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

OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2634 and 2635

RIN 3209–AA50

Legal Expense Fund Regulation

AGENCY: Office of Government Ethics.

ACTION: Final rule.

SUMMARY: The U.S. Office of Government Ethics (OGE) is adding a new subpart to the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). The new subpart contains the standards for an employee's acceptance of payments for legal expenses through a legal expense fund and an employee's acceptance of *pro bono* legal services for a matter arising in connection with the employee's official position, the employee's prior position on a campaign of a candidate for President or Vice President, or the employee's prior position on a Presidential Transition Team. OGE is also making related amendments to the portions of the Standards that govern the solicitation and acceptance of gifts from outside sources and the portions of the Executive Branch Financial Disclosure regulation that govern confidential financial disclosure reports.

DATES: This rule is effective November 21, 2023.

FOR FURTHER INFORMATION CONTACT: Maura Leary, Associate Counsel, or Heather Jones, Senior Counsel for Financial Disclosure, General Counsel and Legal Policy Division, Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005–3917; Telephone: (202) 482–9300; TTY: (800) 877–8339; FAX: (202) 482–9237.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Office of Government Ethics (OGE) published a proposed rule in the **Federal Register**, 87 FR 23769 (Apr. 21, 2022), proposing to amend both 5 CFR part 2634, Executive Branch, Financial Disclosure, Qualified Trusts, and Certificates of Divesture, and 5 CFR part 2635, Standards of Ethical Conduct for Employees of the Executive Branch, to establish a framework to govern an executive branch employee's acceptance of both payments for legal expenses through a Legal Expense Fund (LEF) and *pro bono* legal services for matters arising in connection with the employee's past or current official position, the employee's prior position on a campaign of a candidate for President or Vice President, or the employee's prior position on a Presidential Transition Team.

Before proposing the Legal Expense Fund rule, OGE sought public input through an advance notice of proposed rulemaking (ANPRM), *see* Notice and Request for Comments: Legal Expense Fund Regulation, 84 FR 15146 (Apr. 15, 2019), and at two public meetings, *see* Announcement of Public Meeting: Legal Expense Fund Regulation, 84 FR 50791 (Sept. 26, 2019). In addition to seeking public input, OGE consulted with executive branch ethics officials and with the Department of Justice and the Office of Personnel Management pursuant to section 201(a) of Executive Order 12674, as modified by Executive Order 12731, and the authorities contained in 5 U.S.C. 13122.

The proposed rule provided a 60-day comment period, which ended on June 21, 2022. OGE received 6,916 timely and responsive comments, which were submitted by six organizations and 6,910 individuals. After carefully considering the comments and the input provided before and in response to the proposed rule's publication, and making appropriate modifications, OGE is publishing this final rule. The rationale for the rule can be found in the preamble to the proposed rule at: *https://www.govinfo.gov/content/pkg/FR-2022-04-21/pdf/2022-08130.pdf.*

This rule will be effective 180 days after publication to allow OGE to implement procedures, provide training, and publish guidance regarding this new ethics program. It will also allow agencies to consider staffing needs and their own internal procedures.

II. Comments

OGE received nearly 7,000 comments from both organizations and individuals. The comments are publically posted on OGE's website and can be found at this address: *https://www.oge.gov/web/OGE.nsf/All+docs+By+Cat/417908CAB842A8128525887E004D262C.* Many of the commenters provided feedback on several different sections of the proposed rule. OGE has reviewed and considered each comment submitted; comments are discussed below in the context of the particular subparts or sections to which they pertain. OGE is not discussing comments that were either generally supportive of the regulation or generally critical of the regulation; however, OGE weighed both support and criticism when considering any possible changes in response to other comments. In addition, OGE does not specifically discuss comments that address issues outside the scope of the regulation.

OGE received 6,907 comments from individuals that all asked OGE to take the following actions: (1) make compliance with the regulation mandatory; (2) require employee beneficiaries to recuse from particular matters involving donors to their legal expense funds for five years; (3) remove a particular example; and (4) allow nonprofits to hire outside *pro bono* counsel. OGE addresses each of these comments below in the applicable section, and portions of the regulation were revised to address the concerns raised.

In the proposed rule, OGE specifically solicited comments on: (1) whether multi-beneficiary trusts should be permitted; (2) whether 501(c)(3) and 501(c)(4) organizations should be permitted to make donations to legal expense funds; and (3) whether 501(c)(3) and 501(c)(4) organizations may hire attorneys outside their organization to provide free or reduced cost legal services for employees. The weight of the comments supported single-beneficiary trusts and opposed allowing 501(c)(4) organizations to donate to legal expense funds or pay for outside legal representation. Although commenters were more divided on the question of allowing 501(c)(3) organizations to donate to legal expense funds and to pay for outside legal representation, the weight of the comments favored allowing such organizations to do both. As discussed in more detail in the relevant sections below, the rule has been revised to

permit 501(c)(3) organizations to donate to legal expense funds and pay for outside legal services.

Finally, OGE, in adopting this final rule, has corrected a few typographical errors and made a few other minor clarifying revisions to the rule as proposed.

General Comments

Several comments from individuals encouraged OGE to expand the regulation to cover employees of the legislative and judicial branches. Pursuant to 5 U.S.C. 13122(b)(1), OGE only is permitted to draft regulations that apply to executive branch employees. The Ethics in Government Act designated a supervising ethics office for each branch of government and, within the legislative branch, separate offices for the House and Senate. *See* 5 U.S.C. 13101(18). Each supervising ethics office is responsible for promulgating ethics rules that apply to the employees of that branch or congressional body.

One commenter asked that OGE amend the definition of ''covered relationship'' in § 2635.502(b)(1) to include the trustee and donors of a legal expense fund established under subpart J of part 2635 and the provider of any *pro bono* legal services to employees. OGE first notes that the relationship between an employee beneficiary and their trustee is a ''contractual . . . relationship that involves other than a routine consumer transaction'' and thus would already be covered by § 2635.502(b)(1)(i). Second, OGE has amended the regulation to reflect that the legal expense fund recusal is not a ''covered relationship'' recusal under § 2635.502. Instead, OGE is requiring employee beneficiaries to abide by a mandatory two-year recusal from matters affecting any trustee, donor of legal expense payments, or provider of *pro bono* services. OGE does not want to create confusion as to whether the § 2635.502 recusals or the more stringent legal expense fund recusals apply, so OGE is electing not to include these relationships as covered relationships under § 2635.502.

Several individual commenters suggested that OGE ban all legal expense funds. OGE has determined that this approach would significantly limit access to legal services for all but the wealthiest executive branch employees. While OGE historically has provided guidance to help ensure that executive branch employees who may receive distributions from an LEF are in compliance with existing ethics laws and rules, OGE believes that the proposed regulation, which creates much more robust limitations on the acceptance of payments for legal expenses and imposes significant transparency requirements, is the preferred and appropriate course.

Two organizations commented that the rule was vague about which funds must be routed through a legal expense fund and suggested that items such as pre-paid legal service plans, credit cards, or ''private borrowing from family members and close friends'' are covered by subpart J. OGE first notes that routine market arrangements, such as a pre-paid service plan or the use of a credit card, are not gifts as defined in subpart B and therefore would not be required to be routed through a legal expense fund. Second, OGE notes that if, for example, an employee received a below market rate loan from a family member or close friend, it would qualify under the personal relationship exception at § 2635.204(b), and the employee could accept the loan under that subpart B exception rather than subpart J. OGE included the provision at § 2635.1002(b) specifically to address circumstances such as ''private borrowing from family members or close friends,'' as raised by the commenter. Accordingly, OGE believes the regulation is sufficiently clear about which legal expense payments must be accepted using subpart J.

Several individual commenters suggested making contributions from legal expense funds taxable income. The Internal Revenue Service makes determinations about what income is taxable, and such a determination is outside of OGE's jurisdiction.

Several commenters asked that OGE address the political pressure that can be applied by withholding funds from employee witnesses. In response to OGE's ANPRM, numerous organizations and individuals expressed the desire for legal expense funds to be structured only as trusts with single beneficiaries to guard against such pressure. *See* May 22, 2019 Public Hearing Transcript, *https://www.oge.gov/web/OGE.nsf/0/DB24D09F28472B82852585B6005A2206/$FILE/Transcript.pdf;* Written Comments to ANPRM, *https://www.oge.gov/web/OGE.nsf/0/FE8D43CE6A038852852585B6005A2293/$FILE/ANPRM%20Legal%20Expense%20Fund%20Regulation%20-%20Written%20Comments.pdf.* The commenters noted that, unlike legal expense funds with multiple beneficiaries, trustees of single-beneficiary trusts have a fiduciary duty to the sole beneficiary. The structure of trusts with single beneficiaries, in the words of one commenter, ''provides the best protection for public servants, who can be certain that distributions will not be withheld or disbursed according to political pressures.'' Accordingly, OGE is electing to require that legal expense funds be trusts with a single beneficiary.

OGE received one comment from an organization in support of the existing penalties in the regulation, including the penalties for impermissible donations. Several comments from individuals requested stricter penalties, including imprisonment, for noncompliance with the regulation. OGE believes the remedies in the regulation strike the appropriate balance for noncompliance. Section 1007(h) requires the fund to return impermissible donations and requires the beneficiary to forfeit the ability to accept donations and make distributions if a quarterly report is late. In addition, OGE has reserved both the right to prohibit the fund from either accepting donations or making distributions and the right to terminate the trust if there is significant noncompliance. Finally, while violation of the substantive requirements of a regulation cannot be criminal, the criminal penalties for knowingly making a false statement to the government will apply to the documents and reports filed pursuant to this regulation.

A. Subpart J of the Standards

Section 2635.1002: Applicability and Related Considerations

One commenter asked that § 2635.1002 explicitly state that referring to an employee's official position in a legal expense fund solicitation does not violate subpart G. OGE did not adopt this suggestion, because an employee could reference their position in a way that would violate subpart G—in fact, § 2635.1002(c)(3) specifically requires that employees comply with subpart G in soliciting donations. However, OGE is adding language to § 2635.1002(c)(3) to clarify that the mere reference of the employee's official position in a solicitation does not in itself violate subpart G.

Two organizations objected to the regulation's scope being restricted to those legal matters arising in connection with the employee's past or current official position, calling it a disparate burden on employment law litigation. Payments for legal services that arise out of an executive branch employee's federal employment or service on a campaign raise more significant appearance and misuse concerns than payments for purely personal legal services. Numerous stakeholders, from public interest organizations to U.S.

Senators, have noted that legal expense funds previously established to defray the costs of legal expenses connected to government service have created heightened concern. Specifically, stakeholders have expressed concerns about the potential for donors to influence employees' official actions or witness statements, the difficulty of screening for prohibited donors, and the lack of transparency for legal expense donations to those in federal service. OGE has addressed this heightened appearance concern by specifically regulating payments for legal expenses arising out of an employee's past or current official position, limiting who may donate to employee legal expense funds, and requiring public disclosure of such donations.

Moreover, OGE is specifically directed by E.O. 12674 (as modified by E.O. 12731) to promulgate regulations addressing fundamental ethics principles such as prohibiting the use of public office for private gain and avoiding actions that create the appearance of a violation of a law or regulation. This directive supports regulating only legal expense payments connected to government service, as receipt of such payments for legal expenses could be viewed as using a public position for personal gain or creating the appearance of violating a law or regulation.

One organization commented that the regulation as drafted would not address the concerns about potential corruption raised by Senators in their letter to the Director (Letter from Senator Margaret Hassan *et. al.,* Aug. 2, 2018, *https://www.hassan.senate.gov/imo/media/doc/RoundsPatriotFundLetterSIGNED.180802.pdf*). In that letter, the Senators specifically raised concerns about transparency and funds with multiple beneficiaries, which make screening donations difficult and could allow the trustee to prioritize certain employee beneficiaries.

When drafting the proposed regulation, OGE addressed the Senators' concerns about multiple beneficiaries by prohibiting executive branch employees from accepting payments for legal expenses from an LEF that has multiple beneficiaries. In addition, to promote transparency, the proposed regulation requires both that the trust document be made publicly available, and that all payments of $250 or more be reported quarterly and posted publicly on OGE's website. The proposed regulation also limits the amount a single donor can donate and prohibits donations from businesses and lobbyists. Finally, the proposed rule requires that any existing legal expense fund not structured as required by subpart J come into compliance within 90 calendar days of the rule going into effect, or use of the fund to pay legal expenses will violate the Standards of Conduct.

Two organizations and 6,907 commenters objected to the language in § 2635.1002(b)(2), stating that legal expense fund payments and *pro bono* services that otherwise qualify for a subpart B gift exception or exclusion are not covered by this subpart (and thus are not subject to the trust, quarterly reporting, and transparency requirements). Many commenters stated that this language made the regulation optional, and the two organizations requested that subpart J be the exclusive means for accepting legal expense fund payments. One organization characterized the provision as ''allow[ing] executive branch officials to continue relying on the gift rule exclusions and exceptions they have historically cited to justify legal expense funds.''

Compliance with the requirements of subpart J is mandatory. Importantly, this regulation specifically clarifies that payments for legal expenses arising from an employee's past or current official position are given because of the employee's official position, and thus may not be accepted unless the employee complies with the gift rules. Accordingly, any gift of legal expenses or *pro bono* services arising out of an employee's past or current official position must comply with all the requirements of subpart J or conform to a narrow, pre-existing subpart B exception. Executive branch officials will not be able to rely on the historical interpretation that legal expenses could be excluded from the gift regulations under subpart B by determining that such expenses are not given because of their official position.

The only two subpart B exceptions likely to be used in practice are § 2635.204(b), which requires a determination that the donation is clearly motivated by a family relationship or personal friendship; and § 2635.204(c), which allows employees to accept free or discounted legal services from an established employee organization, such as a union or an employee welfare organization. Maintaining these two narrow exceptions would allow less well-connected employees to accept help with legal expenses from, for example, their spouse, their parents, or their union.

Several individuals requested that the regulation cap donations from family and friends at the same amount as everyone else. Such donations—which, by definition, must be given under circumstances that make clear that the gift is motivated by a family relationship or close personal friendship—are much less likely to raise appearance concerns. Accordingly, OGE is declining to make this change.

One organization and 6,907 individuals commented that the requirement that employees recuse from particular matters affecting donors for one year was too short, and requested that employees recuse from such matters for five years instead. A second organization asked for the recusal period to apply through the lifetime of the legal expense fund, and then recommended instituting different lengths of time for the recusal depending on the amount of money donated (*e.g.,* one-year recusal for under $5,000, four-year recusal for over $5,000). Individual commenters suggested recusal periods ranging from two to ten years. One organization also objected to use of the § 2635.502 impartiality standard because it relies on the reasonable person standard and because an agency can authorize an employee to participate notwithstanding impartiality concerns. In response to these comments, OGE is revising the regulation as follows: Employee beneficiaries will have a two-year recusal for donors donating $250 or more in a calendar year, starting from the time of each donor's most recent donation. Further, this recusal will be mandatory, with no written authorization option.

Two organizations also asked for the recusal to apply to both particular matters involving specific parties and particular matters of general applicability. OGE declines to adopt this proposal; recusals will be required only for particular matters involving specific parties. If recusals were extended to particular matters of general applicability, as proposed by the commenters, it would make legal expense funds unworkable for employees at the many agencies whose missions affect large and diverse sectors of the public. In addition, identifying which particular matter of general applicability would affect each donor to a trust would be extremely difficult.

OGE further notes that donors are limited to individuals, political parties, and 501(c)(3) organizations; for these donors, OGE believes that particular matters involving specific parties present the primary impartiality risk. Although 501(c)(3) organizations often work on policy issues that would be considered particular matters of general applicability, they typically do not have a financial interest in those particular

matters of general applicability (*see* OGE DAEOgram DO–06–002 (Jan. 19, 2006), discussing OLC's conclusion that a nonprofit organization does not have a financial interest in a particular matter on which it spends funds to advocate its policy position solely because of those expenditures). As a result, OGE does not believe a mandatory recusal for particular matters of general applicability is appropriate.

One commenter recommended that OGE require employee beneficiaries to certify in writing that they have notified their *pro bono* attorney of their financial reporting obligations, if any, and that the attorney has agreed to provide them with documentation of any services provided each year so that they may properly report any gifts. In response, OGE notes that § 2635.1009 explicitly reminds financial disclosure filers that *pro bono* services must be reported as gifts on their financial disclosure forms and, per § 2634.602(a), filers must certify that the financial disclosure reports are true and correct. Requiring further certification would create inconsistency and unnecessary redundancy in the gift reporting requirement for financial disclosure filers, and therefore OGE is not requiring such certification.

Section 2635.1003: Definitions

OGE received one comment that OGE should modify § 2635.1003 to emphasize that ''arising in connection with an employee's past or current official position'' does not cover assisting individuals with presidential nominations for Senate-confirmed positions. Because the concept of ''official position'' is regularly employed throughout the Standards, OGE does not believe such a change to the regulation is necessary. For example, if an executive branch employee assisted a nominee in the course of their official duties or in the course of their duties on the Presidential Transition Team, and a legal issue arose as a result of their official work or work for the transition team, that employee could establish a legal expense fund pursuant to subpart J. If, however, before an individual's executive branch employment, that individual assisted a nominee in the individual's personal capacity, then the legal issues would not arise from the individual's official position and the individual could not utilize subpart J to establish a legal expense fund. In addition, executive branch employees in Senate-confirmed positions would not be permitted to establish legal expense funds to defray the costs associated with the nomination and confirmation process, because those costs are expenses that do not arise from that employee's official executive branch position.

One organization also requested that OGE treat contingency fee arrangements like *pro bono* arrangements, requiring pre-approval by agency ethics officials. The organization was primarily concerned with contingency fees being paid by third parties. Although OGE understands the concern, OGE does not believe that differentiating between contingency fees and other fee structures is appropriate, as OGE considers a contingency fee structure to be a regular market arrangement and not a gift. Payments by third parties for any legal services arrangement—contingency fees or any other fee structure—must comply with subpart J or an applicable exception or exclusion in subpart B.

One organization and 6,907 individuals commented that the example to the definition of ''arising in connection with the employee's past or current official position,'' was offensive. The example illustrates that a military officer accused of sexual harassment off duty would be required to follow the subpart J requirements should that officer wish to accept payments for legal expenses from anyone other than family, close friends, or qualifying employee organizations, because the officer's after-work conduct is subject to the Uniform Code of Military Justice and thus arises out of the officer's official position. Several other individual commenters expressed opposition to the idea that employees accused of bad behavior would be able to fundraise for their defense. OGE has revised the example in the final rule. OGE would like to highlight, however, that nothing in this regulation should be construed as restricting an employee's access to a legal defense based on the nature of the allegations giving rise to the need for a defense fund.

Two organizations objected to the definition of ''*pro bono* legal services'' in proposed § 2635.1003 as too vague, specifically noting that there is ambiguity about whether the definition is limited to direct, representational legal services (not extending to, for example, amicus briefs). OGE intends the regulatory definition of *pro bono* legal services to mean direct, representational services. OGE will provide further guidance on this issue as needed.

OGE received several comments asking to broaden the definition of ''whistleblower'' beyond employees making protected reports or disclosures under the Whistleblower Protection Act (5 U.S.C. 2302(b)(8)) and the listed related statutes. OGE believes that a clear, objective definition of the term ''whistleblower'' is appropriate. In addition, OGE does not want the definition to be overbroad because of the public interest in transparency in this area and thus declines to broaden the definition of ''whistleblower.''

Section 2635.1004: Establishment

Two organizations objected to the requirement for a trust structure as unduly burdensome for public employees. Three organizations commented that they strongly supported the trust structure as drafted. OGE weighed these comments, as well as prior comments on this issue, in choosing to require the use of single-beneficiary trusts in drafting the final regulation. In addition, one organization commented that OGE was not taking into account the burden of seeking approval for every *pro bono* representation, and that the overall administrative burden of the regulation would outweigh any plausible benefit to employees.

OGE understands the concerns of the commenters objecting to the trust structure, and weighed the additional burden of establishing a trust on employees when drafting the proposed rule. However, a number of factors support a trust requirement. First, trusts offer the benefit of having a fiduciary act on behalf of a single employee and therefore in that employee's interest. Second, requiring a trust is consistent with the Legal Expense Fund regulations governing House and Senate employees. Third, the trust requirement creates a uniform system for approval for every executive branch employee, which ensures that each employee is treated equally and also eases the review burden for agency ethics officials. Finally, the feedback OGE received in interagency consultations, as well as the majority of the comments received in the public comment period and in the public hearings and meetings held by OGE in advance of drafting the proposed regulation, strongly support the trust structure being mandatory for legal expense funds.

Furthermore, in order to address the concerns raised by those objecting to the trust requirement and to reduce the burden on employee beneficiaries, OGE intends to issue guidance on, and provide sample trust clauses that would meet, the requirements of the regulation. In addition, OGE has provided other means for less wealthy or well-connected employees to access legal services. For example, the new § 2635.204(c)(2)(iv) creates a specific gift exception for assistance offered by pre-

existing employee organizations, which would permit employees to accept assistance with legal fees from organizations such as unions. OGE also notes that the requirements for accepting *pro bono* services under subpart J are significantly less burdensome than setting up a trust.

One commenter asked that the prohibitions on the trustee position be expanded to include prohibited sources (as defined in § 2635.203(d)), employees of lobbyists, all relatives of the beneficiary, and an employee or agent of the beneficiary or any other person prohibited by this section. OGE believes that the proposed additions are overly broad. First, OGE does not believe that a blanket prohibition on any individual already serving as employee or agent of the beneficiary (*e.g.,* an employee's personal attorney) is needed to adequately guard against potential conflicts of interest. OGE further notes that the proposed term ''relative'' is broad; instead, OGE specifically prohibited spouses, parents, and children for clarity. In addition, OGE notes that agency ethics officials emphasized in listening sessions following the ANPRM that in large agencies, almost all companies (and correspondingly, their employees) are considered prohibited sources. Furthermore, the proposed restrictions would prohibit an attorney working at any law firm where other attorneys perform lobbying work from serving as a trustee. Adding the proposed restrictions would greatly limit the pool of people available to serve as trustees, which could create additional barriers to access for lower-level employees. Accordingly, OGE is not going to adopt the proposed restrictions.

One commenter commended OGE's careful consideration of anonymous whistleblowers and the particular risks they face within the proposed structure. One organization raised concerns that anonymous whistleblowers working for intelligence agencies may risk having their identities revealed if OGE contacts the agency to establish procedures for handling classified documents. OGE has coordinated with intelligence agencies and has confirmed that existing policies at these agencies can be adapted to handle any LEF documents with classified information. All classified information will remain at the agency. Moreover, anonymous whistleblower LEF documents likely will not contain any classified information since the employee's name and position will not be included. In the unlikely event OGE would need to review a document with classified information, an OGE employee with a security clearance will review the document in secure agency spaces, consistent with the current practice for other ethics documents containing classified information.

OGE received several comments from individuals objecting to ''self-reporting'' of legal expense funds. OGE understands the concern, but notes that because OGE only has the authority to regulate executive branch employees, it is necessarily the employee beneficiary's responsibility to properly report a legal expense fund.

OGE received one comment that § 2635.1004(e)(1) is superfluous and should be deleted in light of § 2635.1004(f) because both provisions discuss the requirement that an employee beneficiary file their legal expense trust fund document with their agency. Section 2635.1004(e)(1) outlines the steps employees must take after accepting contributions to their legal expense fund, which include filing the legal expense fund trust document with their agency and receiving approval. Section 2635.1004(f) specifies which employees need to file with their agency and which need to file with OGE. Because paragraph (e) identifies which actions an employee must take to accept contributions and paragraph (f) specifies where the employee must file, OGE disagrees that § 2635.1004(e)(1) is superfluous and declines to change the regulation.

One organization proposed mandating that additional documents be sent to reviewing officials for approval, specifically: the trust agreement, written procedures for compliance with applicable ethics requirements, and a certification that the trustee meets the eligibility requirements, which would include the trustee's name, business address, employer, and relationship to beneficiary. The organization further proposed that there be no redactions of the documents other than fee schedules and sensitive personal information such as personal addresses, the names of minor children, and account numbers.

OGE notes that providing the trust agreement to the reviewing official is already mandated by § 2635.1004(f). Further, § 2635.1004(g) indicates that the reviewing official should review ''information regarding the trustee'' along with the trust document, in order to ascertain that the trustee meets the requirements of § 2635.1003. Accordingly, OGE does not believe a separate trustee certification is needed. In addition, OGE is electing not to adopt the proposal as OGE believes that ''written procedures for compliance with applicable ethics requirements'' is vague and could cause confusion—agency ethics officials can advise on compliance with legal expense fund requirements just as they do with other ethics requirements. Finally, OGE is adding a note in this section clarifying that only sensitive personal information such as fee schedules, personal addresses, and account numbers will be redacted.

Two organizations objected to agency officials serving as the approval authority for employee legal expense funds on the grounds that the agency is often a party opponent in federal employment litigation, which would create an incentive to withhold or delay approval. OGE understands this concern, and notes that all employees seeking legal expense funds may appeal agency denials to OGE. To more fully address this issue, OGE has broadened the existing legal expense fund appeal process to include an appeal right if the legal expense fund is not approved within the required 30-day timeline. However, OGE notes that given the need for conflicts screening, agencies should still be the initial review authority for most legal expense funds due to their knowledge of agency-specific conflicts.

In addition, one commenter proposed expanding the list of employees for whom OGE would conduct a second-level review of legal expense funds to include agency heads and leaders of certain component entities whose financial disclosure reports OGE does not review. OGE believes that uniformity across the executive branch ethics program is appropriate in this case and defers to the authority in 5 U.S.C. 13103 in identifying which senior positions require an elevated level of review. Accordingly, OGE declines to adopt the commenter's proposal.

One commenter noted that the proposed regulation did not clearly indicate the process for review for a Designated Agency Ethics Official's (DAEO) legal expense fund or specify the process for subordinate ethics officials. OGE has amended the regulation to clarify that OGE would conduct the initial review of a DAEO's legal expense fund. Legal expense funds of subordinate ethics officials will follow the same process as other employees and be reviewed by the DAEO.

One organization commented that whistleblowers should have access to a standardized trust document to use rather than having to seek an individualized prior approval of their trust. State trust laws vary and are subject to change. Therefore, OGE cannot create a standardized trust document that would reliably satisfy all states' trust laws. It is the responsibility

of the beneficiary and trustee to ensure the trust complies with applicable state law. However, OGE will issue guidance that provides trust clauses that will comply with subpart J.

One organization asked that the legal expense fund documents be available on OGE's website as ''searchable, sortable, and downloadable.'' OGE intends to have the records sortable by name of employee beneficiary, agency, position, and type of document. This is similar to the search capability for financial disclosure reports, which are also publicly available on OGE's website. In addition, OGE anticipates that the number of legal expense trust funds will be relatively low. Accordingly, anyone seeking information about legal expense fund donations should be able to quickly locate the information they need using the search capability available.

One organization requested more specific requirements for donors and the trustee when screening donations. Specifically, the organization requested that each donor supply their employer and state of residence, confirm they meet the eligibility requirements, and acknowledge that the information the donor submits is subject to 18 U.S.C. 1001. They asked that the trustee consult with the beneficiary and agency ethics official during the review and that the trustee interview every donor giving more than $1,000.

Although § 2635.1005 does not specifically address the information the trustee is required to collect from donors, it does state the trustee must provide the beneficiary with the information to complete their quarterly reports and public financial disclosure statements. As a result, the trustee is required to collect the name and employer for every donor and if the beneficiary is a public financial disclosure filer, the donor's city and state of residence. To create reporting consistency for all beneficiaries, OGE is revising § 2635.1007(a)(1) to require the reporting of the donor's city and state of residence. Because the donor information is being provided to the trust, rather than the government directly, OGE is not requiring an acknowledgement that 18 U.S.C. 1001 applies. The trustee is a fiduciary and as a result, OGE believes a trustee's duty of care will require them to consult with the beneficiary and agency ethics officials, as necessary, to determine if a donation is permissible. Finally, OGE believes an interview requirement is too great an administrative and cost burden to place on the trust as the trustee should be able to ascertain whether or not the donation is prohibited without interviewing the donor.

Section 2635.1005: Administration

OGE received no comments regarding this section.

Section 2635.1006: Contributions and Use of Funds

One individual commenter noted that the scope of acceptable donors to legal expense funds is different from the scope of individuals and entities that can provide *pro bono* legal services and suggested both have the same restrictions. OGE created more specific requirements for donors of in-kind *pro bono* services because of the nature of legal service providers. Many *pro bono* donors are law firms or legal service organizations, which are not individuals and would thus be precluded from donating *pro bono* legal services if the requirements were identical. Instead, only solo legal practitioners would be able to provide *pro bono* legal services, severely limiting employees' access to such services. For these reasons, OGE is electing to provide executive branch employees the opportunity to access *pro bono* legal services within the existing limitations of the regulation. These limitations include, importantly, prohibiting *pro bono* donations from attorneys or organizations substantially affected by the performance or nonperformance of an employee's official duties.

OGE requested comments regarding whether 501(c)(3) and 501(c)(4) organizations should be permitted to donate to legal expense funds. OGE received three comments from organizations expressing opposition to allowing 501(c)(4) organizations to donate. OGE also received comments from two organizations expressing opposition to allowing 501(c)(3) organizations to donate, with one allowing for the possibility of permitting donations with certain restrictions on the type of 501(c)(3) organizations that can donate.

OGE believes it is appropriate to allow 501(c)(3) organizations to donate to legal expense funds and has revised the regulation to permit such donations. 501(c)(3) organizations are tax-exempt charitable organizations that are restricted from lobbying activities and have other safeguards built into the requirements of the Internal Revenue Code. OGE is further requiring that the donating 501(c)(3) organization be established for two years before the donation in order to prevent donations from entities created specifically to circumvent these regulations. 501(c)(4) organizations may participate in lobbying activities, and as a result, OGE believes these organizations pose a greater risk of impartiality concerns. Accordingly, OGE is electing not to allow 501(c)(4) organizations to donate. In addition, OGE notes that an employee beneficiary will have a mandatory recusal from particular matters involving specific parties for any 501(c)(3) organization making a donation (*see* § 2635.1002) to protect against impartiality concerns.

OGE received many comments arguing for a lower cap on donations, including comments suggesting the cap match the campaign finance donation limit. One organization commented that there should be no cap on donations. The $10,000 proposed donation cap in the regulation is consistent with the donation cap for U.S. Senate legal expense funds. The cap in the regulation also balances the high cost of legal services with preventing employees from relying on a single source or small number of sources to fund the employee's legal expenses.

OGE received several comments from individuals asking OGE to prohibit donations from foreign governments and corporations. The regulation prohibits foreign governments from donating, and OGE has, in addition, amended the regulation to prohibit foreign nationals from donating to legal expense funds, serving as trustees, and providing *pro bono* legal services. The regulation also prohibits donations from any entities that are not registered 501(c)(3) organizations or political parties. For the purposes of this regulation, ''political parties'' include the distinct legal entities within national parties and party committees.

Section 2635.1007: Reporting Requirements

Two organizations commented that they oppose the requirement to disclose the terms of representation and funding sources for most employees in quarterly reports, stating that the information is privileged and confidential, that it would require employees to report confidential billing statements with attorney work product, and that the proposed rule, as written, improperly invades the privileged attorney-client relationship. One of the two organizations argued in the alternative that the vagueness of the reporting requirements would ''trick'' unwary clients into disclosing privileged and confidential information. This organization further stated that the reporting would be onerous and strategically disadvantage federal employees who need legal representation. In contrast, a separate organization strongly supported the quarterly reporting model as drafted.

OGE also received many comments from individuals supporting the idea of transparency generally and the specific public reporting requirements in the proposed regulation. Several individual commenters requested additional disclosures including: disclosing all donations, disclosing the relationship between the donor and beneficiary, and disclosing whether the donor does business with the beneficiary's agency. OGE weighed this strong support for transparency when considering any possible changes in response to commenters seeking less transparency.

OGE believes that the required quarterly reporting is necessary for transparency and does not impede on attorney-client privilege or unduly discourage representation of federal employees. The regulation requires that the beneficiary report distributions of $250 or more from the fund. Section 2635.1007 requires that the employee beneficiary disclose the payee, date of distribution, amount, and ''purpose'' of the distribution. The required purpose can be as broad as ''legal services'' and the employee beneficiary is in no way compelled to, and in fact should not, report confidential attorney-client information. OGE notes specifically that the beneficiary is not required to report the terms of the representation or the billing rates of the staff involved. Moreover, OGE intends to provide more specific guidance regarding quarterly reporting requirements. Although OGE acknowledges that there may be some strategic disadvantages to any disclosure requirements, OGE is balancing that concern with the need for transparency, which most commenters emphasized was crucial to this process.

OGE also is balancing the privacy interests of the donors and beneficiaries with the need for transparency. OGE believes the additional information requested by some individual commenters, such as the relationship between the beneficiary and donor, encroaches too much on the privacy of the donors and the beneficiary. In addition, the information required aligns with the disclosure requirements for U.S. House of Representatives legal expense funds.

One of the organizations also commented that the proposed reporting system would deter attorneys from representing federal employees. As noted above, OGE believes that the reporting requirements are very general and not unduly onerous.

Two organizations commented that placing the quarterly reporting information into a searchable, sortable database makes that information available to attorneys of party opponents, and stated that the information is privileged. OGE reiterates that no privileged information is required to be disclosed under § 2635.1007, and information such as whether the client is on a flat or fixed rate or the numbers of hours worked is not required by the form. Any hypothetical strategic disadvantage to the employee beneficiary is outweighed by the employee beneficiary being able to access funds for legal services.

One organization requested that the trustee disclose violations of the regulations (which OGE takes to mean impermissible donors or expense payments) and the corrective action taken, or in the alternative, declare that there have been no known violations. OGE does not have the statutory authority to require reporting by the trustee; all required reporting is from the employee beneficiary. In addition, the regulation contemplates the identification and return of impermissible donations as part of the proper functioning of the regulation, not as a per se violation. The beneficiary reports all donations received of $250 or more and all distributions of $250 or more on quarterly reports. These reports will be reviewed by agency ethics officials, and in some cases OGE, to ensure compliance with the regulation. It is possible that a trustee or beneficiary may not promptly identify an impermissible donation: this is the reason for agency review. In those cases, the agency ethics official will direct the employee to return the donation. OGE believes agency review of the quarterly reports and the fiduciary duty owed to the beneficiary are sufficient incentives for the trustee to act with care in carrying out their responsibilities.

One organization commented that they were concerned that the information required in quarterly reports about donors could provide clues as to the identity of an anonymous whistleblower and asked that anonymous whistleblowers be permitted to file reports a year after the normal deadline. OGE understands this concern, which is why reports filed by anonymous whistleblowers are not publicly posted like other reports. However, OGE believes the quarterly reporting requirements are important to ensure compliance with the regulation and to provide the information necessary for the employee and OGE to manage any required recusals. OGE believes the regulation strikes the proper balance between the risk to the whistleblower and OGE's required oversight of the ethics program. As a result, the regulation's quarterly reporting requirements apply to all beneficiaries of legal expense funds.

Section 2635.1008: Termination of a Legal Expense Fund

OGE requested comments regarding how and when the 501(c)(3) organization to which excess funds are donated should be designated. OGE received two comments from organizations supporting the idea that the trustee designate the organization, with one in favor of designating the organization at the time of termination of the trust. One individual commenter asked that the designation of the organization be at the time of formation to provide more information to donors to the fund. The commenter also objected to not returning the unspent donations to the donors. In addition, one organizational commenter requested that the 501(c)(3) organization not have ties to the trustee.

OGE has revised § 2635.1008 to exclude 501(c)(3) organizations that have ties to the trustee, but is not changing the time of designation. The regulation's timing in designating the 501(c)(3) organization is similar to that for legal expense funds established pursuant to the U.S. House of Representatives legal expense fund regulations, and the small number of comments weigh in favor of not changing the time of designation. The individual commenter was dubious of the difficulty in returning unspent funds to individual donors, given that the regulation requires the return of impermissible donations. In practice, however, it is challenging to return unspent donations to individual donors at the end of the life of a fund because the trustee would have to apportion the remaining funds among all of the donors to the fund, which could result in returning insignificant amounts to many individual donors. OGE believes a donation of the remaining amount to an approved 501(c)(3) organization reduces the administrative burden on the trust and does not create additional conflicts issues. However, OGE has amended the regulation to allow the return of unspent funds to individual donors if practicable.

OGE received one comment requesting mandatory termination of legal expense funds to prevent beneficiaries from having legal expense funds that continue to spend funds after the legal matter has ended, *i.e.,* ''zombie funds.'' OGE has revised the rule and adopted a mandatory termination within 90 days of conclusion of the legal matter or within 90 days of the last expenditure made in relation to the

legal matter for which it was created, whichever is later.

Section § 2635.1009: Pro Bono Legal Services

OGE received three comments from organizations regarding the restrictions on individuals and entities that provide *pro bono* legal services. One organization supported this section of the proposed regulation as drafted, stating that it contained adequate protections against conflicts of interest. One organization suggested that OGE adopt the definition of prohibited source found in § 2635.203(d) and disallow all prohibited sources from providing *pro bono* legal services. One organization suggested that OGE revise the language of the rule to more clearly state that any individuals providing *pro bono* legal services may not be substantially affected by the performance or nonperformance of an employee's official duties.

OGE declines to adopt the suggestion to bar the acceptance of *pro bono* services from prohibited sources as defined in § 2635.203(d). In preparing to draft the proposed rule, OGE solicited input from agency ethics officials. Several agency ethics officials from large agencies told OGE that if the traditional ''prohibited source'' definition was applied to *pro bono* services, the employees at their agencies would likely never be able to accept *pro bono* assistance with legal expenses because of the breadth of the agency portfolio.

OGE also notes that barring acceptance of *pro bono* services from firms registered as lobbyists and foreign agents would make it very difficult for employees to retain law firm services at all; this is particularly true for employees who live and work in the Washington, DC Metro Area. Accordingly, OGE has elected to permit employees to accept *pro bono* services from individual attorneys who are not lobbyists, foreign nationals, or foreign agents, and from organizations (law firms and other legal entities) that do not have interests that may be substantially affected by the performance or nonperformance of an employee's official duties. OGE recognizes the concerns related to lobbyists and registered foreign agents providing gifts, which is why individual attorneys providing *pro bono* services cannot be lobbyists, foreign nationals, or foreign agents.

In addition, OGE has revised the regulation to more clearly address the two-step *pro bono* donor analysis. First, the individual attorney providing legal services cannot be a lobbyist, foreign agent, or foreign national, nor have interests substantially affected by the performance or nonperformance of the employee's official duties. Second, the organization or entity employing the attorney (*e.g.,* a law firm, legal services organization, or 501(c)(3) hiring outside counsel) may not have interests that may be substantially affected by the performance or nonperformance of the employee's official duties. OGE believes the regulation as written strikes the proper balance between conflicts of interest concerns and allowing access to *pro bono* services in practice for all federal employees.

OGE solicited comments regarding whether 501(c)(3) and 501(c)(4) organizations should be permitted to pay for legal services for an executive branch employee. OGE received a comment from 6,905 individuals that nonprofit charities should be on equal footing with law firms in the ability to provide legal services. OGE also received comments from three organizations that supported the idea that 501(c)(3) organizations should be able to pay for outside counsel to provide legal services to executive branch employees, with some limitations. The limitations proposed include: (1) that the organization not have conflicting interests; (2) that the organization be in operation for at least two or three years; and (3) that the organization's focus be on government integrity, whistleblower protections, federal employment law, or fraud, waste, and abuse in the government. OGE received one comment from an organization objecting to the idea that both 501(c)(3) organizations and 501(c)(4) organizations could be able to pay for outside counsel to provide legal services. OGE received two comments from organizations objecting to, and no comments in support of, allowing 501(c)(4) organizations to provide *pro bono* legal services or pay for legal services for executive branch employees.

OGE notes that § 2635.1009(a)(2) of the proposed regulation had allowed both law firms and 501(c)(3) organizations to provide in kind *pro bono* legal services to an employee, so long as the entity providing services did not ''have interests that may be substantially affected by the performance or nonperformance of an employee's official duties.'' This provision allowed a 501(c)(3) organization to provide legal services using the organization's own employees, but it did not permit any entity to hire an outside lawyer or law firm to provide those services.

Following the review of the comments, OGE also believes it is appropriate to allow 501(c)(3) organizations to pay an outside lawyer or law firm to provide an employee legal services. As discussed above, 501(c)(3)s are tax-exempt charitable organizations that are restricted from lobbying activities and have other safeguards due to the requirements of the Internal Revenue Code. Because 501(c)(4) organizations do not have similar safeguards in place and do not have the same restrictions on lobbying activity, OGE is declining to allow 501(c)(4) organizations to pay an outside lawyer or law firm to provide an employee legal services.

OGE has revised the regulation to include a provision permitting 501(c)(3) organizations to hire outside counsel to represent executive branch employees for legal matters arising in connection with the employee's past or current official position, the employee's prior position on a campaign, or the employee's prior position on a Presidential Transition Team. Any 501(c)(3) organization seeking to hire outside counsel will be required to have been established for two years before paying for an employee's legal services to protect against the creation of an entity in order to circumvent these regulations. The 501(c)(3) organization will also need to meet the requirements of § 2635.1009(a).

There is heightened concern about impartiality in *pro bono* legal arrangements and in any circumstance when a third party is paying for an employee's legal fees. As a result, the employee will have a mandatory recusal from particular matters involving specific parties involving the attorney(s) and legal services organization representing the employee in a legal matter. The employee will also have a mandatory recusal from particular matters involving specific parties involving any 501(c)(3) organization paying for the employee's legal fees during the representation and for two years after the representation has concluded.

OGE received comments from two organizations concerned that seeking approval from the agency for receipt of *pro bono* service when the agency is the opposing party in the legal matter would deter some employees from seeking *pro bono* legal services. The ethics system in the executive branch is decentralized; thus, the agencies are in the best position to know which individuals, 501(c)(3) organizations, and law firms have business before the agency and could create a conflict of interest. As a result, the review process

rests with agencies. To address the concern expressed by the commenters, however, OGE has revised the regulation to permit employees engaged in legal matters when the agency is the opposing party to appeal to OGE when an agency determines that a *pro bono* service provider is prohibited, or when an agency fails to make such a determination within 30 days. OGE believes this change strikes a balance between ensuring prohibited donors are not providing legal services to employees while ensuring every employee entitled to assistance with legal services can access those services.

OGE received a comment from an organization that is concerned that legal services providers could be paid by third parties for legal services and the employee and/or the legal services provider would then characterize those services as *pro bono.* The commenter requested an amendment to the regulation requiring a certification by the legal services provider and the employee that no third party is paying for the legal services. In response to the commenter's concern, OGE is adding a certification to the quarterly report where the employee will attest that the information is true, complete, and correct to the best of their knowledge. In addition, any employee who files an OGE Form 278e or 450 financial disclosure statement must disclose the receipt of *pro bono* services or legal services paid for by a non-relative third party as a gift on their annual financial disclosure report, which the employee must similarly certify is true, complete, and correct to the best of their knowledge. Both disclosure statements are subject to the civil and criminal penalties for either failure to disclose or false disclosure.

B. Comments on Subpart B of the Standards

Two organizations requested clarification on whether contingency fees are provided for less than ''market value'' as that term is defined in § 2635.203(c). OGE considers contingency fees to be a regular market arrangement, and does not consider a contingency fee arrangement on its face to be less than the cost a member of the general public would reasonably expect to incur. Accordingly, contingency fee arrangements are not *pro bono* legal services as defined in § 2635.1003.

OGE received no comments regarding § 2635.204(n): Exception for Legal Expense Funds and Pro Bono Legal Services and § 2635.204(c): Discounts and Similar Benefits in subpart B.

OGE is implementing a new exception at 5 CFR 2635.204(c)(2)(iv) to clarify that employees may properly accept opportunities and benefits offered by a previously established employee organization, when eligibility is based on the employee's status as an agency employee. As discussed in the preamble to the proposed rule (*see* 87 FR 23773), the proposed exception is limited to ''established'' employee organizations, such as employee welfare groups for Federal employees, because the purpose of this exception is to allow employees to accept opportunities and benefits from pre-existing employee organizations with a general mission of providing assistance to agency employees, rather than from organizations established as a response to a specific investigation or established to help a specific employee. As the preamble to the proposed rule clarifies, the word ''established'' does not mean an employee organization must be established before this regulation goes into effect; rather, it means that the organization should have been established before the need for assistance arises—in the case of an LEF, before a legal matter arises.

C. Regulatory Amendments to Confidential Financial Disclosure Reporting Requirements

OGE received no comments regarding § 2634.907: Report contents.

III. Matters of Regulatory Procedure

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final rule will not have a significant economic impact on a substantial number of small entities because it primarily affects current Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies because this regulation creates information collection requirements that require approval of the Office of Management and Budget. The information collection requirements imposed by the proposed regulation are directed at beneficiaries of legal expense funds, who are current executive branch employees. Although the requirements are directed at employee beneficiaries, OGE anticipates that the legal expense fund trustees will prepare most or all of the fund documentation and reporting.

In fulfilling the regulatory requirements, employee beneficiaries must first submit a trust document for approval by their employing agency, and in some cases by OGE. Employee beneficiaries must also submit quarterly and termination reports regarding the funds collected and disbursed by the legal expense fund. The employee beneficiaries will in turn collect information from (1) donors who contribute to the legal expense fund for the payment of legal expenses and (2) payees who receive payments distributed from the legal expense fund. Together, this information collection is titled ''OGE Legal Expense Fund Information Collection.''

OGE plans to seek Paperwork Reduction Act approval of this new information collection. The purposes of the OGE Legal Expense Fund Information Collection include, but are not limited to, obtaining information relevant to a conflict-of-interest determination and disclosing on the OGE website information submitted pursuant to 5 CFR part 2635, subpart J. The authority for this information collection is addressed in the **SUPPLEMENTARY INFORMATION** section.

OGE estimates that there will be approximately three new legal expense funds filed each year. It is anticipated that there may be an average of five legal expense fund trusts in existence each year. Each trust is anticipated to have approximately 20 donors, whose reporting requirements are tied to the frequency with which they donate, and approximately two payees, who will submit information each time they receive a distribution.

The following table estimates the total annual burden resulting from the OGE Legal Expense Fund Information Collection will be approximately 129.2 hours.

Instrument	Time per response	Number of annual responses	Total burden (hours)
Trust Document	20 hours	3	60
Quarterly and Termination Reports (beneficiary burden)	2 hours	20	60
Quarterly and Termination Reports (donor and payee burden)	5 minutes	110	9.2

Instrument	Time per response	Number of annual responses	Total burden (hours)
Total			129.2

These estimates are based in part on OGE's knowledge of several legal expense funds that have been established for Executive branch employees, as well as OGE's consultation with the U.S. House of Representatives and the U.S. Senate regarding the legal expense funds that they oversee.

Shortly after publication of this rule, OGE plans to submit this new information collection to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act. OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. Public comments can be submitted on OMB's website: *Reginfo.gov*.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this final rule will not significantly or uniquely affect small businesses and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Executive Order 13563 and Executive Order 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select the regulatory approaches that maximize net benefits (including economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated as a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, this rule has been reviewed by the Office of Management and Budget.

Currently, executive branch employees may accept gifts to pay for legal expenses from others directly and can also establish funds to accept donations for such expenses, as long as the employee remains in compliance with the gift restrictions in subparts B and C of the Standards of Conduct and the criminal conflict of interest statutes. *See, e.g.,* OGE Legal Advisory LA–18–11 (Sept. 12, 2018); OGE Legal Advisory LA–17–10 (Sept. 28, 2017). In other words, there are currently costs for employees who establish an LEF in order to ensure compliance with ethics rules even in the absence of OGE's new framework in subpart J, but compliance can be difficult and confusing as the current rules do not address these types of gifts specifically. OGE's role is currently limited to providing a legal expense fund trust template or to providing technical assistance to help ensure that executive branch employees who may receive distributions from an LEF will be in compliance with existing ethics laws and rules.

Based on OGE's current experience under the status quo, it is estimated that approximately five executive branch employees may seek to establish or maintain an LEF annually. The new framework will consist of the following activities: establishment of the LEF trust; submission of trust documentation for agency review and approval; review and approval by OGE (when applicable); LEF trustee soliciting and accepting donations; LEF trustee screening donations to ensure the donor is permissible; LEF trustee overseeing distributions from the trust for the employee's legal expenses; preparing quarterly reports of contributions to and distributions from the LEF; submission of quarterly reports for agency review; review by OGE (when applicable); preparation of trust termination reports and/or employment termination reports; submission of those reports for agency review and OGE review (when applicable); and communications regarding all of the above. OGE estimates that the annual time burden for all of the above is 100 hours. Using an estimated rate $340 per hour for the services of a professional trust administrator or private representative, the estimated annual cost burden is $34,000. *See* Clio, Legal Trends Report 65 (2021), *https://www.clio.com/resources/legal-trends/2021-report/read-online/* (calculating an average hourly rate of $332 for trust lawyers nationally). However, OGE estimates that the annual time burden under the status quo, if an employee establishes a legal expense fund that needs to comply with existing ethics rules, is 75 hours with an annual cost burden of $25,500. Thus, the net increase from the status quo is approximately $8,500 per fund. The estimate of 75 hours is based, in part, on the estimated time burden for OGE's qualified trust program. *See* 84 FR 67743. That number was reduced because the status quo does not require review and approval of trusts or submission of reports to agencies and OGE. Under the status quo, a significant time burden exists because the lack of a detailed framework requires additional research by employee representatives, consultation with agency ethics officials and OGE, and a more detailed review of each legal expense fund donor in the absence of an enumerated list of permissible donors. The additional 25-hour estimate is based on the specific submissions required by 5 CFR part 2635, subpart J. Specifically, submission of documents establishing an LEF trust, quarterly reports, and termination reports; review by agencies and OGE of those submissions; and corresponding communications will increase the cost burden in comparison to the status quo. The burden on legal expense fund donors specifically is unchanged because they would need to provide the same level of information under the status quo.

The benefits from implementing this new regulatory structure are significant. Employees' acceptance of payments for legal expenses relating to their official duties has triggered concern from outside groups, Congress, and the media regarding appearance of corruption, corruption issues, and a desire for transparency. Creating this regulation will provide a framework for screening for conflicts of interest and transparency, which will serve to protect both the agency and the employee. Further, the regulation will provide clarity to executive branch employees by articulating the process for establishing an LEF and the requirements for maintaining one, including: donation caps, the process for review and approval of LEF trust documents, the definition of prohibited donors, and the submission of quarterly, publicly available reports. As a result of

these requirements, as well as the increased public reporting requirements, the public will have increased confidence in the decision-making of executive branch employees who accept gifts of legal expenses consistent with the new proposed subpart J.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Executive Order 13175

The Office of Government Ethics has evaluated this final rule under the criteria set forth in Executive Order 13175 and determined that tribal consultation is not required as this proposed rule has no 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.

List of Subjects

5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, Trusts and trustees.

5 CFR Part 2635

Conflict of interests, Executive branch standards of ethical conduct, Government employees.

Approved: May 10, 2023.

Emory Rounds,

Director, U.S. Office of Government Ethics.

For the reasons set forth in the preamble, the U.S. Office of Government Ethics amends 5 CFR parts 2634 and 2635 as follows:

PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

■ 1. The authority citation for part 2634 is revised to read as follows:

Authority: 5 U.S.C. 13101 *et. seq.;* 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note, as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 and Sec. 701, Pub. L. 114–74; Pub. L. 112–105, 126 Stat. 291; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 2. Amend § 2634.907 by:

■ a. Revising paragraph (g)(5); and

■ b. Designating the example following paragraph (g)(5) as Example 1 to paragraph (g).

The revision reads as follows:

§ 2634.907 Report contents.

* * * * *

(g) * * *

(5) *Exceptions.* Reports need not contain any information about:

(i) Gifts and travel reimbursements received from relatives (see § 2634.105(o)).

(ii) Gifts and travel reimbursements received during a period in which the filer was not an officer or employee of the Federal Government.

(iii) Any food, lodging, or entertainment received as ''personal hospitality of any individual,'' as defined in § 2634.105(k).

(iv) Any payments for legal expenses from a legal expense fund or the provision of *pro bono* legal services, as defined in subpart J of part 2635 of this chapter, or any payments for legal expenses or the provision of *pro bono* legal services that otherwise qualify for a gift exclusion or gift exception in subpart B of part 2635 of this chapter, if the confidential filer is an anonymous whistleblower as defined by § 2635.1003 of this chapter.

(v) Any exclusions specified in the definitions of ''gift'' and ''reimbursement'' at § 2634.105(h) and (n).

* * * * *

PART 2635—STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

■ 3. The authority citation for part 2635 is revised to read as follows:

Authority: 5 U.S.C. 7301, 7351, 7353; 5 U.S.C. 13101 *et. seq.;* E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 4. Amend § 2635.203 by adding paragraphs (h) and (i) to read as follows:

§ 2635.203 Definitions.

* * * * *

(h) *Legal expense fund* has the meaning set forth in § 2635.1003.

(i) *Pro bono legal services* has the meaning set forth in § 2635.1003.

■ 5. Amend § 2635.204 by:

■ a. Removing the word ''or'' at the end of paragraph (c)(2)(ii);

■ b. Removing the period at the end of paragraph (c)(2)(iii) and adding ''; or'' in its place; and

■ c. Adding paragraph (c)(2)(iv), Example 4 to paragraph (c)(2), and paragraph (n).

The additions read as follows:

§ 2635.204 Exceptions to the prohibition for acceptance of certain gifts.

* * * * *

(c) * * *

(2) * * *

(iv) Offered to employees by an established employee organization, such as an association composed of Federal employees or a nonprofit employee welfare organization, because of the employees' Government employment, so long as the employee is part of the class of individuals eligible for assistance from the employee organization as set forth in the organization's governing documents.

* * * * *

Example 4 to paragraph (c)(2): A nonprofit military relief society provides access to financial counseling services, loans, and grants to all sailors and Marines. A service member may accept financial benefits from the relief society, including to cover legal expenses, because the benefits are offered by an employee organization that was established before the legal matter arose, and because the benefits are being offered because of the employees' Government employment, as set forth in the relief society's governing documents.

* * * * *

(n) *Legal expense funds and pro bono legal services.* An employee who seeks legal representation for a matter arising in connection with the employee's past or current official position, the employee's prior position on a campaign of a candidate for President or Vice President, or the employee's prior position on a Presidential Transition Team may accept:

(1) Payments for legal expenses paid out of a legal expense fund that is established and operated in accordance with subpart J of this part; and

(2) *Pro bono* legal services provided in accordance with subpart J of this part.

■ 6. Add subpart J to read as follows:

Subpart J—Legal Expense Funds

Sec.

2635.1001 Overview.
2635.1002 Applicability and related considerations.
2635.1003 Definitions.
2635.1004 Establishment.
2635.1005 Administration.
2635.1006 Contributions and use of funds.
2635.1007 Reporting requirements.
2635.1008 Termination of a legal expense fund.
2635.1009 *Pro bono* legal services.

§ 2635.1001 Overview.

This subpart contains standards for an employee's acceptance of payments for

legal expenses through a legal expense fund and an employee's acceptance of *pro bono* legal services. Legal expenses covered by this subpart are those for a matter arising in connection with the employee's past or current official position, the employee's prior position on a campaign of a candidate for President or Vice President, or the employee's prior position on a Presidential Transition Team.

§ 2635.1002 Applicability and related considerations.

(a) *Applicability.* This subpart applies to an employee who seeks to accept payments for legal expenses from a legal expense fund or the provision of *pro bono* legal services. The legal expenses or the provision of *pro bono* legal services must be for a matter arising in connection with the employee's past or current official position, the employee's prior position on a campaign of a candidate for President or Vice President, or the employee's prior position on a Presidential Transition Team.

(b) *Not covered by this subpart.* The following types of payments for legal expenses or *pro bono* legal services are not covered by this subpart:

(1) *Personal matters.* Payments for legal expenses or the provision of *pro bono* legal services related to matters that do not arise in connection with the employee's past or current official position, the employee's prior position on a campaign of a candidate for President or Vice President, or the employee's prior position on a Presidential Transition Team, such as a matter that is primarily personal in nature, are not covered by this subpart. Personal matters include, but are not limited to, tax planning, personal injury litigation, protection of property rights, family law matters, and estate planning or probate matters.

Example 1 to paragraph (b)(1): A Department of Homeland Security employee wants to set up a legal expense fund in connection with the employee's divorce and custody proceeding. This is a personal matter and the employee may not establish a legal expense fund under this subpart, but may use other gift exceptions and exclusions in accordance with subparts B and C of this part as appropriate.

(2) *Gifts acceptable according to a gift exclusion or exception.* Payments for legal expenses or the provision of *pro bono* legal services that otherwise qualify for a gift exclusion or exception other than § 2635.204(n) are not covered by this subpart.

Example 1 to paragraph (b)(2): A Central Intelligence Agency employee is facing administrative disciplinary action due to an issue with the employee's security clearance and would like to seek financial assistance to pay for an attorney. Even though this matter arose in connection with their official position, if the employee's parents offer to cover the legal expenses, that donation is not subject to this subpart, as it would be subject to the gift exception at § 2635.204(b).

Note 1 to paragraph (b): Acceptance of legal expense payments or *pro bono* legal services not covered by this subpart must be analyzed under subparts B and C of this part.

(c) *Related considerations*—(1) *Gifts between employees.* Acceptance of legal expense payments or the provision of *pro bono* legal services from another employee must be analyzed under 18 U.S.C. 205 and subpart C of this part.

(2) *Impartiality.* (i) An employee beneficiary may not knowingly participate in a particular matter involving specific parties, consistent with the periods of disqualification detailed in paragraph (c)(2)(ii) of this section, if any person described below is a party or represents a party:

(A) The trustee;

(B) An individual, entity, or organization donating *pro bono* legal services pursuant to § 2635.1009 (*pro bono* legal services provider); or

(C) An individual or entity that made a donation of $250 or more in a calendar year to the legal expense fund.

(ii) The employee beneficiary's period of disqualification from particular matters involving specific parties involving the trustee runs from the assumption of the trustee position until two years after the trustee's resignation, if the trustee resigns, or two years after the termination of the trust. The employee's period of disqualification from particular matters involving specific parties involving each *pro bono* legal services provider runs from the commencement of *pro bono* legal services until two years after the last date *pro bono* services were provided. The period of disqualification for each donor begins to run on the date the most recent legal expense fund donation is received from that donor until two years after the donation.

Example 1 to paragraph (c)(2): A donor contributed to a Social Security Administration (SSA) employee's legal expense fund. Three months after this contribution was made, the donor submitted a disability claim. The employee may not participate in evaluating the disability claim because the claim falls within the two-year mandatory recusal period.

(3) *Misuse of position.* Legal expense fund payments must be solicited and accepted consistent with the provisions in subpart G of this part relating to the use of public office for private gain, use of nonpublic information, use of Government property, and use of Government time. The mere reference to the employee's official position in a solicitation would generally not violate subpart G of this part.

Example 1 to paragraph (c)(3): A Transportation Security Administration (TSA) employee retains legal counsel due to an investigation into inappropriate behavior in their department, and the employee establishes a legal expense fund in accordance with this subpart. Neither the employee nor the legal expense fund's trustee may use the TSA agency seal in materials or otherwise imply the Government endorses the legal expense fund, or use nonpublic details of the investigation to solicit contributions to the legal expense fund. Agency seals frequently are protected by law or require licensing for use. Further, the employee may not task subordinates with any work relating to administration of the legal expense fund. However, the employee may note in a solicitation that they are an employee of TSA, and that the matter arose in the course of their official duties.

(4) *Financial disclosure.* In addition to the legal expense fund reporting requirements outlined in § 2635.1007, an employee beneficiary who is a public or confidential filer, other than a confidential filer who is an anonymous whistleblower, under part 2634 of this chapter must report gifts of legal expense payments accepted from sources other than the United States Government, including gifts of *pro bono* services, on the employee's financial disclosure report, subject to applicable thresholds and exclusions.

§ 2635.1003 Definitions.

For purposes of this subpart:

Anonymous whistleblower means an employee who makes or intends to make a disclosure or report, or who engages in an activity protected under 5 U.S.C. 2302(b)(8), 5 U.S.C. 2302(b)(9), 5 U.S.C. 416, 50 U.S.C. 3517, 50 U.S.C. 3033, or 28 CFR 27.1, and who seeks to remain anonymous.

Arising in connection with the employee's past or current official position means the employee's involvement in the legal matter would not have arisen had the employee not held the status, authority, or duties associated with the employee's past or current Federal position.

Example 1 to the definition of "arising in connection with the employee's past or current official position": A Department of Transportation employee is being investigated by the Inspector General for potential misuse of Government resources while on official travel. The Internal Revenue Service (IRS) is separately investigating the employee for misreporting household income on the employee's personal taxes. The employee may use this subpart to establish a legal expense fund concerning the Inspector General investigation because the legal matter arose in connection with their official position. However, this subpart would not apply to the unrelated IRS investigation because that legal matter did not arise in connection with the employee's official position.

Example 2 to the definition of "arising in connection with the employee's past or current official position": A junior employee at the Environmental Protection Agency is challenging their proposed termination due to misuse of Government property. All of the employee's alleged misconduct occurred outside official duty hours. Because the employee would not be subject to the Standards of Conduct had the employee not held their official position, the employee may establish a legal expense fund in accordance with this subpart.

Arising in connection with the employee's prior position on a campaign means the employee's involvement in the legal matter would not have arisen had the employee not held the status, authority, or duties associated with the employee's prior position on a campaign of a candidate for President or Vice President.

Arising in connection with the employee's prior position on a Presidential Transition Team means the employee's involvement in the legal matter would not have arisen had the employee not held the status, authority, or duties associated with the employee's prior position as a member of the staff of a Presidential Transition Team.

Employee beneficiary means an employee as defined by § 2635.102(h) for whose benefit a legal expense fund is established under this subpart.

Legal expense fund means a fund established to receive contributions and to make distributions of legal expense payments.

Legal expense payment or payment for legal expenses means anything of value received by an employee under circumstances that make it clear that the payment is intended to defray costs associated with representation in a legal, congressional, or administrative proceeding.

Pro bono legal services means legal services provided without charge or for less than market value as defined in § 2635.203(c) to an employee who seeks legal representation for a matter arising in connection with the employee's past or current official position, the employee's prior position on a campaign of a candidate for President or Vice President, or the employee's prior position on a Presidential Transition Team.

§ 2635.1004 Establishment.

(a) *Structure.* A legal expense fund must be established as a trust that conforms to the requirements of this part and applicable state law. To the extent the requirements of this part and applicable state law are incompatible, the Director of the Office of Government Ethics may permit such deviations from this part as necessary to ensure compatibility with applicable state law.

(b) *Grantor.* The legal expense fund must be established by the employee beneficiary.

(c) *Trustee.* A legal expense fund must be administered by a trustee who is not:

(1) The employee beneficiary;

(2) A spouse, parent, or child of the employee beneficiary;

(3) Any other employee of the Federal executive, legislative, or judicial branches;

(4) An agent of a foreign government as defined in 5 U.S.C. 7342(a)(2);

(5) A foreign national;

(6) A lobbyist as defined by 2 U.S.C. 1602(10) who is currently registered pursuant to 2 U.S.C. 1603(a); or

(7) A person who has interests that may be substantially affected by the performance or nonperformance of the employee beneficiary's official duties.

(d) *Employee beneficiary.* (1) Except as provided in paragraph (d)(2) of this section, a legal expense fund must be established for the benefit of a single, named employee beneficiary.

(2) A legal expense fund for the benefit of an anonymous whistleblower may be established without disclosing the identity of the anonymous whistleblower to anyone other than the trustee so long as the legal expense fund is created for the purpose of funding expenses in connection with the whistleblowing activity or the facts that underlie that activity.

(e) *Filing and approval of legal expense fund trust document required.* An employee beneficiary may not solicit or accept contributions or make distributions through a legal expense fund before:

(1) Filing the legal expense fund document in accordance with paragraph (f) of this section; and

(2) Receiving approval for the legal expense fund in accordance with paragraph (g)(1) or (g)(3) of this section.

(f) *Filing of legal expense fund trust document.* (1) The employee beneficiary, or the trustee or representative of the employee beneficiary, must file the legal expense fund trust document with the designated agency ethics official at the agency where the employee beneficiary is employed.

(2) An employee beneficiary who is an anonymous whistleblower may choose to file a legal expense fund trust document anonymously through the employee beneficiary's trustee or representative with the Office of Government Ethics only. The Office of Government Ethics will not receive reports containing classified material; if needed, an OGE employee with a security clearance will review any classified documents in a secure agency space, consistent with the current practice for other ethics documents containing classified material.

(g) *Approval of legal expense fund trust document.* (1) *Designated agency ethics official approval.* The designated agency ethics official must determine, based on the submitted trust document and information regarding the trustee, whether to approve a legal expense fund trust document filed by an employee beneficiary, other than an anonymous whistleblower choosing to file with the Office of Government Ethics, within 30 calendar days of filing.

(i) *Standard for approval.* The designated agency ethics official must approve a legal expense fund that is, based on the submitted trust document and information regarding the trustee, in compliance with this subpart.

(ii) *Transmission of trust documents to the Office of Government Ethics.* Following approval, the signed legal expense fund trust document must be forwarded to the Office of Government Ethics within seven calendar days.

(iii) *Exception for anonymous whistleblowers.* The Office of Government Ethics will serve as the approving authority for anonymous whistleblowers who choose to file a legal expense fund trust document anonymously with the Office of Government Ethics only.

(2) *Office of Government Ethics review.* Following approval by the designated agency ethics official, the Office of Government Ethics will conduct a secondary review of the legal expense fund trust documents of the employee beneficiaries listed in

paragraph (g)(2)(ii) of this section within 30 calendar days of receipt.

(i) *Standard for review.* The Office of Government Ethics will review the legal expense fund trust document to determine whether it conforms to the requirements established by this subpart. If defects are ascertained, the Office of Government Ethics will bring them to the attention of the approving agency and the employee beneficiary or the employee beneficiary's trustee or representative, who will have 30 calendar days to take necessary corrective action.

(ii) *Employee beneficiaries requiring secondary Office of Government Ethics review.* The Office of Government Ethics will review the legal expense fund trust documents of the following employee beneficiaries:

(A) The Postmaster General;

(B) The Deputy Postmaster General;

(C) The Governors of the Board of Governors of the United States Postal Service;

(D) Employees of the White House Office and the Office of the Vice President; and

(E) Officers and employees in offices and positions which require confirmation by the Senate, other than members of the uniformed services and Foreign Service Officers below the rank of Ambassador.

(3) *Review for designated agency ethics officials.* When the employee beneficiary is a designated agency ethics official, the Office of Government Ethics will conduct the sole review and approval. The Office of Government Ethics will review the legal expense fund trust document to determine whether it conforms to the requirements established by this subpart.

(4) *Right to Appeal.* If the approval of a legal expense fund has been denied, or an employee's legal expense fund request has not been acted upon within 30 days, the requester may appeal by mail or email to the Director of the U.S. Office of Government Ethics. Requests sent by mail should be addressed to the address for the Office of Government Ethics that can be found at *www.oge.gov.* The envelope containing the request and the letter itself should both clearly indicate that the subject is a legal expense fund appeal. Email requests should be sent to *LEF@oge.gov* and should indicate in the subject line that the message contains a legal expense fund appeal. Appeals should be submitted within 60 days of denial by the designated agency ethics official or 90 days of submission to the designated agency ethics official, in the case of a request that has not been acted upon. In the case of legal expense funds for anonymous whistleblowers and designated agency ethics officials, OGE staff will conduct the initial review, and the Director will serve as the appeal authority.

(h) *Amendments.* The trust document may only be amended if the trustee and employee beneficiary file the amended legal expense fund trust document in accordance with paragraph (f) of this section and seek approval in accordance with paragraph (g) of this section.

(i) *One legal expense fund.* No employee beneficiary may establish or maintain more than one legal expense fund at any one time. An employee may not later establish a second legal expense fund for the same legal matter.

(j) *Conforming existing legal expense funds.* In order for an employee beneficiary who has an existing legal expense fund to receive legal expense payments from the existing legal expense fund, the employee beneficiary must comply with §§ 2635.1005(b), 2635.1006, and 2635.1007 by February 20, 2024.

(k) *Public access.* Approved legal expense fund trust documents will be made available by the Office of Government Ethics to the public on its website within 30 calendar days of receipt. The trust fund documents will be sortable by employee beneficiary's name, agency, and position, as well as type of document and document date. Legal expense fund trust documents filed by anonymous whistleblowers will not be made available to the public. Legal expense fund trust documents that are made available to the public will not include any information that would identify individuals whose names or identities are otherwise protected from public disclosure by law. Only sensitive personal information such as fee schedules, personal addresses, and account numbers will be redacted.

§ 2635.1005 Administration.

(a) *Trustee's duties and powers.* A trustee of a legal expense fund is responsible for:

(1) Operating the legal expense fund trust consistent with this part and applicable state law;

(2) Operating as a fiduciary for the employee beneficiary in relation to the legal expense fund property and the legal expense fund purpose;

(3) Providing information to the employee beneficiary as necessary to comply with the Ethics in Government Act, 5 U.S.C. 13104(a)(2), part 2634 of this chapter, and this part; and

(4) Notifying donors and payees whose contributions and distributions, respectively, are reportable that their names will be disclosed on the OGE website.

(b) *Limitation on role of the employee beneficiary.* An employee beneficiary may not exercise control over the legal expense fund property.

§ 2635.1006 Contributions and use of funds.

(a) *Contributions.* A legal expense fund may only accept contributions of payments for legal expenses from permissible donors listed in paragraph (b) of this section.

(b) *Permissible donors.* A permissible donor includes:

(1) An individual who is not:

(i) An agent of a foreign government as defined in 5 U.S.C. 7342(a)(2);

(ii) A foreign national;

(iii) A lobbyist as defined by 2 U.S.C. 1602(10) who is currently registered pursuant to 2 U.S.C. 1603(a);

(iv) Acting on behalf of, or at the direction of, another individual or entity in making a donation;

(v) Donating anonymously;

(vi) Seeking official action by the employee beneficiary's agency;

(vii) Doing business or seeking to do business with the employee beneficiary's agency;

(viii) Conducting activities regulated by the employee beneficiary's agency other than regulations or actions affecting the interests of a large and diverse group of persons;

Example 1 to paragraph (b)(1)(viii): A donor contributed to a Department of State employee's legal expense fund. The donor has recently applied to renew their United States Passport. Because the Department of State's passport renewal office affects the interests of a large and diverse group of people, the donation is permissible under paragraph (b)(1)(viii) of this section.

(ix) Substantially affected by the performance or nonperformance of the employee beneficiary's official duties; or

(x) An officer or director of an entity that is substantially affected by the performance or nonperformance of the employee beneficiary's official duties.

(2) A national committee of a political party as defined by 52 U.S.C. 30101(14) and (16) or, for former members of a campaign of a candidate for President or Vice President, the campaign, provided that the donation is not otherwise prohibited by law and the entity is not substantially affected by the performance or nonperformance of an employee beneficiary's official duties; or

(3) An organization, established for more than two years, that is:

(i) described in section 501(c)(3) of the Internal Revenue Code and exempt from taxation under section 501(a) of the Internal Revenue Code, and

(ii) not substantially affected by the performance or nonperformance of an employee beneficiary's official duties.

Note 1 to paragraph (b): Acceptance of a legal expense payment from another employee must be analyzed under subpart C of this part.

(c) *Contribution limits.* A legal expense fund may not accept more than $10,000 from any single permissible donor per calendar year.

Note 2 to paragraph (c): As discussed in § 2635.1002(b)(2), payments for legal expenses or the provision of *pro bono* legal services that otherwise qualify for a gift exclusion or exception other than § 2635.204(n) in subpart B of this part are not covered by this subpart.

(d) *Use of funds.* Legal expense fund payments must be used only for the following purposes:

(1) An employee beneficiary's expenses related to those legal proceedings arising in connection with the employee's past or current official position, the employee's prior position on a campaign of a candidate for President or Vice President, or the employee's prior position on a Presidential Transition Team;

(2) Expenses incurred in soliciting for and administering the fund; and

(3) Expenses for the discharge of Federal, state, and local tax liabilities that are incurred as a result of the creation, operation, or administration of the fund.

Example 1 to paragraph (d): An employee beneficiary's attorney determines it is necessary to employ an expert witness related to a legal proceeding arising in connection with the employee beneficiary's official position. Funds may be distributed from the legal expense fund to pay fees and expenses for the expert witness.

§ 2635.1007 Reporting requirements.

(a) *Quarterly reports.* An employee beneficiary must file quarterly reports that include the following information until the trust is terminated or an employment termination report is filed as set forth in paragraph (d) of this section.

(1) *Contributions.* For contributions of $250 or more during the quarterly reporting period, an employee beneficiary must report the donor's name, city and state of residence, employer, date(s) of contribution, and contribution amount. For the report due January 30, an employee beneficiary must also disclose contributions from a single donor of $250 or more for the prior calendar year unless the contributions have been disclosed on a prior quarterly report.

(2) *Distributions.* For distributions of $250 or more during the quarterly reporting period, an employee beneficiary must report the payee's name, date(s) of distribution, amount, and purpose of the distribution. For the report due January 30, an employee beneficiary must also disclose distributions to a single source of $250 or more for the prior calendar year unless the distributions have been disclosed on a prior quarterly report.

(b) *Filing of reports.* (1) The employee beneficiary must file all reports required in this section with the designated agency ethics official at the agency where the employee beneficiary is employed. The trustee or a representative of the employee beneficiary may file a report on behalf of the employee beneficiary.

(2) An employee beneficiary who is an anonymous whistleblower may choose to file reports anonymously through the employee beneficiary's trustee or representative with the Office of Government Ethics. The Office of Government Ethics will not receive reports containing classified material; if needed, an OGE employee with a security clearance will review any classified documents in a secure agency space, consistent with the current practice for other ethics documents containing classified material.

(c) *Reporting periods and due dates.* Quarterly reports must cover the following reporting periods and comply with the following due dates:

(1) January 1 to March 31, with the report due on April 30.

(2) April 1 to June 30, with the report due on July 30.

(3) July 1 to September 30, with the report due on October 30.

(4) October 1 to December 31, with the report due on January 30 of the following year.

(5) If the scheduled due date falls on a Saturday, Sunday or Federal Holiday, the report will instead be due the next business day.

(d) *Employment termination report.* If the employee beneficiary is leaving executive branch employment, the employee beneficiary must file an employment termination report no later than their last day of employment. No contributions may be accepted for or distributions paid by the legal expense fund between the date of the filing and the employee beneficiary's termination date. The report must include the following:

(1) A report of contributions received and distributions made as required by paragraph (a) of this section between the end of the last quarterly reporting period and the date of the report; and

(2) A statement as to whether the trust will be terminated or remain in force after the employee beneficiary terminates their executive branch employment.

(e) *Extensions.* For each quarterly report, a single extension of 30 calendar days may be granted by the employee beneficiary's designated agency ethics official, or the Director of the Office of Government Ethics if filing with the Office of Government Ethics, for good cause upon written request by the employee beneficiary or the trustee.

(f) *Review of reports.* (1) *Designated agency ethics official review.* The designated agency ethics official must review reports within 30 calendar days of filing.

(i) *Standard for review.* The designated agency ethics official will review the report to determine that:

(A) The information required under paragraph (a) of this section is reported for each contribution and distribution; and

(B) Contributions to and distributions from the trust are in compliance with § 2635.1006.

(ii) *Transmission of reports to the Office of Government Ethics.* Following review, all reports must be forwarded in unclassified format to the Office of Government Ethics within seven calendar days.

(iii) *Office of Government Ethics review for anonymous whistleblowers.* The Office of Government Ethics will serve as the reviewing authority for anonymous whistleblowers who choose to file reports anonymously with the Office of Government Ethics only.

(2) *Office of Government Ethics review.* Following review by the designated agency ethics official, the Office of Government Ethics will conduct a secondary review of the reports of the employee beneficiaries listed in paragraph (f)(2)(ii) of this section within 30 calendar days of receipt.

(i) *Standard for review.* The Office of Government Ethics will review the report to determine whether it conforms to the requirements established by this subpart. If defects are ascertained, the Office of Government Ethics will bring them to the attention of the reviewing agency and the employee beneficiary or the employee beneficiary's trustee or representative, who will have 30 calendar days to take necessary corrective action.

(ii) *Employee beneficiaries requiring secondary Office of Government Ethics review.* The Office of Government Ethics will review the reports of the following employee beneficiaries:

(A) The Postmaster General;

(B) The Deputy Postmaster General;

(C) The Governors of the Board of Governors of the United States Postal Service;

(D) Employees of the White House Office and the Office of the Vice President; and

(E) Officers and employees in offices and positions which require confirmation by the Senate, other than members of the uniformed services and Foreign Service Officers below the rank of Ambassador.

(3) *Review for designated agency ethics official.* When the employee beneficiary is a designated agency ethics official, the Office of Government Ethics will conduct the sole review. OGE will review the report to determine that:

(i) The information required under paragraph (a) of this section is reported for each contribution and distribution; and

(ii) Contributions to and distributions from the trust are in compliance with § 2635.1006.

(g) *Public access.* Quarterly and employment termination reports will be made available by the Office of Government Ethics to the public on its website within 30 calendar days of receipt. The reports will be sortable by employee beneficiary's name, agency, and position, as well as type of document and document date. Quarterly and employment termination reports that are made available to the public by the Office of Government Ethics will not include any information that would identify individuals whose names or identities are otherwise protected from public disclosure by law. The reports filed by anonymous whistleblowers will not be made available to the public.

(h) *Noncompliance.* (1) *Receipt of impermissible contributions.* If the legal expense fund receives a contribution that is not permissible under § 2635.1006, the contribution must be returned to the donor as soon as practicable but no later than the next reporting due date as described in paragraph (c) of this section. If the donation cannot be returned to the donor due to the donor's death or the trustee's inability to locate the donor, then the contribution must be donated to a 501(c)(3) organization meeting the requirements in § 2635.1008(c).

(2) *Late filing of required documents and reports.* If a report or other required document is filed after the due date, the employee beneficiary forfeits the ability to accept contributions or make distributions through the trust until the report or other required document is filed.

Example 1 to paragraph (h)(2): A Department of Labor employee establishes a legal expense fund in accordance with this subpart. Because the employee filed the trust document on February 15, the first quarterly report is due on April 30. However, the employee did not submit the first quarterly report until May 15. The employee is prohibited from accepting contributions or making distributions through the trust from May 1 until May 15. Once the employee files the quarterly report, the employee may resume accepting contributions and making distributions.

(3) *Continuing or other significant noncompliance.* In addition to the remedies in paragraphs (h)(1) and (2) of this section, the Office of Government Ethics has the authority to determine that an employee beneficiary may not accept contributions and make distributions through the trust or terminate the trust if there is continuing or other significant noncompliance with this subpart.

§ 2635.1008 Termination of a legal expense fund.

(a) *Voluntary termination.* A legal expense fund may be voluntarily terminated only for the following reasons:

(1) The purpose of the trust is fulfilled or no longer exists; or

(2) At the direction of the employee beneficiary.

(b) *Mandatory termination.* An employee's legal expense fund must be terminated within 90 days of the resolution of the legal matter for which the legal expense fund was created or within 90 days of the last expenditure made in relation to the legal matter for which it was created, whichever is later.

(c) *Excess funds.* Within 90 calendar days of termination of the legal expense fund, the trustee must distribute any excess funds to an organization or organizations described in section 501(c)(3) of the Internal Revenue Code and exempt from taxation under section 501(a) of the Internal Revenue Code. Funds from the legal expense fund may not be donated to an organization that was established by the trustee or the employee beneficiary, an organization in which the trustee or the employee beneficiary, their spouse, or their child is an officer, director, or employee, or an organization with which the employee has a covered relationship within the meaning of § 2635.502(b)(1). The trustee has sole discretion to select the 501(c)(3) organization. If practicable, the trustee may return the excess funds to the donors on a pro-rata basis rather than donating the funds to a 501(c)(3) organization.

(d) *Trust termination report.* After the trust is terminated, the employee beneficiary must file a trust termination report that contains the information required by § 2635.1007(d)(1) for the period of the last quarter report through the trust termination date. The report also must indicate the organization to which the excess funds were donated or if the excess funds were returned to donors. The report is due 30 calendar days following the termination date of the trust. Trust termination reports should be filed in accordance with the procedures outlined in § 2635.1007(b).

(e) *Exception for anonymous whistleblowers.* An employee beneficiary who is an anonymous whistleblower may choose to file the trust termination report anonymously through the employee beneficiary's trustee or representative with the Office of Government Ethics.

§ 2635.1009 Pro bono legal services.

(a) *Acceptance of permissible pro bono legal services.* An employee may solicit or accept the provision of *pro bono* legal services for legal matters arising in connection with the employee's past or current official position, the employee's prior position on a campaign of a candidate for President or Vice President, or the employee's prior position on a Presidential Transition Team from:

(1) Any individual who:

(i) Is not an agent of a foreign government as defined in 5 U.S.C. 7342(a)(2);

(ii) Is not a foreign national;

(iii) Is not a lobbyist as defined by 2 U.S.C. 1602(10) who is currently registered pursuant to 2 U.S.C. 1603(a); and

(iv) Does not have interests that may be substantially affected by the performance or nonperformance of the employee's official duties; and

(2) An organization or entity that does not have interests that may be substantially affected by the performance or nonperformance of an employee's official duties.

Note 1 to paragraph (a): Pursuant to § 2634.907(g) of this chapter, an employee who is a public or confidential filer under part 2634 of this chapter must report gifts of *pro bono* legal services on the employee's financial disclosure report, subject to applicable thresholds and exclusions.

(b) *Provision of outside legal services.* An employee may solicit or accept payment for legal services for legal matters arising in connection with the employee's past or current official position, the employee's prior position on a campaign of a candidate for

President or Vice President, or the employee's prior position on a Presidential Transition Team from an organization, established for more than two years, that is described in section 501(c)(3) of the Internal Revenue Code and exempt from taxation under section 501(a) of the Internal Revenue Code. The organization, the legal services provider that the organization pays for legal services, and the individual attorney providing legal services must meet the requirements described in paragraph (a) of this section. The term ''*pro bono services*'' includes the provision of outside legal services as described in this section.

(c) *Role of designated agency ethics official.* The designated agency ethics official must determine whether the organization, the legal services provider that the organization pays for legal services, and the individual attorney providing legal services meet the requirements described in paragraph (a) of this section.

Example 1 to paragraph (c): A Department of Justice employee is an eyewitness in an Inspector General investigation and is called to testify before Congress. A local law firm offers to represent the employee at no cost. The employee consults with an agency ethics official, who determines that the attorney who would represent the employee is neither an agent of a foreign government nor a lobbyist. However, the law firm is representing a party in a case to which the employee is assigned. The ethics official determines that the law firm is a person who has interests that may be substantially affected by the performance or nonperformance of the employee's official duties. Accordingly, the employee may not accept the offer of *pro bono* legal services from the law firm.

Example 2 to paragraph (c): A Securities and Exchange Commission employee is harassed by a supervisor and files a complaint. A nonprofit legal aid organization focusing on harassment cases offers *pro bono* legal services to the employee at no cost. The employee consults with an agency ethics official, who determines that the attorney who would represent the employee is neither an agent of a foreign government nor a lobbyist, and neither the attorney nor the nonprofit legal aid organization has interests that may be substantially affected by the performance or nonperformance of the employee's official duties. Accordingly, the employee may accept the offer of *pro bono* legal services from the nonprofit legal aid organization.

Example 3 to paragraph (c): A registered 501(c)(3) organization whose mission focuses on assisting those experiencing workplace harassment offers to pay for legal services for the Securities and Exchange Commission employee from the preceding example. The legal services themselves are performed by attorneys outside the organization. The employee confers with an agency ethics official who determines that the 501(c)(3) organization has been in operation for more than two years, neither the organization nor the attorneys performing legal services have interests that may be substantially affected by the performance or nonperformance of the employee's official duties, and the attorneys performing the legal services are neither agents of foreign governments nor lobbyists. Accordingly, the employee may accept the legal services even though they are provided by attorneys outside of the 501(c)(3) organization.

Example 4 to paragraph (c): A Department of State employee is asked to testify in a legal proceeding relating to a prior position at the Department of Justice. An attorney at a large national law firm offers *pro bono* services to the employee. The employee confers with an agency ethics official who determines that although the attorney offering representation is neither an agent of a foreign government nor a lobbyist, the law firm is currently registered pursuant to 2 U.S.C. 1603(a), some members of the firm are registered lobbyists, and the firm has business before other parts of the Department of State. However, neither the attorney nor the law firm has interests that may be substantially affected by the performance or nonperformance of the employee's official duties. Accordingly, the employee may accept the offer of *pro bono* legal services.

(d) *Appeal process.* An employee may appeal to the Office of Government Ethics in matters when the agency is the party opponent in the legal action. An employee may appeal the designated agency ethics official's determination that the *pro bono* legal services are prohibited; or a failure by the designated agency ethics official to provide a determination regarding whether the *pro bono* legal services are prohibited within 30 days. Appeals should be submitted within 60 days of denial by the designated agency ethics official, or within 90 days of submission to the designated agency ethics official, in the case of a request that has not been acted upon.

[FR Doc. 2023–10290 Filed 5–24–23; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Doc. No. AMS–NOP–19–0106; NOP–19–03]

RIN 0581–AD98

National Organic Program; National List of Allowed and Prohibited Substances (2022 Sunset); Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correcting amendment.

SUMMARY: On February 28, 2022, the Agricultural Marketing Service (AMS) published a rule removing sixteen substances from the National List of Allowed and Prohibited Substances (National List). That document accidentally omitted nonorganic whey protein concentrate from the amendatory instructions. This document corrects the amendatory language, removing nonorganic whey protein concentrate from the National List, as intended in the previous document.

DATES:

Effective: May 25, 2023.

Compliance: Use of nonorganic whey protein concentrate in organic products is prohibited after March 15, 2024.

FOR FURTHER INFORMATION CONTACT: Jared Clark, Standards Division, National Organic Program. Telephone: (202) 720–3252. Email: *jared.clark@usda.gov*.

SUPPLEMENTARY INFORMATION: A final rule published in the **Federal Register** on February 28, 2022 (87 FR 10930) removed substances from the National List following the procedures detailed in the Organic Foods Production Act of 1990 (OFPA) (7 U.S.C. 6501–6524). Removing these substances implements recommendations from the National Organic Standards Board and effectively prohibits their use in organic production.

One change discussed in the final rule was removing nonorganic whey protein concentrate from the National List. While the rule discussed this change and the justification, the rule's instructions for changing the regulation did not include the removal. This document corrects this by removing the entry for whey protein concentrate at 7 CFR 205.606(x). As discussed in the final rule, use of nonorganic whey protein concentrate in organic products is prohibited after March 15, 2024.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agricultural commodities, Agriculture, Animals, Archives and records, Fees, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 205 as follows:

PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6524.

§ 205.606 [Amended]

■ 2. Amend § 205.606 by removing paragraph (x).

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–11149 Filed 5–24–23; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1740

[Docket No. RUS–22-Telecom-0056]

RIN 0572–AC62

Rural eConnectivity Program

AGENCY: Rural Utilities, USDA.

ACTION: Final rule; confirmation and response to comments.

SUMMARY: The Rural Utilities Service (RUS or Agency), an agency in the United States Department of Agriculture (USDA) Rural Development Mission area, published a final rule with comment in the **Federal Register** on January 30, 2023, to make updates to the Rural eConnectivity Program (ReConnect Program) regulation to ensure that requirements are clear, accurate as presented and in compliance with Federal reporting requirements. Through this action, RUS is confirming the final rule as it was published and providing responses to the public comments that were received.

DATES: As of May 25, 2023, the final rule published January 30, 2023, at 88 FR 5724, effective May 1, 2023, is confirmed.

FOR FURTHER INFORMATION CONTACT: Laurel Leverrier, Assistant Administrator; Telecommunication Program; Rural Development; U.S. Department of Agriculture; 1400 Independence Avenue SW; Room 4121–S; Washington, DC 20250; telephone 202–720–3416, email *laurel.leverrier@usda.gov.* Persons with disabilities or who require alternative means for communication should contact the USDA Target Center at 202–720–2600.

SUPPLEMENTARY INFORMATION: The ReConnect Program was authorized by the Consolidated Appropriations Act, 2018 (Pub. L. 115–141), which directed the program to be conducted under the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq).* The ReConnect Program provides loans, grants, and loan/grant combinations to facilitate broadband deployment in rural areas. In facilitating the expansion of broadband services and infrastructure, the program fuels long-term rural economic development and opportunities across rural America.

The final rule that published January 30, 2023, (88 FR 5724), included a 60-day comment period that ended on March 31, 2023. The intent of the changes outlined in the final rule was to remove outdated requirements and ensure that the requirements in the regulation are clear, accurate as presented, and in compliance with Federal reporting requirements. The Agency received comments from 3 respondents. Respondents included one telecommunications company and two industry associations The following are the comments received and the Agency's responses:

Comment: Cimarron Telephone Company, LLC stated that the requirement to have a Tribal Resolution of Support be part of the ReConnect Program application may deter some potential applicants from the program. The respondent also states that this could lessen the amount of rural Americans receiving any service or lessen the chance that current services would be upgraded. The respondent offered examples they personally experienced that lead them to encourage the Agency to change this requirement. The respondent recommends requiring the resolution to be submitted within 120 days of the applicant being selected for an award.

Agency response: The Agency appreciates the comments provided by the respondent; however, it is a priority of this Administration that tribal sovereignty be respected by not imposing federal projects over tribal lands without their consent.

Comment: NCTA—The internet and Telephone Association expressed appreciation for the work done by the Agency to streamline the requirements of the ReConnect Program. They also praised the Agency for its clarification of the Buy America requirements. The respondent also encourages the Agency to allow awardees to continue to use their parent entity's consolidated audit after an award is made, if applicable.

Agency response: The Agency appreciates the comments provided by the respondent.

Comment: NTCA—The Rural Broadband Association expressed concern about the impact of the Build America, Buy America Act on non-Federal entities who receive ReConnect Program funding. Additionally, the respondent offered data indicating that there would be strain on the supply chains which produce needed equipment for those non-Federal entities required to comply with the law. The respondent feels that there are two standards, depending on what type of organization your entity is, and that by treating all entities the same would make it easier for all companies to comply with the Build America, Buy America Act.

Agency response: The Agency appreciates the comments provided by the respondent; however, the entity status for compliance with the Build America, Buy America Act is set in statute, whereas the RUS Buy American requirement applies to all entities also by statute. As such, the requested change is beyond the control of the agency.

No change to the rulemaking is necessary. The RUS appreciates comments from interested parties. The Agency confirms the final rule without change.

Andrew Berke,

Administrator, Rural Utilities Service.

[FR Doc. 2023–11134 Filed 5–24–23; 8:45 am]

BILLING CODE 3410–15–P

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 2023–09]

Contributions in the Name of Another

AGENCY: Federal Election Commission.

ACTION: Interim final rule.

SUMMARY: The Commission is removing the regulatory prohibition on knowingly helping or assisting any person in making a contribution in the name of another. The Commission is taking this action to implement the order of the United States District Court in *FEC* v.

Swallow, which enjoined the Commission from enforcing the provision and ordered the Commission to strike it from the Code of Federal Regulations. The Commission is accepting comments on this revision to its regulations and any comments received may be addressed in a subsequent rulemaking document.

DATES: This interim final rule is effective August 5, 2023. Comments must be received on or before June 26, 2023.

ADDRESSES: All comments must be in writing. Commenters are encouraged to submit comments electronically via the Commission's website at *https://sers.fec.gov/fosers,* reference REG 2018–06, to ensure timely receipt and consideration. Alternatively, comments may be submitted in paper form addressed to the Federal Election Commission, Attn.: Amy L. Rothstein, Assistant General Counsel, 1050 First Street NE, Washington, DC 20463.

Each commenter must provide, at a minimum, the commenter's first name, last name, city, and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's website and in the Commission's Public Records Office. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver's license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, or Ms. Cheryl A. Hemsley, Attorney, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act, 52 U.S.C. 30101–30145 (''FECA''), states that ''[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.'' 52 U.S.C. 30122. The Commission has implemented this provision at 11 CFR 110.4, which states that no person may ''[k]nowingly help or assist any person in making a contribution in the name of another.'' 11 CFR 110.4(b)(1)(iii).

On April 6, 2018, the United States District Court for the District of Utah issued a memorandum decision and order holding that the Commission's regulation at 11 CFR 110.4(b)(1)(iii) was invalid, enjoining the Commission from enforcing that provision, and ordering the Commission to strike the provision from the Code of Federal Regulations.[1] *FEC* v. *Swallow* (*Swallow I*), 304 F. Supp. 3d 1113 (D. Utah 2018); *FEC* v. *Swallow* (*Swallow II*), No. 2:15–CV–00439 (D. Utah Sept. 20, 2018) (Westlaw) (order granting partial final judgment). To conform its regulation to the court orders in *Swallow I* and *II,* the Commission is removing 11 CFR 110.4(b)(1)(iii) and renumbering paragraph (b)(1)(iv) as paragraph (b)(1)(iii). The Commission is accepting comments on this revision and any comments received may be addressed in a subsequent rulemaking document.

The Commission is taking this action without advance notice and comment because it falls under the ''good cause'' exception of the Administrative Procedure Act (''APA''), 5 U.S.C. 553(b)(B). The revisions are necessary to conform the Commission's regulations to the court's orders. Because this action does not involve any Commission discretion or policy judgments, notice and comment are unnecessary. 5 U.S.C. 553(b)(B), (d)(3). Moreover, because this interim final rule is exempt from the APA's notice and comment procedure under 5 U.S.C. 553(b), the Commission is not required to conduct a regulatory flexibility analysis under 5 U.S.C. 603 or 604. *See* 5 U.S.C. 601(2), 604(a).

List of Subjects in 11 CFR Part 110

Campaign funds, Political committees and parties.

For the reasons set out in the preamble, the Federal Election Commission amends 11 CFR chapter I as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 52 U.S.C. 30101(8), 30101(9), 30102(c)(2) and (g), 30104(i)(3), 30111(a)(8), 30116, 30118, 30120, 30121, 30122, 30123, 30124, and 36 U.S.C. 510.

§ 110.4 [Amended]

■ 2. Amend § 110.4 by:
■ a. Adding the word ''or'' at the end of paragraph (b)(1)(ii);
■ b. Removing paragraph (b)(1)(iii); and
■ c. Redesignating paragraph (b)(1)(iv) as paragraph (b)(1)(iii).

Dated: May 18, 2023.

On behalf of the Commission.

Dara S. Lindenbaum,

Chair, Federal Election Commission.

[FR Doc. 2023–11055 Filed 5–24–23; 8:45 am]

BILLING CODE 6715–01–P

[1] After adverse decisions, agencies are permitted in certain circumstances to maintain the invalidated interpretation of the statute or regulation in later matters that will come before courts in other jurisdictions. *See, e.g., Indep. Petroleum Ass'n* v. *Babbitt,* 92 F.3d 1248, 1261 (D.C. Cir. 1996). Agencies may only decline to accord court rulings nation-wide effect, however, as part of a search for eventual rulings from different Courts of Appeals and the Supreme Court. *See, e.g., Va. Soc'y for Human Life, Inc.* v. *FEC,* 263 F.3d 379, 393–94 (4th Cir. 2001) (overturning nationwide injunction against Commission to permit development of the law). In declining to appeal to the Court of Appeals, the Commission chose not to take this path in this case. *See Indep. Petroleum Ass'n,* 92 F.3d at 1261.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1410; Project Identifier AD–2022–00198–T; Amendment 39–22427; AD 2023–09–04]

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, and certain Model 737–8 and –9 airplanes. This AD was prompted by reports of uncommanded escape slide deployments in the passenger compartment, caused by too much tension in the inflation cable and the movement of the escape slide assembly in the escape slide compartment. This AD requires inspecting all escape slide assemblies to identify affected parts, and applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 29, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 29, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1410; 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–2022–1410.

FOR FURTHER INFORMATION CONTACT: Brandon Lucero, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3569; email: *brandon.lucero@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, and certain Model 737–8 and –9 airplanes. The NPRM published in the **Federal Register** on November 30, 2022 (87 FR 73507). The NPRM was prompted by reports from Boeing of uncommanded escape slide deployments in the passenger compartment while the airplane was on the ground, caused by too much tension in the inflation cable (introduced during packing of the slide) and the movement of the escape slide assembly in the escape slide compartment during normal airplane operations. The escape slide is used in the door-mounted escape system of the forward and aft entry doors, and the forward and aft galley service doors on the affected airplanes. In the NPRM, the FAA proposed to require inspecting all escape slide assemblies to identify affected parts, and applicable on-condition actions. The FAA is issuing this AD to address inflation of the escape slide while it is in the escape slide compartment, which could result in injury to passengers and crew during normal operation, or impede an emergency evacuation by rendering the exit unusable.

Discussion of Final Airworthiness Directive

Comments

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

The FAA received additional comments from Aviation Partners Boeing, AIRDO, Singapore Airlines (SIA), American Airlines (AAL), Southwest Airlines (SWA), and an individual. The following presents the comments received on the NPRM and the FAA's response to each comment.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that the installation of winglets per Supplemental Type Certificate STC ST00830SE does not affect the accomplishment of the actions in the proposed AD.

The FAA agrees with the commenter that the installation of STC ST00830SE does not affect the ability to accomplish the actions required by this AD. The FAA has not changed this AD in this regard.

Request To Allow Maintenance Records Review To Determine Slide Part Numbers

AIRDO, SIA, and SWA requested the proposed AD be revised to allow using maintenance records in lieu of inspecting the part number of the escape slide assembly as required by the service information specified in paragraph (g) of the proposed AD. SWA noted that escape slides are time limited parts and can easily be identified by a maintenance records review. AIRDO added that the escape slide is controlled by the operator's maintenance system, so it will be easier to use a maintenance record to identify the part number.

The FAA agrees to allow for a maintenance record review to determine the part number of the escape slide assembly, provided the part number can be conclusively determined from the records review. The FAA has added paragraph (h)(3) of this AD to allow a records review in lieu of an inspection.

Request To Add a Parts Prohibition Paragraph

AAL suggested adding a parts prohibition paragraph to the proposed AD. AAL noted that the proposed AD, Boeing Special Attention Requirements Bulletin 737–25–1855 RB, Revision 1, dated April 13, 2022, and Boeing Special Attention Requirements Bulletin 737–25–1866 RB, Revision 1, dated April 11, 2022, do not explicitly prohibit the installation of slide P/N 5A3307–7 after the actions have been accomplished. AAL requested that the FAA add a paragraph prohibiting the installation of an escape slide part number (P/N) 5A3307–7 after the actions in paragraph (g) of the proposed AD have been accomplished.

The FAA agrees to clarify. 14 CFR 39.7 specifies that once an AD is issued, no person may operate a product to which the AD applies except in accordance with the requirements of that AD. Further, 14 CFR 39.9 imposes a continuing obligation to maintain compliance with an AD by establishing a separate violation for each time an aircraft is operated that fails to meet AD requirements. Thus, operators have an ongoing obligation to ensure that the AD-mandated configuration is maintained. The FAA has not changed this AD as a result of the request.

Request To Add Information Notice 737–25–1855 IN 01

SIA requested Boeing Information Notice 737–25–1855 IN 01, dated April 22, 2022, to be referenced along with Boeing Special Attention Requirements Bulletin 737–25–1855 RB, Revision 1, dated April 13, 2022. SIA noted that Boeing Information Notice 737–25–1855 IN 01, dated April 22, 2022, changed the weight and balance information to ''none.''

The FAA disagrees with the commenter's request. The weight and balance information is only contained in Boeing Special Attention Service Bulletin 737–25–1855, Revision 1, dated April 13, 2022, and is not required for compliance with this AD. Additionally, the information in Boeing Information Notice 737–25–1855 IN 01, dated April 22, 2022, is not necessary to address the unsafe condition or comply with this AD. The FAA has not changed this AD regarding this issue.

Request To Add Airplanes of Similar Type Design

An individual requested the FAA require inspecting other aircraft of similar type design. The individual expressed concern that an emergency evacuation would render the exit unusable.

The FAA agrees to clarify. An emergency evacuation slide is often designed for a particular aircraft. In this case, the escape slide assembly in question is a unique installation to the 737, and the same design does not exist

on other aircraft. Therefore, no change to this AD is necessary.

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 Special Attention Requirements Bulletin 737–25–1855 RB, Revision 1, dated April 13, 2022, and Boeing Special Attention Requirements Bulletin 737–25–1866 RB, Revision 1, dated April 11, 2022. This service information specifies procedures for inspecting all escape slide assemblies to identify affected parts, and applicable on-condition actions. The on-condition actions include replacing any escape slide assembly having part number (P/N) 5A3307–7 with a new assembly having P/N 5A3307–9 or P/N 5A3307–701 (an escape slide assembly having P/N 5A3307–701 is one on which a firing cable retention modification has been done and the assembly has been reidentified). These documents are distinct since they apply to different airplane models.

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 2,502 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
Inspection or maintenance records review	2 work-hours × $85 per hour = $85	$0	$170	$425,340

The FAA estimates the following costs to do any necessary replacements 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 replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	Up to 1 work hours × $85 per hour = up to $85	Up to $19,000	Up to $19,085 per escape slide assembly.

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:

2023–09–04 The Boeing Company: Amendment 39–22427; Docket No. FAA–2022–1410; Project Identifier AD–2022–00198–T.

(a) Effective Date

This airworthiness directive (AD) is effective June 29, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company airplanes identified in paragraphs (c)(1) and (2) of this AD.

(1) Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, as identified in Boeing Special Attention Requirements Bulletin 737–25–1855 RB, Revision 1, dated April 13, 2022.

(2) Model 737–8 and –9 airplanes, as identified in Boeing Special Attention Requirements Bulletin 737–25–1866 RB, Revision 1, dated April 11, 2022.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of uncommanded escape slide deployments in the passenger compartment, caused by too much tension in the inflation cable and the movement of the escape slide assembly in the escape slide compartment. The FAA is issuing this AD to address inflation of the escape slide while it is in the escape slide compartment, which could result in injury to passengers and crew during normal operation, or impede an emergency evacuation by rendering the exit unusable.

(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 Special Attention Requirements Bulletin 737–25–1855 RB, Revision 1, dated April 13, 2022, and Boeing Special Attention Requirements Bulletin 737–25–1866 RB, Revision 1, dated April 11, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Requirements Bulletin 737–25–1855 RB, Revision 1, dated April 13, 2022 (for Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes), and Boeing Special Attention Requirements Bulletin 737–25–1866 RB, Revision 1, dated April 11, 2022 (for Model 737–8 and –9 airplanes); as applicable.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Special Attention Service Bulletin 737–25–1855, Revision 1, dated April 13, 2022, which is referred to in Boeing Special Attention Requirements Bulletin 737–25–1855 RB, Revision 1, dated April 13, 2022.

Note 2 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Special Attention Service Bulletin 737–25–1866, Revision 1, dated April 11, 2022, which is referred to in Boeing Special Attention Requirements Bulletin 737–25–1866 RB, Revision 1, dated April 11, 2022.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 737–25–1855 RB, Revision 1, dated April 13, 2022, use the phrase ''the Original Issue date of Requirements Bulletin 737–25–1855 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 737–25–1866 RB, Revision 1, dated April 11, 2022, use the phrase ''the Original Issue date of Requirements Bulletin 737–25–1866 RB,'' this AD requires using ''the effective date of this AD.''

(3) Where Boeing Special Attention Requirements Bulletin 737–25–1855 RB, Revision 1, dated April 13, 2022, and Boeing Special Attention Requirements Bulletin 737–25–1866 RB specify doing an inspection of the escape slide assembly to determine whether P/N 5A3307–7 is installed, for this AD a review of airplane maintenance records is acceptable in lieu of this inspection, provided the part number of the escape slide assembly can be conclusively determined from that review.

(i) Credit for Previous Actions

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 Special Attention Requirements Bulletin 737–25–1855 RB, dated August 31, 2021, or Boeing Special Attention Requirements Bulletin 737–25–1866 RB, dated September 27, 2021, as applicable.

(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 Brandon Lucero, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3569; email: *brandon.lucero@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 Special Attention Requirements Bulletin 737–25–1855 RB, Revision 1, dated April 13, 2022.

(ii) Boeing Special Attention Requirements Bulletin 737–25–1866 RB, Revision 1, dated April 11, 2022.

(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 April 28, 2023.

Gaetano A. Sciortino,

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

[FR Doc. 2023–11085 Filed 5–24–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0018; Project Identifier AD–2022–00883–R; Amendment 39–22430; AD 2023–09–07]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2022–02–01 for Sikorsky Aircraft Corporation Model S–92A helicopters with certain part-numbered main rotor stationary swashplate assemblies (swashplate assemblies) that had accumulated 1,600 or more total hours time-in-service (TIS) installed. AD 2022–02–01 required visually inspecting the swashplate assembly at specified intervals and depending on the results, removing the swashplate assembly from service. Since the FAA issued AD 2022–02–01, the FAA determined it was necessary to expand the applicability and require more detailed inspections to address the unsafe condition. This AD retains the actions of AD 2022–02–01, expands the applicability, adds a detailed recurring visual inspection, and requires either eddy current inspections (ECI) or

fluorescent penetrant inspections (FPI). The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 29, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 29, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of February 18, 2022 (87 FR 2316, January 14, 2022).

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov by searching for and locating Docket No. FAA–2023–0018; 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 a Sikorsky Field Representative or Sikorsky's Service Engineering Group at Sikorsky Aircraft Corporation, Mailstop K100, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800–946–4337 (1–800-Winged-S); email: *wcs_cust_service_eng.gr-sik@lmco.com;* website: *sikorsky360.com.*
- You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2023–0018.

FOR FURTHER INFORMATION CONTACT: Jared Hyman, Aerospace Engineer, Airframe Section, East Certification Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (781) 238–7305; email: *9-AVS-AIR-BACO-COS@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2022–02–01, Amendment 39–21898 (87 FR 2316, January 14, 2022), (AD 2022–02–01). AD 2022–02–01 applied to Sikorsky Aircraft Corporation Model S–92A helicopters with a swashplate assembly part number (P/N) 92104–15011–042 or P/N 92104–15011–043 that had accumulated 1,600 or more total hours TIS, installed. The NPRM published in the **Federal Register** on January 17, 2023 (88 FR 2558). The NPRM was prompted by a notification of an in-service crack in a swashplate assembly inner ring. The crack, discovered during a routine inspection, extended between the uniball bore and near the right-hand trunnion to servo attach bolt hole. In the NPRM, the FAA proposed to continue to require, for swashplate assemblies that have accumulated 1,600 or more total hours TIS, a certain recurring visual inspection and replacing the swashplate assembly if cracks are found. In the NPRM, the FAA proposed to require accomplishing an FPI or ECI depending on accrued flight time or suspicion of cracks. In the NPRM, the FAA also proposed to expand the visual inspections required by AD 2022–02–01 and revise the applicability statement of AD 2022–02–01.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from one commenter, Sikorsky Aircraft Corporation. The following presents the comment received on the NPRM and the FAA's response to the comment.

Request To Clarify Previous Actions for Compliance

Sikorsky Aircraft Corporation requested the FAA change paragraph (f) of the AD to state, ''Comply with this AD within the compliance times specified, unless already accomplished by Alert Service Bulletin. Repetitive inspections incorporated into Sikorsky S–92 [Aircraft Maintenance Manual] (AMM), Chapter 5, demonstrate compliance with the repetitive inspections of this Airworthiness Directive.'' Sikorsky Aircraft Corporation stated that it has issued two alert service bulletins (ASBs) that introduce both a one-time inspection and recurrent inspections for the existing part-numbered stationary swashplate assemblies. In addition, Sikorsky Aircraft Corporation stated that the recurrent inspections have been incorporated into the Sikorsky S–92 AMM, Chapter 5 inspection requirements; and that the introduction of this rule makes these inspections mandatory and the original equipment manufacturer (OEM) agrees. However, Sikorsky Aircraft Corporation stated that from the operator perspective, there may be some confusion as to compliance with the AD. Since the ASBs and Chapter 5 are in place, Sikorsky Aircraft Corporation stated that it may be helpful to add language in the text of the AD explaining that the AD is not introducing a new action if the operator is already following the OEM instructions, which may prevent operators from unnecessarily repeating inspections with which the operator already complied. Lastly, Sikorsky Aircraft Corporation stated that operators who incorporate repetitive inspections into their maintenance programs, in this case the OEM Chapter 5, are demonstrating compliance with the repetitive inspections of this AD.

The FAA disagrees. After reviewing the S–92 AMM tasks, the FAA has determined that the technical content from Sikorsky S–92 Helicopter Alert Service Bulletin ASB 92–62–009, Basic Issue, dated February 6, 2019 (ASB 92–62–009), and Sikorsky S–92 Helicopter Alert Service Bulletin ASB 92–62–010, Basic Issue, dated January 26, 2022 (92–62–010) are not completely incorporated into the AMM tasks. The visual inspection instructions from ASB 92–62–009 are not included in these tasks, and the accomplishment instructions from ASB 92–62–010 have some elements that are missing from some of the AMM tasks. Accordingly, the FAA has determined that the accomplishment instructions of ASB 92–62–009 and ASB 92–62–010 must be done to correct the unsafe condition. In addition, paragraph (f) of the AD specifies to ''comply with this AD . . . unless already done.'' Therefore, if some of the actions required by this AD are already done, only the remaining required actions of this AD must be accomplished in order to comply with 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, 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 ASB 92–62–010, which specifies a visual inspection of the swashplate assembly to determine if there are any cracks and initiates a 50-hour recurring visual inspection. If cracks are found, ASB 92–62–010 specifies replacing the swashplate assembly. Dependent on accrued flight

time or suspicion of cracks, an FPI or ECI is performed. ASB 92–62–010 also specifies returning the swashplate assembly, uniball bearing, trunnions, and all attachment hardware to Sikorsky for investigation if cracks are found.

This AD also requires ASB 92–62–009, which the Director of the Federal Register approved for incorporation by reference as of February 18, 2022 (87 FR 2316, January 14, 2022).

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.

Differences Between This AD and the Service Information

The applicability statement in this AD does not identify airframe serial numbers, whereas the effectivity of ASB 92–62–010 does. This AD affects all swashplate assemblies P/N 92104–15011–042 and P/N 92104–15011–043 regardless of delivery date, whereas the effectivity of ASB 92–62–010 is for those part-numbered swashplate assemblies delivered as of January 26, 2022 (the issuance date of ASB 92–62–010). ASB 92–62–009 specifies a one-time visual inspection of the swashplate assembly; this AD requires a recurring visual inspection of the swashplate assembly to determine if any crack, nick, dent, or scratch develops over time. This AD does not require returning parts to or contacting Sikorsky, while ASB 92–62–009 and ASB 92–62–010 specify performing those actions.

Costs of Compliance

The FAA estimates that this AD affects 89 helicopters of U.S. registry. The FAA estimates the following costs to comply with this AD. Labor costs are estimated at $85 per work-hour.

Visually inspecting a swashplate assembly takes about 1.0 work-hour, for an estimated cost of $85 per helicopter and $7,565 for the U.S. fleet, per inspection cycle.

Performing an ECI or FPI takes about 8.0 work-hours, for an estimated cost of $680 per helicopter and $60,520 for the U.S. fleet, per inspection cycle.

Replacing the swashplate assembly, if required, takes about 16 work-hours and parts cost about $389,720, for an estimated cost of $391,080 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA has determined that 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 2022–02–01, Amendment 39–21898 (87 FR 2316, January 14, 2022); and

■ b. Adding the following new airworthiness directive:

2023–09–07 Sikorsky Aircraft Corporation: Amendment 39–22430; Docket No. FAA–2023–0018; Project Identifier AD–2022–00883–R.

(a) Effective Date

This airworthiness directive (AD) is effective June 29, 2023.

(b) Affected ADs

This AD replaces AD 2022–02–01, Amendment 39–21898 (87 FR 2316, January 14, 2022) (AD 2022–02–01).

(c) Applicability

This AD applies to Sikorsky Aircraft Corporation Model S–92A helicopters, certificated in any category, with a main rotor stationary swashplate assembly (swashplate assembly) part number (P/N) 92104–15011–042 or P/N 92104–15011–043 installed.

(d) Subject

Joint Aircraft System Component (JASC) Code: 6230, Main Rotor Mast/Swashplate.

(e) Unsafe Condition

This AD was prompted by the discovery of a crack on the swashplate assembly inner ring. The FAA is issuing this AD to detect cracks that could result in fretting wear on the shoulder that supports the clamp-up of the uniball outer race. The unsafe condition, if not addressed, could result in failure of the swashplate assembly and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Definition

For the purposes of this AD, a ''suspected crack'' is a nick, scratch, or crack in the paint or primer that includes observable metallic base material.

(h) Required Actions

(1) For helicopters with swashplate assemblies identified in paragraph (c) of this AD that have accumulated 1,600 or more total hours time-in-service on the swashplate assembly, within 50 hours time-in-service (TIS) from February 18, 2022 (the effective date of AD 2022–02–01), and thereafter at intervals not to exceed 50 hours TIS, visually inspect the swashplate assembly for a crack, nick, dent, and scratch, by following the Accomplishment Instructions, Section 3, paragraph B. (except paragraphs B.(2)(a) through (c)) of Sikorsky S–92 Helicopter Alert Service Bulletin ASB 92–62–009, Basic Issue, dated February 6, 2019. If there is a crack, nick, dent, or scratch that exceeds the allowable limits, before further flight, remove the swashplate assembly from service.

(2) For helicopters with swashplate assemblies identified in paragraph (c) of this AD, within 50 hours TIS after the effective date of this AD, and thereafter at intervals not to exceed 50 hours TIS, visually inspect the swashplate assembly for surface discontinuities and suspected cracks by following the Accomplishment Instructions, Section 3., paragraphs B.(1) through (3), of Sikorsky S–92 Helicopter Alert Service Bulletin ASB 92–62–010, Basic Issue, dated January 26, 2022 (ASB 92–62–010). If there is any surface discontinuity or suspected crack, before further flight, remove the trunnion and accomplish an eddy current

inspection (ECI) or fluorescent penetrant inspection (FPI) for a crack by accomplishing the actions in paragraph (h)(2)(i) or (ii) of this AD, as applicable.

(i) Accomplish an ECI by following the Accomplishment Instructions, Section 3, paragraphs C.(1) through (6), but not paragraph C.(6)(c)(1)., of ASB 92–62–010.

(ii) Accomplish an FPI by following the Accomplishment Instructions, Section 3, paragraphs D.(1) through (5), except paragraph D.(4), of ASB 92–62–010.

(3) For helicopters with a swashplate assembly identified in paragraph (c) of this AD certified for operation at a maximum gross weight of 26,500 lbs. that have accumulated 8,600 or more total hours TIS on the swashplate assembly, or certified for operation at a maximum gross weight of 27,700 lbs. that have accumulated 3,300 or more total hours TIS on the swashplate assembly, within 50 hours TIS after the effective date of this AD, and thereafter at intervals not to exceed 50 hours TIS, with the trunnion installed, accomplish an ECI or FPI of the uniball lower bore lip, uniball upper bore, and each trunnion mount bolt hole for a crack by accomplishing the actions in paragraph (h)(3)(i) or (ii) of this AD, as applicable.

(i) Accomplish an ECI by following the Accomplishment Instructions, Section 3, paragraphs C.(2) through (6), but not paragraph C.(6)(c)1., of ASB 92–62–010.

(ii) Accomplish an FPI by following the Accomplishment Instructions, Section 3, paragraphs D.(2), (3), and (5) of ASB 92–62–010.

(4) If there is a crack as a result of any of the inspections required by paragraph (h)(2) or (3) of this AD, before further flight, remove the swashplate assembly from service.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, East Certification Branch, Compliance & Airworthiness Division, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD.

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

(j) Related Information

For more information about this AD, contact Jared Hyman, Aerospace Engineer, Airframe Section, East Certification Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (781) 238–7305; email: *9-AVS-AIR-BACO-COS@faa.gov.*

(k) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on June 29, 2023.

(i) Sikorsky S–92 Helicopter Alert Service Bulletin ASB 92–62–010, Basic Issue, dated January 26, 2022.

(ii) [Reserved]

(4) The following service information was approved for IBR on February 18, 2022 (87 FR 2316, January 14, 2022).

(i) Sikorsky S–92 Helicopter Alert Service Bulletin ASB 92–62–009, Basic Issue, dated February 6, 2019.

(ii) [Reserved]

(5) For service information identified in this AD, contact a Sikorsky Field Representative or Sikorsky's Service Engineering Group at Sikorsky Aircraft Corporation, Mailstop K100, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800–946–4337 (1–800-Winged-S); email: *wcs_cust_service_eng.gr-sik@lmco.com;* website: *sikorsky360.com.*

(6) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(7) 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 May 8, 2023.

Michael Linegang,

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

[FR Doc. 2023–11136 Filed 5–24–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1417; Project Identifier AD–2022–00731–T; Amendment 39–22419; AD 2023–08–04]

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 787–8, 787–9, and 787–10 airplanes. This AD was prompted by reports of a loss of water pressure during flight and water leaks that affected multiple pieces of electronic equipment. This AD requires a detailed visual inspection of all door 1 and door 3 lavatory and galley potable water systems for any missing or incorrectly installed clamshell couplings, and applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 29, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 29, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1417; 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.* It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2022–1417.
- 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–2022–1417.

FOR FURTHER INFORMATION CONTACT: Courtney Tuck, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3986; email: *Courtney.K.Tuck@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 The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. The NPRM published in the **Federal Register** on December 13, 2022 (87 FR 76158). The NPRM was prompted by

reports of a loss of water pressure during flight and water leaks that affected multiple pieces of electronic equipment. In the NPRM, the FAA proposed to require a detailed visual inspection of all door 1 and door 3 lavatory and galley potable water systems for any missing or incorrectly installed clamshell couplings, and applicable on-condition actions. The FAA is issuing this AD to address incorrectly installed or missing lavatory and galley clamshell couplings that could lead to water leaks and water migration to critical flight equipment, which may affect the continued safe flight and landing of the airplane.

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 additional comments from four commenters, including American Airlines (AAL), Boeing, Turkish Technic, and All Nippon Airways. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Modify the Applicability of the Proposed AD

AAL, Boeing, and All Nippon Airways requested that the applicability of the proposed AD be changed to include only airplanes listed in the effectivity of Boeing Alert Requirements Bulletin B787–81205–SB380021–00 RB, Issue 001, dated August 12, 2022, which does not include undelivered airplanes. The commenters stated that Boeing has taken several steps to prevent missing or misinstalled lavatory and galley clamshell couplings on airplanes not listed in the effectivity of the Boeing Alert Requirements Bulletin B787–81205–SB380021–00 RB, Issue 001, dated August 12, 2022. A request for discrepancy check (RDC) was issued to inspect all stored airplanes as outlined in Boeing Alert Requirements Bulletin B787–81205–SB380021–00 RB, Issue 001, dated August 12, 2022, at the same door 1 and 3 locations. For future production airplanes, Quality Assurance (QA) verification of clamshell coupling installations has been added for lavatories (11/18/2019) and galleys (7/22/2022). As an alternative, if the proposed AD includes undelivered airplanes, All Nippon Airways requested that the compliance time be changed to 180 days after the date of issuance of the original standard certificate of airworthiness or the original export certificate of airworthiness.

The FAA agrees with the request to change the applicability to include only airplanes listed in the effectivity of Boeing Alert Requirements Bulletin B787–81205–SB380021–00 RB, Issue 001, dated August 12, 2022, for the reasons provided by the commenters. Paragraph (c) of this AD has been changed.

Comment Regarding Insufficient Addressing of the Unsafe Condition

AAL commented that the actions of the proposed AD do not sufficiently address the unsafe condition nor do they prevent reoccurrence when future maintenance is accomplished on the clamshell. AAL noted that the leaks are the result of improper installation by individual operators and not a design failure, according to the manufacturer, who has not recommended replacement of the couplings on the majority of the fleet. AAL asserted that the maintenance manual currently provides extensive details on proper installation of the coupling, and that an incorrectly installed coupling is not a latent failure, and is detectable prior to operation of the aircraft. AAL observed that the same couplings are installed on their Model 737 and 777 fleet with a high level of reliability and no recorded installation errors in the previous 12 months.

The FAA partially agrees with the assertions of the commenter. As specified in the NPRM, this AD does not provide a long-term solution to fully address the unsafe condition, but is intended to be interim action that will adequately address leak events until an appropriate design change is developed and additional AD action is proposed. Part of the interim solution is updating the lavatory and galley Fleet Team Digest for missing or incorrectly installed couplings. In addition, maintenance procedures have been updated to correct errors and add tasks directing maintenance in areas where couplings are installed to return the area to its normal condition, which will include inspecting couplings for proper installation prior to leaving the area. Although the commenter asserts that incorrectly installed couplings are detectable, there have been several cases of a loss of water pressure during flight, as well as water leaks, discovered after landing, that caused water to migrate into the forward electronic equipment (EE) bay and affect multiple pieces of EE. The inspections or improved strapped coupling installations have not been completed on all affected airplanes yet, so the unsafe condition still exists within the fleet. This AD will ensure that all couplings are inspected per the updated maintenance procedures and will ensure the safety of the entire fleet. The FAA has therefore determined that this AD is necessary to address the unsafe condition. The FAA has not changed this AD with regard to this comment.

Request To Allow Alternative Service Information

Boeing has issued Multi-Operator Message MOM–MOM–21–0554–01B, dated December 14, 2021 (for lavatory inspections), and MOM–MOM–22–0229–01B, dated April 29, 2022 (for galley inspections). Turkish Technic asserted that the MOMs will address the unsafe condition identified in the proposed AD. The commenter reported that it had performed the actions specified in the MOMs, and subsequently Boeing issued Alert Requirements Bulletin B787–81205–SB380021–00 RB, Issue 001, dated August 12, 2022, which indicates that no further action is necessary after accomplishment of the actions in the MOMs. The commenter considered the actions in the MOMs to satisfactorily complete the proposed requirements, and requested that the proposed AD be revised to add the MOMs as an alternative to Boeing Alert Requirements Bulletin B787–81205–SB380021–00 RB, Issue 001, dated August 12, 2022, or alternatively, to provide credit for inspections previously complied as per the MOMs.

The FAA agrees that inspections completed as specified in the MOMs address the unsafe condition. A paragraph has been added to this AD to provide credit for accomplishing the MOMs prior to the effective date 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 B787–81205–SB380021–00 RB, Issue 001, dated August 12, 2022. This service information specifies procedures for a

detailed visual inspection of all door 1 and door 3 lavatory and galley potable water systems for any missing or incorrectly installed clamshell couplings, and applicable on-condition actions. On-condition actions include installing clamshell couplings, doing a leak test, and performing corrective actions until the leak test is passed.

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.

Interim Action

The FAA considers this AD an interim action. If a final action is later identified, the FAA might consider further rulemaking.

Costs of Compliance

The FAA estimates that this AD affects 134 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
Detailed visual inspection (DVI) (per lavatory or galley).	1 work-hour × $85 per hour = $85	$0	$85	$11,390

The FAA has received no definitive data on which to base the cost estimates for the on-condition actions 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:

2023–08–04 The Boeing Company: Amendment 39–22419; Docket No. FAA–2022–1417; Project Identifier AD–2022–00731–T.

(a) Effective Date

This airworthiness directive (AD) is effective June 29, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 787–8, 787–9, and 787–10 airplanes, certificated in any category, as specified in Boeing Alert Requirements Bulletin B787–81205–SB380021–00 RB, Issue 001, dated August 12, 2022.

(d) Subject

Air Transport Association (ATA) of America Code 38, Water/waste.

(e) Unsafe Condition

This AD was prompted by reports of a loss of water pressure during flight and water leaks that affected multiple pieces of electronic equipment. The FAA is issuing this AD to address incorrectly installed or missing lavatory and galley clamshell couplings that could lead to water leaks and water migration to critical flight equipment, which may affect the continued safe flight and landing 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 B787–81205–SB380021–00 RB, Issue 001, dated August 12, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB380021–00 RB, Issue 001, dated August 12, 2022.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin B787–81205–SB380021–00, Issue 001, dated August 12, 2022, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB380021–00 RB, Issue 001, dated August 12, 2022.

(h) Exceptions to Service Information Specifications

Where the Compliance Time columns of the table in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB380021–00 RB, Issue 001, dated August 12, 2022, uses the phrase ''the Issue 001 date of Requirements Bulletin B787–81205–SB380021–00 RB,'' this AD requires using ''the effective date of this AD.''

(i) Credit for Previous Actions

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 Multi-Operator Message MOM–MOM–21–0554–01B, dated December 14, 2021 (for lavatory inspections); and MOM–MOM–22–0229–01B, dated April 29, 2022 (for galley inspections).

(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 Courtney Tuck, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3986; email: *Courtney.K.Tuck@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 B787–81205–SB380021–00 RB, Issue 001, dated August 12, 2022.

(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 April 18, 2023.

Christina Underwood,

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

[FR Doc. 2023–11091 Filed 5–24–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1558; Airspace Docket No. 22–AGL–11]

RIN 2120–AA66

Amendment and Establishment of Air Traffic Service (ATS) Routes in the Vicinity of Devils Lake, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Very High Frequency (VHF) Omnidirectional Range (VOR) Federal airways V–169, V–170, and V–430, and Area Navigation (RNAV) route T–331; and establishes RNAV route T–475. The FAA is taking this action due to the planned decommissioning of the VOR portion of the Devils Lake, ND (DVL), VOR/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID). The Devils Lake VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, August 10, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the notice of proposed rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

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

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the Air Traffic Service (ATS) routes as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2022–1558 in the **Federal Register** (87 FR 76594; December 15, 2022), amending VOR Federal airways V–169, V–170, and V–430, and RNAV route T–331; and establishing RNAV route T–475 due to the planned decommissioning of the VOR portion of the Devils Lake, ND, VOR/DME NAVAID. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Differences From the NPRM

Subsequent to the NPRM, the FAA published a rule for Docket No. FAA–2023–0501 in the **Federal Register** (88 FR 30896; May 15, 2023), amending RNAV route T–331 by updating the Squaw Valley, CA, VOR/DME route point with its new name, the Palisades, CA, VOR/DME. That editorial amendment, effective August 10, 2023, does not affect the route alignment or structure and is included in this rule.

Incorporation by Reference

VOR Federal airways are published in paragraph 6010(a) and United States Area Navigation Routes (T-routes) are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be

published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by amending VOR Federal airways V–169, V–170, and V–430, and RNAV route T–331; and establishing RNAV route T–475 due to the planned decommissioning of the Devils Lake, ND, VOR. The ATS route actions are described below.

V–169: V–169 currently extends between the Tobe, CO, VOR/DME and the Devils Lake, ND, VOR/DME. The route segment between the Bismarck, ND, VOR/DME and the Devils Lake, ND, VOR/DME is removed. As amended, the airway extends between the Tobe VOR/DME and the Bismarck VOR/DME.

V–170: V–170 currently extends between the Devils Lake, ND, VOR/DME and the Sioux Falls, SD, VOR/Tactical Air Navigation (VORTAC); between the Rochester, MN, VOR/DME and the Salem, MI, VORTAC; and between the Slate Run, PA, VORTAC and the intersection of the Andrews, MD, VORTAC 060° and Baltimore, MD, VORTAC 165° radials (POLLA Fix). The airspace within R–5802 is excluded when active. The airway segment between the Devils Lake, ND, VOR/DME and the Jamestown, SD, VOR/DME is removed. As amended, the airway extends between the Jamestown VOR/DME and the Sioux Falls VORTAC; between the Rochester VOR/DME and the Salem VORTAC, and between the Slate Run VORTAC and the POLLA Fix. The R–5802 exclusion language remains unchanged.

V–430: V–430 currently extends between the Cut Bank, MT, VOR/DME and the Escanaba, MI, VOR/DME. The airway segment between the Minot, ND, VOR/DME and the Grand Forks, ND, VOR/DME is removed. As amended, the airway extends between the Cut Bank VOR/DME and the Minot VOR/DME, and between the Grand Forks VOR/DME and the Escanaba VOR/DME.

T–331: T–331 currently extends between the FRAME, CA, Fix and the FONIA, ND, Fix. The route is extended eastward from the FONIA Fix to the MECNU, MN, Fix located near the western shore of Lake Superior and the United States/Canada border. The T–331 extension overlies the current V–430 airway between the FIONA Fix and the Duluth, MN, VORTAC to provide an RNAV route alternative for the V–430 airway segment removed as noted previously. From the Duluth VORTAC, T–331 overlies VOR Federal airway V–13 to the MECNU Fix. The full route description is listed in the amendments to part 71 as set forth below.

T–475: T–475 is a new RNAV route that extends between the Bismarck, ND, VOR/DME and the GICHI, ND, waypoint (WP) located near the Devils Lake, ND, VOR/DME. The new route overlies the current V–169 airway and serves as a RNAV route alternative for the V–169 airway segment removed as noted previously. The full route description is listed in the amendments to part 71 as set forth below.

The NAVAID radials listed in the VOR Federal airway descriptions below are unchanged and stated in degrees True north.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action of amending VOR Federal airways V–169, V–170, and V–430, and RNAV route T–331; and establishing RNAV route T–475 due to the planned decommissioning of the VOR portion of the Devils Lake, ND, VOR/DME NAVAID, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); paragraph 5–6.5b, which categorically excludes from further environmental impact review actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, Designation of jet routes and VOR Federal airways); operation of civil aircraft in a defense area, or to, within, or out of the United States through a designated Air Defense Identification Zone (ADIZ) (14 CFR part 99, Security Control of Air Traffic); authorizations for operation of moored balloons, moored kites, amateur rockets, and unmanned free balloons (see 14 CFR part 101, Moored Balloons, Kites, Amateur Rockets and Unmanned Free Balloons); and, authorizations of parachute jumping and inspection of parachute equipment (see 14 CFR part 105, Parachute Operations); paragraph 5–6.5i, which categorically excludes from further environment impact review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. For modifications to air traffic procedures at or above 3,000 feet AGL, the Noise Screening Tool (NST) or other FAA-approved environmental screening methodology should be applied; and paragraph 5–6.5k, which categorically excludes from further environmental impact review the publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–169 [Amended]

From Tobe, CO; 69 MSL, Hugo, CO; 38 miles, 67 MSL, Thurman, CO; Akron, CO; Sidney, NE; Scottsbluff, NE; Toadstool, NE; Rapid City, SD; Dupree, SD; to Bismarck, ND.

* * * * *

V–170 [Amended]

From Jamestown, ND; Aberdeen, SD; to Sioux Falls, SD. From Rochester, MN; Nodine, MN; Dells, WI; INT Dells 097° and Badger, WI, 304° radials; Badger; INT Badger 121° and Pullman, MI, 282° radials; Pullman; to Salem, MI. From Slate Run, PA; Selinsgrove, PA; Ravine, PA; INT Ravine 125° and Modena, PA, 318° radials; Modena; Dupont, DE; INT Dupont 223° and Andrews, MD, 060° radials; to INT Andrews 060° and Baltimore, MD, 165° radials. The airspace within R–5802 is excluded when active.

* * * * *

V–430 [Amended]

From Cut Bank, MT; 10 miles, 74 miles 55 MSL, Havre, MT; 14 miles, 100 miles 50 MSL, Glasgow, MT; INT Glasgow 100° and Williston, ND, 263° radials; 22 miles, 33 miles 55 MSL, Williston; to Minot, ND. From Grand Forks, ND; Thief River Falls, MN; INT Thief River Falls 122° and Grand Rapids, MN, 292° radials; Grand Rapids; Duluth, MN; Ironwood, MI; Iron Mountain, MN; to Escanaba, MI.

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–331 FRAME, CA to MECNU, MN [Amended]

FRAME, CA	FIX	(Lat. 36°36′46.74″ N, long. 119°40′25.53″ W)
NTELL, CA	WP	(Lat. 36°53′58.99″ N, long. 119°53′22.21″ W)
KARNN, CA	FIX	(Lat. 37°09′03.79″ N, long. 121°16′45.22″ W)
VINCO, CA	FIX	(Lat. 37°22′35.11″ N, long. 121°42′59.52″ W)
NORCL, CA	WP	(Lat. 37°31′02.66″ N, long. 121°43′10.60″ W)
MOVDD, CA	WP	(Lat. 37°39′40.88″ N, long. 121°26′53.53″ W)
EVETT, CA	WP	(Lat. 38°00′36.11″ N, long. 121°07′48.14″ W)
TIPRE, CA	WP	(Lat. 38°12′21.00″ N, long. 121°02′09.00″ W)
Palisades, CA (SWR)	VOR/DME	(Lat. 39°10′49.16″ N, long. 120°16′10.60″ W)
TRUCK, CA	FIX	(Lat. 39°26′15.67″ N, long. 120°09′42.48″ W)
Mustang, NV (FMG	VORTAC	(Lat. 39°31′52.60″ N, long. 119°39′21.87″ W)
Lovelock, NV (LLC)	VORTAC	(Lat. 40°07′30.95″ N, long. 118°34′39.34″ W)
Battle Mountain, NV (BAM)	VORTAC	(Lat. 40°34′08.69″ N, long. 116°55′20.12″ W)
TULIE, ID	WP	(Lat. 42°37′58.49″ N, long. 113°06′44.54″ W)
AMFAL, ID	WP	(Lat. 42°45′56.67″ N, long. 112°50′04.64″ W)
Pocatello, ID (PIH)	VOR/DME	(Lat. 42°52′13.38″ N, long. 112°39′08.05″ W)
VIPUC, ID	FIX	(Lat. 43°21′09.64″ N, long. 112°14′44.08″ W)
Idaho Falls, ID (IDA)	VOR/DME	(Lat. 43°31′08.42″ N, long. 112°03′50.10″ W)
SABAT, ID	FIX	(Lat. 44°00′59.71″ N, long. 111°39′55.04″ W)
Billings, MT (BIL)	VORTAC	(Lat. 45°48′30.81″ N, long. 108°37′28.73″ W)
EXADE, MT	FIX	(Lat. 47°35′56.78″ N, long. 104°32′40.61″ W)
JEKOK, ND	WP	(Lat. 47°59′31.05″ N, long. 103°27′17.51″ W)
FONIA, ND	FIX	(Lat. 48°15′35.07″ N, long. 103°10′37.54″ W)
Minot, ND (MOT)	VOR/DME	(Lat. 48°15′37.21″ N, long. 101°17′13.46″ W)
GICHI, ND	WP	(Lat. 48°06′54.20″ N, long. 098°54′45.14″ W)
Grand Forks, ND (GFK)	VOR/DME	(Lat. 47°57′17.40″ N, long. 097°11′07.33″ W)
Thief River Falls, MN (TVF)	VOR/DME	(Lat. 48°04′09.53″ N, long. 096°11′11.31″ W)
BLUOX, MN	FIX	(Lat. 47°34′33.13″ N, long. 095°01′29.11″ W)
Duluth, MN (DLH)	VORTAC	(Lat. 46°48′07.79″ N, long. 092°12′10.33″ W)
MECNU, MN	FIX	(Lat. 47°58′26.68″ N, long. 089°59′33.66″ W)

* * * * * * *

T–475 Bismarck, ND (BIS) to GICHI, ND [New]

Bismarck, ND (BIS)	VOR/DME	(Lat. 46°45′42.34″ N, long. 100°39′55.47″ W)
GICHI, ND	WP	(Lat. 48°06′54.20″ N, long. 098°54′45.14″ W)

* * * * *

Issued in Washington, DC, on May 18, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–11092 Filed 5–24–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1161; Airspace Docket No. 22–ASO–18]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Greenville, Spartanburg, and Greer, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the final rule published in the **Federal Register** on March 28, 2023, amending Class D airspace, Class E surface airspace, and Class E airspace in the Greenville, Spartanburg, and Greer, SC areas.

DATES: Effective 0901 UTC, August 10, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group,

Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** (88 FR 18241, March 28, 2023) for Doc. No. FAA–2022–1161, amending Class D airspace, Class E surface area, and Class E airspace extending upward from 700 feet above the surface of the Greenville, Spartanburg, and Greer, SC areas. This action removes the airport name (Greenville-Spartanburg International Airport) from the first line of the E2 descriptor for Greenville-Spartanburg International Airport. The header will now read ASO SC E2 Greer, SC. In addition, this action replaces the reference to Greenville-Spartanburg International Airport with the term Greer in the airspace descriptions.

Class D and Class E airspace designations are published in Paragraphs 5000, 6002, and 6005 of FAA Order JO 7400.11G dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will subsequently be published in FAA Order JO 7400.11G.

Correction to the Final Rule

Accordingly, pursuant to the authority delegated to me, the amendment of Class D airspace and Class E surface airspace published in the **Federal Register** of March 28, 2023 (88 FR 18241) for Doc. No. FAA–2022–1161, is corrected as follows:

§ 71.1 [Corrected]

■ 1. On page 18242, in column 3 under the Airspace Classification ''Paragraph 5000. Class D Airspace.'', revise the airspace headings and descriptions to read:

Paragraph 5000 Class D Airspace.

* * * * *

ASO SC D Greenville, SC [Amended]

Greenville Downtown Airport, SC
(Lat. 34°50′53″ N, long. 82°21′00″ W)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4.5-mile radius of Greenville Downtown Airport, excluding that airspace within the Greer, Class C airspace area. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Air Missions. The effective days and times will thereafter be continuously published in the Chart Supplement.

ASO SC D Greenville Donaldson Field Airport, SC [Amended]

Greenville, Donaldson Field Airport, SC
(Lat. 34°45′30″ N, long. 82°22′35″ W)
Greenville Downtown Airport
(Lat. 34°50′53″ N, long. 82°21′00″ W)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4.2-mile radius of Donaldson Field Airport, excluding that airspace within the Greenville Downtown Airport Class D airspace area and excluding that airspace within the Greer Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

■ 2. On pages 18242 and 18243, beginning in column 3 on page 18242, under the Airspace Classification ''Paragraph 6002. Class E Surface Airspace.'' revise the airspace headings and descriptions to read:

Paragraph 6002 Class E Surface Airspace.

* * * * *

ASO SC E2 Greer, SC [Amended]

Greenville-Spartanburg International Airport, SC
(Lat. 34°53′44″ N, long. 82°13′08″ W)

That airspace extending upwards from the surface within a 5-mile radius of the Greenville-Spartanburg International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

ASO SC E2 Spartanburg, SC [Amended]

Spartanburg Downtown Memorial Airport/ Simpson Field, SC
(Lat. 34°54′59″ N, long. 81°57′21″ W)
Spartanburg VORTAC
(Lat. 35°02′01″ N, long. 81°55′37″ W)

That airspace extending upwards from the surface within a 4.3-mile radius of Spartanburg Downtown Memorial Airport/ Simpson Field and within 1.8 miles each side of Spartanburg VORTAC 192° radial, extending from the 4.3-mile radius to the VORTAC, excluding the portion within the Greer, SC, Class C airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Issued in College Park, Georgia, on May 4, 2023.

Lisa E. Burrows,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–09844 Filed 5–24–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2023–OSERS–0057]

Proposed Priority and Requirements—Technical Assistance on State Data Collection—National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate IDEA Data To Address Significant Disproportionality; Correction

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Proposed priority and requirements; correction.

SUMMARY: On March 28, 2023, the Department of Education (Department) published in the **Federal Register** a notification of proposed priority and requirements (NPP) for fiscal year (FY) 2023 for a National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Data to Address Significant Disproportionality (Center) under the Technical Assistance on State Data Collection program, Assistance Listing Number 84.373E. We are correcting the Docket ID used for submitting public comments. All other information in the NPP remains the same.

DATES: This correction is applicable May 25, 2023.

Deadline for Transmittal of Public Comments: We must receive your comments on or before June 12, 2023.

FOR FURTHER INFORMATION CONTACT: Richelle Davis, U.S. Department of Education, 400 Maryland Avenue SW, Room 5076, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–7401. Email: *Richelle.Davis@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: On March 28, 2023, we published the NPP in the **Federal Register** (88 FR 18280) with a Docket ID of [ED–2023–OSERS–0001]. We are correcting the NPP to reflect the correct Docket ID [ED–2023–OSERS–0057].

Other than correcting the Docket ID, all other information in the NPP remain the same.

Correction

In FR Doc. 2023–06417, appearing on page 18280 of the **Federal Register** of March 28, 2023 (88 FR 18280), we make the following correction:

On page 18280, in the first column, below the heading ''34 CFR Chapter III'', remove ''[Docket ID ED–2023–OSERS–0001]'' and add, in its place, ''[Docket ID ED–2023–OSERS–0057]''.

Glenna Gallo,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2023–11101 Filed 5–24–23; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0936; FRL–10470–02–R9]

Clean Air Plans; 2015 8-Hour Ozone Nonattainment Area Requirements; Clean Fuels for Fleets; California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the California State Implementation Plan (SIP) concerning the provisions for Clean Fuels for Fleets (CFF) for the 2015 ozone national ambient air quality standards (''2015 ozone NAAQS'') in the Riverside County (Coachella Valley), Sacramento Metro, San Joaquin Valley, Los Angeles—South Coast Air Basin (South Coast), Ventura County, and Los Angeles—San Bernardino Counties (West Mojave Desert) nonattainment areas (NAAs). The SIP revision includes the ''California Clean Fuels for Fleets Certification for the 70 ppb Ozone Standard'' (''Clean Fuels for Fleets Certification''), a multi-district certification that California's Low-Emission Vehicle (LEV) program achieved emissions reductions at least equivalent to the reductions that would be achieved by the EPA's Clean Fuels for Fleets Program, submitted on February 3, 2022. We are approving the revision under the Clean Air Act (CAA or ''the Act''), which establishes clean fuels for fleets requirements for ''Serious,'' ''Severe,'' and ''Extreme'' ozone NAAs.

DATES: This rule is effective June 26, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2022–0936. 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 (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Andrew Ledezma, Planning Section (ARD–2–1), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. By phone: (415) 972–3985 or by email at *Ledezma.Ernesto@epa.gov.*

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

Table of Contents

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II. Public Comments and EPA Responses
III. EPA Action
IV. Statutory and Executive Order Reviews

I. Proposed Action

On March 3, 2023, the EPA proposed to approve a revision [1] to the California SIP concerning the provisions for CFF for the 2015 ozone NAAQS in the Coachella Valley, Sacramento Metro, San Joaquin Valley, South Coast, Ventura County, and West Mojave Desert NAAs.[2] In our March 3, 2023 proposed rulemaking, we provided background information on the 2015 ozone standards, area designations in California, and classifications for the 2015 ozone NAAQS.

The proposed rulemaking describes the SIP revision the California Air Resources Board (CARB) submitted to the EPA to fulfill the CFF requirements under section 182(c)(4) and section 246 of the CAA that apply to the Coachella Valley, Sacramento Metro, San Joaquin Valley, South Coast, Ventura County, and West Mojave Desert NAAs. The proposed rulemaking explains that for Serious, Severe, and Extreme nonattainment areas with 1980 populations greater than 250,000, a minimum specified percentage of all new covered fleet vehicles in model year 1998 and thereafter, purchased by each covered fleet operator in each covered area, must be clean-fuel vehicles and must use clean alternative fuels when operating in the covered area. The proposed rulemaking also explains that section 182(c)(4)(B) of the CAA allows states to opt out of the Federal CFF Program by submitting a SIP revision consisting of a program or programs that will result in equivalent or greater long-term reductions in ozone precursors. Lastly, the proposed rulemaking notes that in 1994, CARB submitted a SIP revision to the EPA to opt out of the Federal CFF Program and included a demonstration that California's LEV program achieves emissions reductions at least as large as would be achieved by the Federal program. The EPA approved the California SIP revision to opt out of the CFF Program effective September 27, 1999.[3]

In this action we are approving CARB's certification that the State's LEV program meets the CFF requirements for the 2015 ozone NAAQS for the Coachella Valley, Sacramento Metro, San Joaquin Valley, South Coast, Ventura County, and West Mojave Desert NAAs. Please refer to our proposed rulemaking for more information concerning the background for this action and for a more detailed discussion of the rationale for approval.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, the EPA received one comment from a private individual and four anonymous comments related to the rulemaking. All five comments were supportive of our proposed action and do not require a response. The full text of these comments is available for viewing in the docket for this rulemaking.

III. EPA Action

No comments were submitted that change our assessment of the multi-district certification as described in our proposed action. Therefore, as authorized in sections 182(c)(4) and 246 of the CAA, the EPA is approving the revision to the California SIP concerning the provisions for CFF for the 2015 ozone NAAQS in the Coachella Valley, Sacramento Metro, San Joaquin Valley,

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[1] In this final rulemaking, we are clarifying the terminology that we used to describe our proposed action regarding California's Clean Fuels for Fleets Certification by changing it from ''revisions'' to the California SIP to ''a revision'' to the California SIP. This change more accurately reflects the contents of the submittal, which includes a single, multi-district certification. Our change in terminology does not reflect any change in our evaluation or action, rather, it is a clarification of the action we are taking.

[2] 88 FR 13392 (March 3, 2023).

[3] 64 FR 46849 (August 27, 1999).

South Coast, Ventura County, and West Mojave Desert NAAs.

IV. 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, 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 Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the 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. 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.''

The State 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. The 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 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 July 24, 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, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 18, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(597) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(597) The following multi-district certification was submitted on February 3, 2022, by the Governor's designee, as an attachment to a letter dated February 3, 2022.

(i) [Reserved]

(ii) *Additional materials.* (A) California Air Resources Board.

(*1*) ''California Clean Fuels for Fleets Certification for the 70 ppb Ozone Standard,'' adopted on January 27, 2022.

(*2*) [Reserved]

(B) [Reserved]

[FR Doc. 2023–11006 Filed 5–24–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 232, and 252

[Docket DARS–2022–0029]

RIN 0750–AJ46

Defense Federal Acquisition Regulation Supplement: Payment Instructions (DFARS Case 2017–D036)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to provide payment instructions for certain contracts based on the type of item acquired and the type of payment.

DATES: Effective May 25, 2023.

FOR FURTHER INFORMATION CONTACT: Mr. David E. Johnson, telephone 202–913–5764.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 87 FR 77053 on December 16, 2022, to amend the DFARS to provide payment instructions for certain contracts based on the type of item acquired and the type of payment. Two respondents submitted comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided, as follows:

A. Summary of Significant Changes From the Proposed Rule

Language in the clause at DFARS 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions, is changed for clarity. The term ''subcontractor progress payments'' is changed to ''subcontract financing'' in the clauses at DFARS 252.232–7002, paragraph (d), and 252.232–7018, Progress Payments—Multiple Lots, paragraph (b)(4).

B. Analysis of Public Comments

1. Data Underlying the Proposed Rule

Comment: One respondent inquired about the set of data that underlies the proposed rule and whether such data adequately supports the proposed rule.

Response: Such data has not been published for public comment, but it was gathered in the normal course of compiling operational statistics relating to the manual entry of payment instructions in DoD payment systems. This rule standardizes payment instructions and therefore eliminates the need for such manual entry. This in turn eliminates the possibility of both data-entry errors and application of incorrect payment instructions.

2. Possible Ambiguity in Instructions for Progress Payment Requests

Comment: One respondent inquired whether paragraph (a) of the clause at DFARS 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions, requires separate submission of foreign military sales (FMS) progress payment requests combined with U.S. sales progress payment requests, or rather that the clause requires submission of FMS progress payment requests separate from U.S. ones.

Response: The intent is for FMS progress payment requests to be submitted separately from U.S. sales progress payment requests. The language in the clause at DFARS 252.232–7002 has been clarified in the final rule.

3. Prescription for the Clause at DFARS 252.232–70XX

Comment: One respondent inquired whether the prescription for the clause at DFARS 252.232–70XX, Progress Payments—Multiple Lots, should explicitly limit application of the clause to fixed price contracts.

Response: In accordance with Federal Acquisition Regulation 32.500(a), only fixed-price contracts may provide for progress payments. The prescription limits application of the clause at DFARS 252.232–7018 to contracts that provide for progress payments. DoD therefore declines the suggested change as unnecessary.

4. References to ''Subcontractor Progress Payments''

Comment: One respondent recommends changing the term ''subcontractor progress payments'' to ''subcontract financing'' in the clauses at DFARS 252.232–7002(d) and 252.232–70XX(b)(4) to better align with relevant language in the Federal Acquisition Regulation.

Response: In the final rule, the term ''subcontractor progress payments'' is changed to ''subcontract financing'' in the clauses at DFARS 252.232–7002, paragraph (d), and 252.232–7018, paragraph (b)(4).

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Services, and for Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items

This rule clarifies payment instructions for certain contracts based on the type of item acquired and the type of payment by amending DFARS 252.204–7006, Billing Instructions—Cost Vouchers, and 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions. Application of these clauses to contracts at or below the SAT and to commercial services, commercial products, and COTS items is unchanged. This final rule adds a new clause at 252.232–7018, Progress Payments—Multiple Lots. DoD will apply this clause to solicitations and contracts at or below the SAT and will not apply the clause to commercial services or commercial products, including COTS items.

IV. Expected Impact of the Rule

Currently, payment instructions are being entered manually into DoD's payment systems due to a lack of clarity in the DFARS regarding payment instructions. This rule clarifies the payment instruction language in the DFARS. The clarifications in this rule will reduce data errors and inoperability problems throughout DoD's business processes created by manual entry of payment instructions in the payment systems, as well as reducing the cost of data entry.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VII. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

The purpose of this rule is to provide clarifications on payment instructions for certain contracts based on the type of item acquired and the type of payment. DoD has found that the payment instructions often are not inserted when required and that payment instructions, if inserted, are often not appropriate for the contracts in question. An analysis of the issue showed that the appropriate accounting treatment for payments can be derived from the type of item acquired and the type of payment. In addition, the analysis highlighted the need to establish procedures for structuring progress payment requests for contracts with multiple production lots. The clarifications in this rule will promote consistency with generally accepted accounting principles and reduce data errors created by manual entry of payment instructions in the payment systems.

No public comments were received in response to the initial regulatory flexibility analysis.

The rule will apply to all small entities that will be awarded cost-reimbursement, time-and-material, or labor-hour contracts. However, the rule requires negligible additional effort by contractors, including small entities, because it simply clarifies the identification and use of payment information elements in payment requests. According to data from the Federal Procurement Data System for fiscal years 2020 through 2022, approximately 6,800 cost-reimbursement, time-and-material, and labor-hour contracts (0.01% percent of all awards) are awarded to approximately 1,100 small businesses (3 percent of all awardees) each year. This rule also applies to contracts that use multiple accounting classifications or that involve progress payments for multiple production lots. DoD cannot accurately quantify the number of contracts subject to the multiple-lot progress payments clause, but such contracts are likely few in number.

The rule does not contain any new reporting, recordkeeping, or other compliance requirements for small entities.

There are no known, significant, alternative approaches to the rule that would meet the objectives of the rule.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this rule regarding new DFARS clause 252.232–7018, Progress Payments—Multiple Lots. However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under Office of Management and Budget (OMB) Control Number 9000–0010, titled Progress Payments, SF 1443. The rule affects information collection requirements in DFARS 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions, currently approved under OMB Control Number 0704–0321, titled ''DFARS Part 232, Contract Financing, and the Clause at 252.232–7002, Progress Payments for Foreign Military Sales Acquisition.'' The impact, however, is negligible because the changed reporting requirement is not anticipated to increase the estimate of total burden hours; rather the requirement to submit separate payment requests by rate is merely replaced by a requirement to submit separate payment requests for FMS and U.S. line items in the contract.

List of Subjects in 48 CFR Parts 204, 232, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 232, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 232, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE AND INFORMATION MATTERS

■ 2. Amend section 204.7109 by revising paragraph (b) to read as follows:

204.7109 Contract clauses.

* * * * *

(b) Use the clause at 252.204–7006, Billing Instructions—Cost Vouchers, in solicitations and contracts when a cost-reimbursement contract, a time-and-materials contract, or a labor-hour contract is contemplated.

PART 232—CONTRACT FINANCING

■ 3. Amend section 232.502–4–70 by adding paragraph (c) to read as follows:

232.502–4–70 Additional clauses.

* * * * *

(c) Use the clause at 252.232–7018, Progress Payments—Multiple Lots, to authorize separate progress payment requests for multiple lots.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 252.204–7006—

■ a. By revising the section heading, clause heading, and clause date; and

■ b. In the clause introductory text, removing ''payment'' and adding ''payment using a cost voucher'' in its place.

The revisions read as follows:

252.204–7006 Billing Instructions—Cost Vouchers.

* * * * *

Billing Instructions—Cost Vouchers (May 2023)

* * * * *

■ 5. Revise section 252.232–7002 to read as follows:

252.232–7002 Progress Payments for Foreign Military Sales Acquisitions.

As prescribed in 232.502–4–70(a), use the following clause:

Progress Payments for Foreign Military Sales Acquisitions (May 2023)

If this contract includes foreign military sales (FMS) requirements, the Contractor shall—

(a) Submit separate progress payment requests for the FMS and U.S. line items in the contract;

(b) Submit a supporting schedule showing the amount of each request distributed to each country's requirements;

(c) Identify in each progress payment request the contract requirements to which it applies (*i.e.,* FMS or U.S.);

(d) Calculate each request on the basis of the prices, costs (including costs to complete), subcontract financing, and progress payment liquidations of the contract requirements to which it applies; and

(e) Distribute costs among the countries in a manner acceptable to the Administrative Contracting Officer.

(End of clause)

■ 6. Add section 252.232–7018 to read as follows:

252.232–7018 Progress Payments—Multiple Lots.

As prescribed in 232.502–4–70(c), use the following clause:

Progress Payments—Multiple Lots (May 2023)

(a) *Definitions.* As used in this clause—

Lot means one or more fixed-price deliverable line items or deliverable subline items representing a single, severable group where the sum of the costs for each group is segregated and a single progress payment rate is used.

Multiple lots means more than one lot on a single contract where progress payment proration is performed on a lot-wide, versus contract-wide, basis.

(b) When submitting progress payment requests under the billing instructions in Federal Acquisition Regulation (FAR) clause 52.232–16, Progress Payments, or Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.232–7002, Progress

Payments for Foreign Military Sales Acquisitions, of this contract, the Contractor shall—

(1) Submit separate progress payment requests for each lot identified in the contract;

(2) Identify the contract price for the lot as the sum of all fixed-priced line items identified to the lot, in accordance with FAR 32.501–3;

(3) Identify the lot on each progress payment request to which the request applies;

(4) Calculate each request on the basis of the price, costs (including the cost to complete), subcontractor financing, and progress payment liquidations of the lot to which it applies; and

(5) Distribute costs among lots in a manner acceptable to the Administrative Contracting Officer.

(c) Submit a separate progress payment request for U.S. and FMS requirements in accordance with the DFARS clause 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions, of this contract.

(End of clause)

[FR Doc. 2023–11138 Filed 5–24–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 206

[Docket DARS–2023–0021]

RIN 0750–AL79

Defense Federal Acquisition Regulation Supplement: Modification of Authority of the Department of Defense To Carry Out Certain Prototype Projects (DFARS Case 2023–D006)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2023.

DATES: Effective May 25, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly R. Ziegler, telephone 703–901–3176.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to implement section 842 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 (Pub. L. 117–263), which amends 10 U.S.C. 4022(f)(2) to permit the award of a follow-on production contract without the use of competitive procedures, even if explicit notification was not listed within the request for proposal for the prototype project transaction. This revision modifies the criteria required to award a follow-on production contract without the use of competitive procedures at DFARS 206.001–70(a), which requires other transaction solicitations and agreements to include provisions for a follow-on contract in order to qualify for an exception to competition requirements.

The statutory revision to the criteria does not implement new requirements; instead it removes one of the requirements. The statutes and regulations that implement DoD's other transactions authority permit DoD to provide, in the agreement, for the award of a follow-on production contract to a participant in the prototype project. Agreements made under DoD's other transactions authority are not subject to the Federal Acquisition Regulation (FAR) or DFARS; however, the award of a follow-on production contract resulting from such an other transaction agreement is subject to these acquisition regulations.

DoD issued a final rule for DFARS case 2019–D031 (87 FR 10989) on February 28, 2022, to implement section 815 of the NDAA for FY 2016 (Pub. L. 114–92), which modified the criteria required to exempt from competition certain follow-on production contracts at DFARS 206.001–70(a)(1) and (2).

This final rule removes from DFARS 206.001–70(a)(1) the other transaction solicitation requirement and clarifies that an other transaction agreement is still statutorily required (10 U.S.C. 4022(f)(1)) to provide for the award of a follow-on production contract in order for a contracting officer to award the follow-on production contract without obtaining competition. DFARS 206.001–70(a)(2) is revised to require documentation from the agreements officer for the other transaction agreement that, where applicable for the prototype project, the threshold at 10 U.S.C. 4022(a)(2)(C) and the requirements at 10 U.S.C. 4022(f)(2)(A) and (B) have been met. These and additional revisions in 206.001–70(a) are intended to ensure an accurate interpretation of the statutory requirements of 10 U.S.C. 4022 that are subject to the DFARS.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is removing a requirement that is no longer mandated by statute and that affects only the internal operating procedures of DoD.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Services and for Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items

This rule does not impose any new requirements on contracts at or below the simplified acquisition threshold, for commercial services, or for commercial products, including commercially available off-the-shelf items.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules Under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and to the Comptroller General of the United States. A major rule under the

Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 206

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR part 206 is amended as follows:

PART 206—COMPETITION REQUIREMENTS

■ 1. The authority citation for 48 CFR part 206 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Revise section 206.001–70 to read as follows:

206.001–70 Exception for prototype projects for follow-on production contracts.

(a) Also excepted from this part are follow-on production contracts for products developed pursuant to the ''other transactions'' authority of 10 U.S.C. 4022 for prototype projects, when the contracting officer receives sufficient documentation from the agreements officer issuing the other transaction agreement for the prototype project that—

(1) The other transaction agreement included provisions for a follow-on production contract (10 U.S.C. 4022(f)(1)); and

(2) Where applicable, the threshold at 10 U.S.C. 4022(a)(2)(C) and the requirements at 10 U.S.C. 4022(f)(2)(A) and (B) have been met.

(b) See PGI 206.001–70 for additional guidance.

[FR Doc. 2023–11140 Filed 5–24–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 215, 217, and 252

[Docket DARS–2022–0026]

RIN 0750–AL22

Defense Federal Acquisition Regulation Supplement: Undefinitized Contract Actions (DFARS Case 2021–D003)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) as recommended by the DoD Inspector General to refine the management of undefinitized contract actions.

DATES: Effective May 25, 2023.

FOR FURTHER INFORMATION CONTACT: David Johnson, telephone 202–913–5764.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 87 FR 65507 on October 28, 2022, to amend the DFARS to refine the management of undefinitized contract actions (UCAs). This final rule implements recommendations regarding management of undefinitized contract actions (UCAs) as addressed in the DoD Inspector General Audit of Military Department Management of Undefinitized Contract Actions (Report No. DODIG–2020–084). Three respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. No changes are made to the final rule in response to the public comments. A discussion of the comments is provided, as follows:

A. Analysis of Public Comments

1. Possible Subjectiveness Associated With the Term ''Qualified Proposal''

Comment: Several respondents remarked that aspects of the definition of ''qualified proposal'' in the context of UCAs appear open to interpretation, and the resulting subjectivity could result in unwarranted detrimental treatment of contractors. Some respondents suggested DoD should change the DFARS to provide additional details regarding what comprises a qualifying proposal or otherwise require contracting officers to undertake a dialogue to assist contractors developing and submitting qualifying proposals.

Response: The term ''qualified proposal,'' defined at DFARS 217.7401, was not proposed for revision in this rule, and the definition is based on statute now found at 10 U.S.C. 3377(b)(2). This rule does not conceptually change the term or its usage, and the comment is therefore outside the scope of this rule.

2. Contract Risk Factors

Comment: Several respondents commented on the language regarding contract risk factors at 215.404–71–3(d)(2)(i). Several respondents stated that this rule would limit the contracting officer's discretion and flexibility to review and assign risk factors that consider the circumstances of a particular UCA. One respondent noted that current language at DFARS 215.404–71–3(d)(2)(i) already instructs the contracting officer to consider the extent to which costs have been incurred prior to definitization rendering unnecessary the language this rule adds at DFARS 215.404–71–3(d)(2)(i), including any resulting updates to DD Form 1547, Record of Weighted Guidelines. One respondent suggested modifying DFARS 217.7404–6, Allowable Profit, to specify cost-risk factors, including ''inflation and baseline fluidity, and reduced negotiating strength with suppliers and vendors in a UCA environment.'' Some respondents disagreed with the assumption reflected in the DFARS that a contractor's cost risk declines during the period of a UCA, therefore warranting a fee reduction based on lower risk.

Response: This rule is intended to incentivize both parties to definitize UCAs timely. The additional language in this rule at DFARS 215.404–71–3(d)(2)(i) provides contracting officers with flexibility and clarity to properly consider and assign fees to the relevant portions based upon their differing risk profiles, and DoD declines to remove the additional language from the final rule. Regarding the comment centering on stating factors that affect cost risk, at least some of the factors or considerations the respondent listed are effectively reflected at DFARS 215.404–71–3(d)(1), and the contracting officer would already consider them when ascribing contract risk. The comment regarding contract risk declining over

the course of a UCA speaks to DFARS language not proposed for revision in this rule; rather, the change in this rule provides guidance to contracting officers when completing DD Form 1547, Record of Weighted Guidelines, without conceptually changing the language regarding declining contract risk. DoD declines to revise this language in the final rule.

3. Concerns Regarding the 5 Percent Maximum Withhold

Comment: Several respondents remarked that the 5 percent maximum withhold specified under this rule, used to protect the Government's interest where a qualifying proposal is not submitted timely, would encourage a 5 percent withhold arbitrarily or as a matter of course without considering either extenuating circumstances or a lesser withholding percentage. Similarly, one respondent noted that the documentation requirement at DFARS 217.7404–3(b)(2) would encourage a 5 percent withhold as a matter of course. One respondent stated that applying a withhold where a qualifying proposal is not submitted timely would cause additional delay, counter to the intent of the rule. Additionally, one respondent indicated that the 5 percent withhold is unnecessary in light of existing remedies.

Response: In accordance with DFARS language existing prior to this rule, contracting officers have discretion whether to withhold or take other appropriate action, where a qualifying proposal is not submitted timely. This rule does not change the discretionary nature either of such withholding or taking other appropriate action. This discretion allows for consideration of extenuating circumstances as appropriate. Additionally, the rule emphasizes that the withhold can be applied in a broad variety of contract financing situations.

4. Requests To Withdraw the Rule

Comment: Several respondents requested DoD withdraw this rule in its entirety as, for example, unnecessary to encourage submission of qualifying proposals.

Response: DoD declines to withdraw the rule because doing so would preclude implementing updates to management of UCAs per the DoDIG report.

5. Underlying Causes of Delays in Submitting Qualifying Proposals

Comment: Several respondents remarked that circumstances outside the control of contractors often contribute to delays in submitting qualifying proposals and in negotiation of the final price, rendering aspects of this rule one-sided or punitive. For example, some respondents noted that delays in submitting qualified proposals are sometimes caused by the prime contractor awaiting cost or pricing details from subcontractors. In this context, one respondent suggested changing the DFARS in the final rule to require explicit agreement by the contractor both to the definitization schedule and to the risk assessment negotiated in the price negotiation memorandum. Some respondents suggested DoD should consider minimizing Government-driven changes affecting contract definitization by disallowing changes to work statements or specifications after the parties initially enter into the UCA and before the contract is definitized.

Response: The contracting officer has discretion under this rule to consider extenuating circumstances surrounding a particular UCA, including delays caused by awaiting data from subcontractors, when developing a defintization schedule or before taking appropriate action such as a withhold. The nature of a UCA, which is inherently subject to some uncertainty, works against the suggestion to disallow changes to the work statement, and DoD therefore declines the suggestion. Further, the parties can bilaterally address scope changes that might necessitate revision to the proposal submission date.

6. Past Performance Evaluations

Comment: One respondent suggested deleting the reference to documenting the contractor's past performance evaluation as an appropriate action under DFARS 217.7404–3(b)(1) where a qualifying proposal is not submitted timely. One respondent suggested DoD should provide an appellate process to challenge past performance evaluations that the contractor believes are inaccurate.

Response: DoD declines to delete the reference in this rule to documenting the contractor's past performance evaluation. This rule does not change the DFARS to compel documenting past performance information in this context but rather lists such documentation as an example of possible appropriate actions. Further, although this case adds a reference to documenting past performance information, the possibility of using this method as an appropriate action existed prior to this rule. Additionally, the suggestion to develop in this rule an appellate process to challenge past performance evaluations is outside the scope of this rule.

7. Underlying Causes of UCAs

Comment: Several respondents suggested that DoD should address underlying causes of UCAs, such as insufficient Government staffing or delayed acquisition planning. Similarly, some respondents stated that DoD should further specify in the DFARS proper or appropriate use of UCAs.

Response: DoD declines the suggestions because they are outside the scope of the rule.

B. Other Changes

No other changes are made to the final rule.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Services, and for Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items

This rule amends the clause at DFARS 252.217–7027, Contract Definitization. However, this rule does not impose any new requirements on contracts at or below the SAT or for commercial services or commercial products, including COTS items. The clause will continue to not apply to acquisitions at or below the SAT and to acquisitions of commercial services and commercial products, including COTS items.

IV. Expected Impact of the Rule

The final rule will incentivize contractors to submit qualifying proposals according to the contract definitization schedule to avoid the withholding of an amount of up to 5 percent of all subsequent financing requests. DoD contracting officers will be required to consider applying separate and differing contract risk factors to costs incurred and estimated costs to complete, when completing the DD Form 1547, Record of Weighted Guidelines. Contracting officers will also be required to document the contract file to show justification for withholding or not withholding a portion of financing payment, when the qualifying proposal was not submitted according to the contract definitization schedule.

V. Executive Orders 12866 and 13563

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

and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VII. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) as recommended by the DoD Inspector General Audit of Military Department Management of Undefinitized Contract Actions (Report No. DODIG–2020–084) to refine the management of undefinitized contract actions. This report recommends changes to the DFARS to encourage contractors to provide timely qualifying proposals, including the possibility of the Government withholding a percentage of payments yet to be paid under an undefinitized contract action until it receives a qualifying proposal from the contractor.

This rule incentivizes contractors to submit qualifying proposals in accordance with the contract definitization schedule; and, notwithstanding FAR 52.216–26, Payments of Allowable Costs Before Definitization, allows contracting officers to withhold an amount necessary to protect the interests of the Government, not to exceed 5 percent of all subsequent financing requests, or take other appropriate actions if a qualifying proposal is not submitted in accordance with the contract definitization schedule. Contracting officers will document in the contract file the justification for withholding or not withholding payments if the qualifying proposal was not submitted in accordance with the contract definitization schedule. This rule clarifies that, when considering the reduced cost risks associated with allowable incurred costs on an undefinitized contract action, it is appropriate to apply separate and differing contract risk factors for allowable incurred costs and estimated costs to complete when documenting the contract risk sections of DD Form 1547, Record of Weighted Guidelines.

DoD received no public comments in response to the initial regulatory flexibility analysis.

This rule will likely affect small entities that will be awarded undefinitized contract actions. Data was obtained from the Procurement Business Intelligence Service (PBIS) for all contracts and modifications containing DFARS clause 252.217–7027, Contract Definitization. Data from PBIS revealed DoD awarded 2,162 contracts to 971 small businesses from fiscal year 2019 through fiscal year 2021, which averages out to 324 small businesses per year. Therefore, this rule may apply to approximately 324 unique small entities.

The rule does not impose any new reporting, recordkeeping, or compliance requirements.

DoD did not identify any significant alternatives that would minimize or reduce the significant economic impact on small entities, because this rule is not expected to have a significant impact on small entities.

VIII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 215, 217, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 215, 217, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 215, 217, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

■ 2. Amend section 215.404–71–3 by revising paragraph (d)(2)(i) to read as follows:

215.404–71–3 Contract type risk and working capital adjustment.

* * * * *

(d) * * *

(2) * * *

(i) The contracting officer shall assess the extent to which costs have been incurred prior to definitization of the contract action (also see 217.7404–6(a) and 243.204–70–6). When considering the reduced cost risks associated with allowable incurred costs on an undefinitized contract action, it is appropriate to apply separate contract risk factors for allowable incurred costs and estimated costs to complete when completing the contract risk sections of DD Form 1547, Record of Weighted Guidelines. When costs have been incurred prior to definitization, generally regard the contract type risk to be in the low end of the designated range. If a substantial portion of the costs has been incurred prior to definitization, the contracting officer may assign a value as low as zero percent, regardless of contract type. However, if a contractor submits a qualifying proposal to definitize an undefinitized contract action and the contracting officer for such action definitizes the contract after the end of the 180-day period beginning on the date on which the contractor submitted the qualifying proposal as defined in 217.7401, the profit allowed on the contract shall accurately reflect the cost risk of the contractor as such risk existed on the date the contractor submitted the qualifying proposal.

* * * * *

PART 217—SPECIAL CONTRACTING METHODS

■ 3. Amend section 217.7404–3 by revising paragraph (b) to read as follows:

217.7404–3 Definitization schedule.

* * * * *

(b)(1) Submission of a qualifying proposal in accordance with the definitization schedule is a material element of the contract. If the contractor does not submit a qualifying proposal in accordance with the contract definitization schedule, notwithstanding FAR 52.216–26, Payments of Allowable Costs Before Definitization, the contracting officer may withhold an amount necessary to protect the interests of the Government, not to exceed 5 percent of all subsequent financing requests, or take other appropriate actions (*e.g.,* documenting the noncompliance in the contractor's past performance evaluation or terminating the contract for default).

(2) Contracting officers shall document in the contract file the justification for withholding or not withholding payments if the qualifying proposal was not submitted in accordance with the contract definitization schedule.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Revise section 252.217–7027 to read as follows:

252.217–7027 Contract Definitization.

As prescribed in 217.7406(b), use the following clause:

Contract Definitization (May 2023)

(a) A______ *[insert specific type of contract action]* is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include—

(1) All clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the undefinitized contract action;

(2) All clauses required by law on the date of execution of the definitive contract action; and

(3) Any other mutually agreeable clauses, terms, and conditions.

(b) The Contractor agrees to submit a______ *[insert type of proposal; e.g., fixed-price or cost-and-fee]* proposal and certified cost or pricing data supporting its proposal. Notwithstanding FAR 52.216–26, Payments of Allowable Costs Before Definitization, failure to meet the qualifying proposal date in the contract definitization schedule could result in the Contracting Officer withholding an amount up to 5 percent of all subsequent requests for financing until the Contracting Officer determines that a proposal is qualifying.

(c) The schedule for definitizing this contract action is as follows *[insert target date for definitization of the contract action and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of the make-or-buy and subcontracting plans and certified cost or pricing data]:*

____
____
____
____

(d) If agreement on a definitive contract action to supersede this undefinitized contract action is not reached by the target date in paragraph (c) of this clause, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with FAR subpart 15.4 and part 31, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.

(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by—

(i) All clauses required by the FAR on the date of execution of this undefinitized contract action for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (d);

(ii) All clauses required by law as of the date of the Contracting Officer's determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with paragraph (d)(1) of this clause, all clauses, terms, and conditions included in this undefinitized contract action shall continue in effect, except those that by their nature apply only to an undefinitized contract action.

(e) The definitive contract resulting from this undefinitized contract action will include a negotiated______ *[insert ''cost/price ceiling'' or ''firm-fixed price'']* in no event to exceed____*[insert the not-to-exceed amount]*.

(End of clause)

[FR Doc. 2023–11139 Filed 5–24–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 1710319998630–02; RTID 0648–XC946]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Resources of the South Atlantic; 2023 Red Snapper Commercial and Recreational Fishing Seasons

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

ACTION: Temporary rule; 2023 fishing seasons notification.

SUMMARY: NMFS announces the limited opening of commercial and recreational red snapper in the exclusive economic zone (EEZ) of the South Atlantic for the 2023 fishing year. This notification announces the 2023 red snapper commercial season opening date and the opening and closing dates for the red snapper recreational season, according to the accountability measures (AMs). This season announcement for South Atlantic red snapper allows fishers to maximize their opportunity to harvest the commercial and recreational annual catch limits (ACLs) while also managing harvest to protect the red snapper resource.

DATES: The 2023 commercial red snapper season opens at 12:01 a.m., local time, July 10, 2023, until 12:01 a.m., local time, January 1, 2024, unless changed by subsequent notification in the **Federal Register**. The 2023 recreational red snapper season opens at 12:01 a.m., local time, on July 14, 2023, and closes at 12:01 a.m., local time, on July 16, 2023.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The South Atlantic snapper-grouper fishery includes red snapper and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The South Atlantic Fishery Management Council (Council) prepared the FMP, and the FMP is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

For South Atlantic red snapper, the commercial AM requires the sector to close when commercial landings reach or are projected to reach the commercial ACL. The recreational AM is the length of the recreational season, with NMFS projecting the season length based on catch rate estimates from previous years.

The commercial ACL is 124,815 lb (56,615 kg), round weight, and in 2022, NMFS closed the commercial sector on August 31 as a result of the commercial ACL being projected to be met (87 FR 52859, August 30, 2022). The recreational ACL is 29,656 fish, and NMFS has determined that recreational landings are expected to reach the recreational ACL in a 2-day season.

The commercial season for South Atlantic red snapper begins each year on the second Monday in July and closes when the commercial ACL is reached or is projected to be reached. Accordingly, the 2023 commercial season opens on July 10, 2023, and will remain open until 12:01 a.m., local time, on January 1, 2024, unless the commercial ACL is reached or projected to be reached prior to this date. During the commercial fishing season, the commercial trip limit is 75 lb (34 kg), gutted weight. NMFS will monitor commercial landings during the open season, and if commercial landings reach or are projected to reach the commercial ACL, then NMFS will file a notification with the Office of the Federal Register to close the commercial sector for red snapper for the remainder of the fishing year.

The recreational season for South Atlantic red snapper begins on the second Friday in July. Accordingly, the 2023 recreational red snapper season opens at 12:01 a.m., local time, on July 14, 2023, and closes at 12:01 a.m., local time, on July 16, 2023. During the recreational season, the recreational bag limit is one red snapper per person, per day. After the closure of the recreational sector, the bag and possession limits for red snapper are zero.

There is not a red snapper minimum or maximum size limit for the commercial and recreational sectors during the open seasons.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.183(b)(5)(i) and 622.193(y), which were issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule establishing the red snapper ACLs and AMs has already been subject to notice and comment, and all that remains is to notify the public of the respective commercial and recreational fishing seasons.

In addition, providing prior notice and an opportunity for public comment is contrary to the public interest because the seasons begin in early July and announcing the length of the fishing seasons now allows each sector to prepare for the upcoming harvest, provides opportunity to for-hire fishing vessels to book trips that could increase their revenues and profits, and gives the South Atlantic states the time needed to prepare for their respective data collection needs for the season.

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

Dated: May 22, 2023.

Ngagne Jafnar Gueye,

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

[FR Doc. 2023–11218 Filed 5–22–23; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 230518–0134]

RIN 0648–BL94

Atlantic Highly Migratory Species (HMS); Atlantic Tunas General Category Restricted-Fishing Days (RFDs)

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

ACTION: Temporary rule.

SUMMARY: This temporary rule sets Atlantic bluefin tuna (BFT) General category restricted-fishing days (RFDs) for all Tuesdays, Fridays, and Saturdays from July 1 through November 30, 2023. On an RFD, Atlantic Tunas General category permitted vessels may not fish for (including catch-and-release or tag-and-release fishing), possess, retain, land, or sell BFT. On an RFD, HMS Charter/Headboat permitted vessels with a commercial sale endorsement also are subject to these restrictions and may not fish commercially for BFT under the General category restrictions and retention limits, but such vessels may still fish for, possess, retain, or land BFT when fishing recreationally under applicable HMS Angling category rules. NMFS may waive previously scheduled RFDs under certain circumstances, but will not modify the previously scheduled RFDs during the fishing year in other ways (such as changing an RFD from one date to another or adding RFDs).

DATES: Effective July 1, 2023, through November 30, 2023.

ADDRESSES: Copies of this temporary rule and supporting documents are available from the HMS Management Division website at *https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species* or by contacting Erianna Hammond at *erianna.hammond@noaa.gov* or 301–427–8503.

FOR FURTHER INFORMATION CONTACT: Erianna Hammond, *erianna.hammond@noaa.gov,* or Larry Redd, Jr., *larry.redd@noaa.gov,* at 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota, recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States, among the various domestic fishing categories per the allocations established in the 2006 Consolidated HMS FMP and its amendments. Section 635.23 specifies the retention limit provisions for Atlantic Tunas General category permitted vessels and HMS Charter/Headboat permitted vessels, including regarding RFDs.

Specific information regarding RFDs, request for comments, and the current U.S. quota and General category subquotas, was provided in the preamble to the proposed rule (88 FR 13771, March 6, 2023) and is not repeated here.

As described in the proposed rule, NMFS is undertaking this rulemaking to address and avoid repetition of certain issues that affected the General category BFT fishery in previous years and could recur without additional action. Those issues include the shortened time to fish under the General category subquotas that occurs when the quota is filled quickly, and the increased numbers of BFT that are landed but not sold to dealers because of market gluts. Because the use of RFDs in 2022 succeeded in extending fishing opportunities through a greater portion of the relevant General Category time periods and the fishing season overall, consistent with management objectives for the fishery, NMFS proposed an RFD schedule for parts of the 2023 and 2024 fishing years.

The comment period for the proposed rule closed on April 5, 2023. NMFS received 43 written comments, including comments from commercial and recreational fishermen, Atlantic tunas dealers, and the general public as well as oral comments at a public hearing held by webinar. The comments received and responses to those comments are summarized below in the Response to Comments section.

After considering public comments on the proposed rule in light of the management goals of this action, NMFS is finalizing an RFD schedule for the June through August, September, and October through November 2023 time periods and is not finalizing an RFD schedule for the December 2023 or January through March 2024 time periods. Setting an RFD schedule for

July through November, with the ability to waive scheduled RFDs, should slow the rate of landings and provide available quota throughout a greater portion of the General category time periods while providing reasonable fishing opportunities, including some fishing tournament opportunities, for all General category participants.

Specifically, NMFS sets RFDs on the following days: all Tuesdays, Fridays, and Saturdays from July 1 through November 30, 2023. On an RFD, vessels permitted in the Atlantic Tunas General category are prohibited from fishing for (including catch-and-release and tag-and-release fishing), possessing, retaining, landing, or selling BFT (§ 635.23(a)(2)). RFDs also apply to HMS Charter/Headboat permitted vessels to preclude fishing commercially under General category restrictions and retention limits on those days, but do not preclude such vessels from recreational fishing activity under applicable Angling category regulations and size classes, and they may participate in catch-and-release and tag-and-release fishing (§ 635.23(c)(2)).

NMFS may waive previously scheduled RFDs under certain circumstances. Consistent with § 635.23(a)(4), NMFS may waive an RFD by adjusting the daily BFT retention limit from zero up to five on specified RFDs, after considering the inseason adjustment determination criteria at § 635.27(a)(7). Considerations include, among other things, review of dealer reports, daily landing trends, and the availability of BFT on fishing grounds. NMFS will announce any such waiver by filing a retention limit adjustment with the Office of the Federal Register for publication. NMFS also may waive previously designated RFDs effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct only catch-and-release or tag-and-release fishing for BFT under § 635.26(a). NMFS will not modify the previously scheduled RFDs during the fishing year in other ways (such as changing an RFD from one date to another, or adding RFDs) other than waiving designated RFDs based on the circumstances described above.

Response to Comments

All written comments can be found at *www.regulations.gov* by searching for NOAA–NMFS–2023–0016. NMFS received 43 written comments from General category fishermen, Charter/Headboat fishermen, tournament operators, Atlantic tunas dealers, and others from the general public, as well as oral comments at a public hearing. Below, NMFS summarizes and responds to all comments made specifically on the proposed rule during the comment period.

Comment 1: Most commenters supporting RFDs noted that RFDs should lengthen the General category season.

Response: NMFS agrees that RFDs should lengthen the General category season within the General category time periods and the season overall. The primary objective of this action is to slow the harvest rate of BFT in order to extend General category fishing opportunities through a greater portion of the General category time periods.

Comment 2: Some commenters opposed to RFDs expressed concern that the proposed rule seemed to be economic in nature and would negatively impact General category participants. These commenters suggested that NMFS no longer use RFDs as a management tool to manage the BFT fisheries.

Response: While NMFS considered economic factors in developing the proposed rule for this action, the primary purpose of the action is not economic in nature. Rather, the rule is designed to extend General category fishing opportunities through a greater portion of the General category time periods. RFDs provide a pre-scheduled, consistent approach to slow landings across the fishery. After considering all relevant information, NMFS concluded that the use of RFDs is likely to extend the period of time that the fishery remains open resulting in more fishing opportunities later into General category time periods.

Comment 3: NMFS received comments noting that the BFT stock is healthy and therefore, this action is unwarranted. Additionally, commenters suggested that NMFS negotiate for more BFT quota at ICCAT. Some commenters suggested that NMFS modify existing subquota allocations. NMFS also received some comments supporting the proposed rule noting this action would assist with the conservation and protection of bluefin tuna. One commenter noted that BFT are an endangered species and protection of the species should be a priority of the Agency.

Response: NMFS disagrees that this action is ''unwarranted'' and further notes that BFT are not an endangered species. The purpose of this action, consistent with the objectives of the 2006 Consolidated HMS FMP and its amendments and other applicable laws, is to extend, to the extent practicable, General category fishing opportunities throughout the General category time periods, as was intended when the time period subquotas were adopted. RFDs are an effective effort control that can assist with that purpose.

Regarding the status of BFT, the western Atlantic BFT stock is assessed by ICCAT, and the most recent assessment was conducted in 2021. Domestically, following the 2017 stock assessment, NMFS determined that the overfished status for BFT is unknown and that the stock is not subject to overfishing. This stock status remains in effect. NMFS published a temporary rule in 2022 (87 FR 33049, June 1, 2022), that increased the baseline U.S. BFT quota to 1,316.14 mt (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area), as codified at § 635.27(a), consistent with Recommendation 21–07 adopted by ICCAT at the November 2021 annual meeting. ICCAT Recommendation 22–10 maintained the U.S. BFT quota as specified above. Further information on the BFT stock assessment and stock status can be found in that temporary rule and associated Environmental Assessment. This action helps manage the BFT fisheries within that available U.S. quota and category subquotas as established in existing regulations.

NMFS is not considering modifications of the General category time period subquotas in this action. Amendment 13 to the 2006 Consolidated HMS FMP (86 FR 27686, May 21, 2021) proposed modifications to the BFT category quotas which were further detailed in the Amendment 13 Final Environmental Impact Statement published on May 13, 2022 (87 FR 29310). As discussed in the final rule for Amendment 13 (87 FR 59966; October 3, 2022), NMFS determined that the current structure of the fishery provides equitable fishing opportunities and decided against modifying the General category subquota percentages. NMFS notes, that Amendment 13, among other things, eliminated the Purse Seine category and proportionally reallocated Purse Seine category quota to all of the other bluefin quota categories, including the General and Angling categories, resulting in an increase to the General category and Angling category quota and subquotas. For more information on the Amendment 13 quota allocations, please check the Amendment 13 compliance guide found on the NOAA Fisheries website.

Comment 4: NMFS received comments supporting the proposed July through November Tuesday, Friday, and Saturday schedule of RFDs as well as comments suggesting alternative days.

Some of the commenters supporting the proposed scheduled specifically noted that they are in support of not adding Sunday as an RFD because adding Sunday would have negative impacts on those fishermen that work other jobs full-time during the week and supplement their income with weekend fishing trips. Other commenters suggested a weekly schedule of consecutive RFDs on Friday, Saturday, and Sunday noting that effort and landings rates traditionally are higher on the weekend. One commenter suggested a weekly schedule of Thursday, Friday, and Saturday.

Response: NMFS' proposed schedule of RFDs was based on a review of average daily catch rate data for recent years, a review of past years' RFD schedules (including the 2021 and 2022 RFD schedules) and how they worked to extend the use of the General category quota, and input from members of the HMS Advisory Panel, General category participants, and Atlantic tunas dealers. The Tuesday, Friday, and Saturday RFD schedule allows for two-consecutive-day periods twice each week (Sunday–Monday; Wednesday–Thursday) for General category permitted vessels, and Charter/Headboat permitted vessels with a commercial sale endorsement, to fish for and sell BFT. NMFS believes that two-consecutive-day periods twice each week allows for some commercial fishing activity to occur each weekend (*i.e.,* Sundays) while also providing opportunity throughout the week to move BFT products through the market. NMFS acknowledges that Sunday is a high catch and landing day. As some commenters noted, fully restricting the weekend by adding an RFD on Sunday could have negative unintended impacts for those who could only commercially fish on the weekends. Furthermore, further restricting the weekend by adding Sunday may push those high catch rates to another open day. Additionally, if NMFS set RFDs for the entire weekend, as suggested by some commenters, or for three consecutive days, as suggested by other commenters, NMFS is concerned the schedule would not allow adequate time for fish products to move through the market and could continue the recent trend of BFT being landed by General category participants but not sold. Based on input received during the public comment period for this action and an analysis of daily landings rates, NMFS is setting the RFD schedule to be every Tuesday, Friday, and Saturday from July 1 through November 30, 2023.

Comment 5: Some commenters suggested starting RFDs on June 1 instead of July 1.

Response: NMFS disagrees that RFDs should start on June 1 because catch and landings rates are generally slow at the beginning of June, and there is no need to further reduce catch and landings rates at that time. Catch and landing rates usually begin to substantially increase around July 1. NMFS believes that this schedule of RFDs should increase the likelihood of pacing General category landings to extend fishing opportunities through a greater portion of the time periods.

Comment 6: NMFS received comments both supporting and opposing 4 RFDs per week. Some of those in support noted that adding an additional RFD could better assist with slowing the catch, keeping the fishery open, and market gluts and some specifically noted that 3 RFDs per week have not been effective at extending the General category time periods. Others in support suggested that NMFS set RFDs on Tuesday, Friday, Saturday, and Sunday noting that weekends are high effort days. One commenter suggested a schedule of Wednesday, Friday, Saturday, and Sunday and another suggested Friday, Saturday, Sunday, and Monday.

Commenters opposed to 4 RFDs per week noted that having only 3 open days per week would be too much of an economic burden for commercial fishermen. Another expressed concerns that an additional RFD would create safety-at-sea conflicts due to more effort on open days to harvest the General category quota and subquotas. Some suggested setting 4 RFDs per week for June through November, while another suggested 4 RFDs per week specifically for September through November. NMFS also received comments suggesting NMFS set 5 RFDs per week.

Response: Although NMFS requested comment on the potential setting of 4 RFDs per week from July through November, NMFS is not setting 4 RFDs or 5 RFDs per week during these time periods through this action. NMFS acknowledges that although 4 RFDs per week from July through November might lengthen the General category season within the time periods, it would also limit commercial fishing participants to 3 or fewer fishable days per week depending on the weather, thus decreasing fishing opportunities, which would conflict directly with the objective of this rulemaking. Similarly, potentially decreasing fishing opportunities via a schedule of 5 RFDs per week would be contrary to the objective of this rulemaking. NMFS may consider 4 RFDs per week in the future, if appropriate.

Comment 7: Most commenters did not support implementing RFDs for the December 2023 and January through March 2024 time periods, noting that the unpredictable weather during those periods in combination with RFDs could result in safety-at-sea issues and potentially limit commercial fishermen from landing the relevant subquotas. One commenter suggested that NMFS implement RFDs year-round.

Response: Based on the public comments received, NMFS is not finalizing longer RFDs for the December 2023 and January through March 2024 time periods. NMFS recognizes that the weather during those periods is unpredictable and may limit participation such that setting RFDs in those periods may not be necessary. For the same reasons, NMFS does not support the use of year-round RFDs at this time. NMFS may consider RFDs for the December and January through March time periods in the future, if appropriate.

Comment 8: One commenter noted that RFDs would have a negative impact on fishing tournaments and suggested that NMFS maintain the proposed RFD schedule, *i.e.,* Tuesday, Friday, and Saturday RFDs beginning July 1, 2023. The commenter noted that many fishing tournaments have established their dates based around the proposed schedule and that any modifications to the RFD schedule could have additional negative economic impacts on BFT tournament operations and local communities.

Response: NMFS acknowledges that RFDs that occur on a tournament date may negatively affect BFT fishing at those tournaments since some tournament participants are General category permit holders and are prohibited from fishing for BFT on RFDs. However, on an RFD, General category permit holders may still participate in non-BFT fishing during the tournament and may land sharks (if they also hold a shark endorsement), swordfish, billfish, and/or bigeye, albacore, yellowfin, and skipjack tunas recreationally as otherwise allowed. Additionally, on an RFD, Charter/Headboat-permitted vessels may participate recreationally in HMS fishing tournaments, including for BFT, under the applicable Angling category restrictions and size class limits. Under the current regulations, tournament operators are required to register their tournament with NMFS at least four weeks prior to the start of the tournament. Given past scheduled tournaments from July through November and the tournaments that have registered already for this year,

NMFS anticipates or has been notified of several fishing tournaments that will likely include BFT. Should a tournament change its dates of operation, NMFS encourages tournament operators to contact NMFS to update the dates for which their tournament is registered. NMFS does not plan to waive RFDs specifically and solely to accommodate tournaments as doing so could eliminate the benefits of RFDs by allowing General category and Charter/Headboat permitted vessels with a commercial sale endorsement the opportunity to land and sell commercial size BFT on those scheduled RFD dates. NMFS will closely monitor BFT landings and catch rates and, based on that information, NMFS will consider waiving RFDs if BFT landings and catches indicate that such action is warranted, after taking into consideration the inseason adjustment determination criteria at § 635.27(a)(7). This would include, among other things, review of dealer reports, daily landing trends, and the availability of BFT on fishing grounds. NMFS could waive an RFD by adjusting the daily retention limits by filing such an adjustment in the **Federal Register**, under § 635.23(a)(4).

Comment 9: NMFS received some comments expressing concern that increasing the General category retention limit from the default of 1 fish to 3 fish to begin the June through August time period is unwarranted. Some commenters suggested that NMFS increase the retention limit to 3 fish to begin the June through August time period and subsequently decrease the retention limit from 3 fish to 1 fish when landings rates begin to increase. One commenter requested that NMFS maintain the default of 1 fish during the summer and increase the retention limit to 2 or 3 fish during the fall to correspond with RFDs. One commenter suggested that NMFS increase the retention limit to 2 fish instead of 3 fish to begin the June the August time period.

Response: This action focuses on implementing RFDs, as currently authorized in the regulations, to slow the rate of General category landings, prevent early closures, and extend fishing opportunities through a greater portion of the 2023 General category time periods. NMFS will continue to use retention limits, RFDs, and other available management tools to manage the BFT fisheries, within the available BFT quota and established subquotas. In recent years, because the rate of landings and overall fishing effort in the General category is typically slow in early June, NMFS has regularly set the daily retention limit for the beginning of the June through August period at 3 fish, following consideration of the relevant criteria provided under § 635.27(a)(7), including supporting scientific data collection. NMFS monitors the landings closely, and, as appropriate, NMFS then typically reduces the limit to the 1-fish default level to ensure fishing opportunities in all respective time-periods and to ensure that the available quota is not exceeded. Any change in the retention limit considers the relevant criteria and includes consideration of the catch rates associated with the various authorized gear types (*e.g.,* harpoon, rod and reel). Throughout the season, NMFS monitors landings and catch rates and will close the fishery or modify retention limits as appropriate to ensure the quotas are not exceeded. NMFS will continue to monitor and evaluate the effectiveness of all these management measures in the context of current conditions to determine whether other actions are necessary.

Comment 10: NMFS received comments suggesting mandatory fish handling guidelines (*e.g.,* ice requirement) and better enforcement of safety gear requirements for commercial fishing vessels noting that a number of vessels do not have the correct safety gear and do not properly handle BFT for sale.

Response: This comment is outside of the scope of this action. NMFS notes that guidance for the commercial fishing industry regarding seafood handling can be found under the Seafood Hazard Analysis and Critical Control Point (HACCP) and the Food and Drug Administration (FDA) Food Safety Modernization Act. Additionally, provisions regarding commercial fishing vessel safety can be found under the Coast Guard regulations in 46 CFR part 28.

Comment 11: One commenter suggested going to a tag system to address safety gear concerns.

Response: It is unclear if the commenter is talking about a landing tag system or the tag-and-release program. However, this comment is outside of the scope of this action. NMFS notes that interested vessel operators can participate in a tag-and-release program where NMFS-issued conventional tags, reporting cards, and detailed instructions for their use may be obtained from the NMFS Cooperative Tagging Center ((800) 437–3936 or *https://www.fisheries.noaa.gov/southeast/atlantic-highly-migratory-species/cooperative-tagging-program*). Additionally, NMFS requires dealers to affix a dealer tag to all BFT purchased or received from a U.S. vessel immediately upon offloading the BFT.

Classification

NMFS is issuing this rule pursuant to 304(c) of the Magnuson-Stevens Act. The NMFS Assistant Administrator has determined that this temporary rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law.

This temporary rule has been determined to be not significant for purposes of Executive Order 12866.

This temporary rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

A Final Regulatory Flexibility Analysis (FRFA) was prepared for this rule. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, our responses to those comments and a summary of the analyses completed to support the action. The FRFA is provided below.

Section 604(a)(1) of the Regulatory Flexibility Act (RFA) requires agencies to state the need for and objective of the final action. The objective of this temporary rulemaking is to set a schedule of RFDs for the 2023 fishing year that should slow the rate of General category landings to extend fishing opportunities through a greater portion of the General category time periods (similar to the 2022 RFD schedule).

Section 604(a)(2) of the RFA requires a summary of significant issues raised by the public in response to the IRFA, a summary of the agency's assessment of such issues, and a statement of any changes made as a result of the comments. As described above, during the public comment period, NMFS received comments both in support of and opposed to establishing RFDs for 2023 and part of 2024 year. No comments specifically referenced the IRFA, although some comments raised a variety of economic concerns including whether RFDs would affect the market (see comments 2, 6, 8), whether RFDs would affect some parts of the fishery more than others (see comment 6), and whether RFDs would negatively affect tournaments (see comment 8). NMFS' responses to those comments are summarized above. After careful consideration of all the comments received, NMFS is not finalizing an RFD schedule for the December 2023 or January through March 2024 time periods.

Section 604(a)(3) of the RFA requires the response of the agency to any

comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the temporary rule as a result of the SBA comments. NMFS did not receive any comments from the Chief Counsel for Advocacy of the SBA on the proposed rule.

Section 604(a)(4) of the RFA requires agencies to provide descriptions of, and where feasible, an estimate of the number of small entities to which the rule would apply. NMFS established a small business size standard of $11 million in annual gross receipts for all businesses in the commercial fishing industry (North American Industrial Classification System (NAICS) 11411) for RFA compliance purposes. The Small Business Administration (SBA) has established size standards for all other major industry sectors in the United States, including the scenic and sightseeing transportation (water) sector (NAICS code 487210), which includes for-hire (charter/party boat) fishing entities. The SBA has defined a small entity under the scenic and sightseeing transportation (water) sector as one with average annual receipts (revenue) of less than $14.0 million. NMFS considers all HMS permit holders, both commercial and for-hire, to be small entities because they had average annual receipts of less than their respective sector's standard of $11 million and $14 million. The 2021 total ex-vessel annual revenue for the BFT fishery was $11.8 million. Since a small business is defined as having annual receipts not in excess of $11.0 million, each individual BFT permit holder would fall within the small entity definition. The numbers of relevant annual Atlantic Tunas or Atlantic HMS permits as of October 2022 are as follows: 2,630 General category permit holders and 4,175 HMS Charter/Headboat permit holders, of which 1,873 hold HMS Charter/Headboat permits with a commercial sale endorsement.

Section 604(a)(5) of the RFA requires agencies to describe any new reporting, record-keeping, and other compliance requirements. This temporary rule does not contain any new collection of information, reporting, or record-keeping requirements. This temporary rule would set a schedule of RFDs for July 1 through November 30, 2023 as an effort control for the General category.

Section 604(a)(6) of the RFA, requires agencies to describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the temporary rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

This temporary rule does not change the U.S. Atlantic BFT quotas or implement any new management measures not previously considered under the 2006 Consolidated HMS FMP and its amendments. This temporary rule will instead set a schedule of RFDs for the General category for 2023. Under the regulations, when a General category subquota is reached or projected to be reached during a General category time period, NMFS closes the General category fishery. Retaining, possessing, or landing BFT under that quota category is prohibited on and after the effective date and time of a closure notice for that category, for the remainder of the fishing year, until the opening of the subsequent time period or until such date as specified. In recent years, these closures, if needed, have generally occurred toward the end of a time period. According to communications with dealers and fishermen, several of the high-volume Atlantic tunas dealers in 2019, 2020, and 2022 were limiting their purchases of BFT and buying no or very few BFT (such as harpooned fish only) on certain days during the beginning portion of the June through August time period in order to extend the available quota until later in the time period given market considerations. However, while these actions may have prevented large numbers of BFT from entering the market at the same time and may have lengthened the time before any particular time period was closed, because these actions were not pre-scheduled or consistently implemented across the fishery, there were negative impacts experienced by some General category and Charter/Headboat permitted fishermen, who could not find buyers for their BFT. As a result, a number of BFT that normally would have been sold were not, and opportunities may not have been equitably distributed among all permitted vessels. In 2021, NMFS set pre-scheduled RFDs for the General category fishery on certain days (Tuesdays, Fridays, and Saturdays) from September through November to increase the likelihood of pacing General category landings to extend fishing opportunities through a greater portion of the time periods. In 2022, NMFS again set RFDs for the General category fishery on every Tuesday, Friday, and Saturday from July 1 through November 30.

Table 1 shows the General category closure dates by time period for 2018 through 2022. The General category remained open for the entire duration of the June through August time period in 2018 and 2020, and of the December time period in 2018 and 2019. The October through November time period tends to close the earliest of any time period, and NMFS often receives requests to reopen that time period. Following the consideration of numerous factors (*i.e.,* daily landings rates, weather conditions, available quota, *etc.*), NMFS reopened the October through November time period in 2018 and 2020. In 2021, NMFS set RFDs for the September through November time periods, resulting in the General category fishing extending late into September and through the end of October through November time period. In 2022, NMFS set RFDs for the June through November time periods, with the first RFD established on July 1. Closure dates for 2022 were February 11, August 10, September 19, October 24, and December 10, respectively, for each time period. NMFS believes that the relatively early closure dates in 2022 were due in part to high daily landings rates when the time periods were open in the summer and fall. Based on a review of average daily landings rates, without the use of RFDs, NMFS likely would have needed to close the June through November time periods much earlier if the RFDs were not in place. These high landings rates continued into December 2022, resulting in that time period closing after 10 days, much earlier than in 2018 through 2021. The use of RFDs in 2022 from June through November paced the landings as much as possible and extended the fishing opportunities for the June through November time periods.

TABLE 1—GENERAL CATEGORY CLOSURE DATES BY TIME PERIOD (2018–2022)

Year	Time period				
	January through March	June through August	September	October through November	December
2018	Mar 2	Aug 31	Sept 23	Closed Oct 5; Reopened Oct 31 through Nov 2; Reopened Nov 12 through Nov 26.	Dec 31.
2019	Feb 28	Aug 8	Sept 13	Oct 13	Dec 31.
2020	Feb 24	Aug 31	Sept 27	Closed Oct 9; Reopened Oct 28–29; Reopened Nov 7–8.	Dec 14.
2021	Feb 27	Aug 4	Sept 23	Nov 30	Closed Dec 14; Re-opened Dec 20–23.
2022	Feb 11	Aug 10	Sept 19	Oct 24	Dec 10.

Table 2 shows the average ex-vessel price per pound of BFT during each General category time period for 2018 through 2022 adjusted to real 2022 dollars using the Gross Domestic Product (GDP) deflator. Ex-vessel price per pound was lower for the September time period, with an average (2018 through 2022) of $6.71, and varied over the summer and fall period, with averages of $7.04 for the June through August time period and $7.09 for the October through November time period. In 2022, the average price per pound was higher for the January through March time period compared to the average price per pound during that time period in 2021. In most time periods, the 2022 average price per pound was also higher than the 2020 average price per pound. NMFS believes that this increase in average price was in part due to the use of RFDs in 2022.

TABLE 2—AVERAGE EX-VESSEL PRICE PER POUND ($) OF BFT BY GENERAL CATEGORY TIME PERIOD (2018–2022) ADJUSTED TO REAL 2022 DOLLARS *

Year	Time period				
	January through March	June through August	September	October through November	December
2018	$8.80	$8.13	$7.67	$8.83	$11.14
2019	7.03	6.48	7.32	6.34	14.04
2020	7.00	5.62	5.92	6.33	6.50
2021	6.94	7.60	6.59	7.85	9.06
2022	8.84	7.37	6.08	6.09	7.19
2018 through 2022 average	7.72	7.04	6.71	7.09	9.59

* Adjusted using the Gross Domestic Product (GDP) Deflator.

Table 3 shows the number and total weight of BFT that were landed but not sold by fishermen fishing under the General category quota for 2018 through 2022. The number and weight of unsold BFT increased from 2018 through 2022 with a peak in 2020 (143 BFT and 25.8 mt) in part due to the COVID–19 pandemic, and substantial decrease in 2021 (from 143 to 12 BFT and 25.8 mt to 2.0 mt), followed by an increase in 2022 (48 BFT and 9.1 mt). NMFS believes this increase is in part due to an influx of domestically caught BFT entering the market at one time resulting in dealers limiting their purchases of BFT leading to General category participants. This situation resulted in unprecedented high landings days in several time periods and BFT fishermen having a difficult time finding buyers for landed BFT.

TABLE 3—NUMBER (COUNT) AND WEIGHT (MT) OF BFT LANDED BUT UNSOLD BY GENERAL CATEGORY PARTICIPANTS BY YEAR (2018–2022)

Year	Count	Weight (mt)
2018	14	2.6
2019	20	3.8
2020	143	25.8
2021	12	2.0
2022	48	9.1
Total	237	43.3

After considering public comment, NMFS is setting a schedule of RFDs for the 2023 fishing year that would specify days on which General category quota fishing and sales will not occur. Specifically, the schedule allows for two-consecutive-day periods twice each week for BFT product to move through the market while also allowing some commercial fishing activity to occur each weekend (*i.e.,* Sundays). Because this schedule of RFDs applies to all

participants equally, NMFS anticipates that this schedule would extend fishing opportunities through a greater proportion of the time periods in which they apply by spreading fishing effort out over time, similar to the 2022 fishing season. Further, to the extent that the ex-vessel revenue of a BFT sold by a General or HMS Charter/Headboat permitted vessel (with a commercial endorsement) may be higher when a lower volume of domestically-caught BFT is on the market at one time, the use of RFDs may result in some increase in BFT price, and the value of the General category subquotas could increase, similar to that of 2022. Thus, although NMFS anticipates that the same overall amount of the General category quota would be landed as well as the same amount of BFT landed per vessel, there may be positive impacts to the General category and Charter/Headboat (commercial) BFT fishery because using RFDs may more equitably distribute opportunities across all permitted vessels for longer durations within the time periods.

If NMFS does not implement a schedule, without any other changes, it is possible that the General category could have fewer open days later in the fishing season when ex-vessel prices tend to be higher (Table 1) as observed in 2018 through 2022. Additionally, without RFDs the trends of increasing numbers of unsold BFT (Table 3) and decreasing ex-vessel prices (Table 2) from 2018 through 2020 could continue. If those trends were to continue, all active General category permit holders could experience negative economic impacts similar to 2019, 2020, and 2022 where dealers were limiting their purchases of BFT and buying no or very few BFT on certain days in order to extend the available quota.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rule. As part of this rulemaking process, NMFS has prepared a booklet summarizing fishery information and regulations for Atlantic BFT General category RFDs for the 2023 fishing year. That booklet notice serves as the small entity compliance guide. Copies of the compliance guide are available from NMFS (see **ADDRESSES**).

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: May 19, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2023–11079 Filed 5–24–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 101
Thursday, May 25, 2023

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Doc. No. AMS–SC–23–0015]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible cranberry producers to determine whether they favor continuance of the marketing order regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.

DATES: The referendum will be conducted from June 9 through June 30, 2023. Only current producers of cranberries within the production area who also grew cranberries in the production area during the period September 1, 2021, through August 31, 2022, are eligible to vote in this referendum. The U.S. Department of Agriculture (USDA) will provide the option for ballots to be returned electronically. Further details will be provided in the ballot instructions. Ballots returned via express mail or electronic mail must show proof of delivery by no later than 11:59 p.m. Eastern Time on June 30, 2023, to be counted.

ADDRESSES: Copies of the marketing order may be obtained from the Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1124 First Street South, Winter Haven, FL 33880; Telephone: (863) 324–3375; or from the Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone (202) 720–8085; or on the internet: *https://www.ams.usda.gov/rules-regulations/moa/commodities.*

FOR FURTHER INFORMATION CONTACT: Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Chief, Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1124 First Street South, Winter Haven, FL 33880; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Jennie.Varela@usda.gov* or *Christian.Nissen@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Agreement and Order No. 929, as amended (7 CFR part 929), hereinafter referred to as the ''Order,'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the Order is favored by producers. The referendum will be conducted from June 9 through June 30, 2023, among eligible cranberry producers in the production area. Only current cranberry producers who were engaged in the production of cranberries in the production area during the period of September 1, 2021, through August 31, 2022, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether producers favor the continuation of marketing order programs. USDA would consider termination of the Order if a majority of producers voting in the referendum representing more than 50 percent of the volume of cranberries represented in the referendum favor termination of the program.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials used in the referendum have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0189, Fruit Crops. It has been estimated it will take an average of 20 minutes for each of the approximately 1,100 cranberry producers in the production area to cast a ballot. Participation is voluntary. Ballots postmarked after June 30, 2023, will not be included in the vote tabulation. Ballots delivered to USDA via express mail or returned electronically must show proof of delivery by no later than 11:59 p.m. Eastern Time (ET) on June 30, 2023.

Dolores Lowenstine, Christian D. Nissen, and Jennie M. Varela of the Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR 900.400 *et seq.*).

Ballots and voting instructions will be sent by U.S. mail, United Parcel Service, or through electronic mail to all producers of record and may also be obtained from the referendum agents or from their appointees.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Erin Morris,
Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–11151 Filed 5–24–23; 8:45 am]
BILLING CODE P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 52

[NRC–2022–0073]

Draft Regulatory Guide: Guidance for a Technology-Inclusive Content of Application Methodology To Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public

comment on its draft Regulatory Guide (DG–1404), ''Guidance for a Technology-Inclusive Content of Application Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors.'' This DG is a proposed new regulatory guide to provide guidance to assist interested parties and prospective applicants for the development of content for major portions of their safety analysis reports required in applications for licenses, certifications, and approvals by the NRC to ensure that non-light water reactor (non-LWR) facility designs using the Licensing Modernization Project (LMP) process meet the minimum requirements for construction permits, operating licenses, combined licenses, manufacturing licenses, standard design approval, or design certifications.

DATES: Submit comments by July 10, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission 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–2022–0073. 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: Michael Orenak, Office of Nuclear Reactor Regulation, telephone: 301–415–3229; email: *Michael.Orenak@nrc.gov,* or Robert Roche-Rivera, Office of Nuclear Regulatory Research, telephone: 301–415–8113; email: *Robert.Roche-Rivera@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–2022–0073 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0073.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 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–2022–0073 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 ''Guidance for a Technology-Inclusive Content of Application Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors,'' is temporarily identified by its task number, DG–1404.

The staff is also issuing for public comment a draft regulatory analysis. The staff developed a regulatory analysis to assess the value of issuing or revising a regulatory guide (RG) as well as alternative courses of action.

The NRC anticipates the submission of advanced power-reactor applications within the next few years based on preapplication engagement initiated by several prospective applicants. Because many of these designs are non-LWRs, the NRC is developing technology-inclusive, risk-informed, performance-based guidance to support the development of major portions of safety analysis report content for these non-LWR applications. The proposed guidance describes the development of major portions of the safety analysis report using the industry-developed guidance contained in Nuclear Energy Institute (NEI) 21–07, Revision 1, ''Technology Inclusive Guidance for Non-Light-Water Reactors, Safety Analysis Report Content for Applicants Using the NEI 18–04 Methodology,'' (ADAMS Accession No. ML22060A190). The proposed guidance will facilitate the development of non-LWR applications for construction permits or operating licenses under part 50 of title 10 of the Code of Federal Regulations (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' or combined licenses, manufacturing licenses, standard design approval, or design certifications under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' The NRC is developing a rule to amend parts 50 and 52 (RIN 3150-AI66). The

NRC staff notes this proposed RG may need to be updated to conform to changes to 10 CFR parts 50 and 52, if any, adopted through that rulemaking. Further, as of the date of this DG, the NRC is developing an optional performance-based, technology-inclusive regulatory framework for licensing nuclear power plants designated as 10 CFR part 53, ''Licensing and Regulation of Advanced Nuclear Reactors,'' (RIN 3150–AK31). The NRC intends to revise this proposed guidance as a part of the ongoing rulemaking for 10 CFR part 53.

To standardize the development of content of a non-LWR application, the staff focused on two activities: the Advanced Reactor Content of Application Project (ARCAP) and the Technology-Inclusive Content of Application Project (TICAP). The ARCAP is an NRC-led activity that is intended to result in guidance for a complete non-LWR application for review under 10 CFR part 50 or 10 CFR part 52, and which the staff would update, as appropriate, pending the issuance of the 10 CFR part 50 and 10 CFR part 52 rulemaking previously mentioned in this notice, or if the Commission issues a final 10 CFR part 53 rule.

The TICAP is an industry-led activity that is focused on providing guidance on the appropriate scope and depth of information related to the specific portions of the safety analysis report that describe the fundamental safety functions of the design and document the safety analysis of the facility using the LMP-based approach. The LMP-based approach is described in RG 1.233, ''Guidance for a Technology-Inclusive, Risk-Informed, and Performance-Based Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors,'' (ADAMS Accession No. ML20091L698).

The ARCAP draft interim staff guidance (ISG) titled ''Review of Risk-Informed, Technology-Inclusive Advanced Reactor Applications—Roadmap'' (ARCAP Roadmap ISG) provides a general overview of the information that should be included in a non-LWR application. The ARCAP Roadmap ISG also provides a review roadmap for the NRC staff with the principal purpose of ensuring consistency, quality, and uniformity of NRC staff reviews. The ARCAP Roadmap ISG includes references to eight other ARCAP draft ISGs that are the subject of separate **Federal Register** notices (FRNs) and the TICAP DG that is the subject of this FRN, requesting comment on these guidance documents. Information regarding the eight other ARCAP draft ISGs and the TICAP DG can be found in the ''Availability of Documents'' section of this FRN.

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. Availability of Documents

The table in this notice provides the document description, ADAMS accession number, and, if appropriate, the docket identification number referencing the request for public comment on supporting documents associated with the document that is the subject of this FRN.

Document description	ADAMS accession No.	*Regulations.gov* docket ID No.
DG–1404, ''Guidance for a Technology-Inclusive Content of Application Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors.''.	ML22076A003	NRC–2022–0073.
Regulatory Analysis for DG–1404	ML22076A002	NRC–2022–0073.
Draft Interim Staff Guidance DANU–ISG–2022–01 ''Advanced Reactor Content of Application Project, 'Review of Risk-Informed, Technology Inclusive Advanced Reactor Applications—Roadmap.' ''.	ML22048B546	NRC–2022–0074.
Draft Interim Staff Guidance DANU–ISG–2022–02, ''Advanced Reactor Content of Application Project Chapter 2, 'Site Information.' ''.	ML22048B541	NRC–2022–0075.
Draft Interim Staff Guidance DANU–ISG–2022–03, ''Advanced Reactor Content of Application Project Chapter 9, 'Control of Routine Plant Radioactive Effluents, Plant Contamination and Solid Waste.' ''.	ML22048B543	NRC–2022–0076.
Draft Interim Staff Guidance DANU–ISG–2022–04, ''Advanced Reactor Content of Application Project Chapter 10, 'Control of Occupational Dose.' ''.	ML22048B544	NRC–2022–0077.
Draft Interim Staff Guidance DANU–ISG–2022–05, ''Advanced Reactor Content of Application Project Chapter 11, 'Organization and Human-System Considerations.' ''.	ML22048B542	NRC–2022–0078.
Draft Interim Staff Guidance DANU–ISG–2022–06, ''Advanced Reactor Content of Application Project Chapter 12, 'Post-Construction Inspection, Testing, and Analysis Program.' ''.	ML22048B545	NRC–2022–0079.
Draft Interim Staff Guidance DANU–ISG–2022–07, ''Advanced Reactor Content of Application Project, 'Risk-informed Inservice Inspection/Inservice Testing.' ''.	ML22048B549	NRC–2022–0080.
Draft Interim Staff Guidance DANU–ISG–2022–08, ''Advanced Reactor Content of Application Project, 'Risk-Informed Technical Specifications.' ''.	ML22048B548	NRC–2022–0081.
Draft Interim Staff Guidance DANU–ISG–2022–09, ''Advanced Reactor Content of Application Project, 'Risk-informed Performance-based Fire Protection Program (for Operations).' ''.	ML22048B547	NRC–2022–0082.

IV. Backfitting, Forward Fitting, and Issue Finality

DG–1404, if finalized, would not constitute backfitting as defined in 10 CFR 50.109, ''Backfitting,'' and as described in Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52. The guidance would not apply to any current licensees or applicants or existing or requested approvals under 10 CFR part 52, and therefore its issuance cannot be a backfit or forward fit or affect issue finality. Further, as explained in DG–1404, applicants and licensees would not be required to comply with the positions set forth in DG–1404.

V. Submitting Suggestions for Improvement of Regulatory Guides

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

enhancements to the ''Regulatory Guide'' series.

Dated: May 22, 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. 2023–11179 Filed 5–24–23; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1041; Project Identifier AD–2022–01223–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–600, 737–700, and 737–800 series airplanes. This proposed AD was prompted by an evaluation by the design approval holder (DAH) indicating the fuselage skin at the double row of fasteners centered on certain stringers is subject to skin cracking. This proposed AD is intended to complete certain programs to support the airplane reaching its limit of validity (LOV). This proposed AD would require repetitive inspections for cracks of skin repairs at Stringer S–17, and corrective actions if necessary. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by July 10, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1041; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, 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* by searching for and locating Docket No. FAA–2023–1041.

FOR FURTHER INFORMATION CONTACT: Bill Ashforth, Senior 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:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1041; Project Identifier AD–2022–01223–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Bill Ashforth, Senior 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.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

As described in FAA Advisory Circular 120–104 (*http://www.faa.gov/documentLibrary/media/Advisory_Circular/120-104.pdf*), several programs have been developed to support initiatives that will ensure the continued airworthiness of aging airplane structure. The last element of those initiatives is the requirement to establish an LOV of the engineering data that support the structural maintenance program under 14 CFR 26.21. This proposed AD is the result of an assessment of the previously established programs by the DAH during the process of establishing the LOV for the affected airplanes. The actions specified in this proposed AD are necessary to complete certain programs to ensure the continued airworthiness of aging airplane structure and to support an airplane reaching its LOV.

The FAA has received a report indicating the fuselage skin at the double row of fasteners centered on stringers S–17L and S–17R, at station (STA) 360 to STA 380 and at STA 888 to STA 907 is subject to skin cracking. During airplane production, a structural preload was created in the body skin during installation of S–17 stringers. Analysis by Boeing shows that this preload, combined with pressure cycles, can cause cracks in the skin prior to reaching the design service objective (DSO). For Model 737–600, 737–700, and 737–800 series airplanes after Line Number 269, the sequence of assembly was changed to eliminate the preload.

Boeing issued Service Bulletin 737–53A1217, dated August 9, 2001, to specify repetitive inspections of the skin for cracking; however, that service information was not required by an AD because existing maintenance planning document (MPD) inspections were determined to be adequate to address skin cracking. Several airplanes have had inspections and/or repairs accomplished at STA 360 to STA 380. The FAA and Boeing have since determined that certain existing post-repair inspections are inadequate to address the unsafe condition. The actions in paragraph (g) of this proposed AD would therefore apply only to airplanes on which a repair has been done as specified in Boeing Alert Service Bulletin 737–53A1217 (identified as Group 1 through 3, Configuration 3 in Boeing Alert Service Bulletin 737–53A1217). Once a certain repair is accomplished on an airplane, post-repair inspections must be accomplished on that airplane, as specified in this proposed AD. This proposed AD would require only the post-repair inspections and corrective actions specified in Tables 3 through 6 of Boeing Alert Service Bulletin 737–53A1217. Airplanes identified as Group 1 through 3, Configurations 1 and 2 in Boeing Alert Service Bulletin 737–53A1217 become Configuration 3 airplanes after accomplishing a repair specified in Boeing Alert Service Bulletin 737–53A1217. This unsafe condition, if not addressed, could result in an undetected crack that could grow to critical length, and result in possible rapid decompression and loss of structural integrity of the airplane.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Service Bulletin 737–53A1217, Revision 1, dated September 8, 2022. This service information specifies procedures for, among other actions, repetitive internal and external detailed inspections, low frequency eddy current (LFEC), and medium frequency eddy current (MFEC) inspections for cracks of the skin repair of S–17, STA 360 to STA 380 and STA 888 to STA 907, left and right sides of the airplane. Corrective actions include 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**.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions identified as ''RC'' (required for compliance) in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1217, Revision 1, dated September 8, 2022, already described, except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at *regulations.gov* under Docket No. FAA–2023–1041.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 106 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
External Post Repair Inspection.	56 work-hours × $85 per hour = $4,760 per inspection cycle.	0	$4,760 per inspection cycle ...	$504,560 per inspection cycle.
Internal Post Repair Inspections.	52 work-hours × $85 per hour = $4,420 per inspection cycle.	0	$4,420 per inspection cycle ...	$468,520 per inspection cycle.

The FAA has received no definitive data on which to base the cost estimates for the repairs specified in this proposed 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

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

The Boeing Company: Docket No. FAA–2023–1041; Project Identifier AD–2022–01223–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 10, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–600, 737–700, and 737–800 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737–53A1217, Revision 1, dated September 8, 2022.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) indicating the fuselage skin at the double row of fasteners centered on certain stringers is subject to skin cracking. The FAA is issuing this AD to address fatigue cracks at certain fasteners centered on Stringers S–17L and S–17R, at station (STA) 360 to STA 380 and at STA 888 to STA 907. Such undetected fatigue cracks, if not addressed, could grow to a critical length, which could result in rapid decompression and loss of structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

For Group 1 through 3, Configuration 3 airplanes as identified in Boeing Alert Service Bulletin 737–53A1217, Revision 1, dated September 8, 2022: Except as specified in paragraph (h) of this AD, at the applicable times specified in Tables 3 through 6 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1217, Revision 1, dated September 8, 2022, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1217, Revision 1, dated September 8, 2022.

(h) Exceptions to Service Information Specifications

Where Boeing Alert Service Bulletin 737–53A1217, Revision 1, dated September 8, 2022, 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 (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520 Continued Operational Safety 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.

(4) Except as specified by paragraph (h) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (i)(4)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled 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 RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Related Information

For more information about this AD, contact Bill Ashforth, Senior 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.*

(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 the AD specifies otherwise.

(i) Boeing Alert Service Bulletin 737–53A1217, Revision 1, dated September 8, 2022.

(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 May 9, 2023.

Michael Linegang,

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

[FR Doc. 2023–11199 Filed 5–24–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1037; Project Identifier AD–2023–00511–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2020–26–08 which applies to The Boeing Company Model 787–8, 787–9, and 787–10 airplanes powered by Rolls-Royce Trent 1000 engines. AD 2020–26–08 requires repetitive inspections of the inner fixed structure (IFS) forward upper fire seal and thermal insulation blankets in the forward upper area of the thrust reverser (TR) for damage and applicable on-condition actions. Since the FAA issued AD 2020–26–08, it was determined a new upper splitter fairing assembly is needed to prevent the damage to the fire seal and thermal insulation blanket. This proposed AD would continue to require the actions specified in AD 2020–26–08 and would require determining if an affected part number of the upper splitter fairing assembly is installed on the engine, replacing an affected upper splitter fairing assembly part number with a new upper splitter fairing assembly part number, inspecting the IFS forward upper fire seal and thermal insulation blanket for any damage, and applicable on-condition actions. This proposed AD would also prohibit the installation of

affected parts. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by July 10, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1037; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Boulevard, 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 Street, 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* by searching for and locating Docket No. FAA–2023–1037.

FOR FURTHER INFORMATION CONTACT: Tak Kobayashi, Aerospace Engineer, Propulsion Section, West Certification Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; telephone: 206–231–3553; email: *takahisa.kobayashi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1037; Project Identifier AD–2023–00511–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Tak Kobayashi, Aerospace Engineer, Propulsion Section, West Certification Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; telephone: 206–231–3553; email: *takahisa.kobayashi@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2020–26–08, Amendment 39–21363 (85 FR 83755, December 23, 2020) (AD 2020–26–08), for The Boeing Company Model 787–8, 787–9, and 787–10 airplanes powered by Rolls-Royce Trent 1000 engines. AD 2020–26–08 was prompted by reports of damage to the IFS forward upper fire seal and damage to the thermal insulation blankets in the forward upper area of the thrust reverser. AD 2020–26–08 requires repetitive inspections of the IFS forward upper fire seal and thermal insulation blankets in the forward upper area of the TR for damage and applicable on-condition actions. The FAA issued AD 2020–26–08 to address the damage to the IFS forward upper fire seal and the thermal insulation blankets of the TR due to airflow through structural gapping that could occur at the interface between the leading edge of the IFS and the engine splitter structure during flight. Failure of the IFS forward upper fire seal could cause the loss of seal pressurization and degrade the ability to detect and extinguish an engine fire, resulting in an uncontrolled fire. Damage to the TR insulation blanket could result in thermal damage to the TR inner wall, the subsequent release of engine exhaust components, and consequent damage to critical areas of the airplane. Furthermore, damage to the TR inner wall and IFS forward upper fire seal could compromise the integrity of the firewall and its ability to contain an engine fire, resulting in an uncontrolled fire, which could lead to loss of airplane control.

Actions Since AD 2020–26–08 Was Issued

The preamble to AD 2020–26–08 specifies that the FAA considers that AD ''interim action'' and that the FAA might consider further rulemaking if a modification is developed, approved, and available. The manufacturer has since developed such a modification (installation of upper splitter fairing assembly part number KH99185), which would terminate the repetitive inspections required by AD 2020–26–08. The FAA has determined that this modification should be required.

AD 2020–26–08 specifies doing actions in accordance with Boeing Alert Requirements Bulletin B787–81205–SB780041–00 RB, Issue 001, dated March 31, 2020. Boeing has since issued Boeing Alert Requirements Bulletin B787–81205–SB780041–00, Issue 002, dated December 21, 2021. Issue 002 adds two variable numbers to the effectivity that were missing in Issue 001; however, Issue 002 does not change the procedures in the Accomplishment Instructions or the compliance times. The FAA has added Boeing Alert Requirements Bulletin B787–81205–SB780041–00, Issue 002, dated December 21, 2021, as an optional method of compliance to paragraph (g) of this proposed AD.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin B787–81205–SB720007–00 RB, Issue 001, dated December 12, 2022. This service information specifies procedures for replacing the upper splitter fairing assembly with a new upper splitter fairing assembly with ramp fairing incorporated, doing a general visual inspection of the IFS forward upper fire seal and thermal insulation blanket of the left and right TR halves for any damage, and applicable on-condition actions. On-condition actions include replacing the IFS forward upper fire seal and thermal insulation blanket of each TR half if damage is found. Those procedures in the service information apply to each affected engine.

The FAA also reviewed Boeing Alert Requirements Bulletin B787–81205–SB780041–00, Issue 002, dated December 21, 2021. The service information describes procedures for repetitive inspections of the IFS forward upper fire seal and thermal insulation blanket of the left and right TR halves for any damage, and applicable on-condition actions. On-condition actions include replacing the IFS forward upper fire seal and thermal insulation blanket of each TR half if damage is found. Those procedures in the service information apply to each affected engine.

This proposed AD would also require Boeing Alert Requirements Bulletin B787–81205–SB780041–00 RB, Issue 001, dated March 31, 2020, which the Director of the Federal Register approved for incorporation by reference as of January 27, 2021 (85 FR 83755, December 23, 2020).

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** section.

Proposed AD Requirements in This NPRM

This proposed AD would retain all requirements of AD 2020–26–08. Accomplishing the new actions proposed in this AD would terminate the requirements of AD 2020–26–08.

This proposed AD would require accomplishing the actions specified in the service information already described, except as discussed under ''Differences Between this Proposed AD and the Service Information'' and except for any differences identified as exceptions in the regulatory text of this proposed AD. This proposed AD would also prohibit the installation of affected parts. For information on the procedures and compliance times, see this service information at *regulations.gov* under Docket No. FAA–2023–1037.

Differences Between This Proposed AD and the Service Information

The effectivity of Boeing Alert Requirements Bulletin B787–81205–SB720007–00 RB, Issue 001, dated December 12, 2022, is limited to Model 787–8, –9 and –10 airplanes having certain line numbers. However, the applicability of this proposed AD includes all Boeing Model 787–7, –8, and –9 airplanes with Rolls-Royce Trent 1000 engines installed. Because the affected upper splitter fairing assembly are rotable parts, the FAA has determined that these parts could later be installed on airplanes that were initially delivered with acceptable upper splitter fairing assembly, thereby subjecting those airplanes to the unsafe condition. The FAA has determined that the Accomplishment Instructions in Boeing Alert Requirements Bulletin B787–81205–SB720007–00 RB, Issue 001, dated December 12, 2022, can be applied to airplanes outside the effectivity of the service information if an affected part is installed on those airplanes. This proposed AD includes an inspection or records review to determine if an affected part is installed.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 13 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection (retained actions from AD 2020–26–08).	2 work-hours × $85 per hour = $170 per inspection cycle.	$0	$170 per inspection cycle.	$2,210 per inspection cycle.
Inspection or records review (new proposed action).	1 work-hour × $85 per hour = $85	0	$85	$1,105.
Replacement of each upper splitter fairing assembly (new proposed action).	71 work-hours × $85 per hour = $6,035.	230,000	$236,035	$3,068,455.
Inspection (new proposed action)	2 work-hours × $85 per hour = $170.	0	$170	$2,210.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Fire seal replacement	2 work-hours × $85 per hour = $170 per TR half.	$1,383 per TR half	$1,553 per TR half (4 TR halves per airplane).
Thermal insulation blanket replacement	1 work-hour × $85 per hour = $85 per TR half.	$18,214 per TR half	$18,299 per TR half.

According to the manufacturer, some of the costs of this AD may be covered under warranty by Goodrich, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators.

As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2020–26–08, Amendment 39–21363 (85 FR 83755, December 23, 2020), and

■ b. Adding the following new Airworthiness Directive:

The Boeing Company: Docket No. FAA–2023–1037; Project Identifier AD–2023–00511–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 10, 2023.

(b) Affected ADs

This AD replaces AD 2020–26–08, Amendment 39–21363 (85 FR 83755, December 23, 2020) (AD 2020–26–08).

(c) Applicability

This AD applies to The Boeing Company Model 787–8, 787–9, and 787–10 airplanes, certificated in any category, with Rolls-Royce Trent 1000 engines installed.

(d) Subject

Air Transport Association (ATA) of America Code: 72, Turbine/turboprop engine.

(e) Unsafe Condition

This AD was prompted by reports of Rolls-Royce Trent 1000 powered airplanes having damage to the thrust reverser inner fixed structure (IFS) forward upper fire seal and damage to thermal insulation blankets in the forward upper area of the thrust reverser (TR). The FAA is issuing this AD to address the damage to the IFS forward upper fire seal and the thermal insulation blankets of the TR due to airflow through structural gapping that could occur at the interface between the leading edge of the IFS and the engine splitter structure during flight. Failure of the IFS forward upper fire seal could cause the loss of seal pressurization and degrade the ability to detect and extinguish an engine fire, resulting in an uncontrolled fire. Damage to the TR insulation blanket could result in thermal damage to the TR inner wall, the subsequent release of engine exhaust components, and consequent damage to critical areas of the airplane. Furthermore, damage to the TR inner wall and IFS forward upper fire seal could compromise the integrity of the firewall and its ability to contain an engine fire, resulting in an uncontrolled fire.

(f) Compliance

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

(g) Retained Actions, With New Service Information and Revised Affected Airplanes

This paragraph restates the requirements of paragraph (g) of AD 2020–26–08, with new service information and revised affected airplanes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before the effective date of this AD and for airplanes listed in Boeing Alert Requirements Bulletin B787–81205–SB720007–00 RB, Issue 001, dated December 12, 2022: Except as specified by paragraph (h) of this AD, at the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB780041–00 RB, Issue 001, dated March 31, 2020; or Boeing Alert Requirements Bulletin B787–81205–SB780041–00, Issue 002, dated December 21, 2021; do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB780041–00 RB, Issue 001, dated March 31, 2020; or Boeing Alert Requirements Bulletin B787–81205–SB780041–00, Issue 002, dated December 21, 2021. Accomplishing the actions required by paragraph (i)(2) of this AD terminates the actions required by this paragraph.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by paragraph (g) of this AD can be found in Boeing Alert Service Bulletin B787–81205–SB780041–00, Issue 001, dated March 31, 2020, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB780041–00 RB, Issue 001, dated March 31, 2020; or in Boeing Alert Service Bulletin B787–81205–SB780041–00, Issue 002, dated December 21, 2021, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB780041–00, Issue 002, dated December 21, 2021.

(h) Retained Exceptions to Service Information Specifications in Paragraph (g) of This AD, With Added Reference to New Service Information

This paragraph restates the exceptions specified in paragraph (h) of AD 2020–26–08, with added reference to new service information. Where Boeing Alert Requirements Bulletin B787–81205–SB780041–00 RB, Issue 001, dated March 31, 2020; or Boeing Alert Requirements Bulletin B787–81205–SB780041–00, Issue 002, dated December 21, 2021; uses the phrase ''the Issue 001 date of Requirements Bulletin B787–81205–SB780041–00 RB,'' this AD requires using January 27, 2021, (the effective date of AD 2020–26–08).

(i) New Required Actions

(1) For airplanes with original airworthiness certificate or original export certificate of airworthiness issued on or before the effective date of this AD and for airplanes listed in the Boeing Alert Requirements Bulletin B787–81205–SB720007–00 RB, Issue 001, dated December 12, 2022: Within 7 years after the effective date of this AD, or within 7 years after the date of issuance of the original airworthiness certificate or original export certificate of airworthiness, whichever occurs later, inspect to determine the part number of the upper splitter fairing assembly installed on each engine. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the upper splitter fairing assembly can be conclusively determined from that review. For engines on which no upper splitter fairing assembly part number (P/N) KH60375 was found during the inspection, the actions required by paragraph (g) of this AD are no longer required for that engine.

(2) If, during any inspection or records review required by paragraph (i)(1) of this AD, an upper splitter fairing assembly P/N KH60375 is found on any engine of an airplane: Except as specified by paragraph (j) of this AD, at the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB720007–00 RB, Issue 001, dated December 12, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB720007–00 RB, Issue 001, dated December 12, 2022, for each affected engine. Accomplishing the actions required by this paragraph on all affected engines of an airplane terminates the actions required by paragraph (g) of this AD for that airplane.

Note 2 to paragraph (i)(2): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin B787–81205–SB720007–00, Issue 001, dated December 12, 2022, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB720007–00 RB, Issue 001, dated December 12, 2022.

(j) Exceptions to Service Information Specifications for Paragraph (i)(2) of This AD

Where the ''Effectivity'' paragraph and the Condition and Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB720007–00 RB, Issue 001, dated December 12, 2022, use the phrase ''the original issue date of Requirements Bulletin B787–81205–SB720007–00 RB,'' this AD requires using ''the effective date of this AD.''

(k) Parts Installation Prohibition

(1) For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after the effective date of this AD, except for airplanes listed in Boeing Alert Requirements Bulletin B787–81205–SB720007–00 RB, Issue 001, dated December 12, 2022: As of the effective date of this AD, no person may install an engine with an upper splitter fairing assembly P/N KH60375 on any airplane.

(2) For airplanes with original airworthiness certificate or original export certificate of airworthiness issued on or before the effective date of this AD and for airplanes listed in Boeing Alert Requirements Bulletin B787–81205–SB720007–00 RB, Issue 001, dated December 12, 2022: At the applicable time specified in paragraph (k)(2)(i) or (ii) of this AD, no person may install an engine with an upper splitter fairing assembly P/N KH60375 on any airplane.

(i) For airplanes on which no upper splitter fairing assembly P/N KH60375 was found during the inspection required by paragraph (i)(1) of this AD: After accomplishing the inspection required by paragraph (i)(1) of this AD.

(ii) For airplanes on which an upper splitter fairing assembly P/N KH60375 was found during the inspection required by paragraph (i)(1) of this AD: At the applicable time specified in paragraph (k)(2)(ii)(A) or (B) of this AD.

(A) For an engine on which an upper splitter fairing assembly P/N KH60375 was not found: After accomplishing the inspection required by paragraph (i)(1) of this AD.

(B) For an engine on which an upper splitter fairing assembly P/N KH60375 was found: After replacing an affected upper splitter fairing assembly part number with a new upper splitter fairing assembly part number for that engine as required by paragraph (i)(2) of this AD.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520 Continued Operational Safety 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 (m) 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, AIR–520 Continued Operational Safety 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.

(m) Related Information

For more information about this AD, contact Tak Kobayashi, Aerospace Engineer, Propulsion Section, West Certification Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; telephone: 206–231–3553; email: *takahisa.kobayashi@faa.gov.*

(n) 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.

(3) The following service information was approved for IBR on [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) Boeing Alert Requirements Bulletin B787–81205–SB720007–00 RB, Issue 001, dated December 12, 2022.

(ii) Boeing Alert Requirements Bulletin B787–81205–SB780041–00, Issue 002, dated December 21, 2021.

(4) The following service information was approved for IBR on January 27, 2021 (85 FR 83755, December 23, 2020).

(i) Boeing Alert Requirements Bulletin B787–81205–SB780041–00 RB, Issue 001, dated March 31, 2020.

(ii) [Reserved]

(5) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Boulevard, MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website: *myboeingfleet.com.*

(6) You may view this service information 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.

(7) 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 May 8, 2023.

Gaetano A. Sciortino,

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

[FR Doc. 2023–11064 Filed 5–24–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 91, 107, and 135

[Docket No.: FAA–2023–1256]

UAS Beyond Visual Line-of-Sight Operations

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Request for comment.

SUMMARY: As the FAA reviews the recommendations of the UAS Beyond Visual Line-of-Sight (BVLOS) Operations Aviation Rulemaking Committee (ARC), the FAA is considering the expansion of BVLOS operations in certain operating environments with the appropriate safety mitigations to ensure no adverse safety impact. The FAA is seeking comment to gather additional technical input on key concepts and potential approaches that the FAA is contemplating for use in future exemptions.

DATES: Comments on this petition must identify the petition docket number and must be received on or before June 14, 2023.

ADDRESSES: Send comments identified by docket number FAA–2023–1256 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

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

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Ngo, 202–267–9677, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Background

In March 2022, the UAS Beyond Visual Line-of-Sight (BVLOS) Operations Aviation Rulemaking Committee (ARC) issued its final report, which included a comprehensive set of recommendations for implementation to support expanded unmanned aircraft systems (UAS) operations, such as linear infrastructure and package delivery. The FAA recognizes BVLOS operations provide significant safety, societal, and economic advantages and benefits. Several petitioners have proposed various methods to safely operate UAS BVLOS under petitions for exemptions. Along those lines, the FAA has received several petitions for exemptions to conduct several types of BVLOS operations, which the FAA is looking to leverage in enabling the next phase of BVLOS operations. The FAA will be separately publishing summaries in the **Federal Register** for the individual petitions on the affected projects and seeking comments on each of those petitions for exemption. In this document, the FAA seeks public comments that address how advances in technology, standards, and operational strategies to safely demonstrate UAS BVLOS operations can be applied without adversely affecting safety.

Specific questions are included in this request for comments immediately following the discussion of the relevant issues. The FAA asks that commenters provide as much information as possible on any questions of interest to the commenter. Whenever possible, please provide citations and copies of any relevant studies or reports on which you rely, including cost data as well as any additional data which supports your comment. It is also helpful to explain the basis and reasoning underlying your comment. Each commenting party should include the identifying number of the specific question(s) to which it is responding.

A. Detect and Avoid Systems Performance Standards

The FAA recognizes that several industry standards have been published that may be useful in defining the performance of Detect and Avoid (DAA) systems, a major component of BVLOS operations. However, any single standard may not be fully appropriate for the uses intended by applicants operating at and below 400 feet above ground level (AGL). Therefore, the FAA is reviewing these standards, as well as ways for operators to demonstrate that their DAA system meets specific requirements in a combination of published standards. These include:

1. ASTM F3442/F3442M–23, Standard Specification for Detect and Avoid System Performance Requirements, dated February 28, 2023.
2. RTCA DO–381, Minimum Operational Performance Standards (MOPS) for Ground Based Surveillance Systems (GBSS) for Traffic Surveillance, dated March 26, 2020.
3. RTCA DO–365C, Minimum Operational Performance Standards (MOPS) for Detect and Avoid (DAA) Systems, dated September 15, 2022.
4. RTCA DO–396, Minimum Operational Performance Standards for Airborne Collision Avoidance System sXu (ACAS sXu), dated December 15, 2022.

- A1. In which circumstances or operating environments should the FAA allow this combination approach?
- A2. Conversely, are there circumstances or operating environments where no combination of current standards would provide an acceptable level of safety?

B. Declarations of Compliance for Detect and Avoid

As the FAA is contemplating operations beyond visual line of sight, the FAA is considering allowing operators to declare that they are utilizing DAA systems that meet the DAA standard(s) referenced above.

- B1. In which circumstances or operating environments should the FAA allow this declaration approach? What supporting documentation or data should the FAA require prior to authorization to operating under an exemption?
- B2. Conversely, are there circumstances or operating environments in which the FAA should require operators to submit details of their DAA system for approval and validation prior to operation?

C. Well-Clear Boundary

ASTM F3442/F3442M–23, Standard Specification for Detect and Avoid System Performance Requirements, referenced previously, suggests maintaining a horizontal distance of 2,000 feet and a vertical distance of 250 feet between a small UAS and crewed aircraft, described as a ''hockey-puck-shaped'' area of airspace surrounding the small UAS.

- C1. In which circumstances or operating environments would this standard be appropriate?
- C2. If not this standard, what well-clear boundary should the FAA consider for operations under an exemption, and under what circumstances or operating environments?

D. DAA Systems That Include Third-Party Services/Associated Elements (AE)

There are numerous technologies and architectures that may be suitable when implementing DAA solutions. Some systems may have sensors and DAA logic that are fully contained onboard the aircraft with information relayed to the pilot control station. A remote pilot may be involved in executing avoidance maneuvers, or may monitor the aircraft's automated response. Other systems may rely on ground-based sensors that are connected to, but distinct from, the UA and its control station. Yet other DAA systems may use a combination of those approaches.

Under 14 CFR 1.1, a UAS is defined as the UA and its associated elements necessary to support the safe flight of the UA. However, in various petitions for exemptions, the FAA has understood some DAA system components are intended to be reused by multiple operators. These components are generally not directly controlled by either the UAS manufacturer or the operator; rather, they are controlled by a third-party service provider. Third-party services may directly support the DAA solution by, for example, detecting crewed aircraft in a defined geographic region, or by relaying such information through a managed command and control (C2) link on behalf of multiple operators.

Therefore, the FAA is considering new ways to evaluate and recognize these components as distinct elements. Additionally, section 377 of the FAA Reauthorization Act of 2018 (Pub. L. 115–254) directs the Administrator to ''determine if certain UTM [Unmanned Aircraft Systems Traffic Management] services may operate safely in the national airspace system before completion of the implementation plan required by Section 376.''

- D1. The FAA is considering separating the UTM service provider approval from the exemption for relief from parts 91 and 61. In order to operate, the UTM service provider would need to receive its approval, and the applicant's exemption would be contingent on use of an approved service. Other operators seeking to use that same service would present their specific use case with the approved UTM service. Should the FAA separate the approval of the UTM service provider from the exemption? Why or why not?
- D2. Conversely, the FAA is also considering including the approval of the UTM service within the exemption, similar to how the FAA has implemented 49 U.S.C. 44807 to date. Should the FAA consolidate these approvals? Why or why not?

E. Use of UTM Services for Strategic Deconfliction

At present, the FAA has not determined an acceptable level of risk for collision between two UA. However, FAA is concerned that with increasing numbers of BVLOS UAS operations, two UA could collide, resulting in falling debris that could cause property damage, injuries, or fatalities to non-participants on the ground.

- E1. One proposal the FAA is considering would be to require all BVLOS operations in controlled airspace or within the lateral limits of a Mode C Veil under an exemption to use a strategic deconfliction and conformance monitoring capability (both terms as described in FAA's UTM Concept of Operations v2.0). This could be fulfilled if the operator provisions their own capability that meets the requirements of a published standard; or by using a UTM service. Should the FAA impose this requirement? Why or why not?
- E2. Alternatively, the FAA is considering requiring all BVLOS operations under an exemption, including in Class G airspace, to use a strategic deconfliction and conformance monitoring capability. Should the FAA impose this requirement? Why or why not?
- E3. The FAA is aware of one published standard that could be used to meet a requirement to have a strategic deconfliction and conformance monitoring capability. It is referenced as ASTM F3548–21, Standard Specification for UAS Traffic Management (UTM) UAS Service Supplier (USS) Interoperability, dated March 8, 2022. What alternative means exist, preferably using published standards, that the FAA should consider? What evidence exists for the safety benefit and operational efficiency of any alternative means?

F. Detect and Avoid Between Unmanned Aircraft

FAA views strategic deconfliction and conformance monitoring as two layers of a new, conceptual conflict management strategy for UAS. The FAA is also considering requiring a third layer, in the form of detect-and-avoid between UA, leveraging some form of vehicle-to-vehicle communications method.

- F1. One proposal would be to use the ACAS sXu standard (RTCA DO–396). What communications method should be used in conjunction with this approach? Should the FAA impose this requirement, including use of a specific communications method? Why or why not?
- F2. What evidence exists that the requirement in the above question would sufficiently manage the risk of collision between UA? Should such a requirement be in addition to, or in lieu of, any requirement to use strategic deconfliction and conformance monitoring?
- F3. If the FAA imposes a requirement for UA-to-UA DAA, should it also prescribe technical requirements to ensure interoperability of the solution across all BVLOS UAS? Why or why not?

G. Beyond Visual Line of Sight Shielded Operations

The BVLOS ARC report proposed labeling certain type of BVLOS operations as shielded operations. These operations would occur in a shielded area defined by the ARC as ''a volume of airspace that includes 100′ above the vertical extent of an obstacle or critical infrastructure and is within 100 feet of the lateral extent of the same obstacle or critical infrastructure as defined in 42 U.S.C. 5195(c).'' Furthermore, the ARC recommended that shielded operations be given right-of-way privileges based on the unique nature of those operations and the limited likelihood of crewed aircraft operations in the specified areas.

The FAA is considering a similar framework based on safety analysis and some ability to detect and avoid crewed aircraft operations.

- G1. In which circumstances or operating environments should the FAA authorize shielded operations? The 42 U.S.C. 5195(c) definition of critical infrastructure has a broad applicability. Should the FAA further limit or expand the applicability?
- G2. Conversely, are there circumstances or operating environments in which the FAA should not authorize shielded operations?
- G3. The ARC report describes the appropriate offset as 100′ above, and 100′ lateral. Is this the appropriate standard? Why or why not? If not, what other standard should be used, and what evidence exists for the appropriateness and safety of an alternative standard?
- G4. What type of notification (*e.g.,* email/phone call, web portal, mobile phone application using UTM services, etc.) should operators conducting BVLOS shielded operations provide to the local aviation communities?

Issued in Washington, DC.

David H. Boulter,

Acting Associate Administrator for Aviation Safety.

[FR Doc. 2023–11024 Filed 5–23–23; 11:15 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1512

[Docket No. CPSC–2023–0023]

Petition Requesting Rulemaking To Revoke the Footbrake Requirement for Sidewalk Bicycles

AGENCY: Consumer Product Safety Commission.

ACTION: Request for comment on petition for rulemaking.

SUMMARY: The Consumer Product Safety Commission has received a petition requesting that it initiate rulemaking to eliminate the footbrake requirement for certain sidewalk bicycles, which Commission regulations define as bicycles with a seat height of no more than 635 mm (25 inches), not including recumbent bicycles and in addition, seeks comments on the adequacy of requirements for bicycles in the Commission's rules, including electric bicycles. The Commission invites written comments concerning the petition.

DATES: Submit comments by July 24, 2023.

ADDRESSES: You can submit comments, identified by Docket No. CPSC–2023–0023, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *www.regulations.gov.* Follow the instructions for submitting comments. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. CPSC typically does not accept comments submitted by electronic mail (email), except as described below.

Mail/Hand Delivery/Courier/Confidential Written Submissions: CPSC encourages you to submit electronic comments using the Federal eRulemaking Portal. You may, however, submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *www.regulations.gov.* If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

Docket: For access to the docket to read background documents or comments received, go to: *www.regulations.gov,* and insert the docket number, CPSC–2023–0023, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Alberta E. Mills, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301–504–7479; email: *cpsc-os@cpsc.gov.*

SUPPLEMENTARY INFORMATION: On September 21, 2022, Don Mays of Product Safety Insights, LLC (petitioner), on behalf of woom (a manufacturer of children's bicycles), requested that the Commission initiate rulemaking to eliminate the footbrake requirement for sidewalk bicycles in 16 CFR 1512.5(e). Sidewalk bicycles, which generally are children's bicycles, are defined as bicycles with a seat height of no more than 635 mm (25 inches), not including recumbent bicycles. 16 CFR 1512.2(b). Commission regulations require that sidewalk bicycles with a minimum seat height of 560 mm (22 inches) must have footbrakes that cause the bicycle to stop when a pedal is rotated backwards. 16 CFR 1512.5(c), (e).

The petition argues that this regulation for sidewalk bicycles is out of date. The petition asserts that it is ''hard to compare the relative safety of bicycle braking between children's bicycles with a combination of handbrakes and a footbrake to those with just handbrakes,'' and alleges that there is no evidence that handbrakes are less safe than the required footbrakes—and may be safer than footbrakes. The request also asserts that manufacturers are producing and selling non-compliant children's bicycles without footbrakes. The petition claims that footbrakes cost more to produce than handbrakes, putting manufacturers that comply with CPSC's brake regulations at a competitive disadvantage to those who do not comply. The petition also states that European regulations do not require footbrakes for children's bicycles.

The Commission seeks comments as well as any studies or data pertaining to safety of footbrakes or handbrakes from the public concerning this petition.[1] In addition, the Commission seeks public comment on whether any other requirements in 16 CFR part 1512 are out of date, including whether such requirements are adequate to address bicycles defined in section 1512.2(a)(2). To the extent possible, commenters should provide specific information, including reference to known documentation, engineering studies, technical studies, reports of injuries, medical findings, legal analyses, economic analyses, and environmental impact analyses.

The major factors the Commission considers in deciding whether to grant or deny a petition regarding a product include:

(1) Whether the product presents an unreasonable risk of injury.

(2) Whether a rule is reasonably necessary to eliminate or reduce the risk of injury.

(3) Whether failure to initiate the requested rulemaking proceeding would unreasonably expose the petitioner or other consumers to the risk of injury which the petitioner alleges is presented by the product.

In considering these factors, the Commission will consider the relative priority of the risk of injury associated with the product at issue and the Commission's available resources. 16 CFR 1051.9(b). The CPSC Policy on Establishing Priorities for Commission Action, 16 CFR 1009.8, sets forth the criteria upon which Commission priorities are based.

The petition is available at: *https://www.regulations.gov,* under Docket No. CPSC–2023–0023, Supporting and Related Materials. Alternatively, interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7479; email: *cpsc-os@cpsc.gov.*

Alberta E. Mills,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2023–11137 Filed 5–24–23; 8:45 am]

BILLING CODE 6355–01–P

[1] The Commission voted 4–0 to approve publication of this notice.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 216, 231, and 238

[Docket No. FRA–2021–0067, Notice No. 2]

RIN 2130–AC90

Passenger Equipment Safety Standards; Standards for High-Speed Trainsets; Extension of Comment Period

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: On April 3, 2023, FRA published an NPRM proposing to

amend its Passenger Equipment Safety Standards to modernize Tier I and Tier III safety appliance requirements; update the pre-revenue compliance documentation and testing requirements; establish crashworthiness requirements for individual Tier I-compliant vehicles equipped with crash energy management; establish standards for Tier III inspection, testing, and maintenance and movement of defective equipment; incorporate general safety requirements from FRA's Railroad Locomotive Safety Standards for Tier III trainsets; and provide for periodic inspection of emergency lighting to ensure proper functioning. By this notice, FRA is extending the NPRM's comment period, which will close on June 2, 2023, by 60 days.

DATES: The comment period for the NPRM published April 3, 2023, at 88 FR 19730, is extended until August 1, 2023.

ADDRESSES:

Comments: Comments related to Docket No. FRA–2021–0067, Notice No. 1, may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket name, and docket number or Regulatory Identification Number (RIN) for this rulemaking (2130–AC90). Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Michael Hunter, Executive Staff Director, Office of Railroad Systems and Technology, telephone: (202) 579–5508 or email: *michael.hunter@dot.gov;* or James Mecone, Attorney Adviser, Office of the Chief Counsel, telephone: (202) 380–5324 or email: *james.mecone@dot.gov.*

SUPPLEMENTARY INFORMATION: In a May 11, 2023, letter, the American Public Transportation Association (APTA) requested a 120-day extension of the NPRM's comment period.[1] APTA stated it needs additional time to thoroughly review the NPRM and review and consolidate comments on the NPRM from its members and affiliates.

The comment period for this NPRM is scheduled to close on June 2, 2023. As FRA is granting an extension in response to APTA's request, the comment period is now extended to August 1, 2023, which is a total of 60 days. Although APTA requested a 120-day extension, FRA believes that a 60-day extension will provide sufficient time for APTA and other interested parties to review the NPRM.

[1] 88 FR 19730 (Apr. 3, 2023).

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

Issued in Washington, DC.

Amitabha Bose,

Administrator.

[FR Doc. 2023–11188 Filed 5–24–23; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register
Vol. 88, No. 101
Thursday, May 25, 2023

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by June 26, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Infrastructure Investment and Jobs Act Financial Assistance to Facilities that Purchase and Process Byproducts for Ecosystem Restoration (CFDA 10.725) Wood Products Infrastructure Assistance (WPIA).

OMB Control Number: 0596–0254.

Summary of Collection: USDA Forest Service is delivering the Wood Products Infrastructure Assistance (WPIA) as part of the Bipartisan Infrastructure Law. Section 40804(b)3 of the Infrastructure Investment and Jobs Act Public Law 117–58 (11/15/2021) directs the USDA Forest Service to provide financial assistance to an entity seeking to establish, reopen, expand, or improve a sawmill or other wood processing facility in close proximity to a unit of federal or Indian land that has been identified as high or very high priority for ecological restoration. According to 2 CFR part 200 and Forest Service Handbook 1509.11, chapter 20, there is certain narrative and budget information required for the Agency to determine if the project meets the legislative requirements and if the costs are reasonable, allocable, allowable, and necessary for the project. In particular, collection of information is necessary to ascertain if applicants seeking financial assistance do in fact operate facilities in close proximity to a unit of federal or Indian land that has been identified as high or very high priority for ecological restoration.

Need and Use of the Information: Eligible applicants are for-profit entities; state, local governments; Indian Tribes; school districts; community, not-for-profit organizations; institutions of higher education; and special purpose districts (*e.g.,* public utilities districts, fire districts, conservation districts, and ports).

Applications will be submitted to via email by the date and time as listed in the Notice of Funding Opportunity at *Grants.gov*; searchable and identifiable by the catalog of domestic federal assistance (CFDA) number 10.725. The Forest Service State & Private Forestry will receive, review, and track all applications.

Description of Respondents: State, local, Tribal governments.

Number of Respondents: 702.

Frequency of Responses: Annually.

Total Burden Hours: 2,107.

Forest Service

Title: Temporary Bridge Funding Opportunity (TBFO) Program.

OMB Control Number: 0596–0255.

Summary of Collection: USDA Forest Service is delivering the Temporary Bridge Funding Opportunity (TBFO) Program as part of the Bipartisan Infrastructure Law. Section 40804(b)5 of the Infrastructure Investment and Jobs Act Public Law 117–58 (11/15/2021) directs the Forest Service to provide funding for States and Indian Tribes to establish rental programs for portable skidder bridges, bridge mats, or other temporary water crossing structures, to minimize stream bed disturbance on non-Federal land and Federal land. According to 2 CFR part 200 and Forest Service Handbook 1509.11, chapter 20, prescribes administrative requirements and processes applicable to all Forest Service domestic and international Federal Financial Assistance awards to State and local governments, institutions of higher education, hospitals, private profit and nonprofit organizations, individuals, and foreign recipients. In particular, collection of information is necessary to ascertain the required needs of applicants to initiate a temporary bridge program to protect water resources and reduce water quality degradation during forestry related operations requiring temporary water resource crossings.

Need and Use of the Information: Eligible applicants are For-profit entities; state, local governments; Indian Tribes; school districts; community, not-for-profit organizations; institutions of higher education; and special purpose districts (*e.g.,* public utilities districts, fire districts, conservation districts, and ports).

Applications will be submitted via email and the Forest Service State & Private Forestry will receive, review, and track all applications.

Description of Respondents: State, local, Tribal governments.

Number of Respondents: 300.

Frequency of Responses: Annually.

Total Burden Hours: 700.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–11219 Filed 5–24–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Privacy Act of 1974; Computer Matching Program

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice of a new matching program.

SUMMARY: In accordance with The Privacy Act of 1974, as amended, USDA FNS is providing notice of a new computer matching program (CMP) between FNS and the State agencies that administer the Supplemental Nutrition Assistance Program (SNAP). The CMP allows State agencies access to the National Accuracy Clearinghouse (NAC), a national database operated by FNS, as a tool to prevent individuals from receiving SNAP benefits in more than one State simultaneously, commonly referred to as duplicate participation. State agencies provide information about SNAP applicants and participants to the NAC that is then compared to discover potential duplicate participation. The NAC CMP employs a Privacy-Preserving Record Linkage (PPRL) approach that identifies and links records that correspond to the same individual across different databases, without the need to collect or retain the names, Social Security numbers, or dates of birth of the individuals being matched. State agencies use the PPRL process to convert this information to a secure cryptographic hash before sharing it to the NAC. When a match is found, indicating potential duplicate participation, the NAC notifies the affected State agencies and facilitates communication between the State agencies as they each take action to resolve the match.

DATES: The effective date of the new matching program will be no sooner than 30 days from the publication of this notice, provided no comments are received that result in a contrary determination. The matching program will be conducted for an initial term of 18 months and, within three months of expiration, may be renewed for one additional year if the parties make no change to the matching program and certify that the program has been conducted in compliance with the agreement. Please submit any comments by June 26, 2023.

ADDRESSES: Interested parties may submit written comments by one of the following methods:

- *Preferred:* Federal eRulemaking Portal at *http://www.regulations.gov* provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Follow the online instructions at that site for submitting comments.
- *By email:* FNS, SNAP, State Administration Branch (SAB) at *SM.FN.SNAPSAB@usda.gov*.
- *By mail:* Maribelle Balbes, Branch Chief, SAB, SNAP, FNS, 1320 Braddock Place, Alexandria, VA 22314.
- *Instructions:* All comment submissions must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact the above individual, Maribelle Balbes, Branch Chief, SAB, SNAP, FNS at *Maribelle.Balbes@usda.gov* or 703–605–4272.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended, 5 U.S.C. 552a, provides certain protections for individuals applying for and receiving Federal benefits. The law governs the use of computer matching by Federal agencies when records in a system of records, which contains information about individuals that are retrieved by name or other personal identifier, are matched with records of other Federal, State, or local government records. The Privacy Act requires agencies involved in a matching program to:

1. Obtain approval of a Computer Matching Agreement, prepared in accordance with The Privacy Act, by the Data Integrity Board of any Federal agency participating in a matching program.
2. Enter into a written Computer Matching Agreement.
3. Provide a report of the matching program to Congress and the Office of Management and Budget (OMB), and make it available to the public, as required by 5 U.S.C. 552a(o), (u)(3)(A), and (u)(4).
4. Publish a notice of the matching program in the **Federal Register** as required by 5 U.S.C. 552a(e)(12) after OMB and Congress complete their review of the report, as provided by OMB Circular A–108, Federal Agency Responsibilities for Review, Reporting, and Publication under The Privacy Act.
5. Notify the individuals whose information will be used in the matching program that the information they provide is subject to verification through matching, as required by 5 U.S.C. 552a(o)(1)(D).
6. Verify match findings before suspending, terminating, reducing, or making a final denial of an individual's benefits or payments or taking other adverse action against the individual, as required by 5 U.S.C. 552a(p).

This matching program meets these requirements.

Participating Agencies

FNS and the State agencies that administer SNAP to include all 50 States, the District of Columbia, Guam, and the U.S. Virgin Islands.

Authority for Conducting the Matching Program

The Food and Nutrition Act of 2008 (FNA), as amended, 7 U.S.C. 2020(x), provides the legal authority for conducting the matching program. Section 11(x) requires FNS to establish an interstate data system to be known as the NAC and to promulgate regulations to set requirements for use of the NAC. The FNA requires State agencies to participate in the NAC matching program as both providers of data to the NAC and users of the information in the NAC that has been provided by the other State agencies to detect and prevent duplicate participation in SNAP.

Purpose(s)

The NAC CMP is intended to (1) enhance Program integrity by providing State agencies with a tool to screen for duplicate participation and take timely action to reduce improper payments and (2) improve Program access and customer experience by facilitating State-to-State communication to help State agencies promptly and accurately process SNAP recipient moves from one State to another.

To meet this purpose, State agencies participate in this CMP as both providers and users of information in the NAC. Each State agency must submit information to the NAC about individuals applying for SNAP benefits within the State and those existing participants certified to receive SNAP benefits. Each State agency also has access to the NAC to perform the required queries against information provided by the other State agencies to discover potential duplicate participation. The NAC compares the secure hashes provided by State agencies to find matches and notifies the affected State agencies when a match is found. After being notified of a match, State agencies must take

appropriate action to resolve the match, while ensuring timely, accurate, and fair service to SNAP applicants and recipients. The NAC facilitates this process by providing a method for State agencies to share information with each other as they each take the necessary steps to determine and enact the appropriate resolution.

Categories of Individuals

SNAP applicants, new household members, and recertifying participants are matched against the NAC as part of the eligibility determination process to ensure the individual is not currently receiving benefits in another state.

Categories of Records

State agencies are required by regulations at 7 CFR 272.18(b) to provide information about SNAP participants and applicants, SNAP case information, and match action and resolution information. The NAC will also contain information created by the system when a match is found.

Information on Individuals

State agencies are required to put names, Social Security numbers, and dates of birth through a Privacy-Preserving Record Linkage (PPRL) process that converts these data elements to a secure cryptographic hash before sharing the information to the NAC. When two or more hashes match, a positive match is identified by the NAC. State agencies are also required to provide a Participant ID to the NAC to allow the State agency to connect the match in the NAC to an individual in the State agency's system for match resolution. Requirements:

1. Data elements for match: Name, Social Security number, date of birth.
2. Additional information: Participant ID and, when applicable, a vulnerable individual flag.

SNAP Case Information

Other case information provided by State agencies allows insight into the matched individual's situation in that State. These elements should be uploaded to the NAC, if available and applicable:

1. Case number
2. Participant closing date
3. Recent benefit months

Match Resolution Information

This is information provided about actions taken to pursue clarification and verification of the information received from the NAC. This includes the final disposition of the match information on the participant in which a match was found. Information required:

1. Initial action
2. Date of initial action
3. Final disposition
4. Date of final disposition

Information Generated by the System

1. *Match ID:* When a match is found, the NAC will create a match record and generate a unique match ID to identify the record in the NAC. The match ID will be provided to the affected State agencies as part of the match notification to allow them to find the match record in the NAC.

2. *Match record:* The match record will contain information about the match itself, such as the date of the match and the affected States and the SNAP case information previously provided by the State agencies, including the Participant ID. Each State agency will use the Participant ID provided in the match record to identify the matched individual in its own eligibility system. This is needed because the NAC will not contain the names, Social Security numbers, or dates of birth of matched individuals.

System(s) of Records

The system of records for this data exchange comprising the NAC is USDA/FNS–14, National Accuracy Clearinghouse (NAC) System to Prevent Duplicate Participation, 88 FR 11403 (Feb. 23, 2023). This data exchange is authorized under routine uses.

Cynthia Long,

Administrator, Food and Nutrition Service.

[FR Doc. 2023–11161 Filed 5–24–23; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–832]

Pure Magnesium From the People's Republic of China: Continuation of Antidumping Duty Order

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

SUMMARY: The U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) have determined that revocation of the antidumping duty (AD) order on pure magnesium from the People's Republic of China would likely lead to continuation or recurrence of dumping and material injury to industry in the United States. Therefore, Commerce is publishing a notice of continuation of the AD order on pure magnesium from the People's Republic of China.

DATES: Applicable May 25, 2023.

FOR FURTHER INFORMATION CONTACT: John Conniff, 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) 482–1009.

SUPPLEMENTARY INFORMATION:

Background

On May 12, 1995, Commerce published in the **Federal Register** the AD order on pure magnesium from the People's Republic of China.[1] On March 1, 2022, Commerce published the notice of initiation of the sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] As a result of its review, Commerce determined that revocation of the *Order* would likely lead to continuation or recurrence of dumping. Therefore, Commerce notified the ITC of the magnitude of the margins likely to prevail should the *Order* be revoked, pursuant to sections 751(c)(1) and 752(c) of the Act.[3] On May 19, 2023, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Order* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[4]

Scope of the Order

Merchandise covered by the *Order* is pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of the *Order.* Pure magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure magnesium is used as an input in producing magnesium alloy. Pure magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns

[1] *See Notice of Antidumping Duty Orders: Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium from the Russian Federation,* 60 FR 25691 (May 12, 1995) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 11416 (March 1, 2022).

[3] *See Pure Magnesium from the People's Republic of China: Final Results of Expedited Fifth Sunset Review of the Antidumping Duty Order,* 87 FR 35732 (June 13, 2022), and accompanying Issues and Decision Memorandum.

[4] *See Pure Magnesium from China,* 88 FR 32246 (May 19, 2023).

and crystals) with the following primary magnesium contents:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as ''ultra pure'' magnesium);

(2) Products that contain less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as ''pure'' magnesium); and

(3) Products that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium (generally referred to as ''off-specification pure'' magnesium).

''Off-specification pure'' magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of the *Order* are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder) having a maximum physical dimension (*i.e.,* length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50% by weight), and remelted magnesium whose pure primary magnesium content is less than 50% by weight.

Pure magnesium products covered by the *Order* are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Order* would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Order.* U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of the *Order* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year review of the *Order* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply with the regulations and terms of an APO is a violation which may be subject to sanctions.

Notification to Interested Parties

This five-year (sunset) review and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act, and published in accordance with section 777(i) of the Act and 19 CFR 351.218(f)(4).

Dated: May 19, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–11146 Filed 5–24–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–869, C–533–870]

Certain New Pneumatic Off-the-Road Tires From India: Continuation of Antidumping and Countervailing Duty Orders

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

SUMMARY: The U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) have determined that revocation of the antidumping duty (AD) and countervailing duty (CVD) orders on certain new pneumatic off-the-road tires (off-road tires) from India would be likely to lead to continuation or recurrence of dumping, net countervailable subsidies, and material injury to an industry in the United States. Therefore, Commerce is publishing a notice of continuation of these AD and CVD orders.

DATES: Applicable May 25, 2023.

FOR FURTHER INFORMATION CONTACT: Daniel Alexander, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4313.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 2017, Commerce published the AD and CVD orders on off-road tires from India.[1] On February 1, 2022, Commerce published the notice of initiation of the first sunset reviews of the *Orders,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] As a result of its reviews, Commerce determined that revocation of the AD order would likely lead to continuation or recurrence of dumping and that revocation of the CVD order would likely lead to the continuation or recurrence of countervailable subsidies.[3] Therefore, Commerce notified the ITC of the magnitude of the dumping margins and net countervailable subsidy rates likely to prevail should the *Orders* be revoked, pursuant to sections 752(b) and (c) of the Act. On May 2, 2023, the ITC published its determinations, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[4]

Scope of the Orders

The products covered by the scope of the *Orders* are off-road tires. Certain off-road tires are tires with an off-road tire size designation. The tires included in the scope may be either tube-type[5] or

[1] *See Certain New Pneumatic Off-the-Road Tires from India: Antidumping Duty Order,* 82 FR 12553 (March 6, 2017); *see also Certain New Pneumatic Off-the-Road Tires from India and Sri Lanka: Amended Final Affirmative Countervailing Duty Determination for India and Countervailing Duty Orders,* 82 FR 12556 (March 6, 2017) (*Orders*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 5467 (February 1, 2022).

[3] *See Certain New Pneumatic Off-the-Road Tires from India: Final Results of Expedited Sunset Review of the Antidumping Duty Order,* 87 FR 34654 (June 7, 2022), and accompanying Issues and Decision Memorandum (IDM); *see also Certain New Pneumatic Off-the-Road Tires from India: Final Results of Expedited First Sunset Review of the Countervailing Duty Order,* 87 FR 31860 (May 25, 2022), and accompanying IDM.

[4] *See Pneumatic Off-the-Road Tires from India,* 88 FR 27531 (May 2, 2023).

[5] While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (*e.g.,* sold with or separately from subject merchandise).

tubeless, radial, or non-radial, regardless of whether for original equipment manufacturers or the replacement market.

Subject tires may have the following prefix or suffix designation, which appears on the sidewall of the tire:

Prefix designations:

DH—Identifies a tire intended for agricultural and logging service which must be mounted on a DH drop center rim.

VA—Identifies a tire intended for agricultural and logging service which must be mounted on a VA multipiece rim.

IF—Identifies an agricultural tire to operate at 20 percent higher rated load than standard metric tires at the same inflation pressure.

VF—Identifies an agricultural tire to operate at 40 percent higher rated load than standard metric tires at the same inflation pressure.

Suffix designations:

ML—Mining and logging tires used in intermittent highway service.

DT—Tires primarily designed for sand and paver service.

NHS—Not for Highway Service.

TG—Tractor Grader, off-the-road tire for use on rims having bead seats with nominal +0.188″ diameter (not for highway service).

K—Compactor tire for use on 5° drop center or semi-drop center rims having bead seats with nominal minus 0.032 diameter.

IND—Drive wheel tractor tire used in industrial service.

SL—Service limited to agricultural usage.

FI—Implement tire for agricultural towed highway service.

CFO—Cyclic Field Operation.

SS—Differentiates tires for off-highway vehicles such as mini and skid-steer loaders from other tires which use similar size designations such as 7.00–15TR and 7.00–15NHS, but may use different rim bead seat configurations.

All tires marked with any of the prefixes or suffixes listed above in their sidewall markings are covered by the scope regardless of their intended use.

In addition, all tires that lack any of the prefixes or suffixes listed above in their sidewall markings are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the following sections of the Tire and Rim Association Year Book, as updated annually, unless the tire falls within one of the specific exclusions set forth below. The sections of the Tire and Rim Association Year Book listing numerical size designations of covered certain off-road tires include:

The table of mining and logging tires included in the section on Truck-Bus tires;

The entire section on Off-the-Road tires;

The entire section on Agricultural tires; and

The following tables in the section on Industrial/ATV/Special Trailer tires:

- Industrial, Mining, Counterbalanced Lift Truck (Smooth Floors Only);
- Industrial and Mining (Other than Smooth Floors);
- Construction Equipment;
- Off-the-Road and Counterbalanced Lift Truck (Smooth Floors Only);
- Aerial Lift and Mobile Crane; and
- Utility Vehicle and Lawn and Garden Tractor.

Certain off-road tires, whether or not mounted on wheels or rims, are included in the scope. However, if a subject tire is imported mounted on a wheel or rim, only the tire is covered by the scope. Subject merchandise includes certain off-road tires produced in the subject countries whether mounted on wheels or rims in a subject country or in a third country. Certain off-road tires are covered whether or not they are accompanied by other parts, *e.g.,* a wheel, rim, axle parts, bolts, nuts, *etc.* Certain off-road tires that enter attached to a vehicle are not covered by the scope.

Specifically excluded from the scope are passenger vehicle and light truck tires, racing tires, mobile home tires, motorcycle tires, all-terrain vehicle tires, bicycle tires, on-road or on highway trailer tires, and truck and bus tires. Such tires generally have in common that the symbol ''DOT'' must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following prefixes and suffixes included as part of the size designation on their sidewalls:

Prefix letter designations:

AT—Identifies a tire intended for service on All-Terrain Vehicles;

P—Identifies a tire intended primarily for service on passenger cars;

LT—Identifies a tire intended primarily for service on light trucks;

T—Identifies a tire intended for one-position ''temporary use'' as a spare only; and

ST—Identifies a special tire for trailers in highway service.

Suffix letter designations:

TR—Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156″ or plus 0.250″;

MH—Identifies tires for Mobile Homes;

HC—Identifies a heavy-duty tire designated for use on ''HC'' 15″ tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.

Example: 8R17.5 LT, 8R17.5 HC;

LT—Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service;

ST—Special tires for trailers in highway service; and

M/C—Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; aircraft tires; and turf, lawn and garden, and golf tires. Also excluded from the scope are mining and construction tires that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.1025, 4011.20.1035, 4011.20.5030, 4011.20.5050, 4011.61.0000, 4011.62.0000, 4011.63.0000, 4011.69.0050, 4011.92.0000, 4011.93.4000, 4011.93.8000, 4011.94.4000, 4011.94.8000, 8431.49.9038, 8431.49.9090, 8709.90.0020, and 8716.90.1020. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.4550, 4011.99.8550, 8424.90.9080, 8431.20.0000, 8431.39.0010, 8431.49.1090, 8431.49.9030, 8432.90.0005, 8432.90.0015, 8432.90.0030, 8432.90.0080, 8433.90.5010, 8503.00.9520, 8503.00.9560, 8708.70.0500, 8708.70.2500, 8708.70.4530, 8716.90.5035, 8716.90.5055, 8716.90.5056, and 8716.90.5059. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Orders.* U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of these *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year reviews of the *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4).

Dated: May 17, 2023.

Lisa Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–11143 Filed 5–24–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Open Meeting of the Internet of Things Advisory Board

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Internet of Things (IoT) Advisory Board will meet Tuesday, July 18, 2023 and Wednesday, July 19, 2023; from 11:00 a.m. until 5:00 p.m., Eastern Time. All sessions will be open to the public.

DATES: The meetings will be held on Tuesday, July 18, 2023 and Wednesday, July 19, 2023; from 11:00 a.m. until 5:00 p.m., Eastern Time.

ADDRESSES: The meeting will be conducted virtually via Webex webcast hosted by the National Cybersecurity Center of Excellence (NCCoE) at NIST. Please note registration instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Barbara Cuthill, Information Technology Laboratory, National Institute of Standards and Technology, Telephone: (301) 975–3273, Email address: *barbara.cuthill@nist.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. 1001 *et seq.,* notice is hereby given that the IoT Advisory Board will hold an open meeting on Tuesday, July 18, 2023, and Wednesday, July 19, 2023 from 11:00 a.m. until 5:00 p.m., Eastern Time. All sessions will be open to the public. The IoT Advisory Board is authorized by section 9204(b)(5) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283) and advises the IoT Federal Working Group convened by the Secretary of Commerce pursuant to Section 9204(b)(1) of the Act on matters related to the Federal Working Group's activities. Details regarding the IoT Advisory Board's activities are available at *https://www.nist.gov/itl/applied-cybersecurity/nist-cybersecurity-iot-program/internet-things-advisory-board.*

The agenda for the July meeting is expected to focus on discussions of recommendations to be included in the IoT Advisory Board's report for the IoT Federal Working Group.

The recommendations and discussion are expected to be in the focus areas for the report cited in the legislation and the charter:

- Smart traffic and transit technologies
- Augmented logistics and supply chains
- Sustainable infrastructure
- Precision agriculture
- Environmental monitoring
- Public safety
- Health care

In addition, the IoT Advisory Board may discuss other elements called for in the report:

- whether adequate spectrum is available to support the growing Internet of Things and what legal or regulatory barriers may exist to providing any spectrum needed in the future;
- policies, programs, or multi-stakeholder activities that—
  - promote or are related to the privacy of individuals who use or are affected by the Internet of Things;
  - may enhance the security of the Internet of Things, including the security of critical infrastructure;
  - may protect users of the Internet of Things; and
  - may encourage coordination among Federal agencies with jurisdiction over the Internet of Things.

Note that agenda items may change without notice. The final agendas will be posted on the IoT Advisory Board web page: *https://www.nist.gov/itl/applied-cybersecurity/nist-cybersecurity-iot-program/internet-things-advisory-board.*

Public Participation: Written comments from the public are invited and may be submitted electronically by email to Barbara Cuthill at the contact information indicated in the **FOR FURTHER INFORMATION CONTACT** section of this notice by 5 p.m. on Tuesday, July 11th for distribution to members prior to the meeting.

The second day of the IoT Advisory Board meeting agenda will include a period, not to exceed sixty minutes, for submitted comments from the public to be presented. Submitted comments from the public will be selected on a first-come, first-served basis and limited to five minutes per person for oral presentation if requested by the commenter.

Members of the public who wish to expand upon their submitted statements, those who had wished to submit a comment but could not be accommodated on the agenda, and those who were unable to attend the meeting via webinar are invited to submit written statements. In addition, written statements are invited and may be submitted to the IoT Advisory Board at any time. All written statements should be directed to the IoT Advisory Board Secretariat, Information Technology Laboratory by email to: *Barbara.Cuthill@nist.gov.*

Admittance Instructions: Participants planning to attend via webinar must register via the instructions found on the IoT Advisory Board's page: *https://www.nist.gov/itl/applied-cybersecurity/nist-cybersecurity-iot-program/internet-things-advisory-board.*

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2023–11203 Filed 5–24–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD029]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its

Ecosystem-Based Fishery Management Committee (EBFM) and Advisory Panel Chairs to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This hybrid meeting will be held on Tuesday, June 13, 2023, at 9:30 a.m.

ADDRESSES: This meeting will be held at the Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000.

Webinar registration URL information: *https://attendee.gotowebinar.com/register/4510390641758068059.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

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

SUPPLEMENTARY INFORMATION:

Agenda

The Ecosystem-Based Fishery Management (EBFM) Committee and Advisory Panel Chairs will meet to receive and discuss final simulation results and summary formats from the EBFM Prototype Management Strategy Evaluation (pMSE). A presentation on the final report will be made at the June Council meeting, incorporating this discussion. They will also meet with a Council-chosen contractor to provide workplan guidance for deep-dive EBFM workshops that will occur in August and September. Other business will be discussed as necessary.

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

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: May 22, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–11213 Filed 5–24–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD046]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold meetings of its Federal Data Coordination and Research Committee Technical Committee data subpanel (FDCRC–TC), Federal Data Coordination and Research Committee (FDCRC), and Non-commercial Fisheries Advisory Committee (NCFAC) to discuss and make recommendations on fishery management issues in the Western Pacific Region.

DATES: The meetings will be held between June 8 and June 13, 2023. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The FDCRC–TC, FDCRC, and NCFAC meetings will be held virtually through Webex. Instructions for connecting to the web conference and providing oral public comments will be posted on the Council website at *www.wpcouncil.org.* For assistance with the web conference connection, contact the Council office at (808) 522–8220.

Council address: Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813.

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

SUPPLEMENTARY INFORMATION: The FDCRC–TC will meet on Thursday, June 8, 2023, from 1 p.m. to 3 p.m.; The FDCRC will meet on Monday, June 12, 2023, from 2 p.m. to 4 p.m.; and the NCFAC will meet on Tuesday, June 13, 2023, from 1 p.m. to 4 p.m. All times listed is Hawaii Standard Time.

Public Comment periods will be provided in the agendas. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for the FDCRC–TC Meeting

Thursday, June 8, From 1 p.m. to 3 p.m. (Hawaii Standard Time)

1. Welcome and Introductions
2. Report on Previous Technical Committee Recommendations and Council Actions
3. Data Collection
   A. Marine Recreational Information Program (MRIP)
   i. Pacific Islands Recreational Implementation Plan
   ii. Transition Plan Update
   B. Territorial Creel Survey Review Report
   C. Other Data Collection Updates
4. Annual Stock Assessment and Fishery Evaluation (SAFE) Reports
   A. Data Issues
   B. Archipelagic Plan Team Recommendations
5. Public Comment
6. Discussion and Recommendations
7. Other Business

Schedule and Agenda for the FDCRC Meeting

Monday, June 12, From 2 p.m. to 4 p.m. (Hawaii Standard Time)

1. Welcome Remarks and Introductions
2. FDCRC TC Data Collection Subpanel Meeting Report and Recommendations
3. Council Research Priorities
4. Pacific Islands Fisheries Science Center (PIFSC) Territorial Creel Survey Review
5. MRIP Regional Implementation Plan Update
6. Data Sharing Agreements
7. Public Comment
8. Discussion and Recommendations
9. Other Business

Schedule and Agenda for the NCFAC Meeting

Tuesday, June 13, 2023, From 1 p.m. to 3 p.m. (Hawaii Standard Time)

1. Welcome and Introductions
2. Review of the Last NCFAC Meeting and Recommendations
3. Non-Commercial Data Collection
   A. Review of Creel Survey
   B. Hawaii Small-Boat Fishery Plans
   C. MRIP Regional Implementation Plan Updates
4. PIFSC Socio-Economics Projects Updates
5. Offshore Development Issues

6. Public Comment
7. Discussion and Recommendations
8. Other Business

Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: May 22, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–11212 Filed 5–24–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD047]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 148th Scientific and Statistical Committee (SSC) and its 195th Council meeting to take actions on fishery management issues in the Western Pacific Region. The Council will also hold meetings of the following advisory groups and standing committees: American Samoa Advisory Panel (AP); Fishing Industry Advisory Committee (FIAC); American Samoa Regional Ecosystem Advisory Committee (REAC); American Samoa Standing Committee (SC); and Executive and Budget SC.

DATES: The meetings will be held between June 14 and June 29, 2023. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The 148th SSC meeting will be held in a hybrid format with in-person and remote participation (Webex) options available for SSC members and the public. In-person attendance will be hosted at the Council office, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813.

The American Samoa and Executive and Budget SC meetings, and the American Samoa REAC meeting will be held in-person at the Sadie's by the Sea Conference Room, Utulei Beach, Route 1, Pago Pago, American Samoa, phone: (684) 633–5900.

The FIAC meeting will be held in a hybrid format with in-person and remote participation (Webex) options available for FIAC members and the public. The in-person portion of the FIAC meeting will be held at Tauese P. F. Sunia Ocean Center, Utulei, American Samoa, 96799.

The American Samoa AP meeting will be held will be held in a hybrid format with in-person remote participation (Webex) options available for AP members and the public. In-person attendance will be hosted at the Flying Fox Gastropub, Pavaiai, American Samoa, 96799.

The 195th Council Meeting will be held as a hybrid meeting for Council members and public, with remote participation option available via Webex. The in-person portion of the 195th Council meeting and Fishers Forum will be held at Governor H. Rex Lee Auditorium (Fale Laumei), Utulei, American Samoa, phone: (684) 633–5155.

Specific information on joining the meeting, connecting to the web conference and providing oral public comments will be posted on the Council website at *www.wpcouncil.org.* For assistance with the web conference connection, contact the Council office at (808) 522–8220.

Council address: Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813.

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

SUPPLEMENTARY INFORMATION: The 148th SSC meeting will be held between 9 a.m. and 5 p.m. Hawaii Standard Time (HST) on June 14, 10 a.m. and 5 p.m. HST on June 15, and 9 a.m. and 12 p.m. on June 16, 2023. The American Samoa SC meeting will be held between 10 a.m. and 12 p.m. Samoan Standard Time (SST) on June 22, 2023. The Executive and Budget SC meeting will be held between 9 a.m. and 12 p.m. SST on June 23, 2023. The portion of the Executive and Budget SC from 11:30 a.m. to 12 p.m. will be closed to the public for employment matters in accordance with section 302(i)(3) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The American Samoa REAC meeting will be held between 1 p.m. and 4 p.m. SST on June 23, 2023. The FIAC meeting will be held between 1 p.m. and 5 p.m. SST on June 23, 2023. The American Samoa AP meeting will be held between 1 p.m. and 4 p.m. SST on June 24, 2023. The 195th Council Meeting will be held between 9:30 a.m. and 5 p.m. SST on June 27, 8:30am and 5 p.m. SST on June 28, and 8:30 a.m. and 12 p.m. SST on June 29, 2023. The Fishers Forum will be held between 6 p.m. and 9 p.m. SST on June 27, 2023. Public Comment on Non-Agenda Items will be held between 4:30 p.m. and 5 p.m. SST on June 27, 2023.

Please note that the evolving public health situation regarding COVID–19 may affect the conduct of the June Council and its associated meetings. At the time this notice was submitted for publication, the Council anticipated convening the Standing Committee meetings as an in-person meeting only, and the Council meeting as an in-person meeting with a web conference attendance option. If public participation options will be modified, the Council will post notice on its website at *www.wpcouncil.org* by, to the extent practicable, five calendar days before each meeting.

Agenda items noted as ''Final Action'' refer to actions that may result in Council transmittal of a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under Sections 304 or 305 of the MSA. In addition to the agenda items listed here, the Council and its advisory bodies will hear recommendations from Council advisors. An opportunity to submit public comment will be provided throughout the agendas. The order in which agenda items are addressed may change and will be announced in advance at the Council meeting. The meetings will run as late as necessary to complete scheduled business.

Background documents for the 195th Council meeting will be available at *www.wpcouncil.org.* Written public comments on final action items at the 195th Council meeting should be received at the Council office by 5 p.m. HST, Thursday, June 22, 2023, and should be sent to Kitty M. Simonds, Executive Director; Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, phone: (808) 522–8220 or fax: (808) 522–8226; or email: *info@wpcouncil.org.* Written public comments on all other agenda items may be submitted for the record by email throughout the duration of the meeting. Instructions for providing oral public comments during the meeting will be posted on the Council website. This meeting will be recorded (audio only) for the purposes of generating the minutes of the meeting.

Agenda for the 148th SSC Meeting

Wednesday, June 14, 2023, 9 a.m. to 5 p.m. HST

1. Introductions
2. Approval of Draft Agenda and Assignment of Rapporteurs
3. Status of the 147th SSC Meeting Recommendations
4. Pacific Islands Fisheries Science Center Director Report
5. Island Fisheries
   A. American Samoa Bottomfish Management Unit Species (BMUS)
   1. American Samoa BMUS WPSAR Report
   2. American Samoa BMUS Benchmark Stock Assessment Report
   3. American Samoa Fishery Ecosystem Plan (FEP) Amendment for BMUS Revision (Action Item)
   B. Commonwealth of the Northern Mariana Islands (CNMI) BMUS Acceptable Biological Catch (ABC) Specification for 2024–2025 (Action Item)
   C. Main Hawaiian Islands (MHI) Kona Crab ABC Specification for 2024–2026 (Action Item)
   D. Uku Essential Fish Habitat Revision Options Paper (Action Item)
   E. Public Comment
   F. SSC Discussion and Recommendations
6. Protected Species
   A. Hawaii Deep-Set and American Samoa Longline Fishery Final Biological Opinions (BiOps)
   1. Overview of the Final BiOps
   2. Implementation of Reasonable and Prudent Measures
   B. False Killer Whale Issues
   1. New Approach for Insular False Killer Whale Abundance Estimates
   2. Update on the New Assessment Approach for Hawaii Pelagic False Killer Whales
   3. False Killer Whale Take Reduction Team Meeting Report
   C. Public Comment
   D. SSC Discussion and Recommendations

Thursday, June 15, 2023, 10 a.m. to 5 p.m. HST

7. Program Planning
   A. Review of the National Standard 1 Draft Guidance on Biomass Proxies
   B. Review of National Standards 4, 8 and 9
   C. 2022 Annual Stock Assessment and Fisheries Evaluation (SAFE) Report and Recommendations
   1. Archipelagic and Pelagic Report Highlights
   2. Archipelagic Report Recommendations
   3. Pelagic Report Recommendations
   D. Review of Research Priorities
   1. Cooperative Research
   2. Updating the Council's Pelagic Fisheries Research Plan
   E. Public Comment
   F. SSC Discussion and Recommendations
8. Pelagic and International Fisheries
   A. Update on Proposed Sanctuaries in the Pacific Remote Island Areas (PRIA) & Northwest Hawaiian Islands
   B. The Pacific Community (SPC) Pre-Assessment Workshop
   C. South Pacific Albacore Inter-Sessional Working Group
   D. 2nd Western and Central Pacific Ocean (WCPO) Longline Management Workshop
   E. Western & Central Pacific Fisheries Commission (WCPFC) Tropical Tuna Scientific Requests
   F. Inter-American Tropical Tuna Commission (IATTC) Science Advisory Committee
   G. Public Comment
   H. SSC Discussion and Recommendations

Friday, June 16, 2023, 9 a.m. to 12 p.m. HST

9. Other Business
   A. September 2023 SSC Meetings Dates
10. Summary of SSC Recommendations to the Council

Agenda for the American Samoa SC Meeting

Thursday, June 22, 2023, 10 a.m. to 12 p.m. SST

1. Welcome and Introductions
2. Draft 2022 American Samoa Annual SAFE Report Module
3. American Samoa Bottomfish
   a. Stock Assessment WPSAR Report
   b. 2023 Benchmark Stock Assessment
   c. Management Unit Species Revision
4. Equity and Environmental Justice
5. American Samoa Sea Turtles
6. Fagatele Marine and PRIA Sanctuaries
7. Report on Rose Monument
8. Advisory Group Reports and Recommendations
9. Other Business
10. Public Comment
11. Discussion and Recommendations

Agenda for the Executive and Budget SC Meeting

Friday, June 23, 2023, 9 a.m. to 12 p.m. SST (11:30 a.m. to 12 p.m. Closed)

1. Financial Reports
2. Administrative Reports
3. Pelagic Research Plan
4. Council Family Changes
5. Meetings and Workshops
   A. Council Coordination Committee (CCC) Meeting Report
   B. Deputy Director/Senior Staff Meeting Report
   C. Schedule of Upcoming Meeting
6. Other Business
7. Public Comment
8. Discussion and Recommendations
9. Closed Session on Employment Matters—Pursuant to MSA Section 302(i)(3)

Agenda for the American Samoa REAC Meeting

Friday, June 23, 2023, 1 p.m. to 4 p.m. SST

1. Welcome and Introductions
2. About the American Samoa REAC
3. American Samoa Fishery Ecosystem Issues
   a. Climate Change and Fisheries
   i. Current American Samoa Fishery Stock Status
   ii. President Biden's Ocean Climate Action Plan
   iii. Climate Change in American Samoa
   b. American Samoa Bottomfish
   i. Stock Assessment and Status
   ii. Developing Catch Limits
4. American Samoa Conservation Issues
   a. Sand Mining in American Samoa
   b. American Samoa Shark Issues
   c. Report on Equity and Environmental Justice
   d. Proposed PRIA National Marine Sanctuary
   e. Discussion on Equity and Environmental Justice
   f. Update on Fishery Development
   i. Status of Super-Alia
   ii. Sustainable Fisheries Projects
5. Public Comment
6. Discussion and Recommendations
7. Other Business

Agenda for the FIAC Meeting

Friday, June 23, 2023, 1 p.m. to 5 p.m. SST

1. Welcome and Introductions
2. Status Report on Previous FIAC Recommendations
3. Roundtable Update on Fishing/ Market Issues/Impacts
4. Update on Hawaii Shortline Fishery Paper
5. False Killer Whale Take Reduction Team
6. Final Deep-Set & American Samoa Longline BiOps
7. Proposed Sanctuary Around the PRIA
8. Workshops on WCPFC Tropical Tunas
9. American Samoa-Based U.S. Purse Seine Fishery
   A. Updates From the Fleet
   B. Overview of American Samoa

Cannery Operations
10. American Samoa Longline Fishery
A. 2022–2023 Performance of the American Samoa Longline Fishery
B. WCPFC South Pacific Albacore Fishery Issues & Workplans
C. Impacts of Reducing American Samoa Large Vessel Prohibited Area
11. American Samoa Cost-Earnings Survey & Economic Analyses
12. American Samoa Bottomfish Update
13. American Samoa Fishing Industry Roundtable Discussion: Non-Members
14. Other Issues
15. Public Comment
16. Discussion and Recommendations

Agenda for the American Samoa AP Meeting

Saturday, June 24, 2023, 1 p.m. to 4 p.m. SST

1. Welcome and Introductions
2. Review of the Last AP Recommendations and Meetings
3. Feedback From the Fleet
A. American Samoa Fishermen Observations
B. AP Fishery Issues and Priorities
3. American Samoa Fishery Issues and Activities
A. 2022 Annual SAFE Report—American Samoa Module
B. American Samoa Bottomfish Stock Assessment WPSAR Report
C. 2023 Benchmark American Samoa Bottomfish Stock Assessment
D. Bottomfish Management Unit Species Revision
E. Final BiOp for the American Samoa Longline Fishery and Next Steps
4. Research Priorities
A. MSA Five-Year Research Priorities Review
B. Cooperative Research
5. Other Business
6. Public Comment
7. Discussion and Recommendations

Agenda for the 195th Council Meeting

Tuesday, June 27, 2023, 9:30 a.m. to 5 p.m. SST

1. Welcome and Introductions
2. Opening Protocol
3. Opening Remarks
4. Approval of the 195th CM Agenda
5. Approval of the 194th CM Meeting Minutes
6. Executive Director's Report
7. Agency Reports
A. National Marine Fisheries Service
1. Pacific Islands Regional Office
2. Pacific Islands Fisheries Science Center
B. NOAA Office of General Counsel Pacific Islands Section
C. Enforcement
1. U.S. Coast Guard
2. NOAA Office of Law Enforcement
3. NOAA Office of General Counsel Enforcement Section
D. U.S. State Department
E. U.S. Fish and Wildlife Service
F. Public Comment
G. Council Discussion and Action
8. American Samoa Archipelago
A. Motu Lipoti
B. Department of Marine and Wildlife Resources Report
C. 2022 American Samoa FEP Annual SAFE Report
D. 2022 Pelagic Annual SAFE Report—American Samoa Module
E. American Samoa Bottomfish
1. American Samoa Bottomfish Stock Assessment WPSAR Report
2. 2023 Benchmark American Samoa Bottomfish Stock Assessment
3. American Samoa FEP Bottomfish Management Unit Species Revision Amendment (Initial Action)
F. Advisory Group Report and Recommendations
1. Advisory Panel
2. Fishing Industry Advisory Committee
3. American Samoa REAC
4. Archipelagic Plan Team
5. Pelagic Plan Team
6. Social Science Planning Committee
7. Scientific & Statistical Committee
8. American Samoa Archipelago Standing Committee
G. Public Comment
H. Council Discussion and Action
9. Protected Species
A. Hawaii Deep-Set and American Samoa Longline Fishery Final BiOps
1. Overview of the Final BiOps
2. Implementation Plans for the BiOp Reasonable and Prudent Measures
B. False Killer Whale Take Reduction Team Meeting Report
C. Endangered Species Act and Marine Mammal Protection Act Updates
D. Advisory Group Report and Recommendations
1. Advisory Panel
2. Fishing Industry Advisory Committee
3. American Samoa REAC
4. Archipelagic Plan Team
5. Pelagic Plan Team
6. Scientific & Statistical Committee
E. Public Comment
F. Council Discussion and Action

Tuesday, June 27, 2023, 4:30 p.m. to 5 p.m. SST

Public Comment on Non-Agenda Items

Tuesday, June 27, 2023, 6 p.m. to 9 p.m. SST

Fishers Forum: Rising Tides and Changing Times

Wednesday, June 28, 2023, 8:30 a.m. to 5 p.m. SST

10. Program Planning and Research
A. National Legislative Report
B. Research Priorities
1. MSA Five-Year Research Priorities Review
2. Cooperative Research Review
C. National Standards Guidance and Review
1. National Standard 1 Reference Points Guidance
2. National Standards 4, 8, and 9 Advanced Notice of Proposed Rulemaking
D. Regional Communications & Outreach Report
E. Advisory Group Report and Recommendations
1. Advisory Panel
2. Fishing Industry Advisory Committee
3. American Samoa REAC
4. Archipelagic Plan Team
5. Pelagic Plan Team
6. Social Science Planning Committee
7. Non-Commercial Fisheries Advisory Committee
8. Federal Data Coordination and Research Committee
9. Scientific & Statistical Committee
G. Public Comment
H. Council Discussion and Action
11. Hawaii Archipelago & PRIA
A. Moku Pepa
B. Department of Land and Natural Resources/Division of Aquatic Resources Report
C. 2022 Hawaii Archipelago FEP Annual SAFE Report
D. Kona Crab
1. Specifying Annual Catch Limits for Kona Crab (Final Action)
2. MHI Kona Crab Status Determination Criteria (Final Action)
E. Options for Revising Uku Essential Fish Habitat (Initial Action)
F. Status Report on the Monument Expansion Area and Proposed PRIA Sanctuary
G. Advisory Group Report and Recommendations
1. Advisory Panel
2. Archipelagic Plan Team
3. Pelagic Plan Team
4. Fishing Industry Advisory Committee
5. Social Science Planning Committee
6. Scientific & Statistical Committee
H. Public Comment
I. Council Discussion and Action
12. Mariana Archipelago
A. Guam
1. Department of Agriculture/Division of Aquatic & Wildlife Resources Report
2. Isla Informe

3. Review of Guam Marine Conservation Plan (Action Item)
4. 2022 Annual SAFE Report-Guam Module
B. CNMI
1. Arongol Falú
2. Department of Land and Natural Resources/Division of Fish and Wildlife Report
3. Options for CNMI Bottomfish Annual Catch Limits (Final Action)
4. 2022 Annual SAFE Report-CNMI Module
C. Advisory Group Report and Recommendations
1. Advisory Panel
2. Archipelagic Plan Team
3. Pelagic Plan Team
4. Fishing Industry Advisory Committee
5. Scientific and Statistical Committee
D. Public Comment
E. Council Discussion and Action

Thursday, June 29, 2023, 8:30 a.m. to 12 p.m. SST

13. Pelagic & International Fisheries
A. 2022 Pelagic and PRIA Annual SAFE Report
B. International Fisheries Issues
1. 2nd WCPO Longline Management Workshop
2. WCPFC South Pacific Albacore Working Group
3. US Permanent Advisory Committee to the WCPFC
4. IATTC Science Advisory and General Advisory Committees
C. Council Pelagic Fisheries Research Plan
D. Advisory Group Report and Recommendations
1. Advisory Panel
2. Fishing Industry Advisory Committee
3. American Samoa REAC
4. Pelagic Plan Team
5. Social Science Planning Committee
6. Scientific & Statistical Committee
E. Public Comment
F. Council Discussion and Action
14. Administrative Matters
A. Financial Reports
B. Administrative Reports
C. Council Family Changes
D. Meetings and Workshops
E. CCC Meeting Report
F. Executive and Budget Standing Committee Report
G. Public Comment
H. Council Discussion and Action
15. Other Business

Non-emergency issues not contained in this agenda may come before the Council for discussion and formal Council action during its 195th meeting. However, Council action on regulatory issues will be restricted to those issues specifically listed in this document and any regulatory issue arising after publication of this document that requires emergency action under section 305(c) of the MSA, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: May 22, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–11216 Filed 5–24–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD034]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Skate Committee via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Wednesday, June 14, 2023, at 9 a.m.

ADDRESSES: Webinar registration URL information: *https://attendee.gotowebinar.com/register/5638961262804218718.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

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

SUPPLEMENTARY INFORMATION:

Agenda

The Skate Committee will meet to consider Advisory Panel input and provide final input on the development of a white paper regarding thorny skate. They will consider recent work by the Plan Development Team on the performance of skate possession limits and make recommendations to the Council on the development of possession limit alternatives to consider along with fishing year 2024–25 specifications. This could include revising the skate bait and wing possession limit, increasing the possession limit for barndoor skate, and allowing smooth skate possession. The Committee would need to recommend initiating a framework adjustment action if revising species-specific possession limits is recommended. Other business may be discussed as necessary.

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

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 6 U.S.C. 1801 *et seq.*

Dated: May 22, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–11215 Filed 5–24–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD035]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Skate Advisory Panel via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Monday, June 12, 2023, at 1 p.m.

ADDRESSES: Webinar registration URL information: *https://attendee.gotowebinar.com/register/6275718133240268631.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

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

SUPPLEMENTARY INFORMATION:

Agenda

The Skate Advisory Panel will meet to provide final input on the development of a white paper regarding thorny skate. They will consider recent work by the Plan Development Team on the performance of skate possession limits and make recommendations to the Committee on the development of possession limit alternatives to consider along with fishing year 2024–25 specifications. This could include revising the skate bait and wing possession limit, increasing the possession limit for barndoor skate, and/or allowing smooth skate possession. Other business may be discussed as necessary.

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

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: May 22, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–11214 Filed 5–24–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

U.S. Integrated Ocean Observing System (IOOS®) Advisory Committee Public Meeting

AGENCY: U.S. Integrated Ocean Observing System (IOOS®), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of a virtual meeting of the U. S. Integrated Ocean Observing System (IOOS®) Advisory Committee (Committee). The meeting is open to the public and an opportunity for oral and written comments will be provided.

DATES: The meeting will be held both virtually and in person from June 27, 2023 to June 29, 2023. Sessions will occur from 9 a.m. to 5 p.m. (PDT) on both June 27, 2023 and June 28, 2023. Session will occur from 9 a.m. to 1 p.m. (PDT) on June 29, 2023. Written public comments should be received by the Designated Federal Official by June 20, 2023.

ADDRESSES: The meeting will be held at 7700 Sandholdt Rd, Moss Landing, CA 95039. To register for the meeting and/or submit public comments, use this link *https://forms.gle/rFe9EE5XNnhw5VvE7* or email *Laura.Gewain@noaa.gov.* See **SUPPLEMENTARY INFORMATION** for instructions and other information about public participation.

FOR FURTHER INFORMATION CONTACT: Krisa Arzayus, Designated Federal Official, U.S. IOOS Advisory Committee, U.S. IOOS Program, 1315 East-West Highway, Silver Spring, MD 20910; Phone 240–533–9455; Fax 301–713–3281; email *krisa.arzayus@noaa.gov* or visit the U.S. IOOS Advisory Committee website at *http://ioos.noaa.gov/community/u-s-ioos-advisory-committee/.*

SUPPLEMENTARY INFORMATION: The Committee was established by the NOAA Administrator as directed by section 12304 of the Integrated Coastal and Ocean Observation System Act, part of the Omnibus Public Land Management Act of 2009 (Pub. L. 111–11), and reauthorized under the Coordinated Ocean Observations and Research Act of 2020 (Pub. L. No: 116–271). The Committee advises the NOAA Administrator and the Interagency Ocean Observation Committee (IOOC) on matters related to the responsibilities and authorities set forth in section 12302 and section 12304 of the Integrated Coastal and Ocean Observation System Act of 2009 and other appropriate matters as the Under Secretary may refer to the Committee for review and advice.

The Committee will provide advice on:

(a) administration, operation, management, and maintenance of the Integrated Coastal and Ocean Observation System (the System);

(b) expansion and periodic modernization and upgrade of technology components of the System;

(c) identification of end-user communities, their needs for information provided by the System, and the System's effectiveness in disseminating information to end-user communities and to the general public; and

(d) additional priorities, including—

(1) a national surface current mapping network designed to improve fine scale sea surface mapping using high frequency radar technology and other emerging technologies to address national priorities, including Coast Guard search and rescue operation planning and harmful algal bloom forecasting and detection that—

(i) is comprised of existing high frequency radar and other sea surface current mapping infrastructure operated by national programs and regional coastal observing systems;

(ii) incorporates new high frequency radar assets or other fine scale sea surface mapping technology assets, and other assets needed to fill gaps in coverage on United States coastlines; and

(iii) follows a deployment plan that prioritizes closing gaps in high frequency radar infrastructure in the United States, starting with areas demonstrating significant sea surface current data needs, especially in areas where additional data will improve Coast Guard search and rescue models;

(2) fleet acquisition for unmanned maritime systems for deployment and data integration to fulfill the purposes of this subtitle;

(3) an integrative survey program for application of unmanned maritime systems to the real-time or near real-time collection and transmission of sea floor, water column, and sea surface data on biology, chemistry, geology, physics, and hydrography;

(4) remote sensing and data assimilation to develop new analytical methodologies to assimilate data from the System into hydrodynamic models;

(5) integrated, multi-State monitoring to assess sources, movement, and fate of sediments in coastal regions;

(6) a multi-region marine sound monitoring system to be—

(i) planned in consultation with the IOOC, NOAA, the Department of the Navy, and academic research institutions; and

(ii) developed, installed, and operated in coordination with NOAA, the Department of the Navy, and academic research institutions; and

(e) any other purpose identified by the Administrator or the Council.

Matters To Be Considered

The meeting will focus on: (1) ocean observations and West Coast collaborations, and (2) continuing to work on the phase 2 recommendations from the committee workplan. The latest version of the agenda will be posted at *http://ioos.noaa.gov/community/u-s-ioos-advisory-committee/.* The times and the agenda topics described here are subject to change.

Public Comment Instructions

The meeting will be open to public participation (check agenda on website to confirm time). The Committee expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by the Designated Federal Official by June 20, 2023, to provide sufficient time for Committee review. Written comments received after June 20, 2023, will be distributed to the Committee, but may not be reviewed prior to the meeting date. To submit written comments, please fill out the brief form at *https://forms.gle/rFe9EE5XNnhw5VvE7* or email your comments, your name as it appears on your driver's license, and the organization/company affiliation you represent to Laura Gewain, *Laura.Gewain@noaa.gov.*

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Krisa Arzayus, Designated Federal Official by phone (240–533–9455) or email (*Krisa.Arzayus@noaa.gov*) or to Laura Gewain (*Laura.Gewain@noaa.gov*) by June 13, 2023.

Carl C. Gouldman,

Director, U.S. Integrated Ocean Observing System Office, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2023–11129 Filed 5–24–23; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–C–2023–0006]

Future Strategies in Anticounterfeiting and Antipiracy

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of public roundtable and request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO) is working across government and with the private sector to address counterfeiting and piracy. As part of that effort, the USPTO wants to learn what interested parties are observing and seeks their insights into anticounterfeiting and antipiracy strategies. In particular, the USPTO requests information on current anticounterfeiting and antipiracy strategies that have proven effective, as well as ideas for future strategies. To facilitate discussion among members of the public regarding the future of anticounterfeiting and antipiracy, the USPTO will host a roundtable on the topics listed in this notice on October 3. Any additional roundtables will be announced through the **Federal Register**.

DATES: Comments must be received by 11:59 p.m. ET on August 23, 2023.

ADDRESSES: You may submit comments and responses to the questions below by one of the following methods:

(1) *Electronic Submissions:* Submit all electronic comments via the Federal e-Rulemaking Portal at *www.regulations.gov* (at the homepage, enter ''PTO–C–2023–0006'' in the ''Search''' box, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments). The materials in the docket will not be edited to remove identifying or contact information, and the USPTO cautions against including any information in an electronic submission that the submitter does not want publicly disclosed. Attachments to electronic comments will be accepted only in Microsoft Word, Microsoft Excel, or Adobe PDF formats. Comments containing references to studies, research, and other empirical data that are not widely published should include copies of the referenced materials. Please do not submit additional materials. If you want to submit a comment with confidential business information that you do not wish to be made public, please submit the comment as a written/paper submission in the manner detailed below.

(2) *Written/Paper Submissions:* Send all written/paper submissions to: United States Patent and Trademark Office, Mail Stop OPIA, P.O. Box 1450, Alexandria, VA 22314. Submission packaging should clearly indicate that materials are responsive to Docket No. PTO–C–2023–0006, Office of Policy and International Affairs, Comment Request; Future Strategies in Anticounterfeiting and Antipiracy.

Submissions of Confidential Business Information: Any submissions containing confidential business information must be delivered in a sealed envelope marked ''confidential treatment requested'' to the address listed above. Submitters should provide an index listing the document(s) or information they would like the USPTO to withhold. The index should include information such as numbers used to identify the relevant document(s) or information, document title(s) and description(s), and relevant page numbers and/or section numbers within a document. Submitters should provide a statement explaining their grounds for objecting to the disclosure of the information to the public. The USPTO also requests that submitters of confidential business information include a non-confidential version (either redacted or summarized) of those confidential submissions that will be available for public viewing and posted on *www.regulations.gov.* In the event that the submitter cannot provide a non-confidential version of its submission, the USPTO requests that the submitter post a notice in the docket stating that it has provided the USPTO with confidential business information. Should a submitter fail to docket a non-confidential version of its submission or post a notice that confidential business information has been provided, the

USPTO will note the receipt of the submission on the docket with the submitter's organization or name (to the degree permitted by law) and the date of submission.

Instructions for and Information on the Public Roundtable Event

At least one roundtable event will be held at the USPTO, Madison Building, 600 Dulany Street, Alexandria, VA 22314, and there will be an option to attend virtually. The roundtable will begin at 10 a.m. and end at 1 p.m. Registration for both in-person and virtual options is available, along with the agenda, at *www.uspto.gov/about-us/events/roundtable-future-strategies-anticounterfeiting-and-antipiracy.* Although the USPTO strongly encourages advance registration, attendees may also register at the door one hour prior to the beginning of the roundtable. The platform for attending virtually will be made available at *www.uspto.gov/about-us/events/roundtable-future-strategies-anticounterfeiting-and-antipiracy* along with instructions for attending.

The roundtable will be physically accessible to people with disabilities. Individuals requiring accommodation, such as sign language interpretation or other ancillary aids, should communicate their needs at least seven business days prior to the roundtable to Velica Dunn in the USPTO's Office of Policy and International Affairs at 571–272–9300, at *Velica.Dunn@uspto.gov*, or by postal mail addressed to: Mail Stop OPIA, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22314–1450, ATTN: Velica Dunn. Attendees joining in person should arrive at least a half hour prior to the start of the roundtable and must present valid government-issued photo identification upon arrival.

FOR FURTHER INFORMATION CONTACT: Ameen Imam, USPTO, Office of Policy and International Affairs, at 571–272–9300 or *ameen.imam@uspto.gov.* Please direct media inquiries to the USPTO's Office of the Chief Communications Officer at 571–272–8400.

SUPPLEMENTARY INFORMATION: Counterfeited and pirated products are readily available to U.S. consumers through all forms of commerce, including physical markets, ecommerce, and social media sites. Many of these counterfeited and pirated products endanger public health and safety, as well as national security. The scope of counterfeited and pirated products seeking entry into the U.S. market is significant. For instance, in fiscal year (FY) 2021, U.S. Customs and Border Protection made over 27,000 seizures with an estimated manufacturer's suggested retail price of over $3.3. billion, which represents an increase of 152% over the previous fiscal year. *See* U.S. Customs and Border Protection, ''FY 2021 IPR [Intellectual Property Rights] Seizure Statistics,'' available at *www.cbp.gov/document/annual-report/fy-2021-ipr-seizure-statistics.* The trade in counterfeited and pirated products also negatively impacts American innovation and erodes the competitiveness of U.S. manufacturers and workers. For example, digital video piracy conservatively causes lost domestic revenues of at least $29.2 billion and as much as $71.0 billion annually. Furthermore, digital video piracy not only causes lost revenues to the content industry, but also ''results in losses to the U.S. economy of between 230,000 and 560,000 jobs and between $47.5 billion and $115.3 billion in reduced gross domestic product (GDP) each year.'' *See* U.S. Chamber of Commerce, ''Quick Take: Your Primer on Digital Piracy and Its Impact on the U.S. Economy,'' available at *www.uschamber.com/intellectual-property/quick-take-your-primer-digital-piracy-and-its-impact-the-us-economy.*

The COVID–19 pandemic has provided fertile ground for an increase in the sale and distribution of counterfeited, especially those that are health-related. For example, U.S. Customs and Border Protection seized 35 million counterfeit face masks in FY 2021. It is estimated that the trade in counterfeited and pirated goods has risen steadily in recent years and stands at 3.3% of global trade. *See* Organization for Economic Cooperation and Development iLibrary, ''Trends in Trade in Counterfeit and Pirated Goods,'' available at *www.oecd-ilibrary.org/trade/trends-in-trade-in-counterfeit-and-pirated-goods_g2g9f533-en.* The USPTO has worked to address the issue of counterfeiting and piracy through various efforts, including its Intellectual Property Attaché Program, its public awareness programs, and technical assistance provided to trade partners. Through these efforts, the USPTO has observed that counterfeiters and those trading in counterfeited and pirated goods continually evolve their methods to evade detection so they can expand the flow of dangerous products. Rights holders, online platforms, physical markets, and all other stakeholders in the stream of commerce have also used evolving methods to combat the increasing availability of counterfeited and pirated products made accessible directly to consumers.

The USPTO seeks information from interested parties regarding their observations and insights into the future of anticounterfeiting and antipiracy strategies. In particular, the USPTO requests information from consumers, intellectual property rights holders, online marketplaces and platforms, physical marketplaces, parties who provide goods to the public, consumers, and other private sector stakeholders on the evolution of counterfeiting and piracy in recent years and ways to identify and develop future anticounterfeiting and antipiracy strategies.

Request for Information

The USPTO requests information from all interested parties, including stakeholders, trademark and copyright owners affected by the sale of counterfeited and pirated goods, online and physical sellers and marketplaces, other online platforms, consumers, and other parties engaged in the fight against counterfeited and pirated goods entering the stream of commerce and reaching the hands of consumers.

Respondents may address any, all, or none of the following questions. One should identify, where possible, the question(s) the comments are intended to address. Respondents may organize their submissions in any manner. Please note that respondents have the opportunity to request that any information contained in a submission be treated as confidential business information and must certify that such information is confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and provided only by mail carrier (Please see the **ADDRESSES** section above).

The USPTO welcomes all input relevant to future strategies in the fight to prevent counterfeited and pirated goods from entering the stream of commerce and reaching the hands of consumers. In particular, we seek the following information:

1. Please identify current anticounterfeiting and antipiracy strategies and any trends you see in how often these practices are guiding the public's plans for addressing these issues in the future.

2. Please identify the types of harms you have observed from sales of counterfeited and pirated goods.

3. Please indicate how consumers are educated about the harms and dangers that may result from the use and sale of counterfeited or pirated products.

4. Please describe current anticounterfeiting and antipiracy strategies that may be available, identifying which elements have proven successful and those that have not. Your answer should identify the targets of anticounterfeiting and antipiracy efforts, such as ecommerce platforms, physical markets, and social media.

5. Please identify the challenges you anticipate in the ongoing fight to prevent counterfeited and pirated goods from entering the stream of commerce and reaching the hands of consumers. Please add information on how those challenges might be addressed.

6. What patterns and trends have you observed in counterfeiting and piracy during the COVID–19 pandemic? Do you anticipate that these patterns and trends will continue past the pandemic?

7. What patterns and trends have you observed in counterfeiting and piracy due to shifts in the economy? Do you anticipate that these patterns and trends will continue? And if so, what impact will they have on any current and future strategic plans to combat counterfeiting and piracy?

8. Please indicate whether any strategic plans to combat counterfeiting and piracy might include collaboration with private or public parties, and if a strategic plan is not collaborative, please explain why not. If a strategic plan does include collaboration, please describe the anticounterfeiting and antipiracy strategies employed in the collaboration.

9. Are you considering new collaborative efforts to combat counterfeiting and piracy? What factors will affect your decision? How might those future collaborations be comprised?

10. Please identify effective technologies for use in the fight to prevent counterfeited and pirated goods from entering the stream of commerce and reaching the hands of consumers, such as counterfeited product identification devices or advanced algorithms to secure supply chains and identify counterfeited goods online. Please explain how any anticipated strategies will improve an overall anticounterfeiting and antipiracy strategy.

11. Please describe how online enforcement activities intersect with trademark and copyright laws or procedures. Do online enforcement strategies include employing existing trademark laws to combat online counterfeiting? Do online enforcement strategies use existing copyright laws to combat online piracy? If so, please describe in detail those activities, and provide any suggestions for maximizing these practices.

12. Please describe any fraudulent documentation or materials you have observed in the furtherance of online counterfeiting and piracy activity. For example, after reporting infringements to platforms, have you seen fraudulent materials attached to a counter-notification?

13. Please provide any data you have on counterfeiting and piracy, including any data showing how the activities may adversely or disproportionately affect certain industries or companies.

14. Please share your thoughts on what more the USPTO or government and private parties can do to ensure entities, including under-resourced individuals and small businesses, can readily enforce their intellectual property rights against counterfeited or pirated goods. What other solutions have you seen or can you envision?

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2023–10770 Filed 5–24–23; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Department of the Air Force

Department of the Air Force Scientific Advisory Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of the Air Force Scientific Advisory Board, Department of the Air Force.

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice in accordance with chapter 10 of title 5, United States Code, to announce that the following meeting of the Department of the Air Force Scientific Advisory Board will take place.

DATES: Closed to the public. 15 June 2023 from 8:15 a.m.–3:45 p.m. Eastern Time.

ADDRESSES: The meeting will be held at Gen. Jacob E. Smart Conference Center, Joint Base Andrews, 1359 Arkansas Road, Joint Base Andrews, MD 20762.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Blythe Andrews, (240) 470–4566 (Voice), *blythe.andrews@us.af.mil* (Email). Mailing address is 1500 West Perimeter Road, Ste. #3300, Joint Base Andrews, MD 20762. Website: *https://www.scientificadvisoryboard.af.mil/.* 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, United States Code (as enacted on Dec. 27, 2022, by section 3(a) of Pub. L. 117–286) (formerly the Federal Advisory Committee Act, 5 U.S.C., appendix), section 552b of title 5, United States Code (popularly 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 this Department of the Air Force Scientific Advisory Board meeting is for the Parent Board to receive final outbriefs on the FY23 studies: Assessing Advances Aerospace Mobility Concepts (AMC), Developmental and Operational Testing (DOT), Generative Artificial Intelligence (GAI), Air and Surface Moving Target Indication (MTI) and Scalable Approaches to Resilient Air Operations (RAO).

Agenda: [All times are Eastern Time] 8:15 a.m.–9:15 a.m. Opening Remarks and Status Update 9:15 a.m.–10:15 a.m. DOT 10:15 a.m.–10:30 a.m. Break 10:30 a.m.–11:30 a.m. GAI 11:30 a.m.–12:30 p.m. Lunch 12:30 p.m.–1:30 p.m. Scalable Approaches to RAO 1:30 p.m.–2:30 p.m. Assessing Advanced AMC 2:30 p.m.–2:45 p.m. Break 2:45 p.m.–3:45 p.m. Air and Surface MTI Brief 3:45 p.m.–4:00 p.m. Closing Remarks. In accordance with section 1009(d) of title 5, United States Code (formerly sec. 10(d) of the Federal Advisory Committee Act, 5 U.S.C. appendix) and 41 CFR 102–3.155, the Administrative Assistant of the Air Force, in consultation with the Air Force General Counsel, has agreed that the public interest requires this meeting of the United States Department of the Air Force Scientific Advisory Board be closed to the public because it will involve discussions involving classified matters covered by section 552b(c)(1) of title 5, United States Code.

Written Statements: Any member of the public wishing to provide input to the United States Department of the Air Force Scientific Advisory Board should submit a written statement in accordance with 41 CFR 102–3.140(c), section 1009(a)(3) of title 5, United States Code (formerly sec. 10(a)(3) of the Federal Advisory Committee Act), and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed above at any time. The Designated Federal Officer will review all submissions with the Department of the Air Force Scientific Advisory Board Chairperson and ensure they are provided to members of the Department of the Air Force Scientific Advisory Board.

Written statements received after the meeting that is the subject of this notice may not be considered by the Scientific Advisory Board until the next scheduled meeting.

Tommy W. Lee,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2023–11107 Filed 5–24–23; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF ENERGY

[Docket No. 15–96–LNG]

Statement of Change in Control; Port Arthur LNG, LLC

AGENCY: Office of Fossil Energy and Carbon Management, Department of Energy.

ACTION: Notice of change in control.

SUMMARY: The Office of Fossil Energy and Carbon Management (FECM) (formerly the Office of Fossil Energy) of the Department of Energy (DOE) gives notice of receipt of a Statement of Change in Control (Statement) filed by Port Arthur LNG, LLC (PALNG) on April 25, 2023. The Statement describes an expected change in PALNG's upstream ownership. The Statement was filed under the Natural Gas Act (NGA).

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed electronically as detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, June 9, 2023.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, DOE has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid-19 pandemic. DOE is currently accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact Office of Resource Sustainability staff at (202) 586–4749 or (202) 586–7893 to discuss the need for alternative arrangements. Once the Covid-19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

FOR FURTHER INFORMATION CONTACT:

Jennifer Wade or Peri Ulrey, U.S. Department of Energy (FE–34) Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability, Office of Fossil Energy and Carbon Management, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–4749 or (202) 586–7893, *jennifer.wade@hq.doe.gov* or *peri.ulrey@hq.doe.gov.*

Cassandra Bernstein, U.S. Department of Energy (GC–76) Office of the Assistant General Counsel for Energy Delivery and Resilience, Forrestal Building, Room 6D–033, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793, *cassandra.bernstein@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Summary of Change in Control

PALNG states that, on March 20, 2023, Sempra LNG Holding, LP (Sempra LNG Holding) (an indirect wholly-owned subsidiary of Sempra Infrastructure Partners, LP (SI Partners) and an upstream owner of PALNG), entered into an equity purchase and sale agreement. Under the terms and conditions of the agreement, KKR Denali Holdco LLC (KKR-Denali) [1] will purchase from Sempra LNG Holding a non-controlling 35.7% equity interest in Sempra PALNG Holdings, LLC (Sempra PALNG Member), with an option to increase its purchased interest up to a non-controlling 69.5% equity interest in Sempra PALNG Member (Transaction). PALNG states that Sempra PALNG Member directly holds 70% of the equity interest in Port Arthur Liquefaction Holdings, LLC (PA Liquefaction Holdings), which directly owns 100% of the equity interest in PALNG.

According to PALNG, following consummation of the Transaction, Sempra LNG Holding will be the controlling 30.5–64.3% equity interest holder in Sempra PALNG Member, and KKR-Denali will be the non-controlling 35.7–69.5% equity interest holder in Sempra PALNG Member with certain non-controlling member protections. PALNG states that Sempra LNG Holding, and indirectly its parent SI Partners, will continue to be the operator of PALNG through Sempra PALNG Member. PALNG further states that the Transaction is expected to close in the third quarter of 2023.

A chart illustrating the ownership structure of PALNG before and after the Transaction is attached to the Statement as Exhibit A and B, respectively. Additional details can be found in the Statement, posted on the DOE website at: *www.energy.gov/sites/default/files/2023-05/Port%20Arthur%20LNG%20LLC%20CIC.pdf.*

DOE Evaluation

DOE will review the Statement in accordance with its Procedures for Changes in Control Affecting Applications and Authorizations to Import or Export Natural Gas (CIC Procedures).[2] Consistent with the CIC Procedures, this notice addresses PALNG's existing authorization to export liquefied natural gas (LNG) to non-free trade agreement (non-FTA) countries, granted in DOE/FE Order No. 4372, as amended.[3] If no interested person protests the change in control and DOE takes no action on its own motion, the proposed change in control will be deemed granted 30 days after publication in the **Federal Register**. If one or more protests are submitted, DOE will review any motions to intervene, protests, and answers, and will issue a determination as to whether the proposed change in control has been demonstrated to render the underlying authorizations inconsistent with the public interest.

Public Comment Procedures

Interested persons will be provided 15 days from the date of publication of this notice in the **Federal Register** to move to intervene, protest, and answer PALNG's Statement.[4] Protests, motions to intervene, notices of intervention, and written comments are invited in response to this notice only as to the change in control described in the Statement. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by DOE's regulations in 10 CFR part 590, including the service requirements.

As noted, DOE is only accepting electronic submissions at this time. Please email the filing to *fergas@hq.doe.gov.* All filings must include a

[1] PALNG states that KKR-Denali is a newly formed Delaware limited liability company under the management and control of KKR & Co. Inc., and that DOE/FECM previously reviewed KKR & Co. Inc.'s ownership interest in PALNG without objection (citing DOE Response to Statement of Change in Control, Port Arthur LNG, LLC, *et al.,* Docket Nos. 15–53–LNG, 15–96–LNG, 18–162–LNG, *et al.* (June 29, 2021)).

[2] 79 FR 65541 (Nov. 5, 2014).

[3] PALNG's Statement also applies to its existing authorization to export LNG to FTA countries in Docket Nos. 15–53–LNG and 18–162–LNG, but DOE will respond to that portion of the filing separately pursuant to the CIC Procedures, 79 FR 65542.

[4] Intervention, if granted, would constitute intervention only in the change in control portion of these proceedings, as described herein.

reference to ''Docket No. 15–96–LNG'' in the title line, or ''Port Arthur LNG, LLC Change in Control'' in the title line.

Please Note: Please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner.

The Statement, and any filed protests, motions to intervene, notices of intervention, and comments will be available electronically on the DOE website at: *www.energy.gov/fecm/regulation.*

Signed in Washington, DC, on May 22, 2023.

Amy R. Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability.

[FR Doc. 2023–11141 Filed 5–24–23; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10956–01–R9]

Notice of Availability of Proposed National Pollutant Discharge Elimination System (NPDES) General Permit for Low Threat Discharges in Navajo Nation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA), Region 9 is proposing to reissue a general National Pollutant Discharge Elimination System (NPDES) permit for water discharges from facilities classified as low threat located in the Navajo Nation (Permit No. NNG990001). The permit will be reissued upon completion of the notice and comment period and after due consideration has been given to all comments received. The permit, upon issuance, will be valid for five years. Use of a general NPDES permit in the location described above allows EPA and dischargers to allocate resources in a more efficient manner, obtain timely permit coverage, and avoid issuing resource intensive individual permits to each facility, while simultaneously providing greater certainty and efficiency to the regulated community and ensuring consistent permit conditions for comparable facilities. This notice announces the availability of the proposed general NPDES permit and the corresponding fact sheet for public comment which can be found at EPA Region 9's website at: *https://www.epa.gov/npdes-permits/npdes-permits-epas-pacific-southwest-region-9*.

DATES: Comments on the proposed NPDES general permit must be received by June 26, 2023.

ADDRESSES: The proposed NPDES general permit, related documents, and instructions for submitting comments are available for public inspection online at: *https://www.epa.gov/npdes-permits/proposed-reissuance-npdes-general-permit-low-threat-discharge-navajo-nation-nng990001.* If there are issues accessing the website, please contact EPA via the contact information below.

FOR FURTHER INFORMATION CONTACT: Gary Sheth, EPA Region 9, Water Division, NPDES Permits Office; telephone (415) 972–3516; email address: *sheth.gary@epa.gov.* The proposed NPDES general permit, fact sheet, and other related documents in the administrative record are on file and may be inspected in person any time between 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays, at the following address: U.S. EPA Region 9, NPDES Permits Section, Water Division, 75 Hawthorne Street, San Francisco, CA 94105–3901.

SUPPLEMENTARY INFORMATION:

A. Does this action apply to me?

The proposed NPDES General Permit for Low Threat Discharges in Navajo Nation is intended to provide coverage for discharges of certain types of wastewater that contain only low levels of pollutants and are below a specified volume or for a limited time, to surface waters within the tribal lands of Navajo Nation (which includes areas within Arizona, New Mexico and Utah).

B. How can I submit comments?

- Submit comments by the deadline identified in this **Federal Register** notice.
- No public hearing is planned. If you would like to request a hearing, please see instructions at: *https://www.epa.gov/npdes-permits/npdes-permits-epas-pacific-southwest-region-9*.
- Provide your comments in writing via instructions found here: *https://www.epa.gov/npdes-permits/npdes-permits-epas-pacific-southwest-region-9*. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please reach out by email or telephone to the EPA contact listed above. EPA encourages electronic submittals of comments, but if you are unable to submit electronically or need other assistance, please reach out to the contact information above.
- Please note ''General Permit for Low Threat Discharges in Navajo Nation'' in the subject line of any email submittal and include documentation to support your comments.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: May 19, 2023.

Tomas Torres,

Director, Water Division, EPA Region 9.

[FR Doc. 2023–11217 Filed 5–24–23; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 9 a.m., Thursday, June 8, 2023.

PLACE: You may observe this meeting in person at 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or virtually. If you would like to observe, at least 24 hours in advance, visit *FCA.gov*, select ''Newsroom,'' then select ''Events.'' From there, access the linked ''Instructions for board meeting visitors'' and complete the described registration process.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The following matters will be considered:

- Approval of May 11, 2023, Minutes
- Quarterly Report on Economic Conditions and Farm Credit System Condition and Performance
- Semiannual Report on Office of Examination Operations

CONTACT PERSON FOR MORE INFORMATION: If you need more information or assistance for accessibility reasons, or have questions, contact Ashley Waldron, Secretary to the Board. Telephone: 703–883–4009. TTY: 703–883–4056.

Ashley Waldron,

Secretary to the Board.

[FR Doc. 2023–11350 Filed 5–23–23; 4:15 pm]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Privacy Act of 1974; System of Records

AGENCY: Farm Credit Administration.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, notice is hereby given that the Farm Credit Administration (FCA or Agency) is amending an existing system of records, FCA–16—Examiner Training and Education Records—FCA. The Examiner Training and Education Records—FCA system is used to track pre-commissioned examiners' training and progression towards becoming commissioned examiners. The Agency is updating the notice to rename and broaden the overall purpose of the system, including maintaining performance related information for FCA examiners and is updating the categories of records and individuals maintained in the system to reflect that modified purpose.

DATES: You may send written comments on or before June 26, 2023. FCA filed an amended System Report with Congress and the Office of Management and Budget on April 20, 2023. This notice will become effective without further publication on July 5, 2023 unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESSES: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the FCA's website. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at *reg-comm@fca.gov.*
- *FCA website: http://www.fca.gov.* Click inside the ''I want to . . .'' field, near the top of the page; select ''comment on a pending regulation'' from the dropdown menu; and click ''Go.'' This takes you to an electronic public comment form.
- *Mail:* Kevin Kramp, Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of comments we receive at our office in McLean, Virginia, or from our website at *http://www.fca.gov.* Once you are in the website, click inside the ''I want to . . .'' field, near the top of the page; select ''find comments on a pending regulation'' from the dropdown menu; and click ''Go.'' This will take you to the Comment Letters page, where you can select the SORN for which you would like to read public comments. The comments will be posted as submitted but, for technical reasons, items such as logos and special characters may be omitted. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce internet spam.

FOR FURTHER INFORMATION CONTACT: Jane Virga, Privacy Act Officer, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TTY (703) 883–4019.

SUPPLEMENTARY INFORMATION: This publication satisfies the requirement of the Privacy Act of 1974 that agencies publish a system of records notice in the **Federal Register** when there is a revision, change, or addition to the system of records. The substantive changes and modifications to the currently published version of FCA–16—Examiner Training and Education Records—FCA include:

1. Updating the name of the system to reflect the expanded purpose—FCA–16—FCA Examiner Career Management, Training, and Performance Feedback Records—FCA.
2. Updating the categories of records to ensure they are consistent with the updated purpose.
3. Updating the categories of individuals to ensure they are consistent with the updated purpose.
4. Expanding and clarifying how records may be stored and retrieved.

The amended system of records is: FCA–16—Examiner Records—FCA. As required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, FCA sent notice of this proposed system of records to the Office of Management and Budget, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate. The notice is published in its entirety below.

SYSTEM NAME AND NUMBER:

FCA–16—Examiner Career Management, Training, and Performance Feedback Records—FCA.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Examination, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

SYSTEM MANAGER(S):

Director, Office of Examination, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252.

PURPOSE(S) OF THE SYSTEM:

FCA uses information in this system of records to (i) track pre-commissioned examiners' training and progression towards becoming commissioned examiners; (ii) collect and maintain performance feedback on examination activities and projects; and (iii) collect and maintain records related to the FCA Office of Examination examiner career development program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FCA pre-commissioned and commissioned examiners, and their supervisors.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information about FCA pre-commissioned and commissioned examiners related to career development, training and education history, and progress towards commissioning. Records include but are not limited to: (a) individual name, employee ID number, or similar; (b) employment related information including title, position, grade, start date, supervisor's name, and performance reports; (c) skills inventory form, professional licensees, certifications and memberships, training program record, formal training record, and results of commissioning test. Certain records included in an examiner's file are considered copies and are accounted for in OPM's government-wide system of records notice, OPM/GOVT–1—General Personnel Records, as well as FCA–1 and FCA–19. In some cases, this notice incorporates by reference but does not repeat all the information contained in those systems.

RECORD SOURCE CATEGORIES:

Current and former FCA examiners that are the subject of the record, the examiner's supervisor, examiners-in-charge from examinations where the FCA examiner served as a team member; members of the examiner's supervision panel, and other current and former FCA employees with knowledge of the FCA examiner's performance on a specific examination or project, or their skills or knowledge as it pertains to their role as an FCA examiner.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

See the ''General Statement of Routine Uses'' (64 FR 8175).

Disclosure to consumer reporting agencies:

None.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in files folders as well as electronically in a computerized database.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name.

POLICIES AND PROCEDURES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained in accordance with the National Archives and Records Administration's General Records Schedule requirements, and with the FCA Comprehensive Records Schedule.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

FCA implements multiple layers of security to ensure access to records is limited to those with need-to-know in support of their official duties. Records are physically safeguarded in a secured environment using locked file rooms, file cabinets, or locked offices and other physical safeguards. Computerized records are safeguarded through use of user roles, passwords, firewalls, encryption, and other information technology security measures.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

CONTESTING RECORD PROCEDURES:

Direct requests for amendments to a record to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

NOTIFICATION PROCEDURES:

Address inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, McLean, VA 22102–5090.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Federal Register Vol. 64, No. 100/ Tuesday, May 25, 1999 page 21875.

Vol. 70, No. 183/Thursday, September 22, 2005, page 55621.

Vol. 85, No. 148/Friday, July 31, 2020, page 46100.

Dated: May 22, 2023.

Ashley Waldron,

Secretary, Farm Credit Administration Board.

[FR Doc. 2023–11153 Filed 5–24–23; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0906, OMB 3060–1240; FR ID 141627]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it can further reduce the information collection burden for small business concerns with fewer than 25 employees.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before June 26, 2023.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0906.

Title: Annual DTV Ancillary/ Supplemental Services Report for DTV Stations, FCC Form 2100, Schedule G; 47 CFR 73.624(g).

Form Number: FCC Form 2100, Schedule G (formerly FCC Form 317).

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 7,175 respondents, 14,350 responses.

Frequency of Response: Recordkeeping requirement, annual reporting requirement.

Obligation to Respond: Required to obtain benefits—Statutory authority for this collection of information is contained in sections 154(i), 303, 336 and 403 of the Communications Act of 1934, as amended.

Estimated Time per Response: 2–4 hours.

Total Annual Burden: 43,050 hours.

Total Annual Cost: $1,076,100.

Needs and Uses: Each licensee/permittee of a digital television (DTV) station that provides feeable ancillary or supplementary services during the relevant reporting period must file on an annual basis FCC Form 2100, Schedule G. Specifically, required filers include the following (but we generally refer to all such entities herein as a ''DTV licensee/permittee''): A licensee of a digital commercial or noncommercial educational (NCE) full power television (TV) station, low power television (LPTV) station, TV translator or Class A TV station. A permittee operating pursuant to digital special temporary authority (STA) of a commercial or NCE full power TV station, LPTV station, TV translator or Class A TV station.

Each DTV licensee/permittee must report the feeable ancillary or supplementary services provided at any time during the reporting cycle. Specifically, a DTV licensee/permittee must include the following in its annual report: a brief description of the feeable ancillary or supplementary services provided; the gross revenues received from such services during the applicable period and the amount of bitstream used to provide such services during the applicable period.

Concurrent with the submission of FCC Form 2100, Schedule G, each DTV licensee/permittee is required to remit a payment to the Commission, via FCC Form 159 (see OMB Control No. 3060–0589), in the amount of five percent of the gross revenues derived from the provision of its ancillary or supplementary services.

Each DTV licensee/permittee is required to retain the records supporting the calculation of the fees due for three years from the date of remittance of fees. Each NCE licensee/permittee must also retain for eight years documentation sufficient to show that its entire bitstream was used ''primarily'' for NCE broadcast services on a weekly basis.

OMB Control Number: 3060–1240.

Title: FCC Form 2100, Application for Media Bureau Video Service Authorization, Schedule 387 (Transition Progress Report).

Form Number: FCC Form 2100, Schedule 387 (Transition Progress Report Form).

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 1,000 respondents; 3,333 responses.

Estimated Time per Response: 2 hours (1 hour to complete the form, 1 hour to respond to technical questions).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 6,666 hours.

Total Annual Costs: No costs.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Public Law 112–96, 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 Stat. 156 (2012) (Spectrum Act).

Needs and Uses: By Public Notice released January 10, 2017, The Incentive Auction Task Force and Media Bureau Release Transition Progress Report Form and Filing Requirements for Stations Eligible for Reimbursement from the TV Broadcast Relocation Fund and Seek Comment on the Filing of the Report by Non-Reimbursable Stations, MB Docket No. 16–306, Public Notice, 32 FCC Rcd 256 (IATF/Med. Bur. 2017). The Incentive Auction Task Force and Media Bureau described the information that must be provided in the adopted FCC Form 2100, Schedule 387 (Transition Progress Report Form) to be filed by Reimbursable Stations and when and how the Transition Progress Reports must be filed. We also proposed to require broadcast television stations that are not eligible to receive reimbursement of associated expenses from the Reimbursement Fund (Non-Reimbursable Stations), but must transition to new channels as part of the Commission's channel reassignment plan, to file progress reports in the same manner and on the same schedule as Reimbursable Stations, and sought comment on that proposal. By Public Notice released May 18, 2017. The Incentive Auction Task Force and Media Bureau Adopt Filing Requirements for the Transition Progress Report Form by Stations That Are Not Eligible for Reimbursement from the TV Broadcast Relocation Fund, MB Docket No. 16–306, Public Notice, DA 17–484 (rel. May 18, 2017) (referred to collectively with Public Notice cited above as Transition Progress Report Public Notices). We concluded that Non-Reimbursable Stations will be required to file Transition Progress Reports following the filing procedures adopted for Reimbursable Stations.

The Commission is seeking a three-year extension for this information collection from the Office of Management and Budget (OMB) approval for FCC Form 2100, Schedule 387 (Transition Progress Report).

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–11118 Filed 5–24–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 142415]

Deletion of Item From May 18, 2023 Open Meeting

The following item was released by the Commission on May 17, 2023 and deleted from the list of items scheduled for consideration at the Thursday, May 18, 2023, Open Meeting. The item was previously listed in the Commission's Sunshine Notice on Thursday, May 11, 2023.

4	Media	*Title:* Restricted Adjudicatory Matter. *Summary:* The Commission will consider a restricted adjudicatory matter.

Federal Communications Commission.

Dated: May 18, 2023.

Marlene Dortch,

Secretary.

[FR Doc. 2023–11116 Filed 5–24–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1204; FR ID 141569]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before July 24, 2023. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1204.

Title: Deployment of Text-to-911.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, and State, Local, or Tribal Government.

Number of Respondents and Responses: 4,106 respondents; 55,034 responses.

Estimated Time per Response: 1–8 hours.

Frequency of Response: One-time; annual reporting requirements and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these collections is contained in 47 U.S.C. 151, 152, 154(i), 154(j), 154(o), 251(e), 303(b), 303(g), 303(r), 316, and 403, and section 4 of the Wireless Communications and Public Safety Act of 1999, Public Law 106–81, sections 101 and 201 of the New and Emerging Technologies 911 Improvement Act of 2008, Public Law 110–283, and section 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, as amended 47 U.S.C. 615a, 615a–1, 615b, 615c.

Total Annual Burden: 90,377 hours.

Total Annual Cost: None.

Needs and Uses: Deployment of Text-to-911. In a Second Report and Order released on August 13, 2014, FCC 14–118, published at 79 FR 55367, September 16, 2014, the Commission adopted final rules—containing information collection requirements—to enable the Commission to implement text-to-911 service. The text-to-911 rules provide enhanced access to emergency services for people with disabilities and fulfilling a crucial role as an alternative means of emergency communication for the general public in situations where sending a text message to 911 as opposed to placing a voice call could be vital to the caller's safety. The Second Report and Order adopted rules to commence the implementation of text-to-911 service with an initial deadline of December 31, 2014 for all covered text providers to be capable of supporting text-to-911 service. The Second Report and Order also provided that covered text providers would then have a six-month implementation period. They must begin routing all 911 text messages to a Public Safety Answering Point (PSAP) by June 30, 2015 or within six months of a valid PSAP request for text-to-911 service, whichever is later. To implement these requirements, the Commission seeks to collect information primarily for a database in which PSAPs voluntarily register that they are technically ready to receive text messages to 911. As PSAPs become text-ready, they may either register in the PSAP database (or submit a notification to PS Docket Nos. 10–255 and 11–153), or provide other written notification reasonably acceptable to a covered text messaging provider. Either measure taken by the PSAP constitutes sufficient notification pursuant to the rules in the Second Report and Order. PSAPs and covered text providers may also agree to an alternative implementation timeframe (other than six months). Covered text providers must notify the FCC of the dates and terms of any such alternate timeframe within 30 days of the parties' agreement. Additionally, the rules adopted by the Second Report and Order include other information collections for third party notifications necessary for the implementation of text-to-911, including notifications to consumers, covered text providers, and the Commission. These notifications are essential to ensure that all affected parties are aware of the limitations, capabilities, and status of text-to-911 services. These information collections enable the Commission to meet the objectives for implementation of text-to-911 service and for compliance by covered text providers with the six-month implementation period in furtherance of the Commission's core mission to ensure the public's safety. These rules are codified at 47 CFR 9.10(q).

Real Time Text. In a Report and Order and Further Notice of Proposed Rulemaking, released on December 16, 2016, in CG Docket No. 16–145 and GN Docket No. 15–178, the Commission amended its rules to facilitate a transition from text telephone (TTY) technology to RTT as a reliable and interoperable universal text solution over wireless internet protocol (IP) enabled networks for people who are deaf, hard of hearing, deaf-blind, or have a speech disability. Section 9.10(c) of the rules requires Commercial Mobile Radio Service (CMRS) providers to be "capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, *e.g.,* through the use of [TTY devices]." Additionally, "CMRS providers that provide voice communications over IP facilities are not required to support 911 access via TTYs if they provide 911 access via [RTT] communications, in accordance with 47 CFR part 67, except that RTT support is not required to the extent that it is not achievable for a particular manufacturer to support RTT on the provider's network." See 47 CFR 9.10(c). The Commission's Report and Order provides that once a PSAP is so capable, the requested service provider

must begin delivering RTT communications in an RTT format within six months after a valid request is made—to the extent the provider has selected RTT as its accessible text communication method.

Federal Communications Commission.

Marlene Dortch,

Secretary. Office of the Secretary.

[FR Doc. 2023–11117 Filed 5–24–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0685; FR ID 141930]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before July 24, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0685.

Title: Updating Maximum Permitted Rates for Regulated Services and Equipment, FCC Form 1210; Annual Updating of Maximum Permitted Rates for Regulated Cable Services, FCC Form 1240.

Form Number: FCC Form 1210 and FCC Form 1240.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Government.

Number of Respondents and Responses: 3,400 respondents; 5,350 responses.

Estimated Time per Response: 1 hour to 15 hours.

Frequency of Response: Annual reporting requirement; Quarterly reporting requirement; Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 4(i) and 623 of Communications Act of 1934, as amended.

Total Annual Burden: 44,800 hours.

Total Annual Cost: $3,196,875.

Needs and Uses: Cable operators use FCC Form 1210 to file for adjustments in maximum permitted rates for regulated services to reflect external costs. Regulated cable operators submit this form to local franchising authorities.

FCC Form 1240 is filed by cable operators seeking to adjust maximum permitted rates for regulated cable services to reflect changes in external costs.

Cable operators submit Form 1240 to their respective local franchising authorities (''LFAs'') to justify rates for the basic service tier and related equipment or with the Commission (in situations where the Commission has assumed jurisdiction).

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–11127 Filed 5–24–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 142416]

Federal Advisory Committee, Communications Equity and Diversity Council

AGENCY: Federal Communications Commission.

ACTION: Notice of renewal of the charter for the Communications Equity and Diversity Council.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), the Federal Communications Commission (FCC or Commission) announces its intent to renew the Communications Equity and Diversity Council (CEDC). The renewal will be effective for a two-year period beginning June 22, 2023, following consultation with the Committee Management Secretariat, General Services Administration. The CEDC is a federal advisory committee under the Federal Advisory Committee Act.

DATES: May 25, 2023.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jamila Bess Johnson, Designated Federal Officer, Federal Communications Commission, Media Bureau, (202) 418–2608 or email: *Jamila.Bess-Johnson@fcc.gov.*

SUPPLEMENTARY INFORMATION: After consultation with the General Services Administration, the Commission intends to renew the charter of the CEDC for two years, commencing on June 22, 2023.

The mission of the Committee is to make recommendations to the Commission on advancing equity in the provision of and access to digital communication services and products for all people of the United States, without discrimination on the basis of race, color, religion, national origin, sex, or disability. It shall provide recommendations to the Commission on how to empower people of color and others who have been historically underserved, including persons who live in rural areas, and persons otherwise adversely affected by persistent poverty or inequality, to access, leverage, and benefit from the wide range of opportunities made possible by technology, communication services and next-generation networks.

Advisory Committee

The Committee will be organized under, and will operate in accordance

with, the provisions of the FACA (5 U.S.C. App. 10). The Committee will be solely advisory in nature. Consistent with FACA and its requirements, each meeting of the Committee will be open to the public unless otherwise noticed. A notice of each meeting will be published in the **Federal Register** at least fifteen (15) days in advance of the meeting. Records will be maintained of each meeting and made available for public inspection. All activities of the Committee will be conducted in an open, transparent, and accessible manner. The Committee shall terminate two (2) years from the filing date of its charter, or earlier upon the completion of its work as determined by the Chairwoman of the FCC, unless its charter is renewed prior to the termination date.

During this term, it is anticipated that the Committee will meet approximately three (3) times a year. The first meeting date and agenda topics will be described in a Public Notice issued and published in the **Federal Register** at least fifteen (15) days prior to the first meeting date. In addition, as needed, working groups or subcommittees (ad hoc or steering) will be established to facilitate the Committee's work between meetings of the full Committee. Meetings of the Committee will be fully accessible to individuals with disabilities.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–11106 Filed 5–24–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 141583]

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

DATES: The agency must receive comments on or before July 24, 2023.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, 202–418–2054.

SUPPLEMENTARY INFORMATION: The following applicants filed AM or FM proposals to change the community of license: BRANTLEY BROADCAST ASSOCIATES, LLC, WWTM(AM), Fac. ID No. 54328, FROM DECATUR, AL, TO MOORESVILLE, AL, File No. BMP–20230210AAD; MIRACLE MEDIA GROUP, LLC, WORD(AM), Fac. ID No. 36169, FROM DAYTONA BEACH, FL, TO PORT ORANGE, FL, File No. BP–20230209AAG; ORLANDO RADIO MARKETING, INC., WNDO(AM), Fac. ID No. 1185, FROM APOPKA, FL, TO FAIRVIEW SHORES, FL, File No. BP–20230302AAB; MOBILE PARTNERS, INC., WVNZ(AM), Fac. ID No. 52050, FROM RICHMOND, VA, TO ASHLAND, VA, File No. BP–20230511AAE; LABOR NEIGHBOR RESEARCH & TRAINING CENTER, KCNM(FM), Fac. ID No. 766448, FROM CIMARRON, NM, TO MAXWELL, NM, File No. 0000211871; VCY AMERICA INC., KVLM(FM), Fac. ID No. 71650, FROM LAMESA, TX, TO TARZAN, TX, File No. 0000212959; FAMILY LIFE MINISTRIES, INC., WGCC–FM, Fac. ID No. 23603, FROM BATAVIA, NY, TO KENDALL, NY, File No. 0000213726; WOODARD BROADCASTING CO., INC., WVOK–FM, Fac. ID No. 73609, FROM OXFORD, AL, TO OHATCHEE, AL, File No. 0000213072; MICHAEL RADIO COMPANY, LLC, KLLM(FM), Fac. ID No. 762455, FROM WHEATLAND, WY, TO LARAMIE, WY, File No. 0000205045; and IHM LICENSES, LLC, WFFX(FM), Fac. ID No. 54611, FROM HATTIESBURG, MS, TO MARRERO, LA, File No. 0000214604. The full text of these applications is available electronically via the Consolidated Data Base System (CDBS) *https://licensing.fcc.gov/prod/cdbs/pubacc/prod/app_sear.htm* or Licensing and Management System (LMS), *https://apps2int.fcc.gov/dataentry/public/tv/publicAppSearch.html.*

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2023–11105 Filed 5–24–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0798; FR ID 141653]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before July 24, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0798.

Title: FCC Authorization for Radio Service Authorization; Wireless Telecommunications Bureau; Public Safety and Homeland Security Bureau.

Form Number: FCC Form 601.

Type of Review: Revision of a currently approved collection.

Respondents: Individual and households, Business or other for-profit entities, state, local, or tribal government, and not for profit institutions.

Number of Respondents: 255,552 respondents; 255,552 responses.

Estimated Time per Response: 0.5 to 1.25 hours.

Frequency of Response: Recordkeeping requirement; third party disclosure requirement, on occasion

reporting requirement and periodic reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these collections are contained in 47 U.S.C. 151, 152, 154, 154(i), 155(c), 157, 201, 202, 208, 214, 301, 302a, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 331, 332, 333, 336, 534, 535, and 554 of the Communications Act of 1934.

Total Annual Burden: 225,808 hours.

Total Annual Cost: $72,474,000.

Needs and Uses: FCC Form 601 is a consolidated, multi-part application form that is used for market- based and site-based licensing for wireless telecommunications services, including public safety, which are filed through the Commission's Universal Licensing System (ULS) or any other electronic filing interface the Commission develops. FCC Form 601 is composed of a main form that contains administrative information and a series of schedules used for filing technical and other information. This form is used to apply for a new license, to amend or withdraw a pending application, to modify or renew an existing license, cancel a license, submit required notifications, request an extension of time to satisfy construction requirements, request an administrative update to an existing license (such as mailing address change), or request a Special Temporary Authority License. Respondents are required to submit FCC Form 601 electronically.

On January 18, 2023, the Commission adopted the 4.9 GHz Seventh Report and Order (FCC 23–3) where it concluded that collecting additional technical data on public safety operations in the 4.94–4.99 GHz band (4.9 GHz band) will improve interference protection and give public safety licensees more confidence in the band without adding a significant burden on licensees or applicants. The Commission also established a Band Manager to coordinate operations in the 4.9 GHz band. The Band Manager will use the more granular technical data collected on public safety operations in ULS via the FCC Form 601 to perform frequency coordination and will be empowered to work with public safety licensees to ensure efficient use of this spectrum and enable new, non-commercial operations on a secondary, preemptable basis.

The Commission is creating two new radio service codes and directing applicants seeking to license 4.9 GHz band base/mobile, mobile-only or temporary fixed stations (new radio service code PB) to submit with their applications on FCC Form 601: coordinates (base), antenna height above average terrain (base), center frequency, emission designator, effective radiated power, number of units (mobile and temporary fixed), and area of operation (mobile and temporary fixed). Similarly, the Commission is directing applicants seeking to license 4.9 GHz band permanent fixed point-to-point, point-to-multi-point and fixed receiver stations (new radio service code PF) to submit with their applications on FCC Form 601: transmitter and receiver antenna coordinates, frequencies, polarizations, tolerance, effective isotropic radiated power, emission designator, type of modulation, antenna model, gain, antenna center line height(s) above ground level and ground elevation above mean sea level, and path azimuth and distance.

The current FCC Form 601 already collects the information detailed above on Schedules D, H and I, but existing 4.9 GHz band operations under radio service code PA are not currently required to utilize these schedules. The changes proposed herein will modify the instructions of the FCC Form 601 to include the two new radio service codes and to duplicate certain questions from Schedule D onto Schedule I regarding eligibility, extended implementation and associated call sign.

On July 18, 2022, the Commission released a Report and Order and Second Further Notice of Proposed Rulemaking, Partitioning, Disaggregation, and Leasing of Spectrum, WT Docket No. 19–38, FCC 22–53, in which the Commission established the Enhanced Competition Incentive Program (ECIP) to establish incentives for wireless radio service licensees to make underutilized spectrum available to small carriers, Tribal Nations, and entities serving rural areas (ECIP Report and Order in WT Docket No. 19–38, FCC 22–53). In the Report and Order, the Commission adopted a program under which any covered geographic area licensee may offer spectrum to an unaffiliated eligible entity through a partition and/or disaggregation, and any covered geographic area licensee eligible to lease in an included service may offer spectrum to an unaffiliated eligible entity through a long-term leasing arrangement. If the FCC finds that approval of an ECIP eligible assignment or lease is in the public interest, the agency will consent to the transaction and confer benefits, including five-year license term extensions, one year construction extensions, and substituted alternative construction requirements for rural-focused transactions. The Commission also established rules to permit reaggregation of geographic licenses.

In establishing the ECIP, the Commission requires applicants seeking to participate in the program to submit certain information that shows the transaction qualifies for ECIP inclusion. The Commission found that the ECIP builds on Congressional goals in the MOBILE NOW Act to incentivize beneficial transactions in the public interest that will promote greater competition in the provision of wireless services, facilitate increased availability of advanced wireless services in rural areas, facilitate new opportunities for small carriers and Tribal Nations to increase access to spectrum, and bring more advanced wireless service including 5G to underserved communities.

The ECIP related change created a new Schedule O, similar to schedule K, that will be used by certain ECIP Licensees to file either their Initial Operation Requirement Notifications (IORN) or their Final Operation Requirement Notifications (FORN), as required by 47 CFR 1.60004, 1.60006

The Commission now seeks approval for revisions to its currently approved collection of information under OMB Control Number 3060–0798 to permit the collection of the two changes. We anticipate that these revisions will have no impact on the hourly burden to complete FCC Form 601, as the existing burden already provides the appropriate estimate. The Commission therefore seeks approval for a revision to its currently approved information collection on FCC Form 601 to revise FCC Form 601 accordingly.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–11126 Filed 5–24–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, May 31, 2023 at 10:30 a.m. and its continuation at the conclusion of the open meeting on June 1, 2023.

PLACE: 1050 First Street, NE, Washington, DC and virtual (this meeting will be a hybrid meeting.)

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

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. 2023–11243 Filed 5–23–23; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Tuesday, June 6, 2023.

PLACE: The Richard V. Backley Hearing Room, Room 511, 1331 Pennsylvania Avenue NW, Suite 504 North, Washington, DC 20004 (enter from F Street entrance).

Phone Number for Listening to Meeting: 1–(866) 236–7472.

Passcode: 678–100.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Perry County Resources, LLC,* Docket No. KENT 2022–0024. (Issues include whether the Judge abused his discretion in denying the approval of the settlement motion based on the Secretary of Labor's refusal to provide a section 104(b) order that was associated with a citation that was a subject of the motion to approve settlement.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

(Authority: 5 U.S.C. 552b)

Dated: May 23, 2023.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2023–11289 Filed 5–23–23; 11:15 am]

BILLING CODE 6735–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–MA–2023–02; Docket No. 2023–0002; Sequence No. 3]

Fleet Management Information Systems

AGENCY: Office of Government-Wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice of GSA FMR Bulletin B–2023–55.

SUMMARY: Federal Management Regulation (FMR) Bulletin B–2023–55 cancels and replaces Bulletin FMR B–15 to provide updated guidance for Executive Agencies' fleet management information systems (FMIS). This bulletin also incorporates requirements for asset level data and telematics. GSA expects that, following this guidance, the data accuracy contained in agencies' FMIS will improve.

DATES: *Applicable:* May 25, 2023.

FOR FURTHER INFORMATION CONTACT: James Vogelsinger, Director, Vehicle Policy Division, at 202–501–1764 or *vehicle.policy@gsa.gov.*

SUPPLEMENTARY INFORMATION:

Background

FMR Bulletin B–15 was published in 2007 to emphasize that executive agencies are required to have FMIS. While agencies are still required to operate and maintain FMIS, Bulletin FMR B–15 does not cover innovations in fleet management technology such as telematics and asset level data requirements.

FMR Bulletin B–2023–55 is available for download at *https://www.gsa.gov/policy-regulations/regulations/federal-management-regulation/federal-management-regulation-fmr-related-files#FMRBulletins.*

Krystal J. Brumfield,

Associate Administrator, Office of Government-Wide Policy.

[FR Doc. 2023–11154 Filed 5–24–23; 8:45 am]

BILLING CODE 6820–14–P

OFFICE OF GOVERNMENT ETHICS

Privacy Act of 1974; System Records

AGENCY: Office of Government Ethics.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, the Office of Government Ethics (OGE) proposes to establish a new Governmentwide system of records covering executive branch legal expense fund trust documents, reports, and other name-retrieved legal expense fund records.

DATES: This system of records will be effective on May 25, 2023, subject to a 30-day period in which to comment on the routine uses, described below. Please submit any comments by June 26, 2023.

ADDRESSES:

Email: Comments may be submitted to OGE by email to *usoge@oge.gov.* (Include reference to ''OGE/GOVT–3 comment'' in the subject line of the message.)

Mail, Hand Delivery/Courier: Office of Government Ethics, 1201 New York Avenue NW, Suite 500, Attention: Jennifer Matis, Associate Counsel, Washington, DC 20005–3917.

Comments may be posted on OGE's website, *https://www.oge.gov.* Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Jennifer Matis, Associate Counsel, at the U.S. Office of Government Ethics; telephone: 202–482–9216; TTY: 800–877–8339; Email: *jmatis@oge.gov.*

SUPPLEMENTARY INFORMATION: OGE is concurrently adding a new subpart J to the Standards of Ethical Conduct for Executive Branch Employees at 5 CFR part 2635. See 87 FR 23769 (Apr. 21, 2022). The new subpart J contains the standards for an employee's acceptance of payments for legal expenses through a legal expense fund for a matter arising in connection with the employee's official position, the employee's prior position on a campaign, or the employee's prior position on a Presidential Transition Team.

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, this document provides public notice that OGE is creating a new Governmentwide system of records to cover records collected, generated, maintained, and disclosed under OGE's legal expense fund (LEF) regulation published at 5 CFR part 2635, subpart J. A Governmentwide system of records is a system of records where one agency (in this case, OGE) has regulatory authority over records in the custody of multiple agencies and the agency with regulatory authority publishes a system of records notice that applies to all of the records regardless of their custodial location.

This system of records covers the information required to be collected, generated, maintained, and disclosed by executive branch agencies pursuant to the new subpart J, including

information from current Federal employees establishing, maintaining, and terminating legal expense funds, and information from legal expense fund trustees, donors, and payees. The system of records also permits agencies and OGE to share legal expense fund information with each other as necessary to administer the provisions of the regulation, and permits the posting of such information on OGE's website as required by the regulation.

The LEF regulation requires that employees who wish to establish a legal expense fund do so through a trust with a single, named employee beneficiary and a trustee. It also requires an employee beneficiary to file quarterly reports that include information regarding members of the public who contribute payments for legal expenses (donors) and members of the public who receive payments from a legal expense fund (payees), as well as termination reports upon the termination of the trust and/or executive branch employment. The trust documents, quarterly reports, and termination reports will be posted directly on OGE's website in accordance with 5 CFR 2635.1007(g). These trust documents and reports are generally first submitted to the Designated Agency Ethics Officials (DAEO) at the beneficiary's employing agency but transmitted to OGE for posting. However, the regulation permits anonymous whistleblowers to choose to submit their trust document and reports directly to OGE. DAEOs who create a LEF will also submit their trust document and reports directly to OGE.

This system of records also covers information collected or generated by executive branch agencies in the course of administering the LEF regulation, including information necessary to track and review LEF trust documents, quarterly reports, and termination reports, and information relevant to conflict-of-interest determinations.

SYSTEM NAME AND NUMBER:

OGE/GOVT–3, OGE Legal Expense Fund Trust Documents, Reports, and Other Name-Retrieved Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Government Ethics, 1201 New York Avenue NW, Suite 500, Washington, DC 20005–3917, and designated agency ethics offices.

SYSTEM MANAGER(S):

(a) For records filed directly with the Office of Government Ethics by non-OGE employees: General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005–3917.

(b) For records filed with a Designated Agency Ethics Officials (DAEO) at the agency where the employee beneficiary is employed: The DAEO at the department or agency concerned.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title IV of the Ethics in Government Act of 1978, 5 U.S.C. 13101 *et seq.;* sections 201(a) and 403 of Executive Order 12674 (as modified by E.O. 12731); 5 U.S.C. 7301, 7351(c), and 7353(b)(1); 5 CFR part 2635, subpart J.

PURPOSE(S) OF THE SYSTEM:

The purpose of the system is to collect, generate, maintain, and disclose the information necessary to administer the provisions of the OGE legal expense fund (LEF) regulation at 5 CFR part 2635, subpart J. This includes, but is not limited to, obtaining information relevant to a conflict-of-interest determination and disclosing information on the OGE website pursuant to the regulation. It contains information from executive branch employees establishing legal expense funds as well as information regarding legal expense fund trustees, donors, and payees. It also contains related information collected or generated by OGE or other agencies in the process of collecting, reviewing, tracking, maintaining, and disclosing legal expense fund records. The system of records also permits agencies and OGE to share legal expense fund information with each other as necessary to administer the provisions of the regulation and permits the posting of such information on OGE's website as required by the regulation.

Although all beneficiaries must be current executive branch employees at the time the legal expense fund is created, information may be collected or remain in the system of records after the employee beneficiary has left employment with the executive branch.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records contains records about executive branch employees who seek to create a legal expense fund, pursuant to 5 CFR part 2635, subpart J, for the purpose of accepting donations and disbursing payments for legal expenses for a matter arising in connection with the employee's past or current official position, the employee's prior position on a campaign, or the employee's prior position on a Presidential Transition Team. Information may be collected or remain in the system of records after the employee beneficiary has left employment with the executive branch. This system also contains records about members of the public who contribute payments for legal expenses (donors), members of the public who receive payments from a legal expense fund (payees), and members of the public who serve as a beneficiary's trustee or representative in establishing and maintaining a legal expense fund.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains all information or material, retrieved by name or other personal identifier, which is created or received by OGE or other agencies in the course of administering the legal expense fund provisions of the regulation at 5 CFR part 2635, subpart J. The system of records also contains records generated by agencies in the course of administering the legal expense fund provisions of 5 CFR part 2635, subpart J. The categories of records include, but are not limited to, the following:

- legal expense fund trust documents;
- quarterly reports;
- trust termination reports;
- employment termination reports;
- names and contact information of beneficiaries, beneficiary representatives, donors, and trustees; and
- tracking information and deliberative notes generated by the review of legal expense fund trust documents submitted for approval, quarterly reports, trust termination reports, and employment termination reports.

The data elements contained on these records include, but are not limited to, names, city and state of donor, employment information, information about contribution amounts, information about fund payments to service providers, and information about the purpose for which the legal expense fund was created. None of the records in the system of records shall contain Social Security numbers.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The beneficiary of the legal expense fund and the legal expense fund's trustee or representative;

b. Donors who contribute to the legal expense fund for the payment of legal expenses;

c. Payees who receive payments distributed from a legal expense fund; and

d. Executive branch employees, such as agency ethics officials and OGE

employees, who generate information and documents related to legal expense funds in the system in the course of their official duties.

As stated in the preamble to the proposed rule, OGE will create a form to collect information for the quarterly reports, trust termination reports, and employment termination reports. OGE will provide beneficiaries and trustees with a template for collecting information from donors and payees, as well as guidance on drafting trust documents. Together, this information collection is titled ''OGE Legal Expense Fund Information Collection'' and is subject to Paperwork Reduction Act approval by the Office of Management and Budget.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and the information contained therein may be used:

a. To disclose information to authorized officials of OGE or the beneficiary's employing agency in accordance with the Ethics in Government Act of 1978, 5 U.S.C. 13101 *et seq.,* 5 CFR part 2635, subpart J, and other ethics-related laws, Executive orders, and regulations conferring pertinent authority on OGE.

b. To disclose information to the beneficiary's designated trustee or representative as necessary for the administration of the provisions of 5 CFR part 2635, subpart J.

c. To disclose on the OGE website legal expense fund trust documents, quarterly reports, and termination reports submitted to an agency pursuant to 5 CFR part 2635, subpart J.

d. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

e. To disclose information to any source when necessary to obtain information relevant to a conflict-of-interest investigation or determination.

f. To disclose information to the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

g. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

h. To disclose information when the disclosing agency determines that the records are arguably relevant and necessary to a proceeding before a court, grand jury, or administrative or adjudicative body; or in a proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant and necessary to the proceeding.

i. To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of, and at the request of, an individual who is the subject of the record.

j. To disclose information to contractors, grantees, experts, consultants, detailees, and other non-Government employees performing or working on a contract, service, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

k. To disclose information to such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

l. To disclose information to appropriate agencies, entities, and persons when: (1) the agency maintaining the records suspects or has confirmed that there has been a breach of the system of records; (2) the agency maintaining the records has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the agency (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 the agency's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

m. To disclose information to another Federal agency or Federal entity, when the agency maintaining the record 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained in electronic form, whenever possible. Records may be maintained in hardcopy form if necessary, as long as they are maintained in secured file cabinets to which only authorized personnel have access.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The data will be retrieved by the names of all of the individuals identified in the ''Categories of Individuals Covered by the System'' section, as well as by other data points such as agency name, type of document, quarter and year, and/or report type. Beneficiaries, trustees, representatives, donors, and payees will all be provided with notices in accordance with 5 U.S.C. 552a(e)(3).

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

OGE records dispositions are pending. Related records will be maintained as permanent as required by the National Archives and Records Administration (NARA) until NARA has approved the retention and disposition schedule related to records for 5 CFR part 2635, subpart J.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records should be maintained and managed electronically whenever possible. Hardcopy records are maintained in secured file cabinets to which only authorized personnel have access. OGE maintains electronic records on the OGE network, including in OGE internal applications. They are protected from unauthorized access through password identification procedures, multifactor authentication, limited access, firewalls, and other system-based protection methods. Access to the systems is controlled based on user roles and responsibilities. Other executive branch agencies are responsible for properly safeguarding the records maintained in their systems using equivalent safeguards.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the appropriate office as shown in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Department or agency and component with which employed, if applicable.

c. Date the legal expense fund was established, if applicable.

d. A reasonably specific description of the record content being sought.

Individuals requesting access to records maintained at OGE must also follow OGE's Privacy Act regulations regarding verification of identity and

access to records (5 CFR part 2606). In addition, individuals seeking access to records filed with the DAEO at the agency where the employee beneficiary is employed must follow that agency's regulations regarding verification of identity and access to records.

CONTESTING RECORD PROCEDURES:

Because the information in these records is updated on a periodic basis, most record corrections can be handled through internal agency procedures for updating the records without the need for a formal request to amend pursuant to the Privacy Act. However, individuals can obtain information on the procedures for contesting the records under the provisions of the Privacy Act by contacting the appropriate office shown in the Notification Procedure section.

Individuals requesting records corrections of records maintained at OGE must also follow OGE's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 2606). In addition, individuals requesting corrections to records filed with the DAEO at the agency where the employee beneficiary is employed must follow that agency's regulations regarding verification of identity and access to records.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about them should contact, as appropriate:

a. For records filed directly with OGE, contact the General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005–3917; and

b. For records filed with the DAEO where the employee beneficiary is employed, contact the DAEO at the department or agency concerned.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Approved: May 10, 2023.

Emory Rounds,

Director, U.S. Office of Government Ethics.

[FR Doc. 2023–10292 Filed 5–24–23; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–1618]

Generally Accepted Scientific Knowledge in Applications for Drug and Biological Products: Nonclinical Information; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled "Generally Accepted Scientific Knowledge in Applications for Drug and Biological Products: Nonclinical Information." This draft guidance is intended to assist sponsors in determining whether it may be appropriate to rely on generally accepted scientific knowledge (GASK) to fulfill certain legal and regulatory requirements applicable to the new drug application (NDA) or biologics licensing application (BLA) in question. When final, this guidance will represent the Agency's current thinking on this topic.

DATES: Submit either electronic or written comments on the draft guidance by July 24, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2023–D–1618 for "Generally Accepted Scientific Knowledge in Applications for Drugs and Biological Products: Nonclinical 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." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://*

www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration,10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Kristiana Brugger, Office of Regulatory Policy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6262, Silver Spring, MD 20993–0002, 301–796–3601; or Diane Maloney, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Generally Accepted Scientific Knowledge in Applications for Drugs and Biological Products: Nonclinical Information.'' This guidance describes two types of instances in which it may be appropriate to rely on GASK to meet certain nonclinical safety requirements for NDAs and BLAs, regardless of regulatory pathway for approval or licensure (*e.g.,* an NDA under section 505(b)(1) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(b)(1)) or an NDA pursuant to section 505(b)(2) of the FD&C Act; or a BLA under section 351(a) of the Public Health Service Act (PHS Act) (42 U.S.C. 262(a)) or a BLA under section 351(k) of the PHS Act). The information that supports the nonclinical safety of a drug or biological product and that must be submitted in the application can include references to GASK, when appropriate, instead of or in addition to, specific studies conducted with respect to the drug or biological product. In such cases, therefore, it might be unnecessary to conduct certain nonclinical studies. This guidance does not address the use of GASK in other contexts (*e.g.,* clinical studies).

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Generally Accepted Scientific Knowledge in Applications for Drug and Biological Products: Nonclinical Information.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 312, investigational new drug applications, have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314, NDAs and abbreviated new drug applications, have been approved under OMB control number 0910–0001, and the collections of information in 21 CFR part 601, BLAs, have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: May 22, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–11148 Filed 5–24–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–P–3293]

Determination That Chirocaine (Levobupivacaine) Injection, 2.5 Milligrams (Base)/Milliliter, 10 Milliliter and 30 Milliliter Vials, 5 Milligrams (Base)/Milliliter, 10 Milliliter and 30 Milliliter Vials and 7.5 Milligrams (Base)/Milliliter, 10 Milliliter and 30 Milliliter Vials, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that Chirocaine (levobupivacaine) injection, 2.5 milligrams (mg) (base)/milliliter (mL), 10 mL and 30 mL vials, 5 mg (base)/mL, 10 mL and 30 mL vials and 7.5 mg (base)/mL, 10 mL and 30 mL vials, were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for levobupivacaine injection, 2.5 milligrams (mg) (base)/milliliter (mL), 10 mL and 30 mL vials, 5 mg (base)/mL, 10 mL and 30 mL vials and 7.5 mg (base)/mL, 10 mL and 30 mL vials, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Donna Tran, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6213, Silver Spring, MD 20993–0002, 301–796–3600, *Donna.Tran@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a

version of the drug that was previously approved and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

Chirocaine (levobupivacaine) injection, 2.5 mg (base)/mL, 10 mL and 30 mL vials, 5 mg (base)/mL, 10 mL and 30 mL vials and 7.5 mg (base)/mL, 10 mL and 30 mL vials, is the subject of NDA 020997, held by Purdue Pharma L.P., and initially approved on August 5, 1999. Chirocaine is indicated to produce local or regional anesthesia for surgery and obstetrics, and for post-operative pain management.

In a letter dated May 21, 2004, Purdue Pharma L.P. requested withdrawal of NDA 020997 for Chirocaine (levobupivacaine) injection, 2.5 mg (base)/mL, 10 mL and 30 mL vials, 5 mg (base)/mL, 10 mL and 30 mL vials and 7.5 mg (base)/mL, 10 mL and 30 mL vials. In the **Federal Register** of March 4, 2005 (70 FR 10651), FDA announced that it was withdrawing approval of NDA 020997, effective April 4, 2005. Chirocaine is currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Lachman Consultant Services, Inc. submitted a citizen petition dated December 21, 2022 (Docket No. FDA–2022–P–3293), under 21 CFR 10.30, requesting that the Agency determine whether Chirocaine (levobupivacaine) injection, 2.5 mg (base)/mL, 10 mL and 30 mL vials, 5 mg (base)/mL, 10 mL and 30 mL vials and 7.5 mg (base)/mL, 10 mL and 30 mL vials, were withdrawn from sale for reasons of safety or efficacy.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that Chirocaine (levobupivacaine) injection, 2.5 mg (base)/mL, 10 mL and 30 mL vials, 5 mg (base)/mL, 10 mL and 30 mL vials and 7.5 mg (base)/mL, 10 mL and 30 mL vials, were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that Chirocaine (levobupivacaine) injection, 2.5 mg (base)/mL, 10 mL and 30 mL vials, 5 mg (base)/mL, 10 mL and 30 mL vials and 7.5 mg (base)/mL, 10 mL and 30 mL vials, were withdrawn for reasons of safety or effectiveness.

We have carefully reviewed our files for records concerning the withdrawal of Chirocaine (levobupivacaine) injection, 2.5 mg (base)/mL, 10 mL and 30 mL vials, 5 mg (base)/mL, 10 mL and 30 mL vials and 7.5 mg (base)/mL, 10 mL and 30 mL vials, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that these drug products were withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list Chirocaine (levobupivacaine) injection, 2.5 mg (base)/mL, 10 mL and 30 mL vials, 5 mg (base)/mL, 10 mL and 30 mL vials and 7.5 mg (base)/mL, 10 mL and 30 mL vials, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to Chirocaine (levobupivacaine) injection, 2.5 mg (base)/mL, 10 mL and 30 mL vials, 5 mg (base)/mL, 10 mL and 30 mL vials or 7.5 mg (base)/mL, 10 mL and 30 mL vials, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: May 22, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–11162 Filed 5–24–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–1554]

Agency Information Collection Activities; Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on a generic collection of information through which we intend to seek insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services.

DATES: Either electronic or written comments on the collection of information must be submitted by July 24, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of July 24, 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–1554 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.'' 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: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

OMB Control Number 0910–0697—Extension

FDA will garner qualitative customer and stakeholder feedback using a variety of methods in order to gain useful insights into customer or stakeholder perceptions, experiences, and expectations; provide an early warning of issues with service; or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance.

Respondents to this collection of information cover a broad range of customers and stakeholders who have specific characteristics related to certain products or services regulated by FDA. These stakeholders include members of the general public, healthcare professionals, industry, and others who have experience with a product under FDA's jurisdiction.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Focus groups	3,000	1	3,000	1.75	5,250
Customer comment cards/forms	1,500	1	1,500	0.25 (15 minutes)	375
Small discussion groups	800	1	800	1.75	1,400
Customer satisfaction surveys	20,000	1	20,000	0.33 (20 minutes)	6,600
Usability studies	1,100	1	1,100	1	1,100
Total					14,725

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we increased the number of respondents for focus groups, customer comment cards/forms, customer satisfaction surveys, and usability studies. This adjustment results in an overall burden increase of 6,234 hours.

Dated: May 22, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–11165 Filed 5–24–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–1778]

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Endocrinologic and Metabolic Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held virtually on June 28, 2023, from 9:30 a.m. to 5:30 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of the COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2022–N–1778. Please note that late, untimely filed comments will not be considered. The docket will close on June 27, 2023. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of June 27, 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.

Comments received on or before June 14, 2023, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–N–1778 for ''Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' 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.'' FDA 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 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 the 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: LaToya Bonner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–2855, email: *EMDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. The committee will discuss new drug application (NDA) 215559, for palovarotene capsules, submitted by Ipsen Biopharmaceuticals, Inc. The proposed indication is the prevention of heterotopic ossification in adults and children (females aged 8 years and above and males 10 years and above) with fibrodysplasia ossificans progressiva.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions to the Docket (see **ADDRESSES**) on or before June 14, 2023, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 2 p.m. and 3 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 6, 2023. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 7, 2023.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact LaToya Bonner (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 22, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–11164 Filed 5–24–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–P–2952]

Determination That Heparin Sodium Injection 5000 USP Units/Milliliters Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) has determined that Heparin Sodium Injection 5000 USP Units (IU)/Milliliters (mL) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for Heparin Sodium Injection 5000 USP IU/mL, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Nikki Mueller, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6280, Silver Spring, MD 20993–0002, 301–796–3601, *Nicole.Mueller@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain

approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to FDA's approval of an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

Heparin Sodium Injection 5000 USP IU/mL is the subject of NDA 017029, held by Fresenius Kabi USA LLC, and initially approved on January 1, 1982. Heparin Sodium Injection is an anticoagulant indicated for:

- Prophylaxis and treatment of venous thrombosis and pulmonary embolism.
- Prevention of postoperative deep venous thrombosis and pulmonary embolism in patients undergoing major abdominothoracic surgery or who, for other reasons, are at risk of developing thromboembolic disease.
- Atrial fibrillation with embolization.
- Treatment of acute and chronic consumptive coagulopathies (disseminated intravascular coagulation).
- Prevention of clotting in arterial and cardiac surgery.
- Prophylaxis and treatment of peripheral arterial embolism.
- Use as an anticoagulant in blood transfusions, extracorporeal circulation, and dialysis procedures.

In May 1991, FDA moved the Heparin Sodium Injection 5000 USP IU/mL to the ''Discontinued Drug Product List'' section of the Orange Book. BE Pharmaceuticals AG, submitted a citizen petition dated October 18, 2022 (Docket No. FDA–2022–P–2952), under 21 CFR 10.30, requesting that the Agency determine whether Heparin Sodium Injection 5000 USP IU/mL was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that Heparin Sodium Injection 5000 USP IU/mL was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that Heparin Sodium Injection 5000 USP IU/mL was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of Heparin Sodium Injection 5000 USP IU/mL from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that this drug product was not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list Heparin Sodium Injection 5000 USP IU/mL in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to Heparin Sodium Injection 5000 USP IU/mL may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: May 22, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–11157 Filed 5–24–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–1268]

Use of Whole Slide Imaging in Nonclinical Toxicology Studies: Questions and Answers; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Use of Whole Slide Imaging in Nonclinical Toxicology Studies: Questions and Answers.'' This guidance represents FDA's current thinking on the use of whole slide images during good laboratory practice (GLP)-compliant toxicology studies. Documentation practices during generation, use, and retention of whole slide images have not been clearly defined and vary among nonclinical testing facilities. This question-and-answer document is intended to clarify FDA's recommendations concerning the management, documentation, and use of whole slide images in histopathology assessment and/or pathology peer review for nonclinical studies conducted in compliance with the GLP regulations. This guidance finalizes the draft guidance of the same title issued on April 8, 2022.

DATES: The announcement of the guidance is published in the **Federal Register** on May 25, 2023.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets

Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–1268 for ''Use of Whole Slide Imaging in Nonclinical Toxicology Studies: Questions and Answers.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002 or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Tahseen Mirza, Office of Study Integrity and Surveillance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2211, Silver Spring, MD 20993, 301–796–7645; Diane Maloney, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911; Judy Davis, Office of Device Evaluation, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2220, Silver Spring, MD 20993, 301–796–6636; Hilary Hoffman, Office of New Animal Drug Evaluation, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rm. 389, Rockville, MD 20855, 240–402–8406; Yuguang Wang, Office of the Center Director, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., Rm. 4A012, College Park, MD 20740, 240–402–1757; Hans Rosenfeldt, Office of Science, Center for Tobacco Products, Food and Drug Administration, 11785 Beltsville Dr., Calverton Tower, Rm. 5322, Beltsville, MD 20705, 301–796–2202; Eric S. Myskowski, Office of Bioresearch Monitoring Operations, Office of Regulatory Affairs, Food and Drug Administration, Resident Post—Maplewood, 15 Sunnen Dr., Maplewood, MO 63143, 612–758–7187.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Use of Whole Slide Imaging in Nonclinical Toxicology Studies: Questions and Answers.'' The histopathological assessment of tissue samples is one of the key activities conducted during GLP-compliant nonclinical laboratory studies. Commonly, the histopathological assessment includes an initial evaluation of glass histology slides by the study pathologist and a subsequent review (referred to as pathology peer review) by a second pathologist, group of pathologists, or Pathology Working Group. The current regulations (21 CFR part 58) include general requirements for histopathology evaluation (*e.g.,* standard operating procedures), but the use of whole slide images in lieu of glass slides is not expressly addressed. This guidance provides information to sponsors and nonclinical laboratories regarding the management, documentation, and use of whole slide images during histopathology assessment and/or pathology peer review performed for GLP-compliant nonclinical toxicology studies using non-human specimens. The guidance does not cover the use of whole slide imaging for clinical applications.

When whole slide images are used in lieu of glass slides as part of a nonclinical study conducted in compliance with the GLP regulations, adequate documentation is critical. Documentation practices during whole slide imaging generation and use have not been clearly defined and vary among nonclinical testing facilities. Use of whole slide images in casual consultations, opinion exchanges, and mentoring among pathologists are not covered by this guidance document.

This guidance finalizes the draft guidance entitled ''Use of Whole Slide Imaging in Nonclinical Toxicology Studies: Questions and Answers'' issued on April 8, 2022 (87 FR 20872). FDA considered comments received on the draft guidance as the guidance was finalized. This revision includes editorial changes to improve the clarity of the document.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Use of Whole Slide Imaging in Nonclinical Toxicology Studies: Questions and Answers.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 58 pertaining to good laboratory practice for non-clinical laboratory studies have been approved under OMB control number 0910–0119. The collections of information in 21 CFR part 11 pertaining to electronic records and signatures have been approved under OMB control number 0910–0303.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances,* or *https://www.regulations.gov.*

Dated: May 22, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–11211 Filed 5–24–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics Meeting

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting. This meeting is open to the public. The public is welcome to obtain the link to attend this meeting by following the instructions posted on the Committee website: *https://ncvhs.hhs.gov/meetings/full-committee-meeting-13/.*

NAME: National Committee on Vital and Health Statistics (NCVHS) Meeting

DATES: Wednesday, June 14, 2023: 10:00 a.m.–4:30 p.m. EDT.

ADDRESSES: Virtual open meeting.

FOR FURTHER INFORMATION CONTACT: Substantive program information may be obtained from Rebecca Hines, MHS, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Hyattsville, Maryland 20782, or via electronic mail to *vgh4@cdc.gov;* or by telephone (301) 458–4715. Summaries of meetings and a roster of Committee members are available on the NCVHS website *https://ncvhs.hhs.gov/*, where further information including an agenda and instructions to access the broadcast of the meeting will be posted.

Should you require reasonable accommodation, please telephone the CDC Office of Equal Employment Opportunity at (770) 488–3210 as soon as possible.

SUPPLEMENTARY INFORMATION:

Purpose: As outlined in its Charter, the National Committee on Vital and Health Statistics assists and advises the Secretary of HHS on health data, data standards, statistics, privacy, national health information policy, and the Department's strategy to best address those issues. Under the Health Insurance Portability and Accountability Act of 1996 (HIPAA),[1] NCVHS advises the Secretary on administrative simplification standards, including those for privacy, security, adoption and implementation of transaction standards, unique identifiers, code sets, and operating rules adopted under the Patient Protection and Affordable Care Act (ACA).[2]

The purpose of this meeting is to provide a public forum for the Committee to consider what comments it will make on the April 17, 2023, Notice of Proposed Rulemaking (NPRM) ''HIPAA Privacy Rule to Support Reproductive Health Care Privacy'' which is available at *https://www.federalregister.gov/documents/2023/04/17/2023-07517/hipaa-privacy-rule-to-support-reproductive-health-care-privacy.*

In addition, the Committee will consider what recommendations it will make in response to updated and new operating rules proposed by the Council for Affordable Quality Health Care (CAQH), Committee on Operating Rules for Information Exchange (CORE), to support adopted HIPAA standards, and an updated version of the X12 standard for claims and electronic remittance advice transactions (Version 8020) proposed by X12. The Committee developed these recommendations in response to formal proposals received from CAQH CORE [3] and X12 [4] respectively, informed by a Request for Comment (RFC) and two-day hearing held January 18–19, 2023.[5] Details on the recent RFC and hearings are available on the Committee's website here: *https://ncvhs.hhs.gov/meetings/standards-subcommittee-hearing/.*

The Committee will reserve time on the agenda for public comment. Meeting times and topics are subject to change. Please refer to the agenda posted on the NCVHS website for updates: *https://ncvhs.hhs.gov/meetings/full-committee-meeting-13/.*

Sharon Arnold,

Associate Deputy Assistant Secretary, Office of Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2023–11207 Filed 5–24–23; 8:45 am]

BILLING CODE 4150–05–P

[1] Public Law 104–191, 110 Stat. 1936 (Aug 21, 1996), available at *https://www.congress.gov/104/plaws/publ191/PLAW-104publ191.pdf.*

[2] Public Law 111–148, 124 Stat.119, available at *https://www.congress.gov/111/plaws/publ148/PLAW-111publ148.pdf.*

[3] Letter from CAQH CORE to NCVHS, May 23, 2022: *https://ncvhs.hhs.gov/wp-content/uploads/2022/09/CAQH-CORE-Board-Letter-to-NCVHS-re-New-Updated-OR-052322-508.pdf.*

[4] Letter from X12 to NCVHS, June 7, 2022: *https://ncvhs.hhs.gov/wp-content/uploads/2022/09/X12-Request-for-review-of-8020-transactions-060822-to-NCVHS-508.pdf.*

[5] See, Subcommittee on Standards, National Committee on Vital and Health Statistics, Hearing on Requests for New and Updated Transaction Standards and Operating Rules, available at *https://ncvhs.hhs.gov/meetings/standards-subcommittee-hearing/.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 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; Small

Business: Instrumentation, Environmental, and Occupational Safety.

Date: June 15–16, 2023.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Joonil Seog, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–9791, *joonil.seog@nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Musculoskeletal Tissue Engineering Study Section.

Date: June 20–21, 2023.

Time: 9:30 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: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, (301) 435–2406, *ariasj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD22–028: The Intersection of Sex and Gender Influences on Health and Disease.

Date: June 20–21, 2023.

Time: 10:00 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: Courtney M Pollack, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–594–3671, *courtney.pollack@nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Pathobiology of Kidney Disease Study Section.

Date: June 21–22, 2023.

Time: 9:00 a.m. to 8:00 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: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Integrative Myocardial Physiology/Pathophysiology A Study Section.

Date: June 21–22, 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: Abdelouahab Aitouche, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4222, MSC 7814, Bethesda, MD 20892, 301–435–2365, *aitouchea@csr.nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Reproductive, Perinatal and Pediatric Health Study Section.

Date: June 21–22, 2023.

Time: 9:00 a.m. to 8:00 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: Cynthia Chioma McOliver, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007G, Bethesda, MD 20892, (301) 594–2081, *mcolivercc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Applied Immunology and Vaccine Development.

Date: June 21–22, 2023.

Time: 10:00 a.m. to 9:00 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: Dayadevi Jirage, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4422, Bethesda, MD 20892, (301) 867–5309, *jiragedb@csr.nih.gov*.

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group; Bacterial Virulence Study Section.

Date: June 21–22, 2023.

Time: 10:00 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: Susan Daum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, Bethesda, MD 20892, 301–827–7233, *susan.boyle-vavra@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Computational, Modeling, and Biodata Management.

Date: June 21, 2023.

Time: 10:00 a.m. to 8:00 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: Marie-Jose Belanger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 6188 MSC 7804, Bethesda, MD 20892, 301–435–1267, *belangerm@csr.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: May 19, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–11147 Filed 5–24–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2342]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before August 23, 2023.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are

accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2342, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Menominee County, Michigan (All Jurisdictions) Project: 13–05–4218S Preliminary Date: August 01, 2022	
City of Menominee	City Hall, 2511 10th Street, Menominee, MI 49858.
Township of Cedarville	Cedarville Township Hall, N8235 Old Mill Lane Number 20.75, Cedar River, MI 49887.
Township of Ingallston	Ingallston Township Hall, W3790 Town Hall Lane Number 13.5, Wallace, MI 49893.
Township of Menominee	Township Hall, N2283 0–1 Drive, Menominee, MI 49858.

[FR Doc. 2023–11160 Filed 5–24–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2341]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Alabama:						
Limestone	Unincorporated areas of Limestone County (22–04–5392P).	The Honorable Collin Daly, Chair, Limestone County Commission, 310 West Washington Street, Athens, AL 35611.	Limestone County, Engineering Department, 310 West Washington Street, Athens, AL 35611.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 21, 2023	010307
St. Clair	Unincorporated areas of St. Clair County (23–04–0305P).	The Honorable Stan Bateman, Chair, St. Clair County, Board of Commissioners, 165 5th Avenue, Ashville, AL 35953.	St. Clair County, Highway Department, 31588 U.S. Highway 231, Ashville, AL 35953.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 11, 2023	010290
Colorado:						
Arapahoe	City of Centennial (21–08–0505P).	The Honorable Stephanie Piko, Mayor, City of Centennial, 13133 East Arapahoe Road, Centennial, CO 80112.	Southeast Metro, Stormwater Authority, 7437 South Fairplay Street, Centennial, CO 80112.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 24, 2023	080315
Arapahoe	City of Greenwood Village (21–08–0505P).	The Honorable George Lantz, Mayor, City of Greenwood Village, 6060 South Quebec Street, Greenwood Village, CO 80111.	City Hall, 6060 South Quebec Street, Greenwood Village, CO 80111.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 24, 2023	080195
Arapahoe	Unincorporated areas of Arapahoe County (21–08–0505P).	The Honorable Carrie Warren-Gully, Chair, Arapahoe County, Board of Commissioners, 5334 South Prince Street, Littleton, CO 80120.	Arapahoe County, Public Works and Development Department, 6924 South Lima Street, Littleton, CO 80112.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 24, 2023	080011
Weld	Town of Johnstown (22–08–0435P).	Matt LeCerf, Town of Johnstown Manager, P.O. Box 609, Johnstown, CO 80534.	Town Hall, 450 South Parish Avenue, Johnstown, CO 80534.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 28, 2023	080250
Weld	Unincorporated areas of Weld County (22–08–0435P).	Scott James, Chair, Weld County, Board of Commissioners, P.O. Box 758, Greely, CO 80631.	Weld County, Commissioner's Office, 1150 O Street, Greely, CO 80632.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 28, 2023	080266
Delaware:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
New Castle ...	Unincorporated areas of New Castle County (22–03–0971P).	The Honorable Matthew Meyer, New Castle County, Executive, 87 Read's Way, New Castle, DE 19720.	New Castle County, Government Center, 87 Read's Way, New Castle, DE 19720.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 10, 2023 ..	105085
Florida:						
Charlotte	City of Punta Gorda (22–04–4836P).	The Honorable Lynne Matthews, Mayor, City of Punta Gorda, 326 West Marion Avenue, Punta Gorda, FL 33950.	Building Department, 326 West Marion Avenue, Punta Gorda, FL 33950.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 11, 2023	120062
Charlotte	Unincorporated areas of Charlotte County (22–04–4836P).	Bill Truex, Chair, Charlotte County, Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County, E.J. Carlson Community Development Building, 18400 Murdock Circle, Port Charlotte, FL 33948.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 11, 2023	120061
Monroe	Village of Islamorada (23–04–0726P).	The Honorable Joseph Buddy Pinder III, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Building Department, 86800 Overseas Highway, Islamorada, FL 33036.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 10, 2023	120424
Osceola	City of St. Cloud (22–04–0527P).	The Honorable Nathan Blackwell, Mayor, City of St. Cloud, 1300 9th Street, St. Cloud, FL 34769.	City Hall, 1300 9th Street, St. Cloud, FL 34769.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 7, 2023	120191
Osceola	Unincorporated areas of Osceola County (22–04–0527P).	Donald Fisher, Osceola County Manager, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County, Public Works Department, 1 Courthouse Square, Suite 3100, Kissimmee, FL 34741.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 7, 2023	120189
Palm Beach ..	Village of Tequesta (22–04–0040P).	The Honorable Molly Young, Mayor, Village of Tequesta, 345 Tequesta Drive, Tequesta, FL 33469.	Building Department, 345 Tequesta Drive, Tequesta, FL 33469.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 10, 2023	120228
Kentucky: Jefferson.	Metropolitan Government of Louisville and Jefferson County (23–04–2013P).	The Honorable Craig Greenberg, Mayor, Metropolitan Government of, Louisville and Jefferson County, 527 West Jefferson Street, Louisville, KY 40202.	Louisville/Jefferson County Metropolitan Sewer District, 700 West Liberty Street, Louisville, KY 40203.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 10, 2023 ..	105085
Maryland: Frederick.	Unincorporated areas of Frederick County (23–03–0342P).	The Honorable Jessica Fitzwater, Frederick County Executive, 12 East Church Street, Frederick, MD 21701.	Frederick County, Division of Planning and Permitting, 30 North Market Street, Frederick, MD 21701.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 4, 2023	240027
Massachusetts:						
Plymouth	Town of Marshfield (22–01–0998P).	The Honorable Stephen Darcy, Chair, Town of Marshfield Select Board, 870 Moraine Street, Marshfield, MA 02050.	Building Department, 870 Moraine Street, Marshfield, MA 02050.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 9, 2023	240027
Suffolk	City of Boston (22–01–0360P).	The Honorable Michelle Wu, Mayor, City of Boston, 1 City Hall Square, Suite 500, Boston, MA 02201.	City Hall, 1 City Hall Square, Suite 500, Boston, MA 02201.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 25, 2023 ..	250286
Michigan:						
Genesee	City of Flint (22–05–1981P).	The Honorable Sheldon Neeley, Mayor, City of Flint, 1101 South Saginaw Street, Flint, MI 48502.	Department of Public Works, 1101 South Saginaw Street, Flint, MI 48502.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 10, 2023	260076
Genesee	Township of Flint (22–05–1981P).	Karyn Miller, Township of Flint Supervisor, 1490 South Dye Road, Flint, MI 48532.	Building Department, 1490 South Dye Road, Flint, MI 48532.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 10, 2023	260395
Genesee	Township of Genesee (22–05–1981P).	Daniel Eashoo, Township of Genesee, Supervisor, 7244 North Genesee Road, Genesee, MI 48437.	Department of Public Works, 7244 North Genesee Road, Genesee, MI 48437.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 10, 2023	260078
Montana: Gallatin	City of Bozeman (22–08–0557P).	Jeff Mihelich, Manager, City of Bozeman, P.O. Box 1230, Bozeman, MT 59771.	Engineering Department, 20 East Olive Street, 1st Floor, Bozeman, MT 59715.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 26, 2023	300028

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
New Mexico: Dona Ana.	City of Las Cruces (22–06–0707P).	Ifo Pili, Manager, City of Las Cruces, 700 North Main Street, Suite 3600, Las Cruces, NM 88001.	City Hall, 700 North Main Street, Suite 1100, Las Cruces, NM 88001.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 14, 2023	355332
North Carolina: Moore.	Village of Whispering Pines (22–04–5068P).	The Honorable Glenn Bernhard, Mayor, Village of Whispering Pines, 10 Pine Ridge Drive, Whispering Pines, NC 28327.	Moore County, Planning and Inspections Department, 1048 Carriage Oaks Drive, Carthage, NC 28327.	*https://msc.fema.gov/port,al/advanceSearch.*	Aug. 10, 2023	370464
South Carolina:						
Jasper	City of Hardeeville (22–04–1790P).	Michael J. Czymbor, Manager, City of Hardeeville, 205 Main Street, Hardeeville, SC 29927.	City Hall, 205 Main Street, Hardeeville, SC 29927.	*https://msc.fema.gov/port,al/advanceSearch.*	Jun. 29, 2023	450113
Jasper	Unincorporated areas of Jasper County (22–04–1790P).	The Honorable Barbara Clark, Vice Chair, Jasper County Council, 358 3rd Avenue, Ridgeland, SC 29936.	Jasper County, Planning and Building Services Department, 358 3rd Avenue, Ridgeland, SC 29936.	*https://msc.fema.gov/port,al/advanceSearch.*	Jun. 29, 2023	450112
Tennessee:						
Hamilton	City of Collegedale (22–04–3380P).	The Honorable Morty Lloyd, Mayor, City of Collegedale, 4910 Swinyar Drive, Collegedale, TN 37315.	Public Works Department, 9751 Sanborn Drive, Collegedale, TN 37315.	*https://msc.fema.gov/port,al/advanceSearch.*	Jul. 24, 2023	475422
Hamilton	Unincorporated areas of Hamilton County (22–04–3380P).	The Honorable Weston Wamp, Mayor, Hamilton County, 625 Georgia Avenue, Collegedale, TN 37402.	Hamilton County, Public Works Division, 4005 Cromwell Road, Chattanooga, TN 37421.	*https://msc.fema.gov/port,al/advanceSearch.*	Jul. 24, 2023	470071
Texas:						
Bexar	City of Helotes (21–06–3308P).	The Honorable Rich Whitehead, Mayor, City of Helotes, P.O. Box 507, Helotes, TX 78023.	City Hall, 12951 Bandera Road, Helotes, TX 78023.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 10, 2023	481643
Collin	City of Josephine (23–06–0194P).	The Honorable Jason Turney, Mayor, City of Josephine, P.O. Box 99, Josephine, TX 75164.	City Hall, 201 South Main Street, Josephine, TX 75173.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 18, 2023	480756
Collin	Unincorporated areas of Collin County (23–06–0194P).	The Honorable Chris Hill, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	Collin County, Engineering Department, 4690 Community Avenue, Suite 200, McKinney, TX 75071.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 18, 2023	480130
Dallas	City of Coppell (22–06–1246P).	The Honorable Wes Mays, Mayor, City of Coppell, P.O. Box 9478, Coppell, TX 75019.	Department of Public Works, 265 East Parkway Boulevard, Coppell, TX 75019.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 10, 2023	480170
Tarrant	City of Grapevine (22–06–1246P).	The Honorable William D. Tate, Mayor, City of Grapevine, P.O. Box 95104, Grapevine, TX 76099.	City Hall, 200 South Main Street, Grapevine, TX 76051.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 10, 2023	480598
Denton	City of Denton (22–06–2546P).	The Honorable Gerard Hudspeth, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	Development Services Department, 401 North Elm Street, Denton, TX 76201.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 31, 2023	480194
Denton	City of Denton (23–06–0063P).	The Honorable Gerard Hudspeth, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	Capital Projects/Engineering Department, 401 North Elm Street, Denton, TX 76201.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 31, 2023	480194
Denton	City of Fort Worth (22–06–1732P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	City Hall, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 7, 2023	480596
Denton	Unincorporated areas of Denton County (23–06–0063P).	The Honorable Andy Eads, Denton County Judge, 1 Courthouse Drive, Suite 3100, Denton, TX 76208.	Denton County, Development Services Department, 3900 Morse Street, Denton, TX 76208.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 31, 2023	480774

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Ellis	City of Ennis (22–06–2915P).	The Honorable Angeline L. Juenemann, Mayor, City of Ennis, 115 West Brown Street, Ennis, TX 75119.	Planning, Development and Inspection Department, 108 West Knox Street, Ennis, TX 75119.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 7, 2023	480207
Ellis	City of Midlothian (22–06–1316P).	Chris Dick, Manager, City of Midlothian, 104 West Avenue E, Midlothian, TX 76065.	City Hall, 104 West Avenue E, Midlothian, TX 76065.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 4, 2023	480801
Ellis	City of Waxahachie (22–06–1316P).	Michael Scott, Manager, City of Waxahachie, 401 South Rogers Street, Waxahachie, TX 75165.	City Hall, 401 South Rogers Street, Waxahachie, TX 75165.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 4, 2023	480211
Ellis	Unincorporated areas of Ellis County (22–06–1316P).	The Honorable Todd Little, Ellis County Judge, 101 West Main Street, Waxahachie, TX 75165.	Ellis County, District Court House, 109 South Jackson Street, Waxahachie, TX 75165.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 4, 2023	480798
Harris	Unincorporated areas of Harris County (22–06–0678P).	The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County, Permits Office, 1111 Fannin Street, 8th Floor, Houston, TX 77002.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 24, 2023	480287
Harris	Unincorporated areas of Harris County (22–06–0855P).	The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County, Permits Office, 1111 Fannin Street, 8th Floor, Houston, TX 77002.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 3, 2023	480287
Harris.	Unincorporated areas of Harris County (22–06–2197P).	The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County, Permits Office, 1111 Fannin Street, 8th Floor, Houston, TX 77002.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 24, 2023	480287
Taylor	City of Abilene (22–06–3030P).	The Honorable Anthony Williams, Mayor, City of Abilene, P.O. Box 60, Abilene, TX 79604.	City Hall, 555 Walnut Street, Abilene, TX 79601.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 11, 2023	485450
Virginia: Loudoun	Unincorporated areas of Loudoun County (22–03–0882P).	Tim Hemstreet, Loudoun County Administrator, P.O. Box 7000, Leesburg, VA 20175.	Loudoun County, Government Center, 1 Harrison Street Southeast, 3rd Floor, MSC #60, Leesburg, VA 20175.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 31, 2023	510090

[FR Doc. 2023–11155 Filed 5–24–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0007]

Notice of Intent To Prepare an Environmental Impact Statement for Oregon; Extension of Comment Period

AGENCY: Federal Emergency Management Agency, DHS

ACTION: Notice of intent to prepare an Environmental Impact Statement; extension of comment period.

SUMMARY: The Federal Emergency Management Agency (FEMA) is extending the public comment period for its notice of intent to prepare an Environmental Impact Statement for Oregon, which published March 6, 2023. In this notice, FEMA announced its intent to prepare an Environmental Impact Statement (EIS) for the implementation of the plan for National Flood Insurance Program (NFIP)—Endangered Species Act (ESA) Integration in Oregon.

DATES: Written comments on the notice of intent published at 88 FR 13841 (March 6, 2023) must be received by FEMA on or before June 26, 2023. Comments already submitted do not need to be resubmitted. FEMA will hold at least two virtual public scoping meetings and at least two in-person public scoping meetings in Oregon at the times, dates, and locations listed on the project EIS website (see **ADDRESSES** section of this document). Reasonable accommodations are available for people with disabilities. To request a reasonable accommodation, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below as soon as possible. Last minute requests will be accepted but may not be possible to fulfill.

ADDRESSES: The project EIS website with the draft plan and public meeting information is at *https://www.fema.gov/about/organization/region-10/oregon/nfip-esa-integration.* You may provide oral or written comments at either the in-person or virtual public scoping meetings. You may also provide written comments via the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for FEMA–2023–0007 and follow the instructions for submitting comments.

All submissions must include the agency name and Docket ID for this notice. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security notice, which can be viewed by clicking on the ''Privacy and Security Notice'' link on the homepage of *www.regulations.gov.* Commenters are encouraged to identify the number of the specific question or questions to which they are responding. For access to the docket and to read comments received by FEMA, go to *https://www.regulations.gov* and search for Docket ID FEMA–2023–0007.

FOR FURTHER INFORMATION CONTACT: Ms. Science Kilner, Regional Environmental

Officer, FEMA Region 10, *FEMA-R10-ESAcomments@fema.dhs.gov,* 425–487–4713, or visit the EIS website (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION: On March 6, 2023, FEMA published a notice announcing its intent to prepare an Environmental Impact Statement (EIS) for the implementation of the plan for National Flood Insurance Program (NFIP)—Endangered Species Act (ESA) Integration in Oregon.[1] FEMA gave notice that the public scoping process had begun for the preparation of an EIS for the proposed action. The purpose of the scoping process is to solicit public comments regarding the range of issues, information, and analyses relevant to the proposed action, including potential environmental impacts and reasonable alternatives to address in the EIS. FEMA also notified the public of its intent to host in-person and virtual public scoping meetings to provide additional information to the public, and solicit comments on potential issues, concerns, and reasonable alternatives that FEMA should consider. FEMA is preparing this EIS in compliance with the National Environmental Policy Act (NEPA) of 1969 and the NEPA regulations implemented by the Council on Environmental Quality as of the date of this Notice.

Public Scoping Process, Including Scoping Meetings

This NEPA scoping process is in addition to previous opportunities available to the public to understand and influence FEMA's draft Implementation Plan. The purpose of the EIS scoping process is to gather input on the issues, concerns, possible alternatives, and potential significant impacts to the quality of the human environment that FEMA should consider in the EIS. Participants are anticipated to include, and are not limited to, agencies (Federal, state, county, and local), Tribes, public interest groups, nongovernmental organizations, businesses, trade associations, and individual members of the public.

As described under the **DATES** section of this notice, FEMA is facilitating virtual and in-person meetings to accommodate and encourage public participation. At these meetings, the public will have the opportunity to present comments on the scope of the EIS. FEMA representatives will be available to answer questions and provide additional information to meeting attendees. In addition to providing comments at the public scoping meetings, stakeholders may submit written comments as described in the **ADDRESSES** section. Comments may be broad in nature or restricted to specific areas of concern, but they should be directly relevant to the NEPA process or potential environmental impacts as described in the Comments section below. Comments already submitted do not need to be resubmitted.

[1] 88 FR 13841. Commenters may reference the Notice of Intent for a general description of the NFIP and the EIS process.

Comments

FEMA is seeking input on relevant information, studies, or analyses of any kind concerning impacts that result from the proposed action or alternatives. Specifically:

1. Potential effects (adverse or beneficial) that the proposed action could have on biological resources, including species and their habitat.
2. Potential effects that the proposed action could have on physical resources and natural floodplain functions.
3. Potential effects that the proposed action could have on socioeconomics, including demographics, employment, economics, minority, low-income populations, and Tribes, land use, zoning, housing, commerce, transportation, community growth, and community infrastructure.
4. Other possible reasonable alternatives to the proposed action that FEMA should consider, including additional or alternative avoidance, minimization, and mitigation measures that achieve the performance standard of no-net loss of three key natural floodplain functions.

FEMA regulation, at 40 CFR 1502.17, requires that FEMA append to the draft EIS or otherwise publish all comments received during the scoping process that identifies alternatives, information, and analysis for FEMA's consideration. FEMA respects each commentor's desire to withhold sensitive information (such as the costs associated with development in the floodplain) but, at the same time, recognizes that one set of impacts that may be associated with the implementation of the draft plan is the economic, social, and equity burden that individuals, businesses, and communities may face.

To promote informed decision-making, comments should be as specific as possible and should provide as much detail as necessary to meaningfully and fully inform FEMA of the commenter's position. Comments should explain why the issues raised are important to the consideration of potential environmental impacts and possible alternatives to the proposed action as well as to economic, employment, and other impacts affecting the quality of the human environment.

Authority: 42 U.S.C. 4321, *et seq.,* and 40 CFR 1501.9.

Donna Defrancesco,

Assistant Administrator for Environmental Planning and Historic Preservation, Federal Emergency Management Agency.

[FR Doc. 2023–11192 Filed 5–24–23; 8:45 am]

BILLING CODE 9111–47–P

DEPARTMENT OF HOMELAND SECURITY

[[Docket No. CISA–2023–0004]

Notice of Cybersecurity and Infrastructure Security Agency Cybersecurity Advisory Committee Meeting

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: Notice of Federal Advisory Committee Act (FACA) meeting; request for comments.

SUMMARY: CISA is publishing this notice to announce the CISA Cybersecurity Advisory Committee Quarterly Meeting will meet in person on Thursday, June 22, 2023. This meeting will be partially closed to the public.

DATES:

Meeting Registration: Registration to attend the meeting is required and must be received no later than 5:00 p.m. Eastern Time (ET) on June 20, 2023.

Speaker Registration: Registration to speak during the meeting's public comment period must be received no later than 5:00 p.m. ET on June 20, 2023.

Written Comments: Written comments must be received no later than 5:00 p.m. ET on June 20, 2023.

Meeting Date: The CISA Cybersecurity Advisory Committee will meet in-person at Mastercard in Arlington, Virginia on June 22, 2023, from 9:00 a.m. to 3:00 p.m. ET. The meeting may close early if the committee has completed its business.

ADDRESSES: The CISA Cybersecurity Advisory Committee's meeting will be open to the public, per 41 CFR 102–3.150 and will held in person at 4250 Fairfax Dr., Arlington, VA 22201. Members of the public may participate via teleconference only. For access to the conference call bridge, information on services for individuals with disabilities, or to request special

assistance, please email *CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov* by 5:00 p.m. ET June 20, 2023. The CISA Cybersecurity Advisory Committee is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact Ms. Megan Tsuyi at (202) 594–7374 as soon as possible.

Comments: Members of the public are invited to provide comment on issues that will be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated materials that may be discussed during the meeting will be made available for review at *https://www.cisa.gov/cisa-cybersecurity-advisory-committee-meeting-resources* by June 16, 2023. Comments should be submitted by 5:00 p.m. ET on June 20, 2023 and must be identified by Docket Number CISA–2023–0004. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Please follow the instructions for submitting written comments.
- *Email: CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov.* Include the Docket Number CISA–2023–0004 in the subject line of the email.

Instructions: All submissions received must include the words ''Cybersecurity and Infrastructure Security Agency'' and the Docket Number for this action. Comments received will be posted without alteration to *www.regulations.gov,* including any personal information provided. You may wish to review the Privacy & Security notice available via a link on the homepage of *www.regulations.gov.*

Docket: For access to the docket and comments received by the CISA Cybersecurity Advisory Committee, please go to *www.regulations.gov* and enter docket number CISA–2023–0004.

A public comment period is scheduled to be held during the meeting from 2:10 p.m. to 2:20 p.m. ET. Speakers who wish to participate in the public comment period must email *CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov* to register. Speakers should limit their comments to 3 minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, depending on the number of speakers who register to participate.

FOR FURTHER INFORMATION CONTACT: Megan Tsuyi, 202–594–7374, *CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The CISA Cybersecurity Advisory Committee was established under the National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283. Notice of this meeting is given under FACA, 5 U.S.C. ch. 10 (Pub. L. 92–463). The CISA Cybersecurity Advisory Committee advises the CISA Director on matters related to the development, refinement, and implementation of policies, programs, planning, and training pertaining to the cybersecurity mission of the Agency.

Agenda: The CISA Cybersecurity Advisory Committee will hold an in-person meeting on Thursday, June 22, 2023, to discuss current CISA Cybersecurity Advisory Committee activities. The open session will include: (1) a period for public comment and (2) a discussion on subcommittee updates and next steps.

The committee will also meet in a closed session from 9:00 a.m. to 1:30 p.m. ET to participate in an operational discussion that will address areas of critical cybersecurity vulnerabilities and priorities for CISA. Government officials will share sensitive information with CSAC members on initiatives and future security requirements for assessing cyber risks to critical infrastructure.

Basis for Closure: In accordance with section 10(d) of FACA and 5 U.S.C. 552b(c)(9)(B), *The Government in the Sunshine Act,* it has been determined that certain agenda items require closure, as the premature disclosure of the information that will be discussed would be likely to significantly frustrate implementation of proposed agency actions.

This agenda item addresses areas of CISA's operations that include critical cybersecurity vulnerabilities and priorities for CISA. Government officials will share sensitive information with CSAC members on initiatives and future security requirements for assessing cyber risks to critical infrastructure.

As the premature disclosure of the information that will be discussed would be likely to significantly frustrate implementation of proposed agency action, this portion of the meeting is required to be closed pursuant to section 10(d) of FACA and 5 U.S.C. 552b(c)(9)(B).

Megan M. Tsuyi,

Designated Federal Officer, CISA Cybersecurity Advisory Committee, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2023–11144 Filed 5–24–23; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_HQ_FRN_MO450017325; LHQ260000. L10600000.PC0000. 23X.LXSIADVSBD0000. 241A]

Wild Horse and Burro Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Wild Horse and Burro Advisory Board (Board) will hold a public meeting.

DATES: The Board will meet in person from June 28–30, 2023; 8 a.m. to 5 p.m. Pacific Time (PT) Wednesday and Thursday and 8 a.m. to Noon on Friday. Also, the BLM will host an educational field tour for the Board, which is open to the public, on June 27 from 8 a.m. to 5 p.m. PT.

ADDRESSES: The Board will meet in person in Reno, Nevada, at the Whitney Peak Hotel in the Whitney Peak ballroom located at 255 N Virginia Street, Reno, NV 89501.

The final agenda will be posted 2 weeks prior to the meeting and can be found on the following website: *www.blm.gov/programs/wild-horse-and-burro/get-involved/advisory-board.*

Please register to provide verbal public comments or suggestions to the Board regarding the Wild Horse and Burro Program at least 3 days prior to the meeting at *www.blm.gov/programs/wild-horse-and-burro/get-involved/advisory-board.* The public may file written comments to be presented to the Board by submitting them at least 3 days in advance of the meeting to the following email address at *BLM_WO_Advisory_Board_Comments@blm.gov* with ''Advisory Board Comment'' in the subject line of the email.

The field tour will commence and conclude at the Whitney Peak Hotel. Those wishing to attend the field tour should register in advance due to limited space via email to *dboothe@blm.gov* no later than June 21 by 5 p.m. PT; ensure to bring a high clearance vehicle; and any necessary food, health, and safety items.

FOR FURTHER INFORMATION CONTACT: Dorothea Boothe, Wild Horse and Burro Program Coordinator: telephone: (602) 906–5543, email: *dboothe@blm.gov.* Individuals in the United States who are

deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Board advises the Secretary of the Interior, the BLM Director, the Secretary of Agriculture, and the Chief of the U.S. Forest Service on matters pertaining to the management and protection of wild, free-roaming horses and burros on the Nation's public lands. The Board operates under the authority of 43 CFR 1784.

Advisory Board Meeting Agenda

Tuesday, June 27, 2023

8 a.m. to 5 p.m. PT

Board Educational Field Tour to Nevada Herd Management Area (TBD)
(Open to the public; high clearance vehicle recommended)

Wednesday, June 28, 2023

8 a.m. to 10 a.m. PT

Board FACA/Ethics Training (Administrative; not open to the public)
Break—10 a.m. to 10:15 a.m. PT

Session 1—10:15 a.m. to 11:30 a.m. PT

Meeting Called to Order
Advisory Board Subcommittee on Collaboration with BLM and U.S. Forest Service
BLM Regulations Process
Lunch Break—11:30 a.m. to 1 p.m. PT

Session 2—1 p.m. to 2 p.m. PT

Advisory Board Subcommittee on Comprehensive Ecosystem Approach to Management

Session 3—2 p.m. to 3 p.m. PT

Advisory Board Subcommittee on Humane Treatment and Communication
Break—3 p.m. to 3:15 p.m. PT

Session 4—3:15 p.m. to 4:15 p.m. PT

Public Comment Period (first)

Session 5—4:15 p.m. to 5 p.m. PT

Advisory Board Discussion and Wrap Up
Adjourn

Thursday, June 29, 2023

Session 6—8 a.m. to 9:30 a.m. PT

Meeting Called to Order
Administrative Announcements
Welcome Remarks from BLM Nevada and BLM Nevada Wild Horse and Burro
Program Overview
Approval of Minutes: October 2022
Discussion: BLM and U.S. Forest Service (USFS) Responses to Board
Recommendations from October 2022 Board Meeting
Break—9:30 a.m. to 9:45 a.m. PT

Session 7—9:45 a.m. to noon PT

BLM and U.S. Forest Service Program Updates
Lunch Break—Noon to 1:30 p.m. PT

Session 8—1:30 p.m. to 2:30 p.m. PT

Public Comment Period (second)
Break—2:30 p.m. to 2:45 p.m. PT

Session 9—2:45 p.m. to 5 p.m. PT

Panel Discussion: Drought, Wild Horses and Burros
Discussion: BLM Wild Horse and Burro Program Population Modeling
Adjourn

Friday, June 30, 2023

Session 10—8 a.m. to 9:30 a.m. PT

Advisory Board Subcommittee Discussions and Draft Recommendations

Session 11—9:30 a.m. to 10:30 p.m. PT

Public Comment Period (third)

Session 12—10:30 p.m. to Noon PT

Advisory Board Discussion and Finalize Recommendations (Board vote)
Adjourn

Agenda may be subject to change.

Public Participation: This meeting is open to the public. The public may attend the meeting in person or watch via live stream at *www.blm.gov/live. The educational field tour for the Board is also open to the public.*

The Board, the BLM, and the USFS welcome comments from all interested parties. Individuals and representatives of organizations who would like to offer comments and suggestions regarding the Wild Horse and Burro Program will have three opportunities to do so either in person or via a Zoom link (audio only) by registering on the BLM website in advance of the meeting. The Board will hear comments on Wednesday, June 28, from 3:15 p.m. to 4:15 p.m. PT, Thursday, June 29, from 1:30 p.m. to 2:30 p.m. PT, and again on Friday, June 30, from 9:30 a.m. to 10:30 a.m. PT. To accommodate all individuals interested in providing comments, please register with the BLM at least 3 days in advance of the meeting. Individuals who have not registered in advance but would like to offer comments will be permitted if time allows. Participants using desktops, laptops, smartphones, and other personal digital devices will be able to participate via audio only via a link provided by the BLM. Those with phone-only access will also be able to participate via a provided phone number and meeting ID that will be provided by the BLM in advance of the meeting when you register. The Board may limit the length of comments, depending on the number of participants who register in advance. Those not able to attend the meeting or who have insufficient time to address the Board may send written comments. Written comments emailed at least 3 days prior to the meeting will be provided to the Board in advance for consideration. Please see the **ADDRESSES** section earlier for the BLM email address and include ''Advisory Board Comment'' in the subject line of your email. The BLM will record the entire meeting, including the allotted public comment sessions. Comments should be specific and explain the reason for the recommendation(s). Comments supported by quantitative information, studies, or those that include citations and analysis of applicable laws and regulations are most useful, and more likely to assist the decision-making process for the management and protection of wild horses and burros.

Beyond live captioning, any person(s) with special needs, such as for an auxiliary aid, interpreting service, assistive listening device, or materials in an alternate format, must notify Ms. Boothe 2 weeks before the scheduled meeting date. It is important to adhere to the 2-week notice to allow enough time to arrange for the auxiliary aid or special service. Live captioning will be available throughout the event on the BLM livestream page at *www.blm.gov/live.*

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, the BLM cannot guarantee that it will be able to do so.

(Authority: 43 CFR 1784.4–2)

Brian St. George,

Designated Federal Officer, Acting Assistant Director, Resources and Planning.

[FR Doc. 2023–11135 Filed 5–24–23; 8:45 am]

BILLING CODE 4331–27–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#-35886; 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 May 13, 2023, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by June 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 May 13, 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.

CALIFORNIA

Kern County

Midway-Sunset Jack Plant, 25296 CA 33, approx. 1 mi. south of Derby Acres, Fellows vicinity, SG100009058

DISTRICT OF COLUMBIA

District of Columbia

Smothers Elementary School (Public School Buildings of Washington, DC MPS), 4400 Brooks St. NE, Washington, MP100009057

OHIO

Delaware County

Radnor Township Hall, 4425 OH 203, Radnor, SG100009061

Lorain County

Lorain Carnegie Public Library, 329 West 10th St., Lorain, SG100009060

OREGON

Coos County

Liberty Theatre, 2100 Sherman Ave., North Bend, SG100009056

Multnomah County

Pepper, Jim, House, 10809 NE Fremont St., Portland, SG100009051

Marshall, Dr. John D., Building, (African American Resources in Portland, Oregon, from 1851 to 1973 MPS), 2337 North Williams Ave., Portland, MP100009052

Wasco County

Wasco Warehouse & Milling Company Hydroelectric Project Historic District, White River Rd. and Sherars Bridge Hwy. (OR 216), Maupin vicinity, SG100009054

TEXAS

Howard County

Big Spring Downtown Historic District, Roughly bounded by 1st, Goliad, 6th, and South Gregg Sts., Big Spring, SG100009055

VIRGINIA

Pulaski County

Pulaski High School, 500 Pico Ter., Pulaski, SG100009049

A request for removal has been made for the following resource:

NEVADA

Clark County

Old Boulder City Hospital, 701 Park Pl., Boulder City, OT82003211

Authority: Section 60.13 of 36 CFR part 60.

Dated: May 17, 2023.

Sherry A. Frear,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2023–11142 Filed 5–24–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWRO–TUSK–35667; PPPWTUSK00, PPMPSPD1Z.YM0000]

Tule Springs Fossil Beds National Monument Advisory Council Notice of Public Meeting

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Park Service is hereby giving notice that the Tule Springs Fossil Beds National Monument Advisory Council (Council) will meet as indicated below.

DATES: The meeting will be held on Wednesday, September 6, 2023, at 5:00 p.m. until 7:00 p.m. (PACIFIC).

ADDRESSES: The meeting will be held in person at the State Park Nevada—Southern Nevada Office at 4747 Vegas Dr., Las Vegas, Nevada 89108. Individuals that prefer to participate virtually must contact the person listed in the (**FOR FURTHER INFORMATION CONTACT**) section at least five (5) business days prior to the meeting. The format and/or location of the meeting are subject to change depending on local health restrictions or mandates.

Written comments can be submitted by mail to Derek Carter, Superintendent, Tule Springs Fossil Beds National Monument, 601 Nevada Way, Boulder City, NV 89005, or by email *derek_carter@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Further information concerning the meeting may be obtained from Mike Theune, Acting Public Affairs Officer, Lake Mead National Recreation Area, 601 Nevada Way, Boulder City, Nevada 89005, via telephone at (702) 293–8691, or email at *mike_theune@nps.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Council was established pursuant to section 3092(a)(6) of Public Law 113–291 and in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. Ch. 10). The purpose of the Council is to advise the Secretary of the Interior with respect to the preparation and implementation of the management plan.

Purpose of the Meeting: The Council agenda will include:

1. Minutes Review
2. Superintendent Updates will include: General Management Plan
3. Resource Management Updates
4. Subcommittee Reports
5. Old Business
6. New Business
7. Public Comments

The meeting is open to the public. Interested persons may make oral or written presentations to the Council during the business meeting or file written statements. Requests to address the Council should be made to the Superintendent prior to the meeting. Members of the public may submit written comments by mailing them to Derek Carter (see **FOR FURTHER INFORMATION CONTACT**). All written comments will be provided to members of the Council. Due to time constraints during the meeting, the Council is not able to read written public comments submitted into the record. Depending on the number of people who wish to speak and the time available, the time for individual comments may be limited.

Meeting Accessibility/Special Accommodations: The meeting is open to the public. Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. ch. 10.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2023–11210 Filed 5–24–23; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–565 and 731–TA–1341 (Review)]

Hardwood Plywood From China

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping and countervailing duty orders on hardwood plywood from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on December 1, 2022 (87 FR 73792) and determined on March 6, 2023 that it would conduct expedited reviews (88 FR 19986, April 4, 2023).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on May 19, 2023. The views of the Commission are contained in USITC Publication 5426 (May 2023), entitled *Hardwood Plywood from China: Investigation Nos. 701–TA–565 and 731–TA–1341 (Review).*

By order of the Commission.

Issued: May 19, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–11108 Filed 5–24–23; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 1196]

Importer of Controlled Substances Application: VA Cooperative Studies Program

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: VA Cooperative Studies Program has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before June 26, 2023. Such persons may also file a written request for a hearing on the application on or before June 26, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on April 12, 2023, VA Cooperative Studies Program, 2401 Centre Avenue SE, Albuquerque, New Mexico 87106, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I
Tetrahydrocannabinols	7370	I

The company plans to import finished dosage unit products containing the above listed controlled substances for research and clinical trial studies only. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug

Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–11172 Filed 5–24–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1193]

Bulk Manufacturer of Controlled Substances Application: Veranova, L.P.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Veranova, L.P. has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before July 24, 2023. Such persons may also file a written request for a hearing on the application on or before July 24, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on March 27, 2023, Veranova, L.P., 2003 Nolte Drive, West Deptford, New Jersey 08066–1727, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid	2010	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Dihydromorphine	9145	I
Difenoxin	9168	I
Amphetamine	1100	II
Methamphetamine	1105	II
Lisdexamfetamine	1205	II
Methylphenidate	1724	II
Nabilone	7379	II
4-Anilino-N-Phenethyl-4-Piperidine (ANPP)	8333	II
Norfentanyl (N-phenyl-N-(piperidin-4-yl) propionamide)	8366	II
Cocaine	9041	II
Codeine	9050	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Dihydromorphine	9145	II
Hydromorphone	9150	II
Diphenoxylate	9170	II
Ecgonine	9180	II
Hydrocodone	9193	II
Levorphanol	9220	II
Meperidine	9230	II
Methadone	9250	II
Methadone intermediate	9254	II
Morphine	9300	II
Thebaine	9333	II
Opium tincture	9630	II
Oxymorphone	9652	II
Noroxymorphone	9668	II
Alfentanil	9737	II
Remifentanil	9739	II
Sufentanil	9740	II
Tapentadol	9780	II
Fentanyl	9801	II

The company plans to bulk manufacture the listed controlled substances for the internal use intermediates for sale to its customers. In reference to drug codes 7360 (Marihuana), and 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture these drugs as synthetic. No other activities for these drug codes are authorized for this registration.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–11169 Filed 5–24–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 22–26]

Keith Ly, M.D.; Decision and Order

I. Introduction

On April 28, 2022, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Keith Ly, M.D. (Applicant), of Houston, Texas.[1] OSC, at 1, 4. The OSC proposes the denial of Applicant's application for a DEA Registration (Control No. W21134341C), pursuant to 21 U.S.C. 824(a)(2 and 4) and 823(g)(1). *Id.* at 1. The OSC more specifically alleges that Applicant is a convicted felon, due to his violations of federal controlled substance laws, and committed other acts rendering his registration inconsistent with the public interest.[2] *Id.*

The hearing Applicant requested was held on September 8, 2022. Transcript of Video-Teleconference. Referencing Applicant's prior seven felony convictions and his failure to accept unequivocal responsibility for his actions, the RD recommends that Applicant's application be denied. RD, at 19–21, 23. Given the seriousness and extent of Applicant's founded violations, *infra* sections II.C., II.D., III.B., III.C., and IV., the Agency agrees.

Having thoroughly analyzed the record and applicable law, the Agency summarizes its findings and conclusions: (1) the Government presented a *prima facie* case that Applicant is a felon convicted of seven violations of federal law relating to a controlled substance and that Applicant wrote prescriptions for controlled substances when he was not legally authorized to do so, (2) Applicant attempted, but failed, to rebut the Government's *prima facie* case, and (3) substantial record evidence shows that the extent of Applicant's legal violations calls for the denial of his application for a DEA registration. Accordingly, the Agency will deny Applicant's registration application. *Infra* Order.

II. Findings of Fact

A. The Government's Case

The Agency finds that the parties stipulated to Applicant's seven felony convictions.[3] Joint Stipulation No. 2 (set out in Prehearing Ruling, at 2); *see also* GX 3 (Amended Judgment in a Criminal Case: *United States* v. *Keith Ly*, 2:13CR00157MJP–002), at 1–2. The Agency finds that Applicant did not object to the introduction of GX 3, and does not dispute that he was sentenced to prison for sixty months. Tr. 28–29; GX 3, at 3; see also, e.g., Tr. 150–51; Applicant's Closing Argument, at 1. Accordingly, the Agency finds uncontroverted, substantial record evidence that Applicant has seven prior felony convictions under federal law.

Regarding the allegation of unlawful controlled substance prescribing, the Government successfully moved into evidence the Agency's prior Decision/Order concerning Applicant. GX 6 (*Keith Ky Ly, D.O.,* 80 FR 29025 (May 20, 2015)). Accordingly, there is substantial record evidence that the Agency immediately suspended Applicant's prior DEA registration and affirmed that suspension in a published final Decision/Order dated May 20, 2015. Further, there is substantial record evidence that Applicant had reason to be aware of that immediate suspension on January 28, 2013. GX 6, at 3; *see also* Tr. 54–55, 61.

The Government successfully moved into evidence four controlled substance prescriptions. GX 5a–d (lorazepam, OxyContin, clonazepam, and phenobarbital).[4] The Diversion Investigator (DI) who testified that he obtained these prescriptions also testified that he confirmed with pharmacies that they dispensed, and with Applicant's patients that they received, the controlled substances issued in GX 5a–d.[5] Tr. 56–70. Accordingly, the Agency finds substantial record evidence that Applicant issued controlled substance prescriptions between February 1, 2013 and March 12, 2014, when his DEA registration was suspended.

B. Applicant's Case

As already discussed, Applicant admits that he is a felon. *Supra* section II.A. He argues, though, that the convictions are ''totally unrelated to any conduct in his medical practice. It was for marijuana and not a prescribed drug, nor one that is presently illegal in most states.'' Applicant Exceptions, at 1. Applicant also argues that the convictions stem ''from actions that took place almost a decade ago,'' and that nobody has ever alleged that his controlled substance prescribing reflected an ''inappropriate medical diagnosis, practice or procedure.''[6] *Id.* at 2. He posits that the RD reflects a prejudging of his case ''due to a conviction . . . totally unrelated'' to his registration application. *Id.* at 2. Applicant similarly argues that the RD shows a ''misinterpret[ation]'' of his approach to acceptance of responsibility, as it fails to ''distinguish between a person who explains what took place,'' as he claims to have done, ''as opposed to someone who seeks to offer an excuse for what took place.'' *Id.*

Regarding the allegation that he prescribed controlled substances when he did not have legal authority to do so, Applicant argues that GX 5a–d includes prescriptions that are not for controlled substances, that some of the alleged prescriptions are not ''prescriptions'' because they do not include all of the elements required by regulation, and that the signature on the alleged controlled substance prescriptions is not his. Tr. 172–176; 186–192; 198–206; *see also, e.g.,* Applicant's Closing Argument at 5. He also argues that the ''prescriptions'' do not evidence or ''constitute any substandard medical procedures or diagnosis.'' Applicant Exceptions, at 2; Applicant's Closing Argument, at 4, 5. Instead, Applicant states that, throughout his practice, he has ''provide[d] medical[ly] necessary assistance with prescribed, controlled substances when the patient's condition(s) suggest that such a

[1] Also referred to as ''Keith Ly, D.O.'' *Compare* Order Rejecting Applicant's Subpoena Request, at 1, *with* Recommended Rulings, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge (RD), at 1.

Effective December 2, 2022, the Medical Marijuana and Cannabidiol Research Expansion Act, Public Law 117–215, 136 Stat. 2257 (2022) (MRA), amended the Controlled Substances Act (CSA) and other statutes. Relevant to this matter, the MRA redesignated 21 U.S.C. 823(f), cited in the OSC, as 21 U.S.C. 823(g)(1). Accordingly, this Decision cites to the current designation, 21 U.S.C. 823(g)(1), and to the MRA-amended CSA throughout.

[2] During the hearing, without Applicant's objection, the Government corrected two, legally irrelevant errors in the OSC. Tr. 65, 69. Applicant did not file Exceptions about and, therefore, the Agency does not address, any of the Administrative Law Judge's pre-hearing, hearing, or post-hearing rulings.

[3] ''On December 19, 2014, Applicant was convicted of seven felonies under Title 21 in the United States District Court for the Western District of Washington, in Case No. 13–CR–157. Specifically, Applicant was convicted of the following: a. Count One, Conspiracy to Distribute and Dispense a Schedule I Controlled Substance, in violation of 21 U.S.C. 841 and 846; b. Counts Two-Four, Manufacturing Marijuana a Schedule 1 Controlled Substance, in violation of 21 U.S.C. 841; and c. Counts Five-Seven, Maintaining a Drug Involved Premises, in violation of 21 U.S.C. 856.'' Joint Stipulation No. 2 (set out in Prehearing Ruling, at 2).

[4] In addition to containing controlled substance prescriptions, GX 5a–d also includes prescriptions for items that are not controlled.

[5] The Agency agrees with the RD's decision to afford DI's testimony ''full credibility.'' RD, at 6.

[6] Applicant also asserts that the notion that past performance is the best indicator of future results is ''archaic reasoning'' that ''flies in the face of countless examples of rehabilitation, restitution and recovery.'' Applicant Exceptions, at 1.

treatment would be in the patient's best interest.'' *Id.*

Applicant's case highlights the continuing medical education (CME) classes he took while incarcerated and the Texas Medical Board's re-issuance of his medical license. *Id.* at 2.

The Agency agrees with the RD's analysis of, and conclusions about, the credibility of Applicant's testimony. RD, at 8–9. Accordingly, in this adjudication, the Agency gives DI's testimony controlling weight when there is a conflict between it and Applicant's testimony, and gives Applicant's testimony little to no weight in all other circumstances. *Id.* at 9.

C. Allegation That Applicant Is a Convicted Felon

Based on a review of all of the record evidence, the Agency notes Applicant's admission that he has been convicted of seven felonies. *Supra* section II.A.; n.3. Accordingly, the Agency finds substantial, uncontroverted record evidence that Applicant is a seven-time convicted felon.

D. Allegation That Applicant Issued Controlled Substance Prescriptions When His DEA Registration Was Suspended

Based on a review of all of the record evidence, and application of its credibility assessments, the Agency rejects the arguments of Applicant about the content of GX 5a–d that conflict with DI's testimony.[7] Applicant's argument that GX 5a–d's controlled substance prescriptions are not valid, because they do not include the elements required by federal regulation, lacks merit against DI's credible testimony that a pharmacy filled them and dispensed controlled substances to Applicant's patients.[8] *See* RD, at 14–15. Accordingly, the Agency finds substantial record evidence that Applicant issued controlled substance prescriptions when his DEA registration was suspended.

III. Discussion

A. The Controlled Substances Act (CSA) and Implementing Regulations

According to the CSA, a practitioner's application for a DEA registration may be denied upon a determination that ''the issuance of such registration . . . would be inconsistent with the public interest.'' 21 U.S.C. 823(g)(1). In making the public interest determination, the CSA requires consideration of five factors. 21 U.S.C. 823(g)(1)(A–E). The five factors are considered in the disjunctive. *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003).

According to Agency decisions, the Agency ''may rely on any one or a combination of factors and may give each factor the weight [it] deems appropriate in determining whether'' to revoke a registration. *Id.; see also Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d 823, 830 (11th Cir. 2018) (citing *Akhtar-Zaidi* v. *Drug Enf't Admin.,* 841 F.3d 707, 711 (6th Cir. 2016)); *MacKay* v. *Drug Enf't Admin.,* 664 F.3d 808, 816 (10th Cir. 2011); *Volkman* v. *U.S. Drug Enf't Admin.,* 567 F.3d 215, 222 (6th Cir. 2009); *Hoxie* v. *Drug Enf't Admin.,* 419 F.3d 477, 482 (6th Cir. 2005). Moreover, while the Agency is required to consider each of the factors, it ''need not make explicit findings as to each one.'' *MacKay,* 664 F.3d at 816 (quoting *Volkman,* 567 F.3d at 222); *see also Hoxie,* 419 F.3d at 482. ''In short, . . . the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's misconduct.'' *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 462 (2009).

Accordingly, as the Tenth Circuit has recognized, findings under a single factor can support the revocation of a registration. *MacKay,* 664 F.3d at 821. In this matter, while all of the 21 U.S.C. 823(g)(1) factors have been considered, the Government's evidence is confined to Factors B, C, and D.[9] OSC, at 1–2.

B. Factor ''C''—Applicant's Conviction Record Under Federal Laws Relating to the Manufacture, Distribution, or Dispensing of Controlled Substances

As already discussed, the record, including Applicant's admissions, contains substantial evidence that Applicant has been convicted of seven felonies. *Supra* sections II.A. and II.C.; n.3. It is self-evident that each of these seven felonies involves a controlled substance and relates to the ''manufacture, distribution, or dispensing'' of a controlled substance. n.3; 21 U.S.C. 823(g)(1)(C). Accordingly, the Agency finds substantial record evidence that Applicant was convicted of seven felonies ''relating to the manufacture, distribution, or dispensing of controlled substances,'' that the Government presented a *prima facie* case under Factor C, that Applicant failed to rebut the Government's *prima facie* case, and that Applicant's continued registration is inconsistent with the public interest, supporting denial of his registration application. *Id.*

C. Factors B and D—Applicant's Experience Dispensing Controlled Substances and Compliance With Applicable Laws Relating to Controlled Substances

As already discussed, the Agency finds substantial record evidence that Applicant issued controlled substance prescriptions when his DEA registration was suspended. *Supra* section II.D; *see also* section II.A. Under the CSA, a practitioner must possess a DEA registration to dispense a controlled substance lawfully. *See, e.g.,* 21 U.S.C. 823(g)(1). Accordingly, the Agency finds substantial record evidence of Applicant's unlawful controlled substance dispensing and failure to comply with federal law relating to controlled substances, that the Government presented a *prima facie* case under Factors B and D, that Applicant failed to rebut the Government's *prima facie* case, and that Applicant's continued registration is inconsistent with the public interest, supporting denial of his registration application. *Id.; see also* RD, at 14 (first full paragraph) through 17 (the penultimate sentence of the first full paragraph).

IV. Sanction

Where, as here, the Government has met its *prima facie* burden of showing that Applicant's continued registration is inconsistent with the public interest, the burden shifts to Applicant to show why he can be entrusted with a registration. *Garrett Howard Smith, M.D.,* 83 FR 18882 (2018). Moreover, as past performance is the best predictor of future performance, the Agency has required that an applicant who has committed acts inconsistent with the public interest must unequivocally accept responsibility for those acts and demonstrate that he will not engage in future misconduct. *Id.* In addition, an applicant's candor during the investigation and hearing has been an important factor in determining acceptance of responsibility and the appropriate sanction. *Id.* In addition, the Agency has found that the egregiousness and extent of the misconduct are

[7] Applicant's argument that the contents of GX 5a–d include prescriptions for non-controlled substances is not germane because GX 5a–d also contain prescriptions for controlled substances. *See* n.4, *supra.* The latter are material to the evaluation of Respondent's application, the former are not.

[8] Applicant's argument that the signatures on those controlled substance prescriptions do not belong to him is not credible for the same reasons.

[9] Neither Applicant nor the Government purports to offer evidence relevant to Factors A or E. The Agency considered Factors A and E, and finds that neither of them is relevant to this adjudication.

significant factors in determining the appropriate sanction. *Id.* The Agency has also considered the need to deter similar acts by an applicant and by the community of registrants. *Id.*

Applicant posits that the RD ''prejudge[s]'' him and ''misinterprets'' his approach by not ''distinguish[ing] between a person who explains what took place,'' as he argues he did, ''as opposed to someone who seeks to offer an excuse for what took place.'' Applicant Exceptions, at 2; *supra* section II.B. Applicant also argues that he stated, ''truthfully,'' ''how the grow houses became used for marijuana'' and ''admit[ted] his responsibility in same.'' Applicant Exceptions, at 2. Citing his ''remarkable'' CME compliance and re-issued Texas medical license, Applicant also claims that he ''has demonstrated, through his actions since, that he is worthy of any discretion the Court could provide.'' *Id.; but see* RD, at 19.

Even if the Agency were to credit Applicant's arguments, they do not change the fact that he did not unequivocally accept responsibility for the founded violations. *Supra* sections III.B. and III.C. For example, regarding the allegation that he prescribed controlled substances after the 2013 suspension of his registration, Applicant even refused to admit that the signatures on the controlled substance orders were his. *Supra* section II.B. The RD credits the DI's testimony over Applicant's steadfast refusal to acknowledge his signatures, and the Agency agrees. RD, at 14–15; *see also supra* sections II.A., II.B., and II.D.

This record evidence also shows that Applicant, despite his ''remarkable'' CME compliance, does not understand the responsibilities the CSA places on practitioners. Applicant posits that, ''throughout his practice, he has provide[d] medical[ly] necessary assistance with prescribed, controlled substances when the patient's condition(s) suggest that such a treatment would be in the patient's best interest.'' Applicant's Closing Argument, at 2; *see also* Applicant Exceptions, at 2–4. Such statements attempt to minimize, or divert attention from, his unlawful activity, and show Applicant's lack of understanding of the CSA's requirements. Accordingly, the Agency finds that Applicant did not unequivocally accept responsibility for the unlawful acts he committed and has not convinced the Agency that he can be entrusted with a registration.[10]

The interests of specific and general deterrence weigh in favor of denying Applicant's registration application. *See, e.g., Garrett Howard Smith, M.D.,* 83 FR at 18910 (collecting cases) (''The egregiousness and extent of the misconduct are significant factors in determining the appropriate sanction.''). Given the seriousness and extent of Applicant's founded violations, a sanction less than application denial would tell prospective registrants that compliance with the law is not a condition precedent to the issuance of a registration.

Accordingly, the Agency shall order the sanction the Government requested.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny the DEA registration application of Keith Ly, M.D. (Control No. W21134341C). Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending application of Keith Ly, M.D., for a DEA Registration in Texas. This Order is effective June 26, 2023.

Signing Authority

This document of the Drug Enforcement Administration was signed on May 16, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–11131 Filed 5–24–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1181]

Bulk Manufacturer of Controlled Substances Application: Benuvia Operations LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Benuvia Operations LLC. has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before July 24, 2023. Such persons may also file a written request for a hearing on the application on or before July 24, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on March 9, 2023, Benuvia Operations, LLC., 3950 North Mays Street, Round Rock, Texas 78665, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Ibogaine	7260	I
Lysergic Acid Diethylamide	7315	I
Tetrahydrocannabinols	7370	I
Mescaline	7381	I

[10] Remedial measures are insufficient without an unequivocal acceptance of responsibility. *Brenton D. Wynn, M.D.,* 87 FR 24228, 24261 (2022); *see also Michael T. Harris, M.D.,* 87 FR 30276, 30278 (2022) (collecting Agency decisions).

Controlled substance	Drug code	Schedule
3, 4-Methylenedioxyamphetamine	7400	I
3, 4-Methylenedioxymethamphetamine	7405	I
5-Methoxy-N-N-dimethyltryptamine	7431	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I
5-Methoxy-N, N-diisopropyltryptamine	7439	I

The company plans to bulk manufacture the listed controlled substances for the internal use intermediates or for sale to its customers. In reference to dug codes 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture this drug as synthetic. No other activities for these drug codes are authorized for this registration.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–11158 Filed 5–24–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1206]

Bulk Manufacturer of Controlled Substances Application: Irvine Labs, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Irvine Labs, Inc. has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before July 24, 2023. Such persons may also file a written request for a hearing on the application on or before July 24, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on April 5, 2023, Irvine Labs, Inc., 7305 Murdy Drive, Hunting Beach, California 92647–3533, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Lysergic acid diethylamide.	7315	I
Mescaline	7381	I
Peyote	7415	I
Diethyltryptamine	7434	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I

The company plans to bulk manufacture the listed controlled substances to support their internal research, clinical trials, and analytical purposes as well as to distribute to their customers. No other activities for these drug codes are authorized for this registration.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–11178 Filed 5–24–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1191]

Bulk Manufacturer of Controlled Substances Application: Patheon API Manufacturing, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Patheon API Manufacturing, Inc. has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before July 24, 2023. Such persons may also file a written request for a hearing on the application on or before July 24, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on March 31, 2023, Patheon API Manufacturing, Inc., 309 Delaware Street, Greenville, South Carolina 29605–5420, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I

The company plans to bulk manufacture the listed controlled substances as an Active Pharmaceutical Ingredient (API) for distribution to its customers. No other activities for these

drug codes are authorized for this registration.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–11163 Filed 5–24–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1201]

Importer of Controlled Substances Application: Galephar Pharmaceuticals Research, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Galephar Pharmaceuticals Research, Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to SUPPLEMENTARY INFORMATION listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before June 26, 2023. Such persons may also file a written request for a hearing on the application on or before June 26, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA **Federal Register** Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on April 25, 2023, Galephar Pharmaceutical Research, Inc., 100 Carr 198 Industrial Park, Juncos, Puerto Rico 00777–3873, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Morphine	9300	II

The company plans to import the listed controlled substance for analytical purpose only. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–11176 Filed 5–24–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1199]

Importer of Controlled Substances Application: Usona Institute

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Usona Institute has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to SUPPLEMENTARY INFORMATION listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before June 26, 2023. Such persons may also file a written request for a hearing on the application on or before June 26, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on April 20, 2023, Usona Institute, 2780 Woods Hollow Road, Room 2412, Fitchburg, Wisconsin 53711–5370, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
5-Methoxy-N–N-dimethyltryptamine.	7431	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I

The institute plans to import the listed controlled substances to be used for research and analytical purposes. The materials will not be used for clinical trials or bulk manufacture. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–11174 Filed 5–24–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1195]

Importer of Controlled Substances Application: AndersonBrecon Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: AndersonBrecon Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before June 26, 2023. Such persons may also file a written request for a hearing on the application on or before June 26, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on April 3, 2023, AndersonBrecon Inc., 5775 Logistics Parkway, Rockford, Illinois 61109–3608, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Tetrahydrocannabinols	7370	I

The company plans to import the listed controlled substance for clinical trial studies only. No other activity for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–11171 Filed 5–24–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1194]

Importer of Controlled Substances Application: Royal Emerald Pharmaceuticals

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Royal Emerald Pharmaceuticals has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to SUPPLEMENTARY INFORMATION listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before June 26, 2023. Such persons may also file a written request for a hearing on the application on or before June 26, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on March 29, 2023, Royal Emerald Pharmaceuticals, 14011 Palm Drive, Building B, Desert Hot Springs, California 92240–6845, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I

The company plans to import Marihuana seeds and immature Marihuana plants in the form of Active Pharmaceutical Ingredients (API) and botanical raw materials for Drug Enforcement Administration-approved legitimate scientific medical research and/or industrial purposes.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–11170 Filed 5–24–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1202]

Bulk Manufacturer of Controlled Substances Application: Royal Emerald Pharmaceuticals

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Royal Emerald Pharmaceuticals has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before July 24, 2023. Such persons may also file a written request for a hearing on the application on or before July 24, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on March 27, 2023, Royal Emerald Pharmaceuticals, 14011 Palm Drive, Building B, Desert Hot Springs, California 92240–6845, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I

The company plans to bulk manufacture the listed controlled substances to provide Marihuana (Cannabis) as botanical raw material and/or active pharmaceutical ingredients (API) to DEA research registrants and manufacturers. No other activities for these drug codes are authorized for this registration.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–11177 Filed 5–24–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1200]

Bulk Manufacturer of Controlled Substances Application: Promega Corporation

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Promega Corporation has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before July 24, 2023. Such persons may also file a written request for a hearing on the application on or before July 24, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on April 5, 2023, Promega Corporation, 3075 Sub Zero Parkway, Fitchburg, Wisconsin 53719, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Psilocybin	7437	I
Psilocyn	7438	I

The company plans to bulk manufacture the listed controlled substances as Active Pharmaceutical Ingredients (API) for sale to its customers. No other activities for these drug codes are authorized for this registration.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–11175 Filed 5–24–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1192]

Importer of Controlled Substances Application: Unither Manufacturing LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Unither Manufacturing LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to SUPPLEMENTARY INFORMATION listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before June 26, 2023. Such persons may also file a written request for a hearing on the application on or before June 26, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to:

(1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on April 7, 2023, Unither Manufacturing LLC, 331 Clay Road, Rochester, New York 14623–3226, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Methylphenidate	1724	II

The company plans to import the listed controlled substance solely for updated analytical testing purposes to meet European Union requirements for their finished dosage form product. This analysis is required to allow the company to export domestically-manufactured finished dosage forms to foreign markets. No other activities for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–11167 Filed 5–24–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1190]

Importer of Controlled Substances Application: United States Pharmacopeial Convention

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: United States Pharmacopeial has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to SUPPLEMENTARY INFORMATION listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before June 26, 2023. Such persons may also file a written request for a hearing on the application on or before June 26, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on March 23, 2023, United States Pharmacopeial Convention, 7135 English Muffin Way, Frederick, Maryland 21704, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Cathinone	1235	I
Methcathinone	1237	I
Methaqualone	2565	I
Lysergic acid diethylamide	7315	I
4-Methyl-2,5-dimethoxyamphetamine	7395	I
3,4-Methylenedioxyamphetamine	7400	I
4-Methoxyamphetamine	7411	I
Codeine-N-oxide	9053	I
Difenoxin	9168	I
Heroin	9200	I
Morphine-N-oxide	9307	I
Norlevorphanol	9634	I
Methamphetamine	1105	II
Lisdexamfetamine	1205	II
Phenmetrazine	1631	II
Methylphenidate	1724	II
Amobarbital	2125	II
Pentobarbital	2270	II
Secobarbital	2315	II
Glutethimide	2550	II
Phencyclidine	7471	II
4-Anilino-N-phenethyl-4-piperidine (ANPP)	8333	II
Phenylacetone	8501	II
Alphaprodine	9010	II
Anileridine	9020	II
Cocaine	9041	II
Dihydrocodeine	9120	II

Controlled substance	Drug code	Schedule
Diphenoxylate	9170	II
Levomethorphan	9210	II
Levorphanol	9220	II
Meperidine	9230	II
Dextropropoxyphene, bulk (non-dosage forms)	9273	II
Thebaine	9333	II
Oxymorphone	9652	II
Noroxymorphone	9668	II
Alfentanil	9737	II
Sufentanil	9740	II

The company plans to import the bulk control substances for distribution as analytical reference standards to its customers for analytical testing of raw materials. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–11166 Filed 5–24–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1198]

Importer of Controlled Substances Application: Almac Clinical Services Incorp. (ACSI)

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Almac Clinical Services Incorp (ACSI) has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before June 26, 2023. Such persons may also file a written request for a hearing on the application on or before June 26, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on May 1, 2023, Almac Clinical Services Incorp (ACSI), 25 Fretz Road, Souderton, Pennsylvania 18964, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Psilocybin	7437	I
Oxycodone	9143	II
Hydromorphone	9150	II
Morphine	9300	II
Tapentadol	9780	II
Fentanyl	9801	II

The company plans to import the listed controlled substances as finished dosage form units for clinical trials purposes only. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–11173 Filed 5–24–23; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 22–11]

Gary Gray d/b/a Complex; Decision and Order

On November 22, 2021, the Drug Enforcement Administration (DEA or the Agency) issued an Order to Show Cause (OSC) to Gary Gray d/b/a Complex (hereinafter, the Respondent) seeking to deny Respondent's application for a DEA Certificate of Registration to manufacture marihuana, Control No. W14063382E. OSC, at 1.

After a hearing, the Chief Administrative Law Judge (Chief ALJ) issued his Recommended Rulings, Findings of Law, and Decision of the Administrative Law Judge (Recommended Decision or RD), which recommended Respondent's application for a manufacturing registration be denied because ''the plain language of the controlling regulations compels the denial of the present application as a matter of law.'' RD, at 2, 11. The Agency agrees with the Chief ALJ's recommendation, and, for the reasons explained below, denies Respondent's application as inconsistent with the public interest under 21 U.S.C. 823(a).[1]

[1] Effective December 2, 2022, the Medical Marijuana and Cannabidiol Research Expansion Act, Public Law 117–215, 136 Stat. 2257 (2022) (Marijuana Research Amendments or MRA), amended the Controlled Substances Act (CSA) and

I. Findings of Fact

On July 30, 2014, Respondent filed an application with DEA to bulk manufacture Schedule I controlled substances. Government Exhibit (GX) 1. According to Respondent, he is seeking to obtain DEA registration as a bulk manufacturer of marihuana ''so that he may cultivate, harvest, and package the particular strains of marihuana required for his research and product development purposes.'' Resp Posthearing, at 4; Tr. 30. Respondent hopes to ultimately produce products that will treat Alzheimer's and other degenerative diseases. Tr. 30, 49.

Respondent is a pharmacist and has possessed, and operated under, pharmacy controlled substance registrations, as well as having held multiple state pharmacy licenses for over 50 years. Tr. 58–61. It is undisputed, however, that Respondent does not currently hold any type of DEA controlled substance registration, and at the onset of the hearing, a certification of Respondent's lack of DEA registration as a schedule 1 researcher was admitted into the record without objection. Tr. 18; GX 1, at 2.

II. Discussion

The Controlled Substances Act (CSA) states that the Agency shall register an applicant to manufacture controlled substances in schedule I or II if such registration is determined to be ''consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971.'' 21 U.S.C. 823(a). The CSA provides six factors DEA must consider in determining the public interest. *Id.* 21 CFR 1318.05, which implements the requirements of § 823(a) for marihuana growers and manufacturers, further provides that the Agency shall place ''particular emphasis'' on certain enumerated criteria in determining the public interest.

In situations, such as here, where ''an applicant seeks registration to grow cannabis for its own research or product development'' one of the criteria of ''particular emphasis'' is that ''the applicant *must possess* registration as a schedule I researcher with respect to marihuana under § 1301.31 of this chapter.'' 21 CFR 1318.05(b)(3)(ii) (emphasis added). It is undisputed that Respondent does not possess a DEA schedule I researcher registration under § 1301.31. Tr. 19; Respondent's Exceptions, at 3. Accordingly, under the plain language of the regulation, Respondent does not meet the criteria to receive the manufacturer registration for which he has applied, and the Agency finds that granting his application for a registration would not be consistent with the public interest under § 823(a).[2]

other statutes; however, the relevant provision here, 21 U.S.C. 823(a), remained the same.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(a), I hereby deny DEA registration application No. W14063382E submitted by Gary Gray d/b/a/Complex. This Order is effective June 26, 2023.

Signing Authority

This document of the Drug Enforcement Administration was signed on May 16, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–11132 Filed 5–24–23; 8:45 am]

BILLING CODE 4410–09–P

[2] Respondent filed Exceptions to the Chief ALJ's Recommended Decision arguing that he is eligible for a manufacturer registration because he applied for the requisite researcher registration in June 2022 and that application is pending with DEA. Respondent's Exceptions, at 4. Respondent's argument is unpersuasive as the regulations clearly state that an applicant must *currently* possess a researcher registration, not just have submitted an application for one. (Respondent's application for a researcher registration is also not in the record under consideration for this matter as, based on a declaration from Respondent's counsel, it was submitted after the Chief ALJ had transferred the certified record for this matter to the DEA Administrator). Respondent requests, in the alternative, that any action on the instant application be stayed pending action on his application for registration as a schedule 1 researcher. *Id.* at 6–7. Respondent's request is denied. Respondent may submit a new application for a manufacturer registration and that application will be evaluated on its merits.

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Request for State or Federal Workers' Compensation Information

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before June 26, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (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.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The OWCP Form CM–981 is completed by a school official to verify whether a Black Lung beneficiary's dependent, aged 18 to 23, qualifies as a full-time student. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 31, 2022 (88 FR 6314).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is

generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OWCP.

Title of Collection: Extension.

OMB Control Number: 1240–0032.

Affected Public: Private Sector—State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 4,155.

Total Estimated Number of Responses: 4,155.

Total Estimated Annual Time Burden: 1,039 hours.

Total Estimated Annual Other Costs Burden: $2,356.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2023–11100 Filed 5–24–23; 8:45 am]

BILLING CODE 4510–26–P

OFFICE OF MANAGEMENT AND BUDGET

Request for Nominations of Experts to Peer-Review Draft Guidance on Valuing Ecosystem Services in Federal Benefit-Cost Analyses

AGENCY: Office of Management and Budget.

ACTION: Notice; request for nominations.

SUMMARY: The Office of Management and Budget (OMB) will propose draft guidance called *Guidance for Assessing Changes in Environmental and Ecosystem Services in Benefit-Cost Analysis.* This notice requests public nominations of experts to participate in an independent scientific peer review of this forthcoming proposed Guidance.

DATES: The 21-day public comment period to provide nominations begins May 25, 2023, and ends June 15, 2023. Nominations must be received on or before June 15, 2023.

ADDRESSES: Submit your nominations by emailing them to *MBX.OMB.OIRA.ESGuidancePeerReview@omb.eop.gov* (subject line: Peer Review Nomination for Ecosystem Services Guidance) no later than June 15, 2023. To receive full consideration, nominations should include all of the information requested below. Please be advised that public comments, including communications on these nominations, are subject to release under the Freedom of Information Act.

Privacy Act Statement: Submission of nominations is voluntary. Solicitation of this information is authorized by 31 U.S.C. 1111. The information furnished will be used to select independent peer reviewers to evaluate forthcoming proposed guidance entitled *Guidance for Assessing Changes in Environmental and Ecosystem Services in Benefit-Cost Analysis.* While the information solicited by this notice is intended to be used for internal purposes, in certain circumstances it may be necessary to disclose this information externally, for example to contractors, as necessary to perform their duties for the Federal government; to a congressional office in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains; or to other agencies, courts, and persons as necessary and relevant in the course of litigation, and as necessary and in accordance with requirements for law enforcement. A complete list of the routine uses can be found in the system of records notice associated with this collection of information, OMB Public Input System of Records, OMB/INPUT/01.

FOR FURTHER INFORMATION CONTACT: Office of Information and Regulatory Affairs, Office of Management and Budget, *MBX.OMB.OIRA.ESGuidancePeerReview@omb.eop.gov* (subject line: Peer Review Nomination for Ecosystem Services Guidance).

SUPPLEMENTARY INFORMATION:

I. Background

Two OMB circulars provide guidance to Federal agencies on benefit-cost analyses. Circular A–4: *Regulatory Analysis* [1] discusses analyses of regulations' impacts, as required under section 6(a)(3) of Executive Order (E.O.) 12866 (Regulatory Planning and Review),[2] the Regulatory Right-to-Know Act,[3] and a variety of related authorities. Circular A–94: *Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs* [4] discusses analyses of Federal programs or policies, decisions whether to lease or purchase, and asset valuation and sale. In April 2023, OMB proposed draft updates to both circulars.[5] These draft updates both note the importance of analyses accounting for effects on environmental and ecosystem services, as feasible and appropriate, and reference forthcoming OMB guidance on ecosystem services for more discussion on how to conduct such analyses.[6] E.O. 14072 section 4(b) also calls for guidance related to the valuation of ecosystem and environmental services and natural assets in Federal regulatory decision-making.[7]

OMB is currently drafting this guidance, entitled *Guidance for Assessing Changes in Environmental and Ecosystem Services in Benefit-Cost Analysis.* OMB will solicit public comments on the proposed guidance. In addition, the proposed guidance will be peer reviewed. The independent, external scientific peer review will be managed by an OMB contractor. This notice requests public nominations of experts to participate in the independent scientific peer review of the forthcoming guidance on valuing ecosystem services in benefit-cost analyses consistent with Circulