Tier 3 (time-series) was unlikely to reduce the highest Hg screening values to 1, we conducted a site-specific multipathway assessment of Hg emissions for this source category. Analysis of the facilities with the highest Tier 2 and Tier 3 screening values helped identify the location for the site-specific assessment and the facilities to model with TRIM.FaTE. The assessment considered the effect that multiple facilities within the source category may have on common lakes. The three facilities selected were located near Underwood, North Dakota. All three facilities had Tier 2 screening values greater than or equal to 20. Two of the facilities were near each other (16 kilometers (km) apart). The third facility was more distant, about 20 to 30 km from the other facilities, but it was included in the analysis because it is within the 50-km modeling domain of the other facilities and because it had an elevated Tier 2 screening value. We expected that the exposure scenarios we assessed for these facilities are among the highest, if not the highest, that might be encountered for other facilities in this source category based upon their Hg emissions and their respective Tier 2 screening values and aggregate impacts to common lakes. The refined site-specific multipathway assessment estimated an HQ of 0.06 for Hg for the three facilities assessed. We believed the assessment represented the highest potential for Hg hazards through fish consumption for the source category based upon an upper-end fish ingestion rate of 373 grams/day.

In evaluating the potential multipathway risk from emissions of lead compounds, rather than developing a screening threshold emission rate, we compared maximum estimated chronic inhalation exposure concentrations to the level of the current National Ambient Air Quality Standards (NAAQS) for lead (0.15 micrograms per cubic meter). Values below the level of the primary (health-based) lead NAAQS were considered to have a low potential for multipathway risk. We did not estimate any exceedances of the lead NAAQS in this source category, the maximum predicted Pb screen concentration over a 3-month period for this source category was equal to 0.005 micrograms per cubic meter, significantly below the Pb NAAQS.

4. Environmental Risk Screening Results

An environmental risk screening assessment for the coal- and oil-fired EGU source category was conducted for the following pollutants: arsenic, cadmium, dioxins/furans, HCl, HF, lead, Hg (methylmercury and mercuric chloride), and POMs. In the Tier 1 screening analysis for PB–HAP (other than lead, which was evaluated differently), POM emissions had no exceedances of any of the ecological benchmarks evaluated. Arsenic and dioxin/furan emissions had Tier 1 exceedances for surface soil benchmarks. Cadmium and methylmercury emissions had Tier 1 exceedances for surface soil and fish benchmarks. Divalent Hg emissions had Tier 1 exceedances for sediment and surface soil benchmarks.

A Tier 2 screening analysis was performed for arsenic, cadmium, dioxins/furans, divalent Hg, and methylmercury emissions. In the Tier 2 screening analysis, arsenic, cadmium, and dioxin/furan emissions had no exceedances of any of the ecological benchmarks evaluated. Divalent Hg emissions from two facilities exceeded the Tier 2 screen for a sediment threshold level benchmark by a maximum screening value of 2. Methylmercury emissions from the same two facilities exceeded the Tier 2 screen for a fish (avian/piscivores) no-observed-adverse-effect-level (NOAEL) (merganser) benchmark by a maximum screening value of 2. A Tier 3 screening assessment was performed to verify the existence of the lake associated with these screening values, and it was found to be located on-site and is a man-made

industrial pond, and, therefore, was removed from the assessment.

Methylmercury emissions from two facilities exceeded the Tier 2 screen for a surface soil NOAEL for avian ground insectivores (woodcock) benchmark by a maximum screening value of 2. Other surface soil benchmarks for methylmercury, such as the NOAEL for mammalian insectivores and the threshold level for the invertebrate community, were not exceeded. Given the low Tier 2 maximum screening value of 2 for methylmercury, and the fact that only the most protective benchmark was exceeded, a Tier 3 environmental risk screen was not conducted for methylmercury.

For lead, we did not estimate any exceedances of the secondary lead NAAQS. For HCl and HF, the average modeled concentration around each facility (*i.e.,* the average concentration of all off-site data points in the modeling domain) did not exceed any ecological benchmark. In addition, each individual modeled concentration of HCl and HF (*i.e.,* each off-site data point in the modeling domain) was below the ecological benchmarks for all facilities.

Based on the results of the environmental risk screening analysis, we did not expect an adverse environmental effect as a result of HAP emissions from the coal- and oil-fired EGU source category.

5. Facility-Wide Risk Results

An assessment of risk from facility-wide emissions was performed to provide context for the source category risks. Based on facility-wide emissions estimates developed using the same estimates of actual emissions for emissions sources in the source category, and emissions data from the 2014 National Emissions Inventory (NEI) (version 2) for the sources outside the source category, the estimated cancer MIR was 9-in-1 million, and nickel emissions from oil-fired EGUs were the major contributor to the risk. The total estimated cancer incidence based on facility-wide emissions was 0.04 excess cancer cases per year, or one excess case in every 25 years. Approximately 203,000 people were estimated to have cancer risks at or above 1-in-1 million from HAP emitted from all sources at the facilities in this source category. The estimated maximum chronic noncancer TOSHI posed by facility-wide emissions was 0.2 (respiratory), driven by emissions of nickel and cobalt from oil-fired EGUs. No one was exposed to TOSHI levels above 1 based on facility-wide emissions. These results were very similar to those based on actual emissions from the source category because there was not significant collocation of other sources with EGUs.

6. Decisions Regarding Risk Acceptability, Ample Margin of Safety, and Adverse Environmental Effect

In determining whether residual risks are acceptable for this source category in accordance with CAA section 112, the EPA considered all available health information and risk estimation uncertainty. The results of the risk analysis indicated that both the actual and allowable inhalation cancer risks to the individual most exposed were below 100-in-1 million, which is the presumptive limit of acceptability. Also, the highest chronic noncancer TOSHI and the highest acute noncancer HQ were below 1, indicating low likelihood of adverse noncancer effects from inhalation exposures. There were also low risks associated with ingestion, with the highest cancer risk being less than 50-in-1 million based on a conservative screening assessment, and the highest noncancer hazard being less than 1 based on a site-specific multipathway assessment. Considering this information, the EPA determined in 2020 that the residual risks of HAP emissions from the coal- and oil-fired EGU source category were acceptable.

We then considered whether the current standards provided an ample margin of safety to protect public health and whether more stringent standards were necessary to prevent an adverse environmental effect by taking into consideration costs, energy, safety, and other relevant factors. In determining whether the standards provided an ample margin of safety to protect public health, we examined the same risk factors that we investigated for our acceptability determination and we also considered the costs, technological feasibility, and other relevant factors related to emissions control options that might reduce risk associated with emissions from the source category. In our analysis, we considered the results of the technology review, risk assessment, and other aspects of our MACT rule review to determine whether there were any cost-effective controls or other measures that would reduce emissions further to provide an ample margin of safety. The risk analysis indicated that the risks from the source category are low for both cancer and noncancer health effects. Thus, we determined in 2020 that the current MATS requirements provided an ample margin of safety to protect public health in accordance with CAA section 112.

Based on the results of our environmental risk screening assessment, we also determined in 2020 that more stringent standards were not necessary to prevent an adverse environmental effect.

B. Summary of the 2020 Technology Review

Pursuant to CAA section 112(d)(6), the EPA conducted a technology review (2020 Technology Review) in the 2020 Final Action, which focused on identifying and evaluating developments in practices, processes, and control technologies for the emission sources in the source category that occurred since the MATS rule was promulgated. Control technologies typically used to minimize emissions of pollutants that have numeric emission limits under the MATS rule include electrostatic precipitators (ESPs) and fabric filters (FFs) for control of non-Hg HAP metals; wet scrubbers and dry scrubbers for control of acid gases (SO_2, HCl, and HF); and activated carbon injection (ACI) for control of Hg. The EPA determined that existing air pollution control technologies that were in use were well-established and provided the capture efficiencies necessary for compliance with the MATS emission limits. Based on the effectiveness and proven reliability of these control technologies, and the relatively short period of time since the promulgation of the MATS rule, the EPA did not identify any developments in practices, processes, or control technologies, nor any new technologies or practices, for the control of non-Hg HAP metals, acid gas HAP, or Hg. However, in the 2020 Technology Review, the EPA did not consider developments in the cost and effectiveness of these proven technologies, nor did the EPA evaluate the current performance of emission reduction control equipment and strategies at existing MATS-affected EGUs, to determine whether revising the standards was warranted. Organic HAP, including emissions of dioxins and furans, are regulated by a work practice standard that requires periodic burner tune-ups to ensure good combustion. The EPA found that this work practice continued to be a practical approach to ensuring that combustion equipment was maintained and optimized to run to reduce emissions of organic HAP and continued to be more effective than establishing a numeric standard that cannot reliably be measured or monitored. Based on the effectiveness and proven reliability of the work practice standard, and the relatively short amount of time since the

promulgation of the MATS rule, the EPA did not identify any developments in work practices nor any new work practices or operational procedures for this source category regarding the additional control of organic HAP.

After conducting the 2020 Technology Review, the EPA did not identify developments in practices, processes, or control technologies and, thus, did not propose changes to emission standards or other requirements. More information concerning that technology review is in the memorandum titled *Technology Review for the Coal- and Oil-Fired EGU Source Category,* available in the docket (Docket ID No. EPA–HQ–OAR–2018–0794–0015), and in the February 7, 2019, proposed rule. 84 FR 2700. On May 20, 2020, the EPA finalized the first technology review required by CAA section 112(d)(6) for the coal- and oil-fired EGU source category regulated under MATS. Based on the results of that technology review, the EPA found that no revisions to MATS were warranted. See 85 FR 31314 (May 22, 2020).

V. Analytical Results and Proposed Decisions

As described in section IV, the EPA conducted a residual risk review under CAA section 112(f) and presented results of the review in the 2020 Final Action. Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis'' required the EPA to review the 2020 Final Action and consider publishing a notice of proposed rulemaking suspending, revising, or rescinding the 2020 Final Action. As part of this effort, the EPA solicited information to inform a review of the MATS RTR in the 2022 Proposal affirming it is appropriate and necessary to regulate coal- and oil-fired EGUs under CAA section 112. The EPA summarizes the results of the review of the RTR and proposed decisions consequent of the review below and requests comment on specific considerations. In addition to generally soliciting comments on all aspects of this proposed action, the EPA is requesting public comment on specific issues as described below. In addition, the EPA is granting in part certain petitions for reconsideration on the Agency's prior rulemakings, which are discussed in further detail below.

A. Review of the 2020 Residual Risk Review

The EPA has reviewed the 2020 Residual Risk Review as directed by E.O. 13990. This included a review of the 2020 residual risk assessment described in Docket ID No. EPA–HQ–OAR–2018–0794–0014 and consideration of comments received in response to the 2022 Proposal. The EPA did not receive any new information in response to the 2022 Proposal that would affect the EPA's 2020 residual risk analysis or the decisions emanating from that analysis. In reviewing the 2020 residual risk analysis, the EPA has determined that the risk analysis was a rigorous and robust analytical review using approaches and methodologies that are consistent with those that have been utilized in residual risk analyses and reviews for other industrial sectors. In addition, the results of the 2020 residual risk assessment, as summarized in section IV.A of this preamble, indicated low residual risk from the coal- and oil-fired EGU source category. For these reasons, we are not proposing any revisions to the 2020 Residual Risk Review. Although we are not reopening the 2020 determination of whether residual risks would alone be sufficient under the CAA to necessitate new standards, the EPA acknowledges that the revised standards being proposed under this technology review, as explored below, will likely reduce HAP exposures to affected populations. In recognition of the hazardous nature of these HAP, Congress intentionally created a two-pronged structure for updating standards for toxic air pollutants that requires the EPA to continue assessing opportunities to strengthen the standards under CAA section 112(d)(6) even after residual risks have been addressed under CAA section 112(f)(2).[17] Under this structure, recognizing the value of reducing any exposure to HAP where feasible, the EPA is obligated to update standards where *either* the EPA finds it is necessary to provide an ample margin of safety to protect public health or where the EPA finds it is necessary taking into account developments in practices, processes, and control technologies. The EPA also acknowledges that it received a petition for reconsideration from environmental organizations that, in relevant part, sought the EPA's reconsideration of certain aspects of the 2020 Residual Risk Review, which the EPA continues to review and will respond to in a separate action.[18]

B. Review of the 2020 Technology Review

The EPA's review of the 2020 Technology Review included evaluating the technology review described in Docket ID No. EPA–HQ–OAR–2018–0794–0015 and comments related to potential practices, processes, or controls received as part of the 2022 Proposal. The review also focused on the identification and evaluation of any developments in practices, processes, and control technologies that have occurred since finalization of the MATS rule in 2012 and since publishing the 2020 Technology Review. As explained in detail herein, based on this information, the EPA now concludes that developments in the costs and effectiveness of control technologies and the related fact that emissions performance still varies significantly, warrant revising certain MACT standards.

Technology reviews can, and often do, include obtaining better information about the performance of a control technology (*e.g.,* emissions data from affected sources) showing that an add-on technology that was identified and considered during the development of the original MACT standards works better (*e.g.,* gets more emissions reductions or costs less) than anticipated. In fact, considering data on outperforming sources and cost and effectiveness of existing controls is well established. See, *e.g.,* Coke Oven Batteries, 69 FR 48338, 48351 (August 9, 2014) (''[A]lthough no new control technologies have been developed since the original standards were promulgated, our review of emissions data revealed that existing MACT track batteries can achieve a level of control for door leaks and topside leaks more stringent than that required by the 1993 national emission standards . . . through diligent work practices to identify and stop leaks.''); Site Remediation, 85 FR 41680, 41690 (July 10, 2020) (noting that commenters had not identified developments like a reduction in costs); Petroleum

[17] The EPA has long considered these two inquiries independent. See, *e.g.,* Mineral Wool Production and Wool Fiberglass Manufacturing, 80 FR 45280, 45292 (July 29, 2015) (explaining CAA section 112(d)(6) and 112(f)(2) ''standards rest on independent statutory authorities and independent rationales.''); *see also Ass'n of Battery Recyclers, Inc.* v. *EPA,* 716 F.3d 667, 672 (D.C. Cir. 2013) (CAA section 112(d)(6) ''directs EPA to take into account developments in practices, processes, and control technologies, . . . not risk reduction achieved by the additional controls.'') (internal quotation omitted). Indeed, the EPA has strengthened standards based upon its technology review while finding residual risks acceptable numerous times. See, *e.g.,* Site Remediation, 85 FR 41680 (July 10, 2020); Organic Liquids Distribution, 85 FR 40740 (July 7, 2020); Ethylene Production, 85 FR 40386 (July 6, 2020); Pulp Mills, 82 FR 47328 (Oct. 11, 2017); Acrylic and Modacrylic Fibers Production, 79 FR 60898 (Oct. 8, 2014); Natural Gas Processing Plants, 77 FR 49400 (Aug. 16, 2012); Wood Furniture Manufacturing Operations, 76 FR 72052 (Nov. 21, 2011).

[18] See Docket ID No. EPA–HQ–OAR–2018–0794–4565 at *www.regulations.gov.*

Refineries, 80 FR 75178, 75201 (December 1, 2015); Mineral Wood Production and Fiberglass Manufacturing, 80 FR 45280, 45284–85 (July 29, 2015); *see also Nat'l Ass'n for Surface Finishing* v. *EPA,* 795 F3d 1, 11–12 (D.C. Cir 2015).

For example, in the 2014 technology review for Ferroalloys Production, the EPA found that PM emission levels were well below the MACT standards established in the original 1999 NESHAP. These findings ''demonstrate[d] that the add-on emission control technology (venturi scrubber, positive pressure FF, negative pressure FF) used to control emissions from the furnaces are quite effective in reducing PM (used as a surrogate for metal HAP) and that all of the facilities have emissions well below the current limits.'' See 79 FR 60271 (October 6, 2014). Therefore, the EPA determined that it was appropriate to revise the PM limits for furnaces. Similarly, in the 2017 technology review for Wool Fiberglass Manufacturing, the EPA found that formaldehyde emissions had decreased by approximately 95 percent since promulgation of the MACT Standards in the original 1999 NESHAP due to ''(1) Improvements in control technology (*e.g.,* improved bag materials, replacement of older baghouses) and (2) the use of electrostatic precipitators,'' as well as upgraded pollution prevention practices (*i.e.,* development and use non-phenol-formaldehyde binders). See 82 FR 40975 (August 29, 2017). Although the EPA declined to lower the formaldehyde limit in this case, it was only because the source category had already upgraded the technology (*i.e.,* non-phenol-formaldehyde binders), resulting in major sources becoming area sources that were no longer subject to the NESHAP.

As in those cases, here many commenters provided data showing that control technologies are more widely used, more effective, and cheaper than at the time EPA promulgated MATS. For example, commenters explained that, due to the many options that are available to control Hg emissions (*e.g.,* control equipment, activated carbon, reagents and sorbents, as well as fuel blending, non-carbon or improvements to carbon-based solvents, wet and dry scrubber additives, oxidizing coal additives, and existing control optimization) and a ''robust industry of technology suppliers that drive innovation through internal research and development,'' the costs of compliance for end users has decreased over time (Docket ID No. EPA–HQ–OAR–2018–0794–4940). Similarly, commenters noted that the large number of EGUs that are outperforming the current Hg and fPM standards would support a decision to revise the standards (Docket ID No. EPA–HQ–OAR–2018–0794–4962). Specific comments leading to our proposed decisions are detailed below, and a summary of this technology review is provided in the memorandum ''2023 Technology Review for the Coal- and Oil-Fired EGU Source Category,'' which can be found in Docket ID No. EPA–HQ–OAR–2018–0794. Based on our review of the 2020 Technology Review, the EPA is proposing to revise the current standards as discussed below.

C. What are the results and proposed decisions based on our technology review, and what is the rationale for those decisions?

This section summarizes the EPA's changes to the 2020 technology review and proposed decisions. Where the EPA has identified developments in practices, processes, or controls, we analyzed the technical feasibility, estimated costs, energy implications, and non-air environmental impacts, as well as the potential emission reductions associated with each development. In addition, we reviewed a variety of data sources in our investigation of developments in practices, processes, or controls. See section III of this preamble for information on the specific data sources that were reviewed as part of the technology review.

1. Filterable Particulate Matter (fPM) Emission Limit (as a Surrogate for Non-Hg HAP Metals)

As described in section III of this preamble, EGUs in six subcategories are subject to numeric emission limits for each of the individual non-Hg metal HAP. Alternatively, certain affected EGUs can choose to demonstrate compliance with an alternative total non-Hg metal HAP emission limit. Finally, affected EGUs can demonstrate compliance with an alternative fPM emission limit that serves as a surrogate for total non-Hg metal HAP. The EPA chose fPM as a surrogate for non-Hg metal HAP in the original MATS rulemaking because non-Hg metal HAP are predominantly a component of the filterable fraction of total PM (which is comprised of a filterable fraction and a condensable fraction), and control of fPM results in co-reduction of non-Hg metal HAP (with the exception of Se, which may be present in the filterable fraction or in the condensable fraction as the acid gas, SeO_2). Additionally, not all fuels emit the same type and amount of non-Hg metal HAP, but most generally emit fPM that includes some amount and combination of all the non-Hg metal HAP. Lastly, the use of fPM as a surrogate eliminates the cost of performance testing to demonstrate compliance with numerous standards for individual non-Hg metal HAP (Docket ID No. EPA–HQ–OAR–2009–0234). For these reasons, the EPA focused its review on the fPM emissions of coal-fired EGUs as a surrogate for non-Hg metal HAP.

In the 2020 Technology Review, the EPA did not identify any developments in practices, processes, or control technologies for non-Hg metal HAP or fPM. The assessment of implementation and developments in non-Hg metal HAP metal is summarized in the memorandum, ''Technology Review for the Coal- and Oil-Fired EGU Source Category,'' which is included in Docket ID No. EPA–HQ–OAR–2018–0794–0015. The 2020 review simply presented a list of PM control technologies used by coal-fired EGUs in operation, finding that the units primarily employ ESPs and FFs, and did not identify any new control technologies to reduce non-Hg metal HAP. That review did not consider or discuss the costs or performance of already-installed controls nor discuss or analyze opportunities for improved performance. In the 2020 Technology Review, the EPA concluded that ''[t]he PM air pollution control device technologies that are currently in use are well-established and provide the capture efficiencies necessary for compliance with the subpart UUUUU [MATS] filterable PM limits.'' In the 2022 Proposal, the EPA solicited information on the cost and performance of new or improved control technologies that control HAP emissions and improved methods of operation.

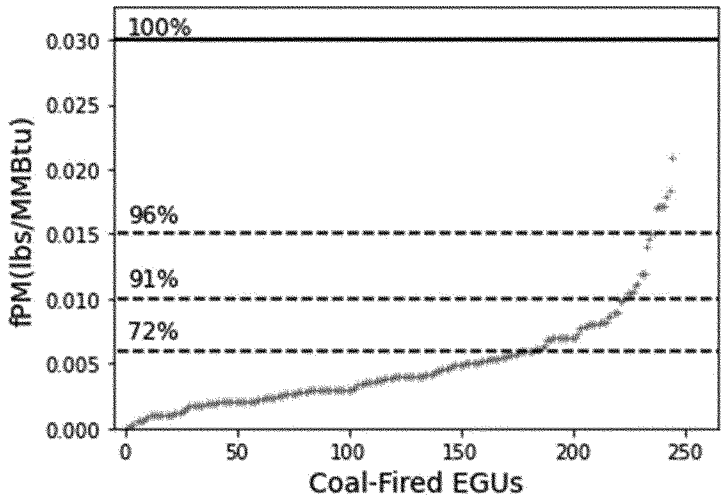
In this review of the RTR, and consistent with some past technology reviews, the EPA assessed the performance of the sources in the source category compared to current standards, and the EPA accordingly expanded upon the 2020 Final Action's technology review to assess the fPM emission performance of the fleet. This review included evaluating the control efficiency and costs of common control systems used for fPM control, primarily ESPs and FFs, detailed in the memorandum (Technical Memo), ''2023 Technology Review for the Coal- and Oil-Fired EGU Source Category,'' which is included in Docket ID No. EPA–HQ–OAR–2018–0794. As part of this effort, the EPA reviewed more recent fPM compliance data that was not available during the 2020 Final Action. Although

our review of fPM compliance data for coal-fired EGUs indicated no new practices, processes, or control technologies for non-Hg metal HAP, it revealed two important developments that inform the EPA's decision to propose revisions to the standard. First, it revealed that most existing coal-fired EGUs are reporting fPM well below the current fPM emission limit of 3.0E–02 lb/MMBtu. Information we received in response to the 2022 Proposal similarly noted that the fleet is reporting much lower fPM rates than what is currently allowed. Second, it revealed that the fleet is achieving these performance levels at lower costs than assumed during promulgation of the original MATS fPM emission limit. More specifically, one commenter presented its fleetwide evaluation using data from 100 coal units in the PJM Interconnection and in the Electric Reliability Council of Texas (ERCOT) markets. The commenter's analysis suggested that only 42 EGUs would require additional capital or operating costs to meet a more stringent fPM limit of 7.0E–03 lb/MMBtu, while 79 EGUs would incur those costs to meet a limit of 3.75E–03 lb/MMBtu. The commenter's analysis suggested that most units would incur costs in the range of $0/kW to $75/kW (Docket ID No. EPA–HQ–OAR–2018–0794–5121). Other commenters pointed to an independent report finding that units are doing ''just enough'' to satisfy the MATS limits and that EGUs can achieve fPM emission rates at or below 7.0E–03 lb/MMBtu with relatively low capital cost upgrades to pollution control systems.[19] Commenters also cited studies finding the actual costs of complying with air pollution regulations are often substantially lower than pre-compliance estimates assumed in the 2012 MATS Final Rule.

Figure 1 shows that all coal-fired EGUs are reporting fPM emissions well below the current MATS limit of 3.0E–02 lb/MMBtu, and that 91 percent of EGUs are reporting fPM emissions at levels lower than a third of the current limit. In fact, the average reported fPM rate of the EGUs assessed in Figure 1 is 4.8E–03 lb/MMBtu, which is 84 percent below the MATS current limit (the median is 4.0E–03 lb/MMBtu, or 87 percent below the MATS current limit). The EPA evaluated the fPM emission performance of EGUs and binned them by quartiles. The average fPM emission rate reported by the best performing 25 percent was 1.4E–03 lb/MMBtu. Of the best performing 50 percent of EGUs assessed, the average fPM emission rate was 2.4E–03 lb/MMBtu and the average fPM rate reported by the best 75 percent was 3.1E–03 lb/MMBtu. Of the best performing 95 percent, the average fPM emission rate was 4.2E–03 lb/MMBtu. Even the higher emitting units, with reported rates above the current fPM LEE standard, are performing 30 percent to 43 percent below the current standard. Even so, the handful of the worst performing EGUs are reporting fPM at rates approximately three to four times the fleet average.

Because an evaluation of compliance data showed that a significant portion of coal-fired EGUs are performing well below the allowed emission limit (Figure 1), and because the EPA obtained information indicating lower costs to improve controls to achieve additional fPM emission reductions than assumed during promulgation of the original MATS fPM emission limit, the EPA concluded that there were developments that warranted an examination of whether to revise the standard.

To examine potential revisions, the EPA used representative fPM emissions as a surrogate for total non-Hg metal HAP to evaluate three more stringent emission limits. The fPM emission limits that were evaluated are (1) 1.5E–02 lb/MMBtu, which is 50 percent of the current limit and the qualifying emission rate for the LEE program (2) 1.0E–02 lb/MMBtu, which is comparable to the MATS new source fPM emission limit; and (3) 6.0E–03 lb/MMBtu, which is the average fPM emission rate from the 2010 ICR. Currently, 96 percent of existing coal-fired capacity without known retirement plans before the proposed compliance period[20] already have demonstrated an emission rate of 1.5E–02 lb/MMBtu or lower, 91 percent of existing coal-fired capacity have demonstrated an emission rate of 1.0E–02 lb/MMBtu or lower, and 72 percent of existing coal-fired capacity have demonstrated an emission rate of 6.0E–03 lb/MMBtu or lower. As mentioned above, the average fPM rate of the best performing 95 percent of EGUs was 4.2E–03 lb/MMBtu, below the most stringent option analyzed of 6.0E–03 lb/MMBtu. The EPA evaluated reductions of the 10 individual non-Hg metal HAP, total non-Hg metal HAP, and fPM and the associated costs for each unit to achieve each of the three fPM emission limits listed above.



[19] See *https://www.andovertechnology.com/wp-content/uploads/2021/08/PM-and-Hg-Controls_CAELP_20210819.pdf.*

[20] If the proposed revised emission limits are finalized, affected EGUs will have up to 3 years after the effective date of the rule amendments to demonstrate compliance with the revised emission limits.

Figure 1—fPM rate distribution for affected coal-fired EGUs in the continental U.S. in reference to the three considered fPM limit (horizontal dashed lines): 1.5E–02 lb/MMBtu, 1.0E–02 lb/MMBtu, and 6.0E–03 lb/MMBtu. Percentages represent the amount of existing capacity achieving each of the limits. More information available in the Technical Memo supporting this action.

The EPA discussed the opportunity for improved performance of existing fPM control technologies in the 2012 MATS Final Rule. In the regulatory impact analysis (RIA) supporting the 2012 MATS Final Rule, the EPA estimated that 34 gigawatts (GW) of coal-fired EGU capacity would perform ESP upgrades as part of their fPM emission limit compliance strategy.[21] EPA's methodology was based on historic PM emission rates and reported control efficiencies and is explained in the IPM 4.10 Supplemental Documentation for MATS.[22] Depending on the incremental fPM reduction needed to bring a unit into compliance, units with existing ESPs for PM control were assigned either a FF retrofit or one of three tiered ESP upgrades to bring them into compliance. In response to the solicitation in the 2022 Proposal, commenters provided detailed information on updated costs for similar upgrades for improved ESP performance. Using that data and additional information from one of the EPA's engineering consultants, the EPA evaluated revised costs to upgrade existing PM controls. The cost effectiveness estimates presented in this section are based on an assumption that eight units would need to upgrade existing ESPs to comply with a revised fPM emission standard of 1.5E–02 lb/MMBtu, that 20 units would need to implement similar ESP upgrades to comply with a revised fPM emission standard of 1.0E–02 lb/MMBtu, and that 65 units would need to install a new FF or modify an existing FF to meet a revised fPM emission limit of 6.0E–03 lb/MMBtu.

In this proposal, the EPA proposes to set an fPM emission limit of 1.0E–02 lb/MMBtu (0.010 lb/MMBtu) and seeks comment on whether its control technology effectiveness and cost assumptions are correct, and whether it should finalize a more stringent standard. The EPA's decision to propose a standard of 1.0E–02 lb/MMBtu is based on several factors. First, this level of control would ensure that the very worst performers bring their performance level up to where the vast majority of the fleet is performing. The EPA notes that Figure 1 shows a ''knee in the curve'' that starts before 1.0E–02 lb/MMBtu, with coal-fired EGUs above that rate emitting substantially more pollution than those below it. Bringing this small number of sources (9 percent of coal-fired EGU capacity) to the performance of the rest of the fleet serves Congress's mandate to the EPA to continually consider developments and to ensure that standards account for developments ''that create opportunities to do even better.'' *See LEAN,* 955 F.3d at 1093. As discussed above in section V.B. of this document, the EPA has a number of times in the past updated its MACT standards to reflect developments where the majority of sources is vastly outperforming the original MACT standards.

According to comments received in response to the solicitation in the 2022 Proposal, since the MATS Final Rule was promulgated in 2012, improvements to existing PM controls to comply with the MATS fPM standard were achieved at lower costs than had been projected by the EPA. The commenter also noted that industry installed far fewer FFs than the EPA projected and that there were a smaller number of ESP upgrades than projected. The 2012 MATS Final Rule used the Upper Predictive Limit (UPL) to establish the fPM emission limit of 3.0E–02 lb/MMBtu for existing coal-fired EGUs. The UPL considers the average of the best performing EGUs, but also includes an allowance for variation that is determined by a confidence level that the UPL will not be exceeded. A report [23] submitted to the EPA in response to the 2020 Proposal presented an updated UPL (using 2019 data compiled by Natural Resources Defense Council (NRDC) [24]) of 5.0E–03 lb/MMBtu, about one-sixth of the EPA's 2011 estimate of 3.0E–02 lb/MMBtu. The updated 5.0E–03 lb/MMBtu UPL value was attributed to updated fPM rates that were lower on average and reflected less variability in emissions for each individual EGU. More specifically, according to the commenter, the lower fPM emissions and thus lower UPL were attributed to: (1) greater attention to fPM emissions due to the monitoring and reporting requirements of MATS; (2) efforts to restore ESPs and other equipment to original designed performance levels; (3) modest improvements to ESPs when needed, such as addition of high frequency transformer rectifier (TR) sets; and (4) efforts to minimize the wear and tear on filter bags and increased attention to FF operation. Developments in the technology, including better performance at lower costs, combined with improved variability assumptions updated since promulgation of the 2012 MATS Final Rule, presents an opportunity to strengthen the MACT standard for fPM.

Second, the EPA believes that a fPM emission limit of 1.0E–02 lb/MMBtu appropriately takes into account the costs of control. The EPA evaluated the costs to improve current PM control systems and the cost to install better performing PM controls (*i.e.,* a new FF) to achieve a more stringent emission limit. As noted above, data received since 2012 demonstrates that the costs of PM control upgrades are likely much lower than the EPA estimated in 2012. Table 3 summarizes the estimated cost-effectiveness of the three emission limits evaluated for the existing fleet. For the purpose of estimating cost-effectiveness, the analysis presented in this table is based on the observed emissions rates of all existing coal-fired EGUs except for those that have announced plans to retire by the end of 2028. Note that, unlike the cost and benefit projections presented in the RIA for this proposed rule, the estimates in this table do not account for any future changes in the composition of the operational coal-fired EGU fleet that are likely to occur by 2028 as a result of other factors affecting the power sector, such as the Inflation Reduction Act (IRA), future regulatory actions, or changes in economic conditions. Of the over 9 GW of coal-fired capacity that the EPA estimates would require control improvements to achieve the proposed fPM rate, less than 5 GW is projected to be operational in 2028 (see section 3 of the RIA for this proposal).

[21] Regulatory Impact Analysis for the Final Mercury and Air Toxics Standards, available *https://www.epa.gov/sites/default/files/2015-11/documents/matsriafinal.pdf* and in the rulemaking docket.

[22] See Table 5–25 in Documentation Supplement for EPA Base Case v.4.10_MATS—Updates for Final Mercury and Air Toxics Standards (MATS) Rule available at *https://www.epa.gov/sites/default/files/2015-07/documents/suppdoc410mats.pdf* and in the rulemaking docket.

[23] See *https://www.andovertechnology.com/wp-content/uploads/2021/08/PM-and-Hg-Controls_CAELP_20210819.pdf.*

[24] *https://www.nrdc.org/resources/coal-fired-power-plant-hazardous-air-pollution-emissions-and-pollution-control-data.*

TABLE 3—SUMMARY OF COST EFFECTIVENESS ANALYSIS FOR THREE POTENTIAL fPM EMISSION LIMITS [1]

	Potential fPM emission limit (lb/MMBtu)		
	1.5E–02	1.0E–02	6.0E–03
Affected Units (Capacity, GW)	8 (4.02)	20 (9.34)	65 (32.9)
Annual Cost ($M)	13.9–19.3	77.3–93.2	633
fPM Reductions (tons/year)	463	2,074	6,163
Total non-Hg metal HAP Reductions (tons/year)	1.41	6.34	24.7
Total non-Hg metal HAP Cost Effectiveness ($k/ton)	9,860–13,700	12,200–14,700	25,600
Total non-Hg metal HAP Cost Effectiveness—Allowable ($k/ton)	35.4–49.1	197–238	1,610

[1] Note that these values represent annual cost and projected emission reductions assuming the affected coal-fired EGUs operate consistent with their operation in their lowest quarter (see Technical Memo accompanying this action for more information).

The cost estimates presented in this table could be overestimated for a number of reasons, and the EPA seeks comment on these cost and cost-effectiveness estimates and how they may change over time. Additionally, the information in Table 3 shows that coal-fired EGUs have demonstrated an ability to meet these limits with existing control technology. It is possible that some EGUs with the same or similar technologies may be able to achieve a lower fPM rate at significantly lower cost than assumed here, and possibly without any additional capital investments. Furthermore, since the EGU-specific fPM emissions rate is calculated using the largest 1 percent of fPM rates for the quarter with the lowest emissions, some EGUs may readily achieve lower fPM rates with improved operation. While such factors could likely lower the overall cost estimates and improve cost-effectiveness, this table presents estimates based on the best information available to the EPA at this time.

The EPA considers costs in various ways, depending on the rule and affected sector. For example, the EPA has considered, in previous CAA section 112 rulemakings, cost-effectiveness, the total capital costs of proposed measures, annual costs, and costs compared to total revenues (*e.g.,* cost to revenue ratios).[25] Because much of the fleet is already reporting fPM rates below 6.0E–03 lb/MMBtu, both the total costs and the total fPM and non-Hg metal HAP reductions for the three potential emission limits are modest in the context of the total control costs and emissions of the coal fleet. The cost-effectiveness estimates for EGUs reporting fPM rates above 6.0E–03 lb/MMBtu to achieve similar performance as the rest of the fleet range from $9,860,000 to $25,600,000 per ton of non-Hg metal HAP for the three potential emission limits.

For this proposal, the costs—either the annual control cost estimates presented above in Table 3 or the projected total annual system-wide compliance costs presented in Table 3–4 in the RIA—represent a very small fraction of typical capital and total expenditures for the power sector. In the 2022 Proposal (reaffirming the appropriate and necessary finding), the EPA evaluated the compliance costs that were projected in the 2012 MATS rule relative to the typical annual revenues, capital expenditures, and total (capital and production) expenditures.[26] (January 11, 2022); 80 FR 37381 (June 30, 2015). Using electricity sales data from the U.S. EIA, the analysis in the 2022 Proposal demonstrated that revenues from retail electricity sales increased from $276.2 billion in 2000 to a peak of $356.6 billion in 2008 (an increase of about 29 percent during this period) and have slowly declined since to a post-2011 low of $331.0 billion in 2019 (a decrease of about 7 percent from its peak during this period) in 2007 dollars. The annual control cost estimates for this proposal based on the cost-effectiveness analysis in Table 3 constitute at most about 0.2 percent of sector sales at their lowest over the 2000 to 2019 period. Making similar comparisons of the estimated capital and total compliance costs to historical trends in sector-level capital and production costs, respectively, would yield similarly small values. Because this cost-effectiveness evaluation only considers improved fPM control needed at a few units and not the entire fleet, we also evaluated an alternative cost-effectiveness approach that considers allowable emissions, assuming emission reductions achieved if all evaluated EGUs emit the maximum allowable amount of fPM (*i.e.,* at the current standard of 3.0E–02 lb/MMBtu), and the associated costs for EGUs to comply with the three potential fPM standards. Using this approach, the EPA estimates the cost-effectiveness (based on allowable rather than actual emissions) of control of non-Hg HAP metals to range from $35,400/ton to $49,100/ton for a 1.5E–02 lb/MMBtu emission limit, from $197,000/ton to $238,000/ton for a 1.0E–02 lb/MMBtu emission limit, and $1,610,000/ton for a 6.0E–03 lb/MMBtu emission limit.

The EPA strives to minimize the uncertainty and the costs associated with the measurements used to demonstrate compliance with emission limits. For fPM measurements, the EPA believes that appropriate approaches to minimizing both uncertainty and costs would include limiting sampling times to 3 hours per run and maintaining the random error contribution to the tolerance given to PM CEMS—which is one component of uncertainty—consistent with that of existing fPM emission limits. The impact of sampling times and random errors on measurable emission limits is described in the ''PM CEMS Random Error Contribution by Emission Limit'' memorandum, available in the rulemaking docket. The

[25] See, *e.g.,* Mercury Cell Chlor-Alkali Plants Residual, 87 FR 27002, 27008 (May 6, 2022) (considered annual costs and average capital costs per facility in technology review and beyond-the-floor analysis); Primary Copper Smelting, 87 FR 1616, 1635 (proposed Jan. 11, 2022) (considered total annual costs and capital costs, annual costs, and costs compared to total revenues in proposed beyond-the-floor analysis); Phosphoric Acid Manufacturing and Phosphate Fertilizer Production Phosphate Fertilizer Production Plants and Phosphoric Acid Manufacturing Plants, 80 FR 50386, 50398 (Aug. 19, 2015) (considered total annual costs and capital costs compliance costs and annualized costs for technology review and beyond the floor analysis); Ferroalloys Production, 80 FR 37366, 37381 (June 30, 2015) (considered total annual costs and capital costs, annual costs, and costs compared to total revenues in technology review); Off-site Waste Recovery, 80 FR 14251, 14254 (March 18, 2015) (considered total annual costs and capital costs, and average annual costs and capital costs and annualized costs per facility in technology review); Chromium Electroplating, 77 FR 58225, 58226 (Sept. 19, 2012) (considered total annual costs and capital costs in technology review); Oil and Natural Gas, 77 FR 49490, 49523 (Aug. 16, 2012) (considered total capital costs and annualized costs and capital costs in technology review). *C.f. NRDC* v. *EPA,* 749 F.3d 1055, 1060 (D.C. Cir. 2014 . . .

[26] See Cost TSD for 2022 Proposal at Docket ID No. EPA–HQ–OAR–2018–0794–4620 at *regulations.gov.*

EPA believes that available PM CEMS will be able to accurately measure the proposed fPM emission limit of 1.0E–02 lb/MMBtu, as the average random error contribution is under that of existing emission limits. Although sources have reported fPM values as low as 2.0E–04 lb/MMBtu, given the 3-hour sampling duration and the current fPM detection limit, the EPA currently believes, as described in the memorandum, that some PM CEMS may struggle to meet the EPA's guideline for average random error contribution to the PM CEMS tolerance to demonstrate compliance with a fPM emission limit of 6.0E–03 lb/MMBtu or lower. The EPA solicits comment on the implications for the costs of measuring emissions to demonstrate compliance—whether through stack testing or PM CEMS—of alternate emission limits set at or below 6.0E–03 lb/MMBtu as compared to the proposed fPM emission limit of 1.0E–02 lb/MMBtu, including run durations, fPM detection levels, and random error calculations.

The EPA seeks comment broadly on how we should consider costs in the context of this rule. Taking all of the foregoing discussion into account, the EPA believes that the middle option, a limit of 1.0E–02 lb/MMBtu best balances the critical importance of reducing hazardous emissions pursuant to the EPA's statutory obligations under CAA section 112(d)(6) and ensuring that the worst performers are required to perform at the level of the remainder of the fleet with the costs of doing so in the context of this industry. Considering all the cost metrics, the EPA believes that the cost of the proposed standards is reasonable, and modest in the context of this industry. Based on the foregoing discussion and these analyses, the EPA is proposing to revise the fPM emission limit, as a surrogate for the total non-Hg metal HAP, to 1.0E–02 lb/MMBtu as supported by our analyses of technical feasibility, control costs, cost-effectiveness, and economics. The EPA believes this standard appropriately balances CAA section 112's direction to achieve the maximum degree of emissions reductions while taking into account the statutory factors, including cost. The EPA is further seeking comment on whether a standard of 6.0E–03 lb/MMBtu or lower (for example 2.4E–03 lb/MMBtu, which is the average emission of the best performing 50 percent of units evaluated) would represent a better balancing of the statutory factors.

Indeed, Congress designed CAA section 112 to achieve significant reductions in HAP emissions, which it recognized are particularly harmful pollutants. This proposal is consistent with the EPA's authority pursuant to CAA section 112(d)(6) to take developments in practices, processes, and control technologies into account to determine if more stringent standards are achievable than those initially set by the EPA in establishing MACT floors, based on developments that occurred in the interim. *See LEAN* v. *EPA,* 955 F.3d 1088, 1097–98 (D.C. Cir. 2020). As discussed above in this section, the EPA finds that the vast majority of existing coal-fired EGUs are performing well below the 2012 MATS fPM emission requirements, and that they are achieving these levels at lower costs than the EPA assumed in the 2012 rulemaking. While this proposal in no way refutes that the EPA's initial MACT standards were set at correct levels based on the available information at the time, consistent with CAA section 112's statutory scheme requiring the EPA to regularly revisit those standards, the EPA now proposes to find that more stringent standards are achievable, as chiefly evidenced by the large majority of facilities that are reporting fPM at emission rates well below the current standard.

This proposed emission limit is comparable to the new source standard for fPM in MATS. This proposed emission limit is estimated to reduce non-Hg metal HAP by 6.34 tons per year (and fPM emissions by 2,074 tons/year) at annual costs between $77.3 and $93.2 million. While the 2020 Residual Risk Review concluded that the residual risks are at an acceptable level, Congress required the EPA to conduct technology reviews on an ongoing basis, at least every 8 years, independent of the residual risk review.[27] Moreover, Congress required the EPA to set the standards at the maximum degree of emissions reductions (including prohibition on emissions) that is achievable taking into account the statutory factors. The technological standard approach of CAA section 112 is based on the premise that, to the extent there are controls available to reduce HAP emissions, sources should be required to use them. Since 91 percent of the anticipated capacity of the fleet is already achieving a limit below 1.0E–02 lb/MMBtu, the EPA proposes that this emissions limit level is technologically feasible and demonstrated for a range of control configurations. Additionally, this revised limit would result in significantly lower allowable fPM emissions from the source category compared to the level of emissions allowed by the 2012 MATS Final Rule and help prevent any emissions increases. The EPA does not anticipate any significant non-air health, environmental, or energy impacts as a result of these proposed amendments. Our assessment of control options, costs, and emission reductions is summarized in the memorandum ''2023 Technology Review for the Coal- and Oil-Fired EGU Source Category'' in Docket ID No. EPA–HQ–OAR–2018–0794.

The EPA is not proposing the highest limit examined (1.5E–02 lb/MMBtu) because it would largely leave in place the status quo, in which, despite the proven feasibility and effectiveness of control technologies, a number of sources are lagging far behind. The EPA does not consider a proposed revision to this standard to be consistent with its statutory charge.

While the EPA is not proposing the most stringent limit examined (6.0E–03 lb/MMBtu) or an even more stringent limit, the EPA is taking comment on whether it should consider finalizing such a standard. Such a standard would achieve far more emissions reductions than the emission standards that the EPA is proposing in this action. It would also ensure that the bottom lowest performing quarter of the fleet would have to improve their performance to the level already demonstrated by the remaining three-quarters of the fleet. The EPA declines to propose 6.0E–03 lb/MMBtu as the primary policy option here in light of the above presentation of potential costs, including the EPA's current assessment of measurement uncertainty, when considering the current fleet. These cost estimates are based on the assumption that existing ESP-controlled units would need to install a new FF in order to meet the lower limit, or if existing FF-controlled units do not meet the more stringent limit, those units would need to upgrade their FF bags. If these assumptions are unnecessarily conservative, the total costs and associated cost-effectiveness values may be considerably lower than estimated. The EPA seeks comment on whether there are lower cost compliance options for units with existing ESPs.

An additional factor affecting the total estimated compliance cost is the size and composition of the generating fleet. As noted above, the cost estimates in Table 3 do not account for market and policy developments that are likely to further change the universe of regulated sources and reduce the expected costs of meeting more protective fPM standards. In the likely case that the power sector's transition to lower-emitting generation

[27] See discussion in section V.A, above.

is accelerated by the IRA, for example, the total costs and emissions reductions achieved by each of the three alternative fPM standards shown in Table 3 would also be an overestimate, and the EPA's judgment could change about which standard most appropriately balances CAA section 112's direction to achieve the maximum degree of emissions reductions while taking into account cost and other the statutory factors. The EPA seeks comment on how the IRA and other market and policy developments should inform the Agency's determination.

Additionally, the EPA notes that other future state and federal policies could affect the size, composition, and fPM emissions rate of the future coal-fired EGU fleet. The EPA seeks comment on the extent to which, and how, to take these future policies into account when considering the total cost and cost effectiveness of a more stringent fPM emission limit.

The EPA requests public comment on all aspects of this proposed rule, including our evaluation of the costs and efficacy of control option assumptions. Among other issues, the EPA requests comment on whether we have accurately assessed the variability of fPM emissions and requests information on the costs, pollution reduction benefits, and cost-effectiveness of applying lower emission limits to sources subject to MATS; and whether there are other factors the EPA should consider that would support a lower emission limit, including the contribution that HAP from these sources make to the overall pollution burden. The EPA seeks comment on requiring existing coal-fired EGUs to meet a fPM standard of 6.0E–03 lb/MMBtu or a more stringent standard considering the higher emission reductions as well as the larger total costs such a standard would entail to inform our consideration of whether the more stringent standard would reduce the overall pollution burden in these communities. The EPA also seeks comment on whether there are any areas where EPA has overestimated costs, including some of the generation and storage technologies discussed above as well as the cost of PM controls themselves.

2. PM Emission Monitoring

Under the current rule, EGU owners or operators may choose among quarterly testing, PM CEMS, and PM CPMS to demonstrate compliance with the alternate fPM emission limit in MATS. The initial MATS ICR, available at *www.reginfo.gov,*[28] anticipated that all EGU owners or operators would use PM CEMS for compliance purposes and estimated Equivalent Uniform Annual Cost (EUAC) for the beta gauge PM CEMS to be $65,388. As mentioned in the 2012 proposed Portland Cement NESHAP,[29] beta gauge technology, also referred to as beta attenuation, allows PM CEMS to be much less sensitive to changes in particle characteristics than light-based PM CEMS technologies such as light-scatter or scintillation. Beta attenuation PM CEMS extracts a sample from the stack gas and collects the fPM on filter tape. The device periodically advances the tape from the sampling mode to an area where the sample is exposed to beta radiation. The detector measures the amount of beta radiation emitted by the sample and that amount can be directly related to the mass of the filter. The unannualized purchase cost for a beta gauge PM CEMS and its installation were estimated to be $115,267 in the initial MATS ICR; and the EUAC for beta gauge PM CEMS was estimated to be less expensive than quarterly EPA Method 5 (M5) testing for fPM. Even so, not all EGU owners or operators chose the most cost-effective means of demonstrating compliance with the fPM emission limits. Review of reports submitted to WebFIRE and ongoing ICR renewals shows PM CEMS are used for compliance purposes by about one-third of EGU owners or operators. In addition to being more cost-effective for compliance purposes, PM CEMS provide regulators and the public, as well as the EGU owners or operators, direct and continuous measurement of the pollutant of concern. Such data supply real-time, quality-assured feedback that can lead to improved control device and power plant operation, which, in turn, can lead to fPM emission reductions. Moreover, quick detection of potential problems with PM emissions as provided by PM CEMS, coupled with appropriate corrective measures, can prevent instances of non-compliance, which otherwise could go undetected and uncorrected until the next quarterly PM test. This quicker identification and correction of high emitting EGUs will lead to less pollution emitted and lower pollutant exposure for local communities. In addition to significant value of more efficient pollution abatement, transparency of EGU emissions as provided by PM CEMS, along with real-time assurance of compliance has intrinsic value to the public and communities as well as instrumental value in holding sources accountable.

Since promulgation of MATS, two important developments in the PM CEMS industry have occurred, which the EPA identified as part of this technology review: cessation of beta gauge PM CEMS manufacturing and reduced overall costs for non-beta gauge PM CEMS instruments and installation. These two occurrences have reduced the current one-time costs for PM CEMS, making their use even more cost-effective. As shown in Table 4 below, average non-beta gauge instrument and installation costs obtained from representatives of the Institute of Clean Air Companies (ICAC), a trade association consisting of air pollution control and measurement and monitoring system manufacturers and of environmental equipment and service providers, and from Envea/Altech, a PM CEMS manufacturer and vendor, show about a 48 percent reduction (from $109,420 to $57,095) from average comparable costs determined from the EPA's CEMS Cost Model and Monitoring Cost/Benefit Analysis Tool (MCAT).

TABLE 4—NON-BETA GAUGE PM CEMS COST ESTIMATES USING M5I FOR PS 11

Data source	PM CEMS type	One time costs, $		Annual costs, $				EUAC, $
		Instrument and installation	Other initial costs	Capital recovery	Operation and maintenance	Audits	Other annual costs	
EPA MCAT	In situ	119,295	81,220	22,016	1,558	54,877	11,219	89,670
	Extractive	152,850	81,220	25,700	2,579	54,877	12,241	95,397
EPA CEMS Cost Model	In situ	65,107	79,813	15,912	2,689	54,392	6,525	79,518

[28] See the supporting statement 2137ss06.docx in ICR reference number 201202–2060–005 at OMB Control Number 2060–0567.

[29] See 77 FR 42375, July 18, 2012.

TABLE 4—NON-BETA GAUGE PM CEMS COST ESTIMATES USING M5I FOR PS 11—Continued

Data source	PM CEMS type	One time costs, $		Annual costs, $				EUAC, $
		Instrument and installation	Other initial costs	Capital recovery	Operation and maintenance	Audits	Other annual costs	
	Extractive	100,427	84,458	20,300	3,689	54,392	7,525	85,906
Average		109,420	81,678	20,982	2,629	54,635	9,378	87,623
ICAC	Low	35,000		3,843	12,000	14,290		30,133
	High	40,000		4,392	12,000	14,290		30,682
Envea/Altech	Dry	34,743		3,821		14,290		18,111
	Wet	118,585		13,020		14,290		27,310
Average		57,095		6,269	12,000	14,290		32,559

Generally, EPA models include other initial costs associated with PM CEMS installation, including those associated with planning, selecting equipment, and conducting correlation testing, in its models; such one-time costs are annualized along with instrument and installation costs. The proposed lower fPM emission limit will require longer duration runs for M5 testing and may require the use of M5I, which was designed for PM CEMS correlation testing at low fPM levels. Initial costs in Table 4 for M5I emission testing are $58,000; such testing includes 18 runs of 3-hour duration spread over 9 total days. PM CEMS correlation testing for the proposed lower fPM levels using M5 is estimated to be $41,000. Of course, the quarterly testing run durations would need to increase if PM CEMS were not used; annual cost for M5 testing with 3 hour run duration is estimated to be $85,127 ($82,000 for testing, and $3,127 for 24 hours of site technical support); quarterly testing using M5I with runs of similar duration is estimated to be $107,127. However, neither ICAC nor Envea/Altech explicitly included those costs as line items in their estimates. This does not necessarily mean that such costs have been excluded; if such costs have been included, then the estimates do not change, but if such costs have not been included, the estimates may increase. Their average capital recovery cost, determined from the sum of the instrument, installation, and other initial costs amortized over 15 years at a 7 percent interest rate, is about 70 percent lower than that obtained from the average capital recovery cost obtained from the EPA models. As shown in the table, EPA models also include annual costs for operation and maintenance, relative response and correlation audits, and other items such as reporting and recordkeeping. The sum of those items plus the capital recovery cost yields EUAC of PM CEMS. ICAC includes operation and maintenance as a line item in its annual costs, but neither ICAC nor Envea/Altech include audits or other items in their annual costs estimates. Because EPA believes some EGUs may require PM spiking—an approach that involves introducing known amounts of fPM to increase fPM concentration without altering control device equipment—the EPA added $14,290 (the annualized cost of conducting $35,000 p.m. spiking every 3 years at an interest rate of 7 percent) to the audit portion of all entries. As mentioned earlier, omission of specifically named costs does not necessarily mean that those costs have been excluded; rather these costs may be included in other listed costs. Using the data provided and explained above, the average EUAC for PM CEMS that rely on M5I correlation testing is about 63 percent lower than the average EUAC from EPA models (from $87,623 to $32,559). Given that the annual cost of quarterly M5 testing for fPM is now estimated to be $85,127, annualized other one-time costs and operation and maintenance, audits, and other annualized costs—if omitted by the manufacturers—would have to be more than $52,568 for PM CEMS to be less cost-effective than quarterly testing.

As mentioned in the proposed Portland Cement NESHAP from 10 years ago (see 77 FR 42374, July 18, 2012), the EPA was aware of the potential difficulty use of PM CEMS might have created in determining compliance for that rulemaking due to the low end of emission limits (0.04 lb/ton clinker, which translates to a range of about 5 to 8 mg/dscm, depending on particle characteristics) and to the short duration of emission test runs. The EPA addressed those concerns for that rulemaking by proposing to raise the emission limit to 0.07 lb/ton clinker, which translated to a range of about 7 to 14 mg/dscm, and to no longer require PM CEMS use; instead, owners or operators would use their PM CEMS as PM CPMS. Even so, the durations of test runs used to develop the correlation of the instrument with the emissions limit remained unchanged, at about 1 hour per run. Such short run durations led to inherent measurement uncertainty accounting for more than half the emission limit at the expected portland cement plant operating condition, leading some to question whether values provided by instrumentation were appropriately related to emissions.

The conditions experienced by portland cement facilities that required revisions to emission limits and compliance determination method are not similar to those expected to be faced by EGU owners or operators subject to MATS. First, the fuel used by coal-fired EGUs is more uniform and its characteristics are more consistent than those of the fuel and additive mixtures used by portland cement kilns. Such fuel combustion particle consistency allows technologies such as light scattering and scintillation, in addition to beta gauges, to be used by PM CEMS for compliance determination purposes. Moreover, consistent fPM particle characteristics for EGUs provide stable correlations for those EGUs with existing PM CEMS; while the fPM particle characteristics provide correlations that remain within specifications, as evidenced by ongoing relative correlation audits, the existing correlations do not change and can continue to be used now and in the future without having to develop a new correlation. Second, the proposed MATS emission limit of 1.0E–02 lb/MMBtu, which translates to about 7.3 mg/dscm, coupled with a minimum sampling collection time of 3 hours per run, based on a typical sampling rate of ¾ cubic feet per minute, avoids the measurement problems described by the Portland Cement NESHAP by reducing the average inherent measurement uncertainty for half of the proposed emission limit (where the EGU is expected to operate) from more than 50 to 80 percent. In addition, use of 3 hour

run durations would allow for a 6.0E–03 lb/MMBtu (or about 4.4 mg/dscm) MATS emission limit, which the EPA is seeking comment on, to have an average inherent measurement uncertainty due to random error of 14 percent at the target PM CEMS operational limit of 3.0E–03 lb/MMBtu. As shown, inherent measurement uncertainty does not appear to be problematic for the primary proposed emission limit, but, as mentioned earlier, some PM CEMS may have difficulty meeting the inherent measurement uncertainty—specifically, the average random error component—of the alternative proposed emission limit. Note that the primary proposed MATS emission limit is just above the fPM limit for new EGUs, as 9.0E–02 lb/MWh on an electrical output basis translates to about 9.0E–03 lb/MMBtu on a heat input basis. MATS requires use of PM CEMS for new EGUs, along with minimum sampling collection time of 3 hours per run.[30] Proposed use of runs of at least 3 hour durations and emission limits of 1.0E–02 lb/MMBtu would be consistent with run durations and limits already in MATS. Third, Performance Specification 11 (PS 11), which provides procedures and acceptance criteria for validating PM CEMS technologies, already anticipates and includes approaches for developing low-level emission correlations for PM CEMS. Those techniques include varying process operations; varying fPM control device conditions; PM spiking zero point methods when the previous techniques are not able to provide the 3 distinct fPM concentration levels. As mentioned earlier, average costs for fPM spiking are about $35,000 every 3 years, or $14,290 annually at an interest rate of 7 percent, and not every EGU will need to adjust its existing correlation in order to continue to use its existing PM CEMS to demonstrate compliance with the proposed limits; however, for purposes of this proposal, costs for spiking will be included in annual PM CEMS cost estimates. In addition to these techniques to aid PM CEMS use for rules with low level emissions, the EPA is aware that the Electric Power Research Institute (EPRI) began working with an instrument manufacturer in 2009, prior to MATS promulgation, to develop a National Institute of Standards and Technology (NIST) traceable aerosol generator that injects known particle size distribution and mass into PM CEMS. Such an instrument, known as a Quantitative Aerosol Generator (QAG), would allow direct PM CEMS calibration, as opposed to the development of a curve that provides a correlation for the PM CEMS.[31] That study relied on six emission rates, four of which were at or under 5 mg/dscm, and reported successful sample collection and transport. EPRI continued this work and provided a technical update in 2014,[32] but the EPA is unaware of specific recommendations or suggestions regarding QAG application to PM CEMS. While we believe the use of the QAG could lower fPM monitoring costs for PM CEMS use, we seek more information on its application for lower fPM limits as measured by PM CEMS; specifically, we solicit comment on whether implementation of the QAG is another reason that PM CEMS costs have decreased.

For these reasons, we propose to require the use of PM CEMS as the method to demonstrate compliance with the fPM emissions limit for coal-fired and IGCC EGUs pursuant to the EPA's authority under CAA section 112(d)(6). If our proposal is finalized, EGU owners or operators currently relying on quarterly PM emissions testing would need to install, operate, and maintain PM CEMS. Such a switch is projected to be more cost-effective, more informative, and more effective in assuring compliance than use of quarterly testing. Those EGU owners or operators already using PM CEMS as their means of compliance determination would maintain their current approach; while some may have no need for additional expenditures, the proposal includes the costs associated with revised and ongoing correlation testing and spiking for all EGUs. Since a proposed requirement for use of PM CEMS renders the current compliance option for the LEE program superfluous, the EPA proposes to remove the individual and total non-Hg metal HAP and the surrogate fPM from the LEE program for all MATS-affected EGUs and solicits comments on removing these limits.

The EPA seeks comment on distinctions between portland cement plants and EGUs that would facilitate PM CEMS use at EGUs. Specifically, the EPA seeks comment on the ability, type, and capabilities of PM CEMS to accurately measure fPM emissions at the levels proposed in this rule. Moreover, the EPA seeks comment on additional or other approaches that could be employed to facilitate PM CEMS use for the proposed emission levels. Specific comments on direct PM CEMS calibration methods, such as the QAG, as well as limitations, are welcome.

The EPA solicits comment on the availability of beta gauge instruments, on the current average costs of non-beta gauge PM CEMS instruments and installation, on ICAC's annual costs, and on Envea/Altech's annual costs. When commenting on EPA model estimates or ICAC's or Envea/Altech's estimates, please provide specific PM CEMS instrument type, manufacturer, and model; cost information broken down by initial cost including instrument type and installation cost, and annual cost, including operation and maintenance, audit, and other costs in your comments. Moreover, please identify in your comments specific items included in your cost information, such as installation, operation, and maintenance provisions. The EPA also solicits comment on the cost-effectiveness of PM CEMS as compared to quarterly PM emissions testing. Also, the EPA solicits comment on the availability of PM CEMS and their use for compliance purposes, especially when compared to less frequent, more expensive measures.

The EPA is aware that some EGUs may be on enforceable schedules to cease operations, which may be just beyond the three-year compliance date the EPA proposes for PM CEMS monitoring requirements in section V.E, below, and that owners or operators of EGUs may be unable to recoup investments in PM CEMS if the instruments are not in operation for at least a certain period of time beyond their installation date. Therefore, the EPA seeks comment on whether EGUs should be able to continue to use quarterly emissions testing past the proposed compliance date for a certain period of time or until EGU retirement, whichever occurs first, provided the EGU is on an enforceable schedule for ceasing coal- or oil-fired operation. In addition, the EPA seeks comment on what would qualify as an enforceable schedule, such as that contained in the Agency's ''EGUs Permanently Ceasing Coal Combustion by 2028'' included in the 2020 Steam Electric ELG Reconsideration Rule (85 FR 64640, 64679, and 64710; 10/13/2020), as well as what the maximum duration of operation using quarterly emissions testing for compliance purposes should be.

[30] See Table 1 to subpart UUUUU of 40 CFR part 63. At a typical sampling rate of ¾ cubic foot per minute, a run would require 3 hours to collect at least 4 cubic meters of sample.

[31] See *A Qualitative Aerosol Generator Designed for Particulate Matter (PM) Continuous Emissions Monitoring Systems (CEMS) Calibration,* available at *www.epri.com/research/products/1017574.*

[32] See *Quantitative Aerosol Generator (QAG) for Calibration of Particulate Monitors: 2014 Technical Update,* available at *www.epri.com/research/products/3002003343.*

3. Review of the Hg Emission Standards

a. Overview of Hg Emissions From Combustion of Coal

Mercury is a naturally occurring element found in small and varying quantities in coal. During combustion of coal, Hg is volatilized and converted to elemental Hg vapor (Hg^0) in the high temperature regions of the boiler. Hg^0 vapor is difficult to capture because it is typically nonreactive and insoluble in aqueous solutions. However, under certain conditions, the Hg^0 vapor in the flue gas can be oxidized to divalent Hg (Hg^{2+}). The Hg^{2+} can bind to the surface of solid particles (*e.g.,* fly ash) in the flue gas stream, often referred to as ''particulate bound Hg'' (Hg_p), and be removed in a downstream PM control device. Oxidized Hg compounds can also be soluble and can be removed in a wet scrubber. The presence of chlorine in gas-phase equilibrium favors the formation of mercuric chloride ($HgCl_2$) at flue gas cleaning temperatures. However, Hg^0 oxidation reactions are kinetically limited as the flue gas cools and, as a result, Hg often enters the flue gas cleaning device(s) as a mixture of Hg^0, Hg^{2+} compounds, and Hg_p. This partitioning into various species of Hg has considerable influence on selection of Hg control approaches. In general, because of the presence of higher amounts of halogen (especially chlorine) in bituminous coals, most of the Hg in the flue gas from bituminous coal-fired boilers is in the form of Hg^{2+} compounds, typically $HgCl_2$ and is more easily captured in downstream control equipment. Conversely, both subbituminous coal and lignite have lower halogen content, compared to that of bituminous coals, and the Hg in the flue gas from boilers firing those fuels tends to be in the form of Hg^0 and is more challenging to control in downstream control equipment.

Fly ash is typically classified as acidic (pH less than 7.0), mildly alkaline (pH greater than 7.0 to 9.0), or strongly alkaline (pH greater than 9.0). The pH of the fly ash is usually determined by the calcium/sulfur ratio and the amount of halogen. The ash from bituminous coals tends to be acidic due to the relatively higher sulfur and halogen content and the glassy (nonreactive) nature of the calcium present in the ash. Conversely, the ash from subbituminous and lignite coals tends to be more alkaline due to the lower amounts of sulfur and halogen and a more alkaline and reactive (non-glassy) form of calcium in the ash. The natural alkalinity of the subbituminous and lignite fly ash can effectively neutralize the limited free halogen in the flue gas and prevent oxidation of the Hg^0.

Some coal-fired power plants—especially those firing bituminous coal—achieve some level of Hg emissions control using existing equipment that was installed to remove other pollutants, including PM, SO_2, and nitrogen oxides (NO_X). Particulate-bound Hg (Hg_p) is effectively removed along with PM in PM control equipment such as FFs and ESPs. Soluble Hg^{2+} compounds (such as $HgCl_2$) can be effectively captured in wet FGD systems. And, while a selective catalytic reduction (SCR) system that has been installed for NO_X control does not itself capture Hg, it can under the right conditions enhance the oxidation of Hg^0 in the flue gas for increased Hg removal in a downstream PM control device or in a wet FGD scrubber.

However, because the Hg in their flue gas tends to be present in the non-reactive Hg^0 phase, EGUs firing subbituminous coal or lignite often get little to no control from equipment designed and installed for other pollutants. While some bituminous coal-fired EGUs require use of additional Hg-specific control technology, such as injection of a sorbent or chemical additive, to supplement the control that these units already achieve from criteria pollutant control equipment, these Hg-specific control technologies are often required as part of the Hg emission reduction strategy at EGUs that are firing subbituminous coal or lignite. As mentioned, the Hg in the flue gas for those EGUs tends to be in the non-reactive Hg^0 phase due to lack of free halogen to promote the oxidation reaction. To alleviate this challenge, activated carbon and other sorbent providers and control technology vendors developed methods to introduce halogen into the flue gas to improve the control of Hg emissions from EGUs firing subbituminous coal and lignite. This was primarily through the injection of pre-halogenated (often pre-brominated) activated carbon sorbents or through the injections of halogen-containing chemical additives along with conventional sorbents. This challenge to controlling Hg emissions was a challenge for EGUs firing subbituminous coal and for EGUs firing lignite.

b. Hg Emission Standards in the 2012 MATS Final Rule

In the 2012 MATS Final Rule, the EPA promulgated a beyond-the-floor standard for Hg for the subcategory of existing coal-fired units designed for low rank virgin coal (*i.e.,* lignite) based on the use of ACI for Hg control. See 77 FR 9304, February 16, 2012. The EPA established a final Hg emission standard of 4.0 pounds of Hg per trillion British thermal units of heat input (lb Hg/TBtu) for lignite-fired utility boilers. The EPA promulgated a final Hg emission standard for EGUs firing non-lignite coals, including bituminous and subbituminous coal, of 1.2 lb Hg/TBtu.

Under CAA section 112(d)(1), the Administrator has the discretion to ''distinguish among classes, types, and sizes of sources within a category or subcategory'' in establishing standards. Any basis for subcategorization must be related to an effect on HAP emissions that is due to the difference in class, type, or size of the units. See 76 FR 25036–25037.

When developing the MATS rule, the EPA examined available Hg emissions data from coal-fired EGUs and found that there were no lignite-fired EGUs among the top performing 12 percent. The EPA then determined that the difference in the emissions from the lignite-fired EGUs was due to a difference in the class, type, or size of those units and finalized two subcategories of coal-fired EGUs for Hg emissions. See 76 FR 25036–67. The EPA considered basing the subcategory definition solely on an EGU (1) being designed to burn lignite and (2) burning lignite. However, the EPA decided not to do so because of the concern that such a definition would allow sources to potentially meet the definition by combusting very small amounts of low rank virgin lignite. In the preamble of the 2012 MATS Final Rule, the EPA suggested a scenario where an EGU that was not designed to burn lignite and did not routinely burn lignite could import one truck full of low rank virgin coal and burn a very small quantity of it periodically to meet the subcategory definition. To avoid creating this potential loophole, the EPA also finalized a requirement that the unit be constructed and operated at or near a mine containing the low rank virgin coal it burns. The EPA indicated that the final definition would prevent other EGUs that are not firing lignite from complying with the less stringent Hg emission standard. The final definition, as specified in the 2012 MATS Final Rule (77 FR 9369, February 16, 2012), was: ''*Unit designed for low rank virgin coal* subcategory means any coal-fired EGU that is designed to burn and that is burning non-agglomerating virgin coal having a calorific value (moist, mineral matter-free basis) of less than 19,305 kJ/kg (8,300 Btu/lb) that is constructed and operates at or near the mine that produces such coal.''

c. Beyond-the-Floor Analysis for the 2012 MATS Final Rule

For the 2012 MATS Final Rule, the EPA calculated beyond-the-floor costs for Hg controls by assuming injection of brominated activated carbon at a rate of 3.0 pounds of sorbent per million actual cubic feet of flue gas (lb/MMacf) for lignite-fired EGUs with an ESP for PM control and at an injection rate of 2.0 lb/MMacf for lignite-fired units with a baghouse (also known as a fabric filter, FF). The sorbent injection rate of 2.0 lb/MMacf for lignite-fire units with FFs is consistent with the rate assumed for all other coal types. The EPA assumed a sorbent injection rate of 3.0 lb/MMacf for lignite-fired units with ESPs, which is lower than the sorbent injection rate of 5.0 lb/MMacf that the EPA assumed for EGUs firing using other (non-lignite) coal types. In the Beyond-the-Floor Memo (see Docket ID No. EPA–HQ–OAR–2009–0234–20130), the EPA indicated that this lower sorbent injection rate was appropriate, because a higher rate would likely result in Hg emission reductions greater than those needed to meet the beyond-the-floor standard of 4.0 lb/TBtu noting that greater than 90 percent control can be achieved at lignite-fired units at a 2.0 lb/MMacf injection rate for units with installed FF and using treated (*i.e.,* brominated) activated carbon or at an injection rate of 3.0 lb/MMacf for units using treated activated carbon with installed ESPs.

Petitioners challenged the beyond-the-floor standard for lignite-fired EGUs, claiming that the final standard is not achievable because they asserted that the standard would require unrealistically high levels of Hg reduction. In *White Stallion* v. *EPA,* the Court of Appeals of the District of Columbia Circuit rejected petitioners' challenge to the final beyond-the-floor standard on the basis that the EPA had adequately concluded during the rulemaking process that the standard for lignite units were achievable if sources increased their use of a particular control technology, ACI. *See White Stallion Energy Center, LLC* v. *EPA,* 748 F.3d 1222, 1251 (D.C. Cir. 2014).

d. Hg Emission Reductions Since Promulgation of the 2012 MATS Final Rule

The EPA estimated annual Hg emissions from coal-fired power plants in 2010 (pre-MATS) to be 29 tons.[33] In 2017, after full implementation of the MATS rule, the EPA estimated Hg emissions had been reduced to 4 tons, an 86 percent decrease.[34] This decline was due to the installation and use of Hg controls as well as other significant changes in the power sector (*e.g.,* coal plant retirements, increase use of natural gas and renewable energy, *etc.*) in the same time period.

i. Hg Emissions From Coal-Fired EGUs in 2021

Hg emission reductions have continued to decline since 2017 as more coal-fired EGUs have retired or reduced utilization. The EPA estimated that 2021 Hg emissions from coal-fired EGUs were 3 tons (a 90 percent decrease compared to pre-MATS levels).[35] However, units burning lignite coal (or permitted to burn lignite) accounted for a disproportionate amount of the total Hg emissions in 2021. As shown in Table 5 below, 16 of the top 20 Hg-emitting EGUs were lignite-fired EGUs. Overall, lignite-fired EGUs were responsible for almost 30 percent of all Hg emitted from coal-fired EGUs in 2021, while generating about 7 percent of total 2021 megawatt-hours. Lignite accounted for 8 percent of total U.S. coal production in 2021.

TABLE 5—TOP HG-EMITTING EGUS IN 2021

Rank	EGU	Fuel	2021 Hg emissions (lb)	State
1	Coal Creek 2	Lignite	181.8	ND
2	Coal Creek 1	Lignite	175.6	ND
3	Oak Grove 2	Lignite	149.8	TX
4	Martin Lake 3	Lignite/Subbituminous	134.4	TX
5	Oak Grove 1	Lignite	112.7	TX
6	Martin Lake 2	Lignite/Subbituminous	111.0	TX
7	Milton R Young B2	Lignite	103.1	ND
8	Martin Lake 1	Lignite/Subbituminous	100.7	TX
9	Antelope Valley B2	Lignite	89.8	ND
10	Coyote B1	Lignite	79.9	ND
11	H W Pirkey Power Plant 1 *	Lignite/Subbituminous	71.1	TX
12	Antelope Valley B1	Lignite	69.6	ND
13	San Miguel SM–1	Lignite	64.6	TX
14	Sandy Creek Energy Station S01	Subbituminous	53.5	TX
15	Limestone LIM2	Lignite/Subbituminous	52.5	TX
16	Milton R Young B1	Lignite	52.4	ND
17	Comanche 3	Subbituminous	50.3	CO
18	Leland Olds 2	Lignite	50.1	ND
19	James H Miller Jr 3	Subbituminous	42.9	AL
20	Labadie 2	Subbituminous	42.5	MO

* This unit has announced its intention to retire in 2023.

ii. Limited CAA Section 114 Request

In May 2021, pursuant to authority in section 114 of the CAA, 42 U.S.C. 7414(a), the EPA solicited information related to Hg emissions and Hg control technologies from certain lignite-fired EGUs to inform this CAA section 112(d)(6) technology review. The selected lignite-fired EGUs were asked

[33] Memorandum: Emissions Overview: Hazardous Air Pollutants in Support of the Final Mercury and Air Toxics Standard. EPA–454/R–11–014. November 2011; Docket ID No. EPA–HQ–OAR–2009–0234–19914.

[34] 2017 Power Sector Programs Progress Report; available at *https://www.epa.gov/sites/default/files/2019-12/documents/2017_full_report.pdf* and in the rulemaking docket.

[35] 2021 Power Sector Programs Progress Report; available at *https://www3.epa.gov/airmarkets/progress/reports/pdfs/2021_full_report.pdf* and in the rulemaking docket.

to provide information on their control configuration for Hg and for other air pollutants (*e.g.,* criteria pollutants such as PM, NO_X, SO_2). Selected information on lignite-fired EGU control configurations that was obtained from the CAA section 114 information request is shown below in Table 6. Additional information on the location, size (capacity), firing configuration, and control configuration of lignite-fired EGUs (including those few that were not included in the CAA section 114 information request) is also included. The additional information was obtained from the EPA's NEEDS database.[36]

TABLE 6—CONTROL CONFIGURATIONS FOR LIGNITE-FIRED EGUS

Plant name	State	Capacity (MW)	Firing	Control configuration	Hg control description	Hg control
Antelope Valley #1	ND	450	tangent	ACI + SDA + FF	Does not use activated carbon as its sorbent, instead injects a liquid sorbent to the scrubber. The facility stopped using refined coal in December 2021.	Nalco non-carbon, non-halogenated liquid sorbent added to dry scrubber; M-Sorb additive (bromide).
Antelope Valley #2	ND	450	tangent	ACI + SDA + FF.		
Coal Creek #1	ND	574	tangent	ACI + ESPC + WFGD	Information not collected in the CAA 114 request.	
Coal Creek #2	ND	573	tangent	ACI + ESPC + WFGD.		
Coyote	ND	429	cyclone	ACI + SDA + FF	Information not collected in the CAA 114 request.	
Leland Olds #1	ND	222	wall	SNCR + ACI + ESPC + WFGD.	Activated carbon and oxidizer injections for Hg control.	ME2C SEA SF10 Oxidizer and SB24 Activated Carbon.
Leland Olds #2	ND	445	cyclone	SNCR + ACI + ESPC + WFGD.		
Milton R Young #1	ND	237	cyclone	SNCR + ACI + ESPC + WFGD.	Hg controlled by Powdered Activated Carbon Injection plus Oxidizing Agent/Halogen Injection System.	DARCO Hg-H non-halogenated Powdered Activated Carbon + ADA M-Prove additive.
Milton R Young #2	ND	447	cyclone	SNCR + ACI + ESPC + WFGD.		
Spiritwood Station	ND	92	FBC	SNCR + ACI + SDA + FF.	Hg emissions are controlled by activated carbon injection system and a CEMS. The activated carbon injection feed rate is adjusted to maintain emissions below the 4.0 lb/TBtu standard.	Activated Carbon sorbent (not specified).
Limestone #1	TX	831	tangent	SNCR + ACI + ESPC + WFGD.	Information not collected in the CAA 114 request.	
Limestone #2	TX	858	tangent	SNCR + ACI + ESPC + WFGD.		
Major Oak #1	TX	152	FBC	Reagent Injection + SNCR + ACI + FF.	Hg is controlled by the introduction of activated carbon into each boiler duct directly in front of the baghouse. A halogen fuel additive is also applied to the lignite before it enters the day silos.	Cabot DARCO Hg-H non-Brominated AC + ADA–ES M-Prove additive.
Major Oak #2	TX	153	FBC	Reagent Injection + SNCR + ACI + FF.		
Martin Lake #1	TX	800	tangent	ACI + ESPC + WFGD	Brominated additive injected into the furnace and activated carbon injected upstream of the air heater. In 2020 and 2021 Refined Coal System applied an aqueous bromine salt solution to the coal.	ME2C SEA process (non-Brominated AC + chemical additive).
Martin Lake #2	TX	805	tangent	ACI + ESPC + WFGD.		
Martin Lake #3	TX	805	tangent	ACI + ESPC + WFGD.		
Oak Grove #1	TX	855	tangent	SCR + ACI + FF + WFGD.	Brominated activated carbon injected downstream of the air heater. From 2018 to 2021, the unit was equipped with a Refined Coal System for Hg control. This system applied an aqueous bromine salt solution to the coal downstream of the crusher. The refined coal system is no longer in service.	ADA–CS Br–AC.
Oak Grove #2	TX	855	wall	SCR + ACI + FF + WFGD.		
Red Hills #1	MS	220	FBC	Reagent Injection + ACI + FF.	Hg is controlled by injection of activated carbon into each boiler duct directly in front of the baghouse. A fuel additive is also applied to the lignite before it enters the day silos. The application of fuel additives ended in December 2021.	ADA–CS non-Br AC + ADA–ES M45 liquid additive.
Red Hills #2	MS	220	FBC	Reagent Injection + ACI + FF.		

[36] National Electric Energy Data System (NEEDS) v621 rev: 10–14–22, available at: *https://www.epa.gov/power-sector-modeling/national-electric-energy-data-system-needs-v6.*

TABLE 6—CONTROL CONFIGURATIONS FOR LIGNITE-FIRED EGUS—Continued

Plant name	State	Capacity (MW)	Firing	Control configuration	Hg control description	Hg control
San Miguel	TX	391	wall	SNCR + ACI + ESPC + WFGD.	Hg is captured using a sorbent enhanced additive (SEA) injected onto the lignite at the pulverizer feeders or directly into the furnace to promote the oxidation and capture of Hg. This is followed by an ACI system located in the boiler exit duct work upstream of the air heaters. The scrubber system also reduces Hg emissions.	ME2C SEA process (non-Br AC + powder-based chemical additive).

Note: ACI = activated carbon injection; SDA = spray dryer absorber (dry scrubber); FF = fabric filter; ESPC = cold side electrostatic precipitator; WFGD = wet flue gas desulfurization scrubber; SNCR = selective non-catalytic reduction (NO_X control); reagent injection = sorbent injection into fluidized bed combustor.

Most, but not all, of the EGUs utilized a combination of the use of a chemical additive and injection of a sorbent as their Hg control strategy. One facility in North Dakota (Antelope Valley) uses a liquid sorbent that is injected to the SO_2 scrubber (spray dryer absorber, SDA). Many of the EGUs used ''refined coal.'' Refined coal is typically produced by mixing proprietary additives to feedstock coal to help capture emissions when the coal is burned. For example, these additives may promote the oxidation of Hg to Hg^{2+} compounds for capture in downstream control equipment (*e.g.,* FGD scrubbers, PM control devices). Several of the facilities noted that use of refined coal as a part of their Hg control strategy was discontinued at the end of 2021 when the refined coal production tax credit (created by the American Jobs Creation Act of 2004) expired. According to a U.S. Government Accountability Office audit report, refined coal producers claimed approximately $8.9 billion in tax credits between 2010 and 2020.

According to fuel use information supplied to EIA (on form 923), 13 of 22 EGUs that were designed to burn lignite utilized refined coal to some extent in 2021, as summarized in Table 7. EIA form 923 does not specify the type of coal that is ''refined'' when reporting boiler or generator fuel use. For this technology review, the EPA has assumed that the facilities have utilized ''refined lignite,'' as reported in fuel receipts on EIA form 923. However, several ''lignite-fired EGUs'' located in Texas reported very high use of subbituminous coal in 2021 (ranging from 76 percent up to > 99 percent).

TABLE 7—2021 FUEL USE AT LIGNITE-FIRED EGUS

Plant name	Distillate fuel oil (%)	Natural gas (%)	Lignite coal (%)	Refined coal (%)	Subbituminous coal (%)
Antelope Valley 1	0.0	0.6	5.8	93.5	0.0
Antelope Valley 2	0.0	0.6	5.8	93.5	0.0
Coal Creek 1	0.1	0.0	0.0	99.9	0.0
Coal Creek 2	0.1	0.0	0.0	99.9	0.0
Coyote 1	0.3	0.0	99.7	0.0	0.0
Leland Olds 1	0.3	0.0	37.6	62.1	0.0
Leland Olds 2	0.3	0.0	6.2	93.6	0.0
Milton R Young 1	0.4	0.0	17.0	82.6	0.0
Milton R Young 2	0.2	0.0	12.1	87.6	0.0
Spiritwood Station 1	0.0	35.6	0.0	64.4	0.0
Limestone 1	0.0	0.2	0.0	0.0	99.8
Limestone 2	0.0	0.8	0.0	0.0	99.2
Major Oak Power 1	0.0	0.2	99.8	0.0	0.0
Major Oak Power 2	0.0	0.0	100.0	0.0	0.0
Martin Lake 1	0.1	0.0	23.5	0.0	76.4
Martin Lake 2	0.1	0.0	22.4	0.0	77.5
Martin Lake 3	0.1	0.0	19.2	0.0	80.6
Oak Grove 1	0.0	1.9	3.4	94.7	0.0
Oak Grove 2	0.0	0.0	3.7	96.3	0.0
Red Hills Generating Facility 1	0.0	0.3	0.0	99.7	0.0
Red Hills Generating Facility 2	0.0	0.3	0.0	99.7	0.0
San Miguel 1	0.2	0.0	99.8	0.0	0.0

e. CAA Section 112(d)(6) Technology Review of the Hg Standards

i. Review of the Hg Emission Standard for Non-Lignite-Fired EGUs

The final MATS Hg emission limit for EGUs firing non-lignite coals (*i.e.,* bituminous and subbituminous coals) is 1.2 lb Hg/TBtu. To review that emission standard, the EPA evaluated the 2021 performance of EGUs firing non-lignite coals and found that EGUs firing primarily bituminous coal emitted Hg at an average annual rate of 0.4 lb Hg/TBtu (with a range of roughly 0.2 to 1.2 lb Hg/TBtu). EGUs firing primarily subbituminous coal in 2021 (not including those EGUs that are permitted to burn lignite but burned a significant amount of subbituminous coal) emitted Hg at an average annual rate of 0.6 lb Hg/TBtu (with a range of 0.1 to 1.2 lb/TBtu). This represents a control range of 98 to 77 percent (assuming an average inlet concentration of 5.5 lb/TBtu). The EPA has information on the control configurations of these non-lignite

EGUs. However, because the non-lignite-fired EGUs were not included in the limited CAA section 114 information collection, the EPA does not have detailed information on the type of sorbent injected (*e.g.,* activated carbon or non-carbonaceous; pre-halogenated, *etc.*). The EPA also does not have detailed information on the injection rate of sorbents used for Hg control (if any). Similarly, the EPA does not have information on the type of quantity of chemical additives used (if any). However, the bituminous coal-fired EGUs are already achieving an average annual rate of 0.4 lb/TBtu and the subbituminous coal-fired EGUs are already achieving an average annual rate of 0.6 lb/TBtu. The typical Hg control performance curves for sorbent injection show a leveling off such that increasing the amount of sorbent results in diminishing improvement in Hg control. Based on full-scale demonstration testing of Hg sorbents, this leveling off typically takes place somewhere greater than 90 percent capture. Without knowing the type of sorbent being injected or the rate of the sorbent injection, it is difficult to determine whether additional emission reductions could be achieved in a cost-effective manner. For bituminous coal-fired EGUs that do not utilize sorbent injection but rely on co-benefit control from equipment installed for criteria pollutants, it is difficult to determine whether additional Hg emission reduction could be obtained in a cost-effective manner with knowledge of the levels of Hg control achieved in each of the installed controls and, if chemical additives are injected, the type and rate of chemical additive injection. For those reasons, the EPA is not proposing to adjust the Hg emission standard for non-lignite-fired EGUs at this time. However, the EPA solicits comment on the performance of Hg controls for non-lignite-fired EGUs, including information on the type and injection rate of sorbents used for Hg control, as well as the possibility of additional cost-effective measures to further reduce Hg from equipment installed for criteria pollutants. The EPA also seeks comment on whether there would be a reasonably efficient way to more thoroughly survey the types of controls—including the types of sorbents used and their injection rates—used to limit Hg emissions at non-lignite-fired EGUs, and whether conducting such additional information collection would be worthwhile.

In addition, the EPA notes that several states have adopted Hg reduction standards that go beyond the 2012 MATS Final Rule in their reduction target. For instance, Connecticut, Minnesota, Montana, New York, Oregon, and Utah all established input-based Hg limits below 1.2 lb/TBtu. For further detail on all 18 states with existing Hg emissions limits, see Chapter 3 of EPA's IPM documentation, available in the docket. The EPA solicits information about the cost and effectiveness of control strategies that EGUs in these states utilize to meet more stringent Hg emission standards than those promulgated in the 2012 MATS Final Rule, as well as any other available control strategies that the EPA should consider and their costs.

ii. Review of the Hg Emission Standard for Lignite-Fired EGUs

The final MATS Hg emission limit for EGUs firing lignite coal is 4.0 lb Hg/TBtu—more than three times the standard for non-lignite coal. To review that emission standard, the EPA evaluated the data obtained in the 2022 CAA section 114 data survey along with the emissions data reported to the EPA and the fuel use data submitted to EIA. The 2021 performance of lignite-fired EGUs (including those permitted to burn lignite but that utilized significant amounts of subbituminous coal in 2021) is shown in Table 8 below. The table shows a ''Hg Inlet'' level which reflects the maximum Hg content of the range of feedstock coals that the EPA assumes is available to each of the plants in the Integrated Planning Model, IPM,[37] the estimated control (percentage) needed to meet an emission standard of 4.0 lb Hg/TBtu (the current standard for lignite-fired EGUs) and the estimated control (percentage) to meet an emission standard of 1.2 lb Hg/TBtu (the current standard for non-lignite-fired EGUs). The table also shows the estimated 2021 Hg inlet concentration from actual 2021 fuel usage (as mentioned earlier, some units utilized significant quantities of non-lignite fuel, *e.g.,* subbituminous coal, natural gas, *etc.*) and the 2021 Hg emissions reported to the EPA. The EPA then estimated the apparent level of Hg control for 2021 and the level of control that would been needed to achieve the emission standard applicable to the non-lignite-firing EGUs (1.2 lb Hg/TBtu).

TABLE 8—HG EMISSIONS AND CONTROL PERFORMANCE OF LIGNITE-FIRED EGUS IN 2021

Plant name	Hg inlet (lb/TBtu)	Est Hg control at 4.0 lb/TBtu (%)	Est Hg control at 1.2 lb/TBtu (%)	Est 2021 Hg inlet (lb/TBtu)	2021 Hg outlet (lb/TBtu)	Est 2021 Hg control (%)	Est 2021 Hg control at 1.2 lb/TBtu (%)
Antelope Valley #1	7.81	48.8	84.6	7.76	2.87	63.0	84.5
Antelope Valley #2	7.81	48.8	84.6	7.76	2.74	64.6	84.5
Coal Creek #1	7.81	48.8	84.6	7.80	3.62	53.6	84.6
Coal Creek #2	7.81	48.8	84.6	7.80	3.89	50.2	84.6
Coyote	7.81	48.8	84.6	7.79	3.17	59.2	84.6
Leland Olds #1	7.81	48.8	84.6	7.79	2.51	67.8	84.6
Leland Olds #2	7.81	48.8	84.6	7.79	3.02	61.3	84.6
Milton R Young #1	7.81	48.8	84.6	7.78	3.23	58.4	84.6
Milton R Young #2	7.81	48.8	84.6	7.79	3.20	58.9	84.6
Spiritwood Station	7.81	48.8	84.6	5.03	1.86	63.1	76.1
Limestone #1	14.88	73.1	91.9	6.24	0.94	84.9	80.8
Limestone #2	14.88	73.1	91.9	6.20	1.59	74.4	80.7
Major Oak #1	14.65	72.7	91.8	14.62	1.24	91.5	91.8
Major Oak #2	14.65	72.7	91.8	14.65	1.31	91.1	91.8
Martin Lake #1	14.65	72.7	91.8	8.22	2.32	71.8	85.4
Martin Lake #2	14.65	72.7	91.8	8.13	2.99	63.2	85.2
Martin Lake #3	14.65	72.7	91.8	7.85	3.04	61.3	84.7

[37] Discussion of how these assumptions were developed for use in the EPA's IPM modeling is available in Chapter 7 of the IPM Documentation.

TABLE 8—HG EMISSIONS AND CONTROL PERFORMANCE OF LIGNITE-FIRED EGUS IN 2021—Continued

Plant name	Hg inlet (lb/TBtu)	Est Hg control at 4.0 lb/TBtu (%)	Est Hg control at 1.2 lb/TBtu (%)	Est 2021 Hg inlet (lb/TBtu)	2021 Hg outlet (lb/TBtu)	Est 2021 Hg control (%)	Est 2021 Hg control at 1.2 lb/TBtu (%)
Oak Grove #1	14.88	73.1	91.9	14.60	2.01	86.2	91.8
Oak Grove #2	14.88	73.1	91.9	14.88	2.59	82.6	91.9
Red Hills #1	12.44	67.8	90.4	12.40	1.33	89.3	90.3
Red Hills #2	12.44	67.8	90.4	12.40	1.35	89.1	90.3
San Miguel	14.65	72.7	91.8	14.62	2.81	80.8	91.8

As can be seen in the table, all lignite-fired EGUs are estimated to meet the current standard by achieving a level of control of less than 75 percent. The average reported 2021 Hg emission rate for lignite-fired EGUs located in North Dakota was 3.0 lb Hg/TBtu with an average control of 83.7 percent. The average reported 2021 Hg emission rate for lignite-fired EGUs located in Texas and Mississippi was 2.0 lb Hg/TBtu (with an average control of 88.2 percent).

f. Proposed Revision of the Hg Emission Standard for Lignite-Fired EGUs

Several commenters have provided information on new developments in Hg control technology. One commenter [38] indicated that improvements in halogen and ACI technologies have significantly lowered the costs of those pollution control systems. The use of computational fluid dynamics and physical modeling has also improved pollutant capture and reduced sorbent consumption. The commenter further noted that ACI systems operate more reliably, and many users utilize technology to improve the dispersion of sorbents in flue gas for better performance. After reviewing the available literature and other studies and available information, the assumptions made regarding Hg control in the 2012 MATS Final Rule, and the information obtained from compliance reports and the 2022 CAA section 114 information collection, the EPA has determined that there are developments in practices, processes, and control technologies since 2012 that warrant consideration of revising the Hg standards for lignite-fired EGUs. As explained below, the EPA has further determined that available controls and methods of operation that will allow lignite-fired EGUs to meet the same Hg emission standard that is being met by EGUs firing on non-lignite coals, and that the costs of doing so are reasonable.[39] Therefore, the EPA is proposing to revise the Hg emission standard for lignite-fired EGUs to 1.2E–06 lb/MMBtu.

i. Both Lignite and Subbituminous Coal Are Low Rank Coals With Low Halogen Content

Coal is classified into four main types, or ranks: [40] anthracite, bituminous, subbituminous, and lignite. The ranking depends on heating value of the coal. Anthracite has the highest heating value of all ranks of coal and is mostly used by the metals industry (it is rarely using for power production). Anthracite accounted for less than 1 percent of the coal mined in the U.S. in 2021. Bituminous coal is also considered a ''high rank coal'' because of its higher heating value. It is the most abundant rank of domestic coal and accounted for about 45 percent of total U.S. coal production in 2021. Bituminous coal is used to generate electricity and in other industries.

Subbituminous coal and lignite are referred to as ''low rank coals.'' They both have lower heating values than bituminous coal. Subbituminous coal accounted for about 46 percent of total U.S. coal production in 2021, with the vast majority produced in the Powder River Basin (PRB) of Wyoming and Montana. Lignite has the lowest energy content of all coal ranks. Lignite accounted for about 8 percent of total U.S. coal production in 2021.[41] About 56 percent was mined in North Dakota (Fort Union lignite) and about 36 percent was mined in Texas (Gulf Coast lignite).

Chlorine is the most abundant halogen in coal. Bromine may also be present in coal but is typically in much lower concentrations than chlorine.[42] Low-rank coals such as lignite and subbituminous generally have lower chlorine contents than higher rank coals such as bituminous coal.[43]

As mentioned earlier, the halogen content of the coal—especially chlorine—largely influences the oxidation state of Hg in the flue gas stream. As a result, the halogen content of the coal directly influences the ability to capture and contain the Hg before it is emitted into the atmosphere. As explained earlier, ash from lignite and subbituminous coals tends to be more alkaline (relative to that from bituminous coal) due to the lower amounts of sulfur and halogen and the presence of a more alkaline and reactive (non-glassy) form of calcium in the ash. The natural alkalinity of the subbituminous and lignite fly ash can effectively neutralize the limited free halogen in the flue gas and prevent oxidation of the Hg^0. This makes control of Hg from both subbituminous coal-fired EGUs and lignite-fired EGUs more challenging than the control of Hg from bituminous coal-fired EGUs. However, because control strategies and technologies were developed to introduce halogens to the flue gas stream, EGUs firing subbituminous coals have been able to meet the 1.2 lb/TBtu emission standard in the 2012 MATS Final Rule. As mentioned earlier, EGUs firing subbituminous coal in 2021 emitted Hg at an average annual rate of 0.6 lb Hg/TBtu with measured values as low as 0.1 lb/TBtu. Clearly EGUs firing subbituminous coal have found control options to meet—and exceed—the 1.2 lb/TBtu emission standard despite the challenges presented by the low natural halogen content of the coal and production of difficult-to-control elemental Hg vapor in the flue gas stream.

[38] See EPA–HQ–OAR–2018–0794–1171.

[39] As discussed in section V.B above, prior CAA section 112(d)(2) technology reviews conducted by the EPA establish that obtaining better information on performance of controls can provide the basis for updates to standards under a technology review.

[40] ''Coal Explained, Types of Coal'' Energy Information Administration, available at *www.eia.gov/energyexplained/coal* and in the rulemaking docket.

[41] EIA Annual Coal Report 2021, October 2022, *https://www.eia.gov/coal/annual/pdf/acr.pdf.*

[42] See Figure 5 in the U.S. Geological Survey publication ''Mercury and Halogens in Coal—Their Role in Determining Mercury Emissions From Coal Combustion'' available at *https://pubs.usgs.gov/fs/2012/3122/pdf/FS2012-3122_Web.pdf.*

[43] *Id.*

ii. The Hg Content of Fort Union Lignite and PRB Subbituminous Coal Are Similar

As can be seen in Table 8 above, for the 2012 MATS Final Rule, the EPA estimated the Fort Union lignite-fired EGUs inlet Hg concentration at up to 7.8 lb/TBtu and estimated the inlet Hg concentration of subbituminous coal-fired EGUs at up to 8.65 lb/TBtu. These values are very similar to results from a published study that found the average Hg concentration of Fort Union lignite and PRB subbituminous coals to be very similar. The study found that the Fort Union lignite samples contained an average of 8.5 lb/TBtu and the PRB subbituminous coal samples contained an average of 7.5 lb/TBtu.[44] Despite the similarities in Hg content, halogen content, and alkalinity between Fort Union lignite and PRB subbituminous coal, EGUs firing subbituminous coal in 2021 emitted Hg at an average annual rate of 0.6 lb Hg/TBtu while those firing on Fort Union lignite emitted Hg at an average annual rate of 3.0 lb Hg/TBtu. While the EGUs firing Fort Union lignite at an average emission rate of 3.0 lb Hg/TBtu are complying with the 2012 MATS Final Rule emission standard of 4.0 lb Hg/TBtu, it is difficult to justify why those units should not meet a similar level of Hg control as that of the EGUs firing PRB subbituminous coal given the similarities between the two fuels—especially the similarities in Hg content, halogen content, and alkalinity.

iii. The Hg Content of Gulf Coast Lignite Is Greater Than That of Fort Union Lignite; and Several Lignite-Fired EGUs in Texas Have Co-Fired Significant Quantities of Subbituminous Coal

The Hg content of Gulf Coast lignite tends to be higher than that of the Fort Union lignite. As can be seen in Table 8 above, for the 2012 MATS Final Rule, the EPA estimated the inlet Hg concentration for Gulf Coast lignite-fired EGUs at an average inlet Hg concentration of up to 14.9 lb/TBtu (as compared to average inlet Hg concentrations of up to 7.8 lb/TBtu for Fort Union lignite). Despite the higher Hg content in Gulf Coast lignite, EGUs permitted as lignite-fired had, in 2021, an average Hg emission rate of 2.0 lb/TBtu—which was lower than the 2021 average emission rate of EGUs firing Fort Union lignite (at 3.0 lb/TBtu). This is due, in part, because some EGUs in Texas that are permitted as lignite-fired units (and thus subject to the Hg emission standard of 4.0 lb/TBtu) were, in 2021, firing significant amounts of subbituminous coal. Firing high levels of non-lignite coal (in some cases greater than 99 percent non-lignite coal), while remaining subject to the less stringent Hg emission standard for the subcategory of lignite-fired EGUs seems to fit the scenario that the EPA expressed concern about in the 2012 MATS Final Rule preamble—that ''sources to potentially meet the definition by combusting very small amounts of low rank virgin coal [lignite].'' See 77 FR 9379.

iv. The Proposed More Stringent Hg Emission Standard Can Be Achieved, Cost-Effectively, Using Available Control Technology

For the 2012 MATS Final Rule, the EPA calculated beyond-the-floor costs for Hg controls by assuming injection of brominated activated carbon at a rate of 3.0 lb/MMacf for units with ESPs and injection rates of 2.0 lb/MMacf for units with baghouses (also known as FF). Yet, in responses to the CAA section 114 information survey, only one facility (Oak Grove) explicitly indicated use of brominated activated carbon. Oak Grove units #1 and #2 (both using FF for PM control) reported use of brominated activated carbon at an average injection rate of less than 0.5 lb/MMacf for operation at capacity factor greater than 70 percent. The Oak Grove units fired, in 2021, using mostly refined coal.[45] That injection rate is considerably less than the 2.0 lb/MMacf assumed.

From the CAA 114 information survey, the average injection rate reported for non-halogenated sorbents was 2.5 lb/MMacf. The average sorbent injection rate ranged from 10–65 percent of the maximum design sorbent injection rate (the average was 36 percent of the maximum design rate). As mentioned earlier, most sources utilized a control strategy of sorbent injection coupled with chemical (usually halogenated) additives. In the beyond-the-floor analysis in the 2012 MATS Final Rule, we noted that the results from various demonstration projects suggests that greater than 90 percent Hg control can be achieved at lignite-fired units using brominated activated carbon sorbent at an injection rate of 2.0 lb/MMacf for units with installed FFs for PM control and at an injection rate of 3.0 lb/MMacf for units with installed ESPs for PM control. As shown in Table 8 above, all units (in 2021) would have needed to control their Hg emissions to less than 92 percent to meet an emission standard of 1.2 lb/TBtu. Based on this, we expect that the units could meet the proposed, more stringent, emission standard of 1.2 lb/TBtu by utilizing brominated activated carbon at the injection rates suggested in the beyond-the-floor memo[46] from the 2012 MATS Final Rule.

To determine the cost-effectiveness of that strategy, we calculated the incremental cost-effectiveness (cost per lb of Hg controlled) for a model 800 MW lignite-fired EGU. We calculated the incremental cost of injecting non-brominated activated carbon sorbent at a sufficiently large injection rate of 5.0 lb/MMacf to achieve an emission rate of 1.2 lb/TBtu versus the cost to meet an emission rate of 4.0 lb/TBtu using non-brominated activated carbon sorbent at an emission rate of 2.5 lb/MMacf. For an 800 MW lignite-fired EGU, the incremental cost effectiveness was $8,703 per incremental lb of Hg removed. The actual cost-effectiveness is likely lower than this value as it is unlikely that sources will need to inject brominated activated carbon sorbent at rates as high as 5.0 lb/MMacf (the Oak Grove units were injecting less than 0.5 lb/MMacf) and is well below the cost that the EPA has found to be acceptable in previous rulemakings (*e.g.,* $27,500/lb Hg was proposed to be cost-effective for the Primary Copper RTR (87 FR 1616); approximately $27,000/lb Hg was found to be cost-effective in the beyond-the-floor analysis supporting the 2012 MATS Final Rule[47]).

In summary, the EPA is proposing to revise the Hg emission standard for lignite-fired EGUs from 4.0E–06 lb/MMBtu to 1.2E–06 lb/MMBtu, which is the same Hg emission limit that non-lignite-fired EGUs must meet. We are proposing to revise this emission standard while recognizing that Hg from the combustion of lignite is challenging to capture because of the lack of naturally occurring halogen in the fuel and because of the natural alkalinity of the resulting fly ash. However, Hg from the combustion of subbituminous coal is similarly challenging to capture for the same reasons. Yet, EGUs firing subbituminous coal in 2021 emitted Hg at an average rate of 0.6 lb/TBtu and some as low as 0.1 lb/TBtu. From the CAA section 114 information survey, very few lignite-fired EGUs are using the control technology that the EPA identified as the most effective for Hg control in the 2012 MATS Final Rule,

[44] ''Mercury in North Dakota lignite'', Katrinak, K.A.; Benson, S.A.; Henke, K.R.; Hassett, D.J.; *Fuel Processing Technology,* 39, 35, 1994.

[45] EIA form 923 does not specify the rank of coal that is ''refined'' in boiler or generator fuel data. For this technology review, the EPA has assumed that facilities reporting the use of refined coal have utilized ''refined lignite,'' which was confirmed in EIA form 923 fuel receipts and costs.

[46] See Docket ID No. EPA–HQ–OAR–2009–0234–20130 at *regulations.gov.*

[47] *Ibid.*

brominated ACI, which many demonstration projects have shown can achieve Hg control of greater than 90 percent. Although we are not proposing to mandate the use of any particular control technology, we have shown that use of brominated activated carbon sorbent injection can be used to cost-effectively meet the more stringent emission.

We also considered the energy implications and non-air environmental impacts of this proposed revision of the Hg emission standard for lignite-fired EGUs. We do not anticipate any energy implications from this proposed revision as most units are already using sorbent injection technology as part of the Hg control strategy and we do not project significant changes in unit operations as a result of the proposed revision. Regarding the non-air environmental impact, we anticipate that there may be positive non-air environmental impacts. The current strategies employed by most lignite-fired EGUs involve the injection of oxidizing halogen additives and, separately, injection of sorbent (typically non-brominated activated carbon). Because homogeneous (gas-phase) oxidation of Hg^0 is kinetically limited, most of the Hg^0 oxidation is thought to occur as heterogeneous (solid-phase) reactions resulting from halogens or other oxidants attached to flue gas solids (*e.g.,* unburned carbon, other). This is essentially a two-step process where the injected (or natural) halogen (chloride or bromide) must first attach to a flue gas solid and then contact and react with gas-phase Hg^0. The addition of sorbent that has already been pre-halogenated (most often brominated) is more efficient as the first step occurs prior to injection. This means that less bromine will be unutilized and captured in a downstream control device or potentially included in the plant water effluent discharge. The EPA requests comment on its expectation that most EGUs (including lignite-fired EGUs) will no longer use ''refined coal'' due to the expiration of the refined coal tax credit. The amount of Br on brominated activated carbon is much less than that used to produce refine coal, and Br is retained on the activated carbon sorbent where it reacts with gas phase Hg and is captured by downstream control devices. Thus, the EPA believes that cross-media transfers of bromine to receiving waterbodies and emitted to the atmosphere, especially when wet FGD is not employed, are not expected (or would certainly be lower) with the use of brominated sorbents as compared to use of refined coal and that any negative health, ecological, and productivity effects associated with bromine transfer to water effluent will be minimized or avoided, especially given the EPA's proposed zero-discharge requirements under the Clean Water Act (88 FR 18824; March 29, 2023).

4. No Revisions to Work Practice Standards for Organic HAP

Following promulgation of the 2020 Final Action, in which the EPA found no developments in new technology or methods of operation that would result in cost-effective emission reductions of organic HAP and thus did not revise the work practice standards for organic HAP, the EPA received a petition for reconsideration that, in relevant part, requested the EPA to reconsider work practice standards for organic HAP.[48] Our review of new technology and of methods of operation conducted as part of this technology review proposal also found no developments that would result in cost-effective emission reductions of organic HAP. Likewise, we are not proposing revisions to the organic HAP work practice standards finalized in the 2012 MATS Final Rule.[49] The EPA acknowledges that it received a petition for reconsideration from environmental organizations that, in relevant part, sought the EPA's reconsideration of organic HAP work practice standards, which the EPA continues to review and will respond to in a separate action.[50]

5. No Proposed Revisions to the Acid Gas Standards for Coal-Fired EGUs

The EPA evaluated the use of control technologies and strategies that are commonly used for control of acid gas HAP (*e.g.,* HCl, HF). These control technologies and strategies include the use of wet FGD scrubbers, spray drier absorber (SDA) scrubbers, reagent injection (for fluidized combustors), dry sorbent injection (DSI), and use of low sulfur or low halogen fuels. As described in section III of this preamble, EGUs in six subcategories are subject to numeric emission limits for acid gas HAP (*e.g.,* HCl, HF). Emission standards for HCl serve as a surrogate for all acid gas HAP, with an alternate standard for SO_2 that may be used as a surrogate for the acid gas HAP at coal-fired EGUs with operational FGD systems and SO_2 CEMS.

When the EPA finalized the 2012 MATS Final Rule, the primary air pollution control devices installed at EGUs for the control of acid gases were wet scrubbers (wet FGD), dry scrubbers (dry FGD or spray dryer absorber, SDA), and reagent injection (at fluidized bed combustors). These technologies are still in wide use for acid gas HAP control. An additional acid gas control technology—dry sorbent injection (DSI)—was in limited use in the power sector at the time the MATS rule was finalized but has seen increased use since (approximately 20 percent of EGUs operating in 2021 utilized DSI for acid gas control for one reason or another).

A wet FGD scrubber uses an alkaline liquid slurry (usually a limestone or lime slurry) to remove acidic gases from an exhaust stream. The acid gases react with the alkaline compounds in the slurry and are removed as scrubber solids (*e.g.,* $CaSO_3$ or $CaSO_4$) or may be captured due to their solubility in the scrubber slurry. Most wet FGD scrubbers have SO_2 removal efficiencies exceeding 90 percent and perform even better for HCl and HF. Dry FGD scrubbers (SDA) are an acid gas pollution control system where an alkaline sorbent slurry is injected into the flue gas stream to react with and neutralize acid gases in the exhaust stream forming a dry powder material which is then captured in a downstream PM control device (usually an FF). Alkaline sorbent injection systems (reagent injection) are also used in fluidized bed combustors (FBC) and circulating fluidized bed (CFB) boilers for control of acid gases. In that use, the alkaline sorbent (usually powdered limestone) is injected into the combustion chamber with the primary fuel. Dry sorbent injection (DSI) is an add-on air pollution control system in which a dry alkaline powdered sorbent (typically sodium- or calcium-based) is injected into the flue gas steam upstream of a PM control device to react with and neutralize acid gases in the exhaust stream forming a dry powder material that may be removed in a primary or secondary PM control device. The EPA evaluated the use of these control technologies (wet FGD scrubbers, SDA, reagent injection, and DSI), and the strategic use of low sulfur or low halogen fuels.

The EPA reviewed compliance data for SO_2 and/or HCl, as shown in Figure 3 of the Technical Memo, showing EGUs with highest SO_2 emissions in 2021 to those with the lowest SO_2 emissions in 2021. Approximately two-thirds of coal-fired EGUs have demonstrated compliance with the

[48] See Docket ID No. EPA–HQ–OAR–2018–0794–4565 at *www.regulations.gov.*

[49] See 40 CFR 63.9991, Table 3.

[50] See Docket ID No. EPA–HQ–OAR–2018–0794–4565 at *www.regulations.gov.*

alternative SO_2 emission standard rather than the HCl emission limit. About one-third of EGUs have demonstrated compliance with the primary acid gas emission limit for HCl. And some sources have reported emissions data that demonstrates compliance with either of the standards. The emission rates for HCl that are shown in Figure 3 of the Technical Memo distinguish between EGUs that utilize some sort of acid gas control system—which would be a wet FGD scrubber, a dry scrubber (an SDA), reagent injection or DSI—and EGUs that do not have a wet FGD scrubber or an SDA and do not utilize either reagent injection or DSI. All of the EGUs with no acid gas controls are units that were firing subbituminous coal and were likely able to demonstrate compliance with the HCl emission standard due to the low natural chlorine content and high alkalinity of most subbituminous coals.

All sources submit SO_2 emissions data to comply with other CAA requirements (*e.g.,* the Acid Rain Program). As mentioned earlier, some sources submitted emissions data that demonstrates compliance with either the HCl standard or the alternative SO_2 standard. The average SO_2 emission rate for units at or below the alternative SO_2 emission limit was 9.0E–02 lb SO_2/MMBtu, which is approximately 55 percent below the SO_2 emission limit of 2.0E–01 lb SO_2/MMBtu. The average HCl emission rate for units demonstrating compliance with the SO_2 standard but also reporting HCl emissions was 4.0E–04 lb HCl/MMBtu, which is approximately 80 percent below the HCl emission limit of 2.0E–03 lb HCl/MMBtu. This result is consistent with the EPA's rationale for establishing the alternative SO_2 emission limit—because HCl emissions are much more easily controlled than SO_2 emissions (HCl and HF are much more reactive and much more water soluble than SO_2), controlling emissions of SO_2 using FGD controls very effectively controls emissions of HCl. Note that an EGU may demonstrate compliance with the acid gas surrogate SO_2 standard only if the unit has some type of installed acid gas control and an operational SO_2 CEMS.

The EPA looked further at the HCl emissions of the EGUs operating in 2021 with and without acid gas controls. The average emission rate of EGUs with no add-on acid gas control was 8.0E–04 lb HCl/MMBtu, which is 60 percent below the SO_2 emission limit.

The EPA looked closer at the relative performance of acid gas controls for HCl emissions. The best performing EGUs tend to be those that utilize either wet or dry FGD scrubbers, with units utilizing sorbent injection emitting at slightly higher rates. The units that utilize DSI with an FF tend to have lower HCl emissions than those that utilize DSI with an ESP. This is an expected outcome as the filter cake on the FF provides great opportunity for contact with the gas phase acid gases.

Overall, the EPA has evaluated acid gas emissions data from MATS-affected EGUs and have determined that some units have demonstrated compliance with the primary HCl emission standard using acid gas control technologies (wet FGD scrubbers, SDA, reagent injection, and DSI) and through the strategic use of low-halogen, high-alkalinity fuels. Other units have demonstrated compliance with acid gas emission limits by meeting or exceeding the alternative surrogate SO_2 emission standard. The average HCl emission rates for units with add-on acid gas controls was 4.0E–04 lb HCl/MMBtu which is approximately 80 percent below the MATS HCl emission limit. The average HCl emission rates for units with no add-on acid gas controls was 8.0E–04 lb HCl/MMBtu (approximately 60 percent below the MATS HCl emission limit). It is not clear that improvements in a wet or dry FGD scrubber would result in additional HCl emission reductions since HCl emissions are already much easier to control than SO_2 emissions. The EPA does not have information on the sorbent injection rates for DSI systems; so, we cannot assess whether increased sorbent injection would result in additional HCl emission reductions. Units using DSI in combination with an ESP would almost certainly see improved performance if they were to replace the ESP with a FF. However, that small incremental reduction in HCl emissions would come at a high cost and would certainly not be a cost-effective option.

In the 2020 Technology Review, the EPA concluded that ''the existing acid gas pollution control technologies that are currently in use are well-established and provide the capture efficiencies necessary for compliance with the promulgated MATS rule limits.'' Comments received during the 2020 Proposal did not provide any new practices, processes, or control technologies for acid gas control. One commenter noted that ''in the short time since the RTR was finalized, there have been no developments in practices, processes, or control technologies, nor any new technologies or practices for the control of . . . acid gas HAP'' (Docket ID No. EPA–HQ–OAR–2018–5121). Another commenter pointed to an independent comprehensive report to show acid gas emission controls had better performance and lower capital costs than the EPA assumed in the 2011 modeling (Docket ID No. EPA–HQ–OAR–2018–0794–4962). That report suggested control technology improvements to acid gas controls to achieve revised HCl emission standards of 1.0E–03 lb HCl/MMBtu, 6.0E–04 lb HCl/MMBtu, and 1.0E–05 lb HCl/MMBtu through addition of new DSI systems, upgrades to existing DSI systems, upgrades to existing wet and dry scrubbers, and, for the most stringent options, installation of new FFs. However, as mentioned earlier—and as detailed further in the Technical Memo—it is not clear that such improvements targeting acid gases would result in corresponding reductions in HCl or HF emissions, as emissions of HCl and HF are already much easier to control than emissions of SO_2.

In summary, the EPA has not identified any new control technologies or any improvements to existing acid gas controls that would result in additional cost-effective acid gas HAP emission reductions from coal-fired EGUs and is, therefore, not proposing revisions to the acid gas emission standards or for the surrogate SO_2 emission standard. However, the EPA solicits comment on any new practices, processes, or technologies for control of acid gas HAP emissions, including any information on whether increased sorbent injection rates (for sources using DSI or SDA controls) would result in additional HCl emission reductions, that could inform the potential for additional cost-effective acid gas HAP emission reductions from coal-fired EGUs.

6. No Proposed Revisions to Standards for Continental Liquid Oil-Fired EGUs

The annual capacity factors of most continental liquid oil-fired units are low. Based on available data reported to the EIA and the EPA's Clean Air Markets Program Data (CAMPD), in 2021 the average annual capacity factor for liquid oil-fired units was 3 percent. Additionally, there were only two continental liquid oil-fired units identified with 2-year capacity factors greater than 8 percent. Those two units primarily fire natural gas but had heat input-based percentages of fuel oil firing that were about 16 percent in at least one of the years from 2019 through 2021 (*i.e.,* slightly above the 15 percent that would qualify them as oil-fired units). Therefore, it is likely that there are very few continental liquid oil-fired units that would be outside of the definition

of the limited-use liquid oil-fired subcategory.

Furthermore, for the continental liquid oil-fired units with available data that are likely limited-use units, the cumulative percentage of heat input from residual fuel oil in 2021 was 32 percent, the heat input of distillate fuel oil was 4 percent, and the heat input from natural gas was 64 percent. Because the capacity factors of most continental liquid oil-fired units are low, and most combustion by those units is using fuel (*i.e.,* natural gas) with low metallic HAP emission rates, the EPA is not proposing changes to the total HAP metals (which includes Hg), nor to the standards for the individual HAP metals, nor to the HAP metal surrogate fPM emission standard for continental liquid oil-fired electricity generating units.

However, given there have been several recent temporary and localized increases in oil combustion at continental liquid oil-fired EGUs during periods of extreme weather conditions, such as the 2023 polar vortex in New England, the EPA seeks comment on whether the current definition of the limited-use liquid oil-fired subcategory remains appropriate or if, given the increased reliance on oil-fired generation during periods of extreme weather, a period other than the current 24-month period or a different threshold would be more appropriate for the current definition. The EPA also seeks comment on the appropriateness of including new HAP standards for EGUs subject to the limited use liquid oil-fired subcategory, as well as on the means of demonstrating compliance with the new HAP standards. For example, in order to reduce HAP emissions during periods of extreme weather conditions, it may be appropriate for limited-use liquid oil-fired EGUs to use distillate fuel oil instead of residual oil, or to switch from residual oil to cleaner fuels after a certain number of hours of operation, or to be subject to an annual or seasonal limit of residual oil firing. The EPA solicits comment on each of these options.

The EPA also solicits comment on establishing a HAP emission limit on liquid oil-fired EGUs (including those in the limited-use subcategory and those located in non-continental areas) where compliance would be demonstrated through fuel sampling and analysis. The EPA seeks comment from the regulated community, citizens, and regulatory authorities on the need for a revision to the limited-use oil-fired subcategory definition and on additional, cost-effective methods to minimize HAP emissions during periods of limited operation.

7. No Proposed Revisions to Standards for Non-Continental Liquid Oil-Fired EGUs

Hawaiian Electric Company (HECO) operates 12 liquid oil-fired boilers at its Waiau Generating Station (Pearl City, HI) and at its Kahe Generating Station (Kapolei, HI). Their average capacity factor in 2021 was 29.6 percent (on a net basis) and they fire on residual fuel oil. HECO has, in compliance reports, reported fPM emission rates to the EPA that are below the fPM emission rate of 3.0E–02 lb/MMBtu.

In Puerto Rico, there are 14 liquid oil-fired MATS-affected EGUs (3,552 MW total capacity) at four separate facilities operated by the Puerto Rico Electric Power Authority (PREPA). The EGUs operate using residual fuel oil and do not currently have any emission controls for NO_X, PM or SO_2. At least two of the units have dual fuel capabilities and have operated on high levels of natural gas. There is limited stack testing data available, but testing done in 2021 and 2022 indicated fPM emission rates ranging from 2.6E–02 lb/MMBtu to 2.9E–02 lb/MMBtu, a range that is just below the fPM emission rate of 3.0E–02 lb/MMBtu.

As mentioned earlier in section IV.A of this preamble summarizing the 2020 Residual Risk Review, the results of the chronic inhalation cancer risk assessment based on actual emissions indicated that the estimated maximum individual lifetime cancer risk (cancer MIR) was 9-in-1 million, with nickel emissions from oil-fired EGUs at these four facilities in Puerto Rico as the major contributor to the risk. The total estimated cancer incidence from this source category was 0.04 excess cancer cases per year, or one excess case in every 25 years. Approximately 193,000 people were estimated to have cancer risks at or above 1-in-1 million from HAP emitted from the facilities in this source category. The estimated maximum chronic noncancer TOSHI for the source category was 0.2 (respiratory), which was driven by emissions of nickel and cobalt from the oil-fired EGUs.

Since these oil-fired EGUs do not have installed control devices for HAP metals (PM controls), there is no opportunity to improve their performance in the same ways the EPA found available to some coal-fired EGUs. PREPA has recently proposed near-term retirement dates (by 2026) for 10 of the 14 oil-fired EGUs with two of the other four remaining boilers burning mostly natural gas.

Because of the low capacity factors of the Hawaii oil-fired EGUs and the near-term retirement dates of most of the Puerto Rico liquid oil-fired EGUs and plans for a transition to greater use of natural gas for the remaining boilers, the EPA is not proposing to revise emission standards for non-continental oil-fired EGUs.

However, the EPA seeks comment on whether the fPM surrogate emission standard is appropriate for these non-continental liquid oil-fired EGUs. As mentioned, the largest risks identified in the 2020 RTR were associated with nickel emissions from residual oil-fired EGUs located in Puerto Rico. The EPA solicits comment on eliminating or revising the fPM standard for existing non-continental sources, and, instead, requiring these EGUs to comply with the existing emission limits for the individual metals, including nickel. In addition, the EPA also seeks comment on the appropriateness of including new HAP standards for EGUs in Puerto Rico and Hawaii, as well as other non-continental U.S. areas, such as Guam and the Virgin Islands, and the means of demonstrating compliance with the new HAP standards. For example, the EPA seeks input on whether, in order to reduce HAP emissions and associated risks in these places, oil-fired EGUs should be required to switch from residual oil to cleaner fuels, or to switch to cleaner fuels after a certain number of hours of operation, or should be subject to an annual limit of residual oil firing. The EPA solicits comment on whether compliance with a HAP metal emission limit could be demonstrated by fuel sampling and analysis. The EPA solicits comment on the need for additional, cost-effective methods to minimize HAP emissions in non-continental states and territories—including Hawaii, Puerto Rico, the U.S. Virgin Islands, and Guam. We solicit comment on any special considerations—including the availability of clean fuels such as distillate fuel oil and natural gas—in non-continental areas.

8. No Proposed Revisions to Standards for IGCC EGUs

The EPA is aware of two existing IGCC facilities that meet the definition of an IGCC EGU. The Edwardsport Power Station, located in Knox County, Indiana, includes two IGCC EGUs that had 2021 average capacity factors of approximately 85 percent and 67 percent. The Polk Power Station, located in Polk County, Florida, had a 2021 average capacity factor of approximately 70 percent, but burned only natural gas in 2021.

While this subcategory has a less stringent fPM standard of 4.0E–02 lb/MMBtu (as compared to that of coal-fired EGUs), recent compliance data indicates fPM emissions well below the most stringent standard option of 6.0E–03 lb/MMBtu that was evaluated for coal-fired EGUs. Since there are only two IGCC EGU facilities, and the EPA is unaware of any developments in the HAP emission controls used at IGCC units, the EPA is not proposing to revise any of the emission standards for this subcategory. However, the EPA is proposing that the affected facilities must install a PM CEMS to demonstrate compliance with the existing fPM limit. Further, the EPA solicits comment on cost-effective methods to achieve additional HAP emission reductions from this subcategory.

D. What other actions are we proposing, and what is the rationale for those actions?

In addition to the proposed actions described above, we are proposing additional revisions to the NESHAP.

1. Startup Requirements

In the Reconsideration of Certain Startup/Shutdown Issues: National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional and Small Industrial-Commercial-Institutional Steam Generating Units (79 FR 68777; November 19, 2014), the EPA took final action on its reconsideration of the startup and shutdown provisions by adding an alternative work practice standard for startup periods. That alternative work practice standard, referred to as paragraph (2) of the definition of ''startup'', required clean fuel use to the maximum extent possible, operation of PM control devices within 1 hour of introduction of primary fuel (*i.e.,* coal, residual oil, or solid oil-derived fuel) to the EGU, collection and submission of records of clean fuel use and emissions control device capabilities and operation, as well as adherence to applicable numerical standards within 4 hours of the generation of electricity or thermal energy for use either on site or for sale over the grid (*i.e.,* the end of startup) and to continue to maximize clean fuel use throughout that period. The EPA provided this alternative work practice because many commenters asserted it would be difficult, if not impossible, for their EGUs to meet the already-promulgated startup work practices.[51] In *Chesapeake Climate Action Network* v. *EPA,* the D.C. Circuit remanded the alternative work practice standard for startup and shutdown to the EPA for reconsideration based on a petition for reconsideration from environmental groups. 952 F.3d 310 (D.C. Cir. 2020). In this action, and in conjunction with the EPA's authority pursuant to CAA section 112(d)(6), the EPA is granting in part petitions for reconsideration which sought the EPA's review of startup and shutdown provisions.[52] As part of our obligation to address the remand on this issue, we reviewed the information available to us. As discussed below, that information shows that the conditions contained in the alternative work practice standard do not represent what the best performers are able to do; moreover, as a practical matter, few EGUs have chosen to use the alternative work practice standard.

The EPA was able to identify 14 EGUs with the ability to generate up to 8.4 GW that chose to use the alternative work practice for startup periods. As shown in Table 9 below, six of those EGUs with the ability to generate up to 3.2 GW have retired and one of those EGUs with the ability to generate up to 0.7 GW will retire by 2025.

TABLE 9—EGUS RELYING ON PARAGRAPH (2) OF THE DEFINITION OF ''STARTUP''

EGU name	Unit	ORIS code	MW	Notes	Fuel
Prairie State Generating	1	55856	877		Bituminous.
Prairie State Generating	2	55856	877		Bituminous.
Brame Energy Center	Rodemacher 2	6190	552		Subbituminous.
Brame Energy Center	Madison 3–1	6190	600		Petroleum coke, coal.
Brame Energy Center	Madison 3–2	6190	600		Petroleum coke, coal.
Dolet Hills	1	51	720	Retired 2021	Lignite.
Sherburne	3	6090	938.7	Retires 2034	Subbituminous.
Westwood	1	50611	36		Waste coal.
Centralia	BW21	3845	729.9	Retired 2020	Subbituminous.
Centralia	BW22	3845	729.9	Retires 2025	Subbituminous.
St Johns River	1	207	679	Retired 2018	Bituminous.
St Johns River	2	207	679	Retired 2018	Bituminous.
HMP&L Station 2	H1	1382	200	Retired 2019	Bituminous.
HMP&L Station 2	H2	1382	200	Retired 2019	Bituminous.

After the planned retirements in 2025, just seven EGUs with the ability to generate up to 4.5 GW will remain; this represents less than 0.4 percent of electrical generation from all affected sources and less than 1.7 percent of the 278 GW of coal-fired and other, non-natural gas fossil-fired electrical generation available in 2022. We solicit comment on whether we have identified all of the EGUs relying on paragraph (2) of the definition of ''startup'', as well as their associated retirement dates as reported to the Department of Energy's EIA. Commenters, particularly owners or operators of affected EGUs, should provide us with corrected information as, or if, necessary. Despite comments from EGU owners or operators and their industry representatives opposing use of paragraph (1) of the definition of ''startup'', the owners or operators of coal- and oil-fired EGUs that generated over 98 percent of electricity in 2022 have made the requisite adjustments, whether through greater clean fuel capacity, better tuned equipment, better trained staff, a more efficient or better design structure, or a combination of factors, to be able to meet the requirements of paragraph (1) of the definition of ''startup.''

[51] See *Assessment of Startup Period at Coal-Fired Electric Generating Units,* available at Docket ID No. EPA–HQ–OAR–2009–0234–20378.

[52] See Docket ID No. EPA–HQ–OAR–2018–0794–4565 at *www.regulations.gov; see also Chesapeake Climate Action Network* v. *EPA,* 952 F.3d 310 (D.C. Cir. 2020).

Consistent with the MACT emission standard setting requirement for using the average of the best performing 12 percent of sources to establish emission standards, we propose to remove the alternative work practice standards, *i.e.,* those contained in paragraph (2) of the definition of ''startup'', from the rule. As demonstrated by the majority of EGUs currently relying on the work practice standards in paragraph (1) of the definition of ''startup'', we believe such a change is achievable by all EGUs; further, we expect such a change would result in little to no additional expenditure since the additional recordkeeping and reporting provisions associated with the work practice standards of paragraph (2) of the definition of ''startup'' were more expensive than the requirements of paragraph (1) of the definition of ''startup.'' We solicit comment on our proposal to remove the work practice standards of paragraph (2) of the definition of ''startup.''

2. Removing Non-Hg Metals Limits

The current MATS rule contains individual and total non-Hg metals emissions limits, as well as fPM emission limits. Those fPM emission limits serve as alternative emission limits because fPM was found to be a surrogate for either individual or total non-Hg metals emissions. As explained and used above to quantify individual and total non-Hg metals reductions from our proposed fPM emission limit revision, the relationship between individual and total non-Hg metals and fPM was determined by EGU fuel type and control device using data collected by the 2010 ICR.[53] While EGU owners or operators have the ability to use individual or total non-Hg metals emissions as the compliance method for the 358 EGUs when this action takes effect and with generation of at least 25 MW,[54] we are aware of just one owner or operator who provides non-Hg metals data—both individual and total—along with fPM data for compliance purposes for one waste coal-fired EGU with generating capacity of 46.1 MW. Given that owners or operators of the other EGUs applicable to MATS have chosen to demonstrate compliance with only the fPM emission limit, we propose to remove the non-Hg metals emission limits—both individual and total—from MATS. Removal of the non-Hg metals emission limits renders the LEE option for non-Hg metals (individual and total) obsolete and the EPA is proposing to remove those standards as well. Removal of the non-Hg metals emissions limits simplifies the compliance determination path for EGU owners or operators and reduces the amount of regulatory text, making the rule clearer yet continuing to ensure that non-Hg metals emissions remain below limits on an ongoing basis, particularly when the fPM is measured as proposed with PM CEMS, given that non-Hg metals emissions provided for one EGU are obtained via quarterly stack testing. We solicit comment on the number of EGUs that currently rely on non-Hg metals emissions measurement for MATS compliance purposes; to the extent that other EGU owners or operators rely on non-Hg metals emissions for compliance purposes, please be sure to identify each EGU, its nameplate generating capacity, its anticipated or announced retirement date (if applicable), and its Office of Regulatory Information Systems (ORIS) Code. We solicit comment on our proposal to remove the non-Hg metals emission limits from all existing MATS-affected EGUs.

If we were to change our position by deciding against removing the non-Hg metals emission limits from MATS and if our proposal to revise the fPM emission limits was accepted, we would develop non-Hg emission limits by multiplying the revised fPM emission limit by each individual (or total) non-Hg PM ratio identified in the aforementioned *Emission Factor Development for RTR Risk Modeling Dataset for Coal- and Oil-fired EGUs* memorandum.[55] The resulting values would become the individual non-Hg metals emission limits; their sum would become the total non-Hg metals emission limit. We solicit comment on our proposed approach to develop non-Hg metals emission limits in the event that our preferred approach—removing the non-Hg metals emission limits—is not selected. Note that should our proposed approach to remove non-Hg metals emission limits from MATS not be finalized, we would need to adjust the compliance determination method because the current quarterly emissions testing would not be consistent with the continuous monitoring and compliance determination method afforded by acceptance of our proposal to require use of PM CEMS for compliance with the fPM emission limit. At least one CEMS manufacturer offers a multi-metals instrument that would be suitable or could be adjusted to account for appropriate detection levels for ongoing compliance purposes. In addition, were our proposal to remove non-Hg metals from the rule not finalized, very frequent emissions testing, perhaps on the order of weekly, might be able to provide more information on compliance status. While not continuous, as provided by CEMS, such information would be more frequent than provided by the quarterly emissions testing required by the rule. We solicit comment on appropriate means to determine compliance with non-Hg metals emission limits, provided our proposed approach—removal of non-Hg metals emission limits—is not finalized. Please include in your comments information related to the frequency of collected data, the continuity of data supplied by your suggested means of compliance, and initial and ongoing annual costs of your suggested means of compliance.

3. Removing Use of PM CPMS for Compliance Determinations

Use of PM CPMS for compliance purposes appears to be limited to four EGUs at one site in South Carolina, and these EGUs account for less than 0.5 percent of all EGUs in operation. According to submitted reports, each of the EGUs relies on an instrument (Sick Maihak RWE–200) which provides a milliamp signal that is used to develop an ongoing operating limit; this instrument is advertised by its maker to be able to serve as a PM CEMS with little to no modification, meaning that the instrument can provide direct measurement of fPM in terms of the emission standard—pounds per million BTU. Given that PM CPMS use costs more than PM CEMS use, that PM CPMS does not provide continuous values in terms of the emission standard, that PM CPMS is rarely in use among EGUs, and that the existing PM CPMS can be used as PM CEMS, we propose to remove the ability to use PM CPMS for compliance purposes in MATS. The EPA solicits comment on the use of PM CPMS for compliance purposes; to the extent there are other EGU owners or operators using PM CPMS, commenters should identify each EGU, along with its ORIS code and MW nameplate capacity, as well as the PM CPMS manufacturer and model in use. The EPA also solicits comment on the proposal to replace PM CPMS with PM CEMS for compliance use in MATS; when providing comments, please provide detailed costs—including initial instrument cost, installation cost, and operating and maintenance costs—as well as a description of ongoing

[53] See *Emission Factor Development for RTR Risk Modeling Dataset for Coal- and Oil-fired EGUs,* available at *https://www.regulations.gov* at Docket ID No. EPA–HQ–OAR–2018–0794–0010.

[54] Data obtained from the Emissions and Generation Resource Integrated Database (eGRID), available at *https://www.epa.gov/egrid.*

[55] See *https://www.regulations.gov* at Docket ID No. EPA–HQ–OAR–2018–0794–0010.

operating activities from those EGUs with existing PM CPMS used for compliance purposes.

E. What compliance dates are we proposing, and what is the rationale for the proposed compliance dates?

The EPA is proposing to revise the fPM emission limit for existing coal-fired EGUs and the Hg emission limit for lignite-fired EGUs. The EPA is proposing up to 3 years after the effective date for EGUs subject to MATS to meet these new emission limits. However, the EPA solicits comment on whether more than 1 year is needed to comply considering the potential need to upgrade control systems. In addition, the EPA is proposing that affected EGUs demonstrate compliance with the fPM emission limit using PM CEMS, removing the alternative compliance options. Sources must demonstrate that compliance has been achieved, by conducting the required performance tests, and other activities as specified in 40 CFR part 63, subpart UUUUU, including a minimum sampling collection time of 3 hours per run, no later than 3 years after the promulgation date. To demonstrate initial compliance using PM CEMS, the initial performance test consists of 30-boiler operating days. If the PM CEMS is certified prior to the compliance date, the test begins with the first operating day on or after that date. If the PM CEMS is not certified prior to the compliance date, the test begins with the first operating day after certification testing is successfully completed. Continuous compliance with the revised fPM emission limit is required to be demonstrated on a 30-boiler operating day rolling average basis, defined in 40 CFR 63.10021(b), as the arithmetic average emissions rates over the last continuous 30 days provided the boiler was operating. The EPA proposes to remove the use of PM CPMS for compliance determinations and the non-Hg metal emission limits—both individual and total—3 years after the promulgation date. The EPA considers 3 years to be as expedient as can be required considering the potential need to upgrade or replace monitoring systems. The EPA solicits comment on whether 3 years is an appropriate amount of time for EGUs to upgrade or replace monitoring systems, and whether quarterly stack testing should continue to apply for EGUs that have a binding commitment to permanently cease operations in the near term. Additionally, the EPA proposes to remove fPM and the total and individual non-Hg HAP metals from the LEE program no later than 3 years after the promulgation date to align with the proposed compliance method of PM CEMS. Lastly, the EPA is proposing to remove the alternative work practice standard in paragraph (2) of the definition of ''startup.'' The EPA proposes that affected sources must utilize paragraph (1) of the definition of ''startup'' as specified in 40 CFR part 63, subpart UUUUU, no later than 180 days after the effective date.

VI. Summary of Cost, Environmental, and Economic Impacts

In accordance with E.O. 12866 and 13563, the guidelines of OMB Circular A–4, and EPA's Guidelines for Preparing Economic Analyses,[56] the EPA prepared an RIA for this proposal. The RIA analyzes the benefits and costs associated with the projected emissions reductions under the proposed requirements, a less stringent set of requirements, and a more stringent set of requirements to inform the EPA and the public about these projected impacts.

We start this section of the preamble describing how the RIA for this proposed rule structured the proposed and less and more stringent regulatory options in the RIA. The proposed regulatory option in the RIA includes the proposed revision to the fPM standard to 0.010 lb/MMBtu, in which fPM is a surrogate for non-Hg metal HAP, the proposed revision to the Hg standard for lignite-fired EGUs to 1.2 lb/TBtu, the proposal to require PM CEMS to demonstrate compliance, and the removal of the startup definition number two. The more stringent regulatory option examined in the RIA tightens the proposed revision to the fPM standard to 0.006 lb/MMBtu. The other three proposed amendments are not changed in the more stringent regulatory option examined in the RIA. Finally, the less stringent regulatory option examined in the RIA assumed the fPM and Hg limits remain unchanged and examines just the proposed PM CEMS requirement and removal of startup definition number two.

A. What are the affected sources?

The EPA estimates that there are 302 coal- and 56 oil-fired EGUs that will be subject to the MATS rule by the compliance date.

B. What are the air quality impacts?

The EPA estimated emissions reductions under the proposed rule for the years 2028, 2030, and 2035 based upon IPM projections. The EPA also used IPM to estimate emissions reductions for the more stringent regulatory option examined in the RIA. The less stringent regulatory option presented in the RIA has no quantified emissions reductions associated with the proposed requirements for PM CEMS and the removal of startup definition number two that constitute the less stringent regulatory option presented in the RIA.

The emissions reduction estimates presented in the RIA include reductions in pollutants directly targeted by this rule, such as Hg, and changes in other pollutants emitted from the power sector as a result of the compliance actions projected under this proposed rule. Table 10 presents the projected emissions reductions under the proposed rule.

TABLE 10—PROJECTED EGU EMISSIONS IN THE BASELINE AND UNDER THE PROPOSED RULE: 2028, 2030, AND 2035

Year	Emissions reductions		
	Proposed rule	Less stringent regulatory option	More stringent regulatory option
Hg (lbs.)			
2028	62.0	0.0	208.0
2030	67.0	0.0	169.0
2035	82.0	0.0	168.0

[56] U.S. EPA (2014). Guidelines for Preparing Economic Analyses. U.S. EPA. Washington, DC, U.S. Environmental Protection Agency, Office of Policy, National Center for Environmental Economics.

TABLE 10—PROJECTED EGU EMISSIONS IN THE BASELINE AND UNDER THE PROPOSED RULE: 2028, 2030, AND 2035—Continued

Year	Emissions reductions		
	Proposed rule	Less stringent regulatory option	More stringent regulatory option
$PM_{2.5}$ (thousand tons)			
2028	0.4	0.0	2.6
2030	0.4	0.0	1.5
2035	0.8	0.0	1.3
SO_2 (thousand tons)			
2028	0.9	0.0	11.6
2030	0.5	0.0	0.3
2035	1.5	0.0	8.8
Ozone-season NO_X (thousand tons)			
2028	0.2	0.0	7.2
2030	0.4	0.0	5.1
2035	3.2	0.0	5.6
Annual NO_X (thousand tons)			
2028	0.4	0.0	18.1
2030	0.8	0.0	9.5
2035	3.4	0.0	8.7
HCl (thousand tons)			
2028	0.0	0.0	0.2
2030	0.0	0.0	0.1
2035	0.0	0.0	0.1
CO_2 (million metric tons)			
2028	0.2	0.0	21.9
2030	0.8	0.0	8.7
2035	4.6	0.0	2.9

Section 3 of the RIA presents a detailed discussion of the emissions projections under the regulatory options as described in the RIA. Section 3 also describes the compliance actions that are projected to produce the emissions reductions in Table 10. Please see section VI.E of this preamble and section 4 of the RIA for detailed discussions of the projected health, welfare, and climate benefits of these emissions reductions.

C. What are the cost impacts?

The power industry's compliance costs are represented in this analysis as the change in electric power generation costs between the baseline and policy scenarios. In simple terms, these costs are an estimate of the increased power industry expenditures required to implement the proposed requirements. The compliance cost estimates were developed with EPA's Power Sector Modeling Platform v6 using IPM, a state-of-the-art, peer-reviewed dynamic, deterministic linear programming model of the contiguous U.S. electric power sector. IPM provides forecasts of least cost capacity expansion, electricity dispatch, and emission control strategies while meeting electricity demand and various environmental, transmission, dispatch, and reliability constraints. IPM's least-cost dispatch solution is designed to ensure generation resource adequacy, either by using existing resources or through the construction of new resources. IPM addresses reliable delivery of generation resources for the delivery of electricity between the 78 IPM regions, based on current and planned transmission capacity, by setting limits to the ability to transfer power between regions using the bulk power transmission system. The model includes state-of-the-art estimates of the cost and performance of air pollution control technologies with respect to Hg and other HAP controls.

We estimate the present value (PV) of the projected compliance costs over the 2028 to 2037 period, as well as estimate the equivalent annual value (EAV) of the flow of the compliance costs over this period. All dollars are in 2019 dollars. Consistent with Executive Order 12866 guidance, we estimate the PV and EAV using 3 and 7 percent discount rates. Table 11 presents the estimates of compliance costs across the regulatory options examined in the RIA.

TABLE 11—PROJECTED COMPLIANCE COSTS OF THE PROPOSED RULE, LESS STRINGENT ALTERNATIVE, AND MORE STRINGENT ALTERNATIVE, 2028 THROUGH 2037

[Millions 2019$, discounted to 2023] [a]

	3% Discount rate			7% Discount rate		
	Proposed	Less stringent	More stringent	Proposed	Less stringent	More stringent
Present Value (PV)	330	−45	4,600	230	−31	3,400
Equivalent Annualized Value (EAV)	38	−5.2	540	33	−4.5	490

[a] Values have been rounded to two significant figures.

The PV of the compliance costs for the proposal, discounted at the 3 percent rate, is estimated to be about $330 million, with an EAV of about $38 million. At the 7 percent discount rate, the PV of the compliance costs of the proposal is estimated to be about $230 million, with an EAV of about $33 million. For a detailed description of these compliance cost projections, please see section 3 of the RIA, which is available in the docket for this action.

D. What are the economic impacts?

This proposed action has energy market implications. The power sector analysis supporting this action indicates that there are important power sector impacts that are worth noting, although they are small relative to recent market-driven changes in the sector and compared to some other EPA air regulatory actions for EGUs.

There are several small national changes in energy prices projected to result from the proposed revisions to the MATS rule. Retail electricity prices are projected to increase in the contiguous U.S. by an average of less than 0.1 percent in 2028, 2030, and 2035. In 2035, the delivered natural gas price is anticipated to increase by less than 0.1 percent in response to the proposed rule. There are several other types of energy impacts associated with the proposed revisions to MATS. Some coal-fired capacity, about 500 MW (less than 1 percent of operational coal capacity), is projected to become uneconomic to maintain by 2028. Coal production for use in the power sector is not projected to change significantly by 2028.

The short-term estimates for employment needed to design, construct, and install the control equipment in the 3-year period before the compliance date are also provided using an approach that estimates employment impacts for the environmental protection sector based on projected changes from IPM on the number and scale of pollution controls and labor intensities in relevant sectors. Finally, some of the other types of employment impacts that will be ongoing are estimated using IPM outputs and labor intensities, as reported in section 5 of the RIA.

E. What are the benefits?

Pursuant to E.O. 12866, the RIA for this action analyzes the benefits associated with the projected emissions reductions under this proposal to inform the EPA and the public about these projected impacts. This proposed rule is projected to reduce emissions of Hg and non-Hg metal HAP, $PM_{2.5}$, SO_2, NO_X, and CO_2 nationwide. The potential impacts of these emissions reductions are discussed in detail in section 4 of the RIA.

The projected reductions in Hg emissions should reduce the bioconcentration of methylmercury in fish in nearby waterbodies. Subsistence fishing is associated with vulnerable populations, including minorities and those of low socioeconomic status. Methylmercury exposure to subsistence fishers from lignite-fired units is below the current reference dose (RfD) for methylmercury neurodevelopmental toxicity. The EPA considers exposures at or below the RfD are unlikely to be associated with appreciable risk of deleterious effects across the population. However, no RfD defines an exposure level corresponding to zero risk; moreover, the RfD does not represent a bright line above which individuals are at risk of adverse effects. In addition, there was no evidence of a threshold for methylmercury-related neurotoxicity within the range of exposures in the Faroe Islands study which served as the primary basis for the RfD.[57] Reductions in Hg emissions from lignite-fired facilities should further reduce exposure to methylmercury for subsistence fisher sub-populations located in the vicinity of these facilities. The projected reductions in non-Hg metal HAP may lead to reduced exposure to carcinogenic metal HAP for residential populations near these facilities, which should help the EPA maintain an ample margin of safety. Furthermore, there is the potential for reductions in Hg and non-Hg HAP emissions to enhance ecosystem services and improve ecological outcomes, both of which can have positive economic effects although it is difficult to estimate these benefits and consequently they have not been included in the set of quantified benefits.

The proposed rule is expected to reduce emissions of direct $PM_{2.5}$, NO_X, and SO_2 nationally throughout the year. Because NO_X and SO_2 are also precursors to secondary formation of ambient $PM_{2.5}$, reducing these emissions would reduce human exposure to ambient $PM_{2.5}$ throughout the year and would reduce the incidence of $PM_{2.5}$-attributable health effects. This proposed rule is also expected to reduce ozone-season NO_X emissions nationally. In the presence of sunlight, NO_X and volatile organic compounds (VOCs) can undergo a chemical reaction in the atmosphere to form ozone. Reducing NO_X emissions in most locations reduces human exposure to ozone and the incidence of ozone-related health effects, though the degree to which ozone is reduced will depend in part on local concentration levels of VOCs.

The health effect endpoints, effect estimates, benefit unit-values, and how they were selected, are described in the TSD titled *Estimating $PM_{2.5}$- and Ozone-Attributable Health Benefits,* which is referenced in the RIA for this action. Our approach for updating the endpoints and to identify suitable epidemiologic studies, baseline incidence rates, population demographics, and valuation estimates is summarized in section 4 of the RIA. This proposed rule is projected to reduce $PM_{2.5}$ and ozone concentrations, producing a projected PV of monetized health benefits of about $1.9 billion, with an EAV of about $220 million discounted at 3 percent.

Because of projected changes in dispatch under the proposed requirements, the proposed rule is also projected to reduce CO_2 emissions. The EPA estimated the climate benefits from

[57] U.S. EPA. 2001. IRIS Summary for Methylmercury. U.S. Environmental Protection Agency, Washington, DC. (USEPA, 2001).

this proposed rule using estimates of the social cost of greenhouse gases (SC–GHG), specifically the social cost of carbon (SC–CO_2). The SC–CO_2 is the monetary value of the net harm to society associated with a marginal increase in CO_2 emissions in a given year, or the benefit of avoiding that increase. In principle, SC–CO_2 includes the value of all climate change impacts (both negative and positive), including (but not limited to) changes in net agricultural productivity, human health effects, property damage from increased flood risk natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services. The SC–CO_2, therefore, reflects the societal value of reducing emissions of the gas in question by one metric ton and is the theoretically appropriate value to use in conducting benefit-cost analyses of policies that affect CO_2 emissions. In practice, data and modeling limitations naturally restrain the ability of SC–CO_2 estimates to include all the important physical, ecological, and economic impacts of climate change, such that the estimates are a partial accounting of climate change impacts and will therefore, tend to be underestimates of the marginal benefits of abatement. The EPA and other Federal agencies began regularly incorporating SC–GHG estimates in their benefit-cost analyses conducted under E.O. 12866 [58] since 2008, following a Ninth Circuit Court of Appeals remand of a rule for failing to monetize the benefits of reducing CO_2 emissions in a rulemaking process.

We estimate the global social benefits of CO_2 emission reductions expected from the proposed rule using the SC–GHG estimates presented in the February 2021 TSD: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under E.O. 13990. These SC–GHG estimates are interim values developed under E.O. 13990 for use in benefit-cost analyses until updated estimates of the impacts of climate change can be developed based on the best available climate science and economics. We have evaluated the SC–GHG estimates in the TSD and have determined that these estimates are appropriate for use in estimating the global social benefits of CO_2 emission reductions expected from this proposed rule. After considering the TSD, and the issues and studies discussed therein, the EPA finds that these estimates, while likely an underestimate, are the best currently available SC–GHG estimates. These SC–GHG estimates were developed over many years using a transparent process, peer-reviewed methodologies, the best science available at the time of that process, and with input from the public. As discussed in section 4.4 of the RIA, these interim SC–CO_2 estimates have a number of limitations, including that the models used to produce them do not include all of the important physical, ecological, and economic impacts of climate change recognized in the climate-change literature and that several modeling input assumptions are outdated. As discussed in the February 2021 TSD, the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG) finds that, taken together, the limitations suggest that these SC–CO_2 estimates likely underestimate the damages from CO_2 emissions. The IWG is currently working on a comprehensive update of the SC–GHG estimates (under E.O. 13990) taking into consideration recommendations from the National Academies of Sciences, Engineering and Medicine, recent scientific literature, public comments received on the February 2021 TSD and other input from experts and diverse stakeholder groups. The EPA is participating in the IWG's work. In addition, while that process continues, the EPA is continuously reviewing developments in the scientific literature on the SC–GHG, including more robust methodologies for estimating damages from emissions, and looking for opportunities to further improve SC–GHG estimation going forward. Most recently, the EPA has developed a draft updated SC–GHG methodology within a sensitivity analysis in the RIA of the EPA's November 2022 supplemental proposal for oil and gas standards that is currently undergoing external peer review and a public comment process. See section 4.4 of the RIA for more discussion of this effort.

Table 12 presents the estimated PV and EAV of the projected health and climate benefits across the regulatory options examined in the RIA in 2019 dollars discounted to 2023. The table includes benefit estimates for the less and more stringent regulatory options examined in the RIA for this proposal.

TABLE 12—PROJECTED BENEFITS OF THE PROPOSED RULE, LESS STRINGENT ALTERNATIVE, AND MORE STRINGENT ALTERNATIVE, 2028 THROUGH 2037

[Millions 2019$, discounted to 2023] [a]

	Present value (PV)					
	3% Discount rate			7% Discount rate [d]		
	Proposed	Less stringent	More stringent	Proposed	Less stringent	More stringent
Health Benefits [c]	1,900	0.0	11,000	1,200	0.0	7,100
Climate Benefits [d]	1,400	0.0	3,200	[d] 1,400	[d] 0.0	[d] 3,200
Benefits [e]	3,300	0.0	14,000	2,600	0.0	10,000
	Equal annualized value (EAV) [b]					
	3% Discount rate			7% Discount rate [d]		
	Proposed	Less stringent	More stringent	Proposed	Less stringent	More stringent
Health Benefits [c]	220	0.0	1,300	170	0.0	1,000
Climate Benefits [d]	170	0.0	380	[d] 170	[d] 0.0	[d] 380

[58] Benefit-cost analyses have been an integral part of executive branch rulemaking for decades. Presidents since the 1970s have issued executive orders requiring agencies to conduct analysis of the economic consequences of regulations as part of the rulemaking development process. E.O. 12866, released in 1993 and still in effect today, requires that for all economically significant regulatory actions, an agency provide an assessment of the potential costs and benefits of the regulatory action, and that this assessment include a quantification of benefits and costs to the extent feasible.

	Equal annualized value (EAV) [b]					
	3% Discount rate			7% Discount rate [d]		
	Proposed	Less stringent	More stringent	Proposed	Less stringent	More stringent
Benefits [e]	390	0.0	1,700	330	0.0	1,400

[a] Values have been rounded to two significant figures. Rows may not appear to sum correctly due to rounding.
[b] The EAV of benefits are calculated over the 10-year period from 2028 to 2037.
[c] The projected monetized benefits include those related to public health associated with reductions in $PM_{2.5}$ and ozone concentrations. The projected health benefits are associated with several point estimates and are presented at real discount rates of 3 and 7 percent.
[d] Climate benefits are based on reductions in CO_2 emissions and are calculated using four different estimates of the social cost of carbon dioxide ($SC–CO_2$): model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate. For the presentational purposes of this table, we show the climate benefits associated with the average $SC–CO_2$ at a 3 percent discount rate, but the Agency does not have a single central $SC–CO_2$ point estimate. Climate benefits in this table are discounted using a 3 percent discount rate to obtain the PV and EAV estimates in the table. We emphasize the importance and value of considering the benefits calculated using all four $SC–CO_2$ estimates. Section 4.4 of the RIA presents estimates of the projected climate benefits of this proposal using all four rates. We note that consideration of climate benefits calculated using discount rates below 3 percent, including 2 percent and lower, is warranted when discounting intergenerational impacts.
[e] Several categories of benefits remain unmonetized and are thus not directly reflected in the quantified benefit estimates in the table. Non-monetized benefits include benefits from reductions in Hg and non-Hg metal HAP emissions and from the increased transparency and accelerated identification of anomalous emission anticipated from requiring CEMS.

This proposed rule is projected to reduce $PM_{2.5}$ and ozone concentrations, producing a projected PV of monetized health benefits of about $1.9 billion, with an EAV of about $220 million discounted at 3 percent. The projected PV of monetized climate benefits of the proposal are estimated to be about $1.4 billion, with an EAV of about $170 million using the $SC–CO_2$ discounted at 3 percent. Thus, this proposed rule would generate a PV of monetized benefits of $3.3 billion, with an EAV of $390 million discounted at a 3 percent rate.

At a 7 percent discount rate, this proposed rule is expected to generate projected PV of monetized health benefits of $1.2 billion, with an EAV of about $170 million discounted at 7 percent. Climate benefits remain discounted at 3 percent in this benefits analysis and are estimated to be about $1.4 billion, with an EAV of about $170 million using the $SC–CO_2$. Thus, this proposed rule would generate a PV of monetized benefits of $2.6 billion, with an EAV of $330 million discounted at a 7 percent rate. The potential benefits from reducing Hg and non-Hg metal HAP were not monetized and are therefore not directly reflected in the monetized benefit-cost estimates associated with this proposal. Potential benefits from the increased transparency and accelerated identification of anomalous emission anticipated from requiring CEMS were also not monetized in this analysis and are therefore also not directly reflected in the monetized benefit-cost comparisons. We nonetheless consider these impacts in our evaluation of the net benefits of the rule and find, if we were able to monetize these beneficial impacts, the proposal would have greater net benefits than shown in Table 12.

F. What analysis of environmental justice did we conduct?

Executive Order 12898 directs the EPA to identify the populations of concern who are most likely to experience unequal burdens from environmental harms; specifically, minority populations, low-income populations, and Indigenous peoples.[59] Additionally, Executive Order 13985 is intended to advance racial equity and support underserved communities through federal government actions.[60] 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.'' [61] In recognizing that minority and low-income populations often bear an unequal burden of environmental harms and risks, the EPA continues to consider ways of protecting them from adverse public health and environmental effects of air pollution.

The EPA's EJ technical guidance [62] states that ''[t]he analysis of potential EJ concerns for regulatory actions should address three questions:

1. Are there potential EJ concerns associated with environmental stressors affected by the regulatory action for population groups of concern in the baseline?

2. Are there potential EJ concerns associated with environmental stressors affected by the regulatory action for population groups of concern for the regulatory option(s) under consideration?

3. For the regulatory option(s) under consideration, are potential EJ concerns created or mitigated compared to the baseline?''

To address these questions in the EPA's first quantitative EJ analysis in the context of a MATS rule, the EPA developed a unique analytical approach that considers the purpose and specifics of the proposed rulemaking, as well as the nature of known and potential disproportionate and adverse exposures and impacts. However, due to data limitations, it is possible that our analysis failed to identify disparities that may exist, such as potential EJ characteristics (*e.g.,* residence of historically red lined areas), environmental impacts (*e.g.,* other ozone metrics), and more granular spatial resolutions (*e.g.,* neighborhood scale) that were not evaluated. Also due to data and resource limitations, we discuss HAP and climate EJ impacts of this action qualitatively (sections 6.3 and 6.6 of the RIA).

For this proposed rule, we employ two types of analysis to respond to the previous three questions: proximity analyses and exposure analyses. Both types of analyses can inform whether there are potential EJ concerns for population groups of concern in the

[59] 59 FR 7629, February 16, 1994.
[60] 86 FR 7009, January 20, 2021.
[61] *https://www.epa.gov/environmentaljustice.*
[62] U.S. Environmental Protection Agency (EPA), 2015. Guidance on Considering Environmental Justice During the Development of Regulatory Actions.

baseline (question 1).[63] In contrast, only the exposure analyses, which are based on future air quality modeling, can inform whether there will be potential EJ concerns after implementation of the regulatory options under consideration (question 2) and whether potential EJ concerns will be created or mitigated compared to the baseline (question 3). While the exposure analysis can respond to all three questions, several caveats should be noted. For example, the air pollutant exposure metrics are limited to those used in the benefits assessment. For ozone, that is the maximum daily 8-hour average, averaged across the April through September warm season (AS–MO3) and for $PM_{2.5}$ that is the annual average. This ozone metric likely smooths potential daily ozone gradients and is not directly relatable to the NAAQS, whereas the $PM_{2.5}$ metric is more similar to the long term $PM_{2.5}$ standard. The air quality modeling estimates are also based on state level emission data paired with facility-level baseline emissions and provided at a resolution of 12 km^2. Additionally, here we focus on air quality changes due to this proposed rulemaking and infer post-policy exposure burden impacts.

Exposure analysis results are provided in two formats: aggregated and distributional. The aggregated results provide an overview of potential ozone exposure differences across populations at the national- and state-levels, while the distributional results show detailed information about ozone concentration changes experienced by everyone within each population.

In section 6 of the RIA we utilize the two types of analysis to address the three EJ questions by quantitatively evaluating: (1) the proximity of affected facilities to populations of potential EJ concern (section 6.4); and (2) the potential for disproportionate ozone and $PM_{2.5}$ concentrations in the baseline and concentration changes after rule implementation across different demographic groups (section 6.5). Each of these analyses depends on mutually exclusive assumptions, was performed to answer separate questions, and is associated with unique limitations and uncertainties.

Baseline demographic proximity analyses can be relevant for identifying populations that may be exposed to local environmental stressors, such as local NO_2 and SO_2 emitted from affected sources in this proposed rule, traffic, or noise. The baseline analysis indicates that on average the populations living within 10 km of coal plants potentially subject to the proposed or alternate filterable PM standards have a higher percentage of people living below two times the poverty level than the national average. In addition, on average the percentage of the Native American population living within 10 km of lignite plants potentially subject to proposed Hg standard is higher than the national average. Relating these results to EJ question 1, we conclude that there may be potential EJ concerns associated with directly emitted pollutants that are affected by the regulatory action (*e.g.,* SO_2) for certain population groups of concern in the baseline (question 1). However, as proximity to affected facilities does not capture variation in baseline exposure across communities, nor does it indicate that any exposures or impacts will occur, these results should not be interpreted as a direct measure of exposure or impact.

As HAP exposure results generated as part of the 2020 Residual Risk analysis were below both the presumptive acceptable cancer risk threshold and noncancer health benchmarks and this proposed regulation should further reduce exposure to HAP, there are no 'disproportionate and adverse effects' of potential EJ concern. Therefore, we did not perform a quantitative EJ assessment of HAP risk.

This proposed rule is also expected to reduce emissions of direct $PM_{2.5}$, NO_X, and SO_2 nationally throughout the year. Because NO_X and SO_2 are also precursors to secondary formation of ambient $PM_{2.5}$ and NO_X is a precursor to ozone formation, reducing these emissions would impact human exposure. Quantitative ozone and $PM_{2.5}$ exposure analyses can provide insight into all three EJ questions, so they are performed to evaluate potential disproportionate impacts of this rulemaking. Even though both the proximity and exposure analyses can potentially improve understanding of baseline EJ concerns (question 1), the two should not be directly compared. This is because the demographic proximity analysis does not include air quality information and is based on current, not future, population information.

The baseline analysis of ozone and $PM_{2.5}$ concentration burden responds to question 1 from EPA's EJ Technical Guidance document more directly than the proximity analyses, as it evaluates a form of the environmental stressor targeted by the regulatory action. Baseline ozone and $PM_{2.5}$ analyses show that certain populations, such as Hispanics, Asians, those linguistically isolated, those less educated, and children may experience somewhat higher ozone and $PM_{2.5}$ concentrations compared to the national average. Therefore, also in response to question 1, there likely are potential EJ concerns associated with ozone and $PM_{2.5}$ exposures affected by the regulatory action for population groups of concern in the baseline. However, these baseline exposure results have not been fully explored and additional analyses are likely needed to understand potential implications. Due to the small magnitude of the exposure changes across population demographics associated with the rulemaking relative to the magnitude of the baseline disparities, we infer that post-policy EJ ozone and $PM_{2.5}$ concentration burdens are likely to remain after implementation of the regulatory action or alternative under consideration (question 2).

Question 3 asks whether potential EJ concerns will be created or mitigated as compared to the baseline. Due to the very small magnitude of differences across demographic population post-policy ozone and $PM_{2.5}$ exposure impacts, we do not find evidence that potential EJ concerns related to ozone and $PM_{2.5}$ concentrations will be created or mitigated as compared to the baseline.[64]

Prior to this proposed rule, the EPA initiated a public outreach effort to gather input from stakeholder groups likely to be interested in this proposed rule. Specifically, the EPA presented on a National EJ call on September 20, 2022, to share information about the proposed rule and solicit feedback about potential EJ considerations. The webinar was attended by individuals representing state governments, federally recognized tribes, environmental non-governmental organizations, higher education institutions, industry, and the EPA.[65]

[63] The baseline for proximity analyses is current population information, whereas the baseline for ozone exposure analyses are the future years in which the regulatory options will be implemented (*e.g.,* 2023 and 2026).

[64] Please note, exposure results should not be extrapolated to other air pollutant. Detailed EJ analytical results can be found in Section 6 of the RIA.

[65] This does not constitute the EPA's tribal consultation under E.O. 13175, which is described in section VIII.F of this proposed rule.

In addition to the engagement conducted prior to this proposed rule, the EPA is providing the public, including those communities disproportionately impacted by the burdens of pollution, opportunities to engage in the EPA's public comment period for this proposed rule, including by hosting a public hearing. This public hearing will occur according to the schedule identified in the **SUPPLEMENTARY INFORMATION** under the heading entitled *Participation in virtual public hearing* of this proposed rule.

VII. Request for Comments

We solicit comments on this proposed action. In addition to general comments on this proposed action, we are also interested in additional data that may improve the analyses. We are specifically interested in receiving any information regarding developments in practices, processes, and control technologies that reduce HAP emissions. We are also interested in comments on any reliance interests stakeholders may have that would be affected by this proposed action.

VIII. Statutory and Executive Order Reviews

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

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action was submitted to the OMB for review under section 3(f)(1) of Executive Order 12866. Any changes made in response to recommendations received as part of review under Executive Order 12866 have been documented in the docket. The EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, ''Regulatory Impact Analysis for the Proposed National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review'' (Ref. EPA–452/R–23–002), is available in the docket and is briefly summarized in section VI of this preamble and here.

Table 13 presents the estimated PV and EAV of the projected health benefits, climate benefits, compliance costs, and net benefits of the proposed rule in 2019 dollars discounted to 2023. The estimated monetized net benefits are the projected monetized benefits minus the projected monetized costs of the proposed rule. Table 13 also presents results for the less stringent and more stringent alternatives that are examined in the RIA for this proposal.

Under E.O. 12866, the EPA is directed to consider all of the costs and benefits of its actions, not just those that stem from the regulated pollutant. Accordingly, the projected monetized benefits of the proposal include health benefits associated with projected reductions in fine particulate matter ($PM_{2.5}$) and ozone concentration. The projected monetized benefits also include climate benefits due to reductions in CO_2 emissions. The projected health benefits are associated with several point estimates and are presented at real discount rates of 3 and 7 percent. The projected climate benefits in this table are based on estimates of the SC–CO_2 at a 3 percent discount rate and are discounted using a 3 percent discount rate to obtain the PV and EAV estimates in the table. The power industry's compliance costs are represented in this analysis as the change in electric power generation costs between the baseline and policy scenarios. In simple terms, these costs are an estimate of the increased power industry expenditures required to implement the proposed requirements and represent the EPA's best estimate of the social cost of the proposed rulemaking.

TABLE 13—PROJECTED MONETIZED BENEFITS, COMPLIANCE COSTS, AND NET BENEFITS OF THE PROPOSED RULE, LESS STRINGENT ALTERNATIVE, AND MORE STRINGENT ALTERNATIVE, 2028 THROUGH 2037

[Millions 2019$, discounted to 2023] [a]

	Present value (PV)					
	3% Discount rate			7% Discount rate [d]		
	Proposed	Less stringent	More stringent	Proposed	Less stringent	More stringent
Health Benefits [c]	1,900	0.0	11,000	1,200	0.0	7,100
Climate Benefits [d]	1,400	0.0	3,200	[d] 1,400	[d] 0.0	[d] 3,200
Compliance Costs	330	−45	4,600	230	−31	3,400
Net Benefits [e]	3,000	45	9,800	2,400	31	6,900
	Equal Annualized Value (EAV) [b]					
	3% Discount rate			7% Discount rate [d]		
	Proposed	Less stringent	More stringent	Proposed	Less stringent	More stringent
Health Benefits [c]	220	0.0	1,300	170	0.0	1,000
Climate Benefits [d]	170	0.0	380	[d] 170	[d] 0.0	[d] 380
Compliance Costs	38	−5.2	540	33	−4.5	490
Net Benefits [e]	350	5.2	1,100	300	4.5	900

[a] Values have been rounded to two significant figures. Rows may not appear to sum correctly due to rounding.
[b] The EAV of costs and benefits are calculated over the 10-year period from 2028 to 2037.
[c] The projected monetized benefits include those related to public health associated with reductions in $PM_{2.5}$ and ozone concentrations. The projected health benefits are associated with several point estimates and are presented at real discount rates of 3 and 7 percent.

[d] Climate benefits are based on reductions in CO_2 emissions and are calculated using four different estimates of the social cost of carbon dioxide (SC–CO_2): model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate. For the presentational purposes of this table, we show the climate benefits associated with the average SC–CO_2 at a 3 percent discount rate, but the Agency does not have a single central SC–CO_2 point estimate. Climate benefits in this table are discounted using a 3 percent discount rate to obtain the PV and EAV estimates in the table. We emphasize the importance and value of considering the benefits calculated using all four SC–CO_2 estimates. Section 4.4 of the RIA presents estimates of the projected climate benefits of this proposal using all four rates. We note that consideration of climate benefits calculated using discount rates below 3 percent, including 2 percent and lower, is warranted when discounting intergenerational impacts.

[e] Several categories of benefits remain unmonetized and are thus not directly reflected in the quantified benefit estimates in the table. Nonmonetized benefits include benefits from reductions in Hg and non-Hg metal HAP emissions and from the increased transparency and accelerated identification of anomalous emission anticipated from requiring CEMS.

As shown in Table 13, this proposed rule is projected to reduce $PM_{2.5}$ and ozone concentrations, producing a projected PV of monetized health benefits of about $1.9 billion, with an EAV of about $220 million discounted at 3 percent. The proposed rule is also projected to reduce greenhouse gas emissions in the form of CO_2, producing a projected PV of monetized climate benefits of about $1.4 billion, with an EAV of about $170 million using the SC–CO_2 discounted at 3 percent. The PV of the projected compliance costs are $330 million, with an EAV of about $38 million discounted at 3 percent. Combining the projected benefits with the projected compliance costs yields a net benefit PV estimate of $3 billion and EAV of $350 million.

At a 7 percent discount rate, this proposed rule is expected to generate projected PV of monetized health benefits of $1.2 billion, with an EAV of about $170 million. Climate benefits remain discounted at 3 percent in this net benefits analysis. Thus, this proposed rule would generate a PV of monetized benefits of $2.6 billion, with an EAV of $340 million discounted at a 7 percent rate. The PV of the projected compliance costs are $230 million, with an EAV of $33 million discounted at 7 percent. Combining the projected benefits with the projected compliance costs yields a net benefit PV estimate of $2.4 billion and an EAV of $300 million.

The potential benefits from reducing Hg and non-Hg metal HAP were not monetized and are therefore not directly reflected in the monetized benefit-cost estimates associated with this proposal. Potential benefits from the increased transparency and accelerated identification of anomalous emission anticipated from requiring CEMS requiring were also not monetized in this analysis and are therefore also not directly reflected in the monetized benefit-cost comparisons. We nonetheless consider these impacts in our evaluation of the net benefits of the rule and find, if we were able to monetize these beneficial impacts, the proposal would have greater net benefits than shown in Table 13.

B. Paperwork Reduction Act (PRA)

OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0567. The information collection activities in this proposed rule, which are a revision to the existing approved information collection activities, have been submitted for approval to the OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 2137–12. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The information collection activities in this proposed rule include continuous emission monitoring, performance testing, notifications and periodic reports, recording information, monitoring and the maintenance of records. The information generated by these activities will be used by the EPA to ensure that affected facilities comply with the emission limits and other requirements. Records and reports are necessary to enable delegated authorities to identify affected facilities that may not be in compliance with the requirements. Based on reported information, delegated authorities will decide which units and what records or processes should be inspected. The recordkeeping requirements require only the specific information needed to determine compliance. These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414).

Respondents/affected entities: The respondents are owners or operators of coal- and oil-fired EGUs. The NAICS codes for the coal- and oil-fired EGU industry are 221112, 221122, and 921150.

Respondent's obligation to respond: Mandatory per 42 U.S.C. 7414 *et seq.*

Estimated number of respondents: 187 per year.

Frequency of response: The frequency of responses varies depending on the burden item. Responses include daily calibrations, quarterly inspections, and semiannual compliance reports.

Total estimated burden: 443,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $100,100,000 (per year), includes $49,600,000 annualized capital or operation & maintenance costs.

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 OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the EPA's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. The EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. OMB must receive comments no later than June 23, 2023.

C. Regulatory Flexibility Act (RFA)

The EPA certifies that this proposed action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA). The EPA chose to examine the projected impacts of a more stringent regulatory option than proposed on small entities in order to present a scenario of ''maximum cost impact.'' As projected cost impacts of the proposed rule is dominated by cost impacts of the more stringent alternative also examined in the RIA, a no SISNOSE conclusion for the more stringent option can be extended to the proposed rule and less stringent option.

In 2028, the EPA identified 26 potentially affected small entities operating 41 units at 27 facilities, and of these 26, only two small entities may experience compliance cost increases greater than 1 percent of revenue under the proposed rule, and three small entities may experience such increases under the more stringent alternative.

Details of this analysis are presented in section 5 of the RIA, which is in the public docket.

D. Unfunded Mandates Reform Act of 1995 (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local, or tribal governments or the private sector. In light of the interest in this rule among governmental entities, the EPA initiated consultation with governmental entities. The EPA invited the following 10 national organizations representing state and local elected officials to a virtual meeting on September 22, 2022: (1) National Governors Association, (2) National Conference of State Legislatures, (3) Council of State Governments, (4) National League of Cities, (5) U.S. Conference of Mayors, (6) National Association of Counties, (7) International City/County Management Association, (8) National Association of Towns and Townships, (9) County Executives of America, and (10) Environmental Council of States. These 10 organizations representing elected state and local officials have been identified by the EPA as the ''Big 10'' organizations appropriate to contact for purpose of consultation with elected officials. Also, the EPA invited air and utility professional groups who may have state and local government members, such as the Association of Air Pollution Control Agencies, National Association of Clean Air Agencies, and others to participate in the meeting. The purpose of the consultation was to provide general background on the review of the MATS RTR, answer questions, and solicit input from state and local governments. Subsequent to the September 22, 2022, meeting, the EPA received a letter from the American Public Power Association (APPA). The EPA opened a non-rulemaking docket for public input on the EPA's efforts to reduce greenhouse gas emissions from new and existing fossil fuel-fired EGUs. The APPA letter was submitted to the non-rulemaking docket. See Docket ID No. EPA–HQ–OAR–2022–0723–0016. In that letter, APPA stated that they were not able to identify any new cost-effective technologies to reduce HAP emissions and that many of the current technologies used are state-of-the-art controls that continue to reduce HAP emissions. In addition, APPA stated there have been no developments in the emission control practices or processes available to control HAP emissions during startup and shutdown periods. Also, APPA stated that they support the continuation of the 30-day rolling average to assure compliance with MATS emission requirements to allow for hourly variability caused by unit operation and load requirements, including startup and shutdown events.

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.

The EPA believes, however, that this action may be of interest to state and/or local governments. Consistent with the EPA's policy to promote communication between the EPA and state and local governments, the EPA consulted with representatives of state and local governments in the process of developing the proposed amendments to permit them to have meaningful and timely input into its development. The EPA's consultation regarded planned actions for the review of the MATS RTR. The EPA met with 10 national organizations representing state and local elected officials to provide general background on the review of the MATS RTR, answer questions, and solicit input from state and local governments. The UMRA discussion in this preamble includes a description of the consultation. In the spirit of E.O. 13132, and consistent with EPA policy to promote communications between state and local governments, the EPA specifically solicits comment on this proposed action from state and local officials.

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

This action does not have tribal implications as specified in Executive Order 13175. The Executive order defines tribal implications as ''actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes.'' The amendments proposed in this action would not have a substantial direct effect on one or more tribes, change the relationship between the Federal Government and tribes, or affect the distribution of power and responsibilities between the Federal Government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.

Although this action does not have tribal implications as specified in Executive Order 13175, the EPA consulted with tribal officials during the development of this action. On September 1, 2022, the EPA sent a letter to all federally recognized Indian tribes initiating consultation to obtain input on this proposal. The EPA did not receive any requests from consultation from Indian tribes. The EPA also participated in the September 2022 National Tribal Air Association EPA Air Policy Update Call to solicit input on this proposed action.

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

This proposed rule is a ''[c]overed regulatory action'' under Executive Order 13045 because it is a significant regulatory action as described in section 3(f)(1) of Executive Order 12866, and the EPA believes that, even though the residual risk assessment showed all modeled exposures to HAP to be below thresholds for public health concern, the rule should reduce HAP exposure by reducing emissions of Hg and non-Hg HAP with the potential to reduce HAP exposure to vulnerable populations including children. Accordingly, we have evaluated the potential for environmental health or safety effects from exposure to HAP on children. The results of this evaluation are contained in the RIA and are available in the docket for this action. The EPA believes that the $PM_{2.5}$-related, ozone-related, and CO_2-related benefits projected under this proposed rule will further improve children's health. Specifically, the $PM_{2.5}$ and ozone EJ exposure analyses in section 6 of the RIA suggests that nationally, children (ages 0–17) will experience at least as great a reduction in annual $PM_{2.5}$ and ozone exposures as adults (ages 18–64) will experience in 2028, 2030 and 2035 under all regulatory alternatives of this rulemaking.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. For 2028, the compliance year for the proposed standards, the EPA projects a less than 0.1 percent change in retail electricity prices on average across the contiguous U.S., a less than 0.1 percent reduction in coal-fired electricity generation, and a less than 0.1 percent increase in natural gas-fired electricity

generation. The EPA does not project a significant change in utility power sector delivered natural gas prices in 2028. Details of the projected energy effects are presented in section 3 of the RIA, which is in the public docket.

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 (59 FR 7629, February 16, 1994) directs federal agencies, to the greatest extent practicable and permitted by law, to make EJ part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or Indigenous peoples) and low-income populations.

HAP risks were below both the presumptive acceptable cancer risk threshold and the RfD, and this proposed regulation will likely further reduce exposure to HAP. As such, the EPA believes that this action does not result in disproportionate and adverse effects on people of color, low-income populations, and/or Indigenous peoples.

The EPA believes that $PM_{2.5}$ and ozone exposures that exist prior to this action result in disproportionate and adverse human health or environmental effects on people of color, low-income populations and/or Indigenous peoples. Specifically, baseline $PM_{2.5}$ and ozone and exposure analyses show that certain populations, such as Hispanics, Asians, those linguistically isolated, those less educated, and children may experience disproportionately higher ozone and $PM_{2.5}$ exposures as compared to the national average. The EPA believes that this action is not likely to change existing disproportionate $PM_{2.5}$ and ozone exposure impacts on people of color, low-income populations and/or Indigenous peoples. American Indians may also experience disproportionately higher ozone concentrations than the reference group. We do not find evidence that potential EJ concerns related to ozone or $PM_{2.5}$ exposures will be meaningfully exacerbated or mitigated in the regulatory alternatives under consideration as compared to the baseline due to the small magnitude of ozone and $PM_{2.5}$ concentration changes associated with this rule relative to baseline disparities and the very small differences in the distributional analyses of post-policy ozone and $PM_{2.5}$ exposure impacts. Importantly, the action described in this rule is expected to lower ozone and $PM_{2.5}$ in certain areas, and thus mitigate some pre-existing health risks across all populations evaluated.

The documentation for these analyses is contained in section VI.F of this this proposed rule and in section 6, *Environmental Justice Impacts* of the RIA, which is in the public docket.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

[FR Doc. 2023–07383 Filed 4–21–23; 8:45 am]

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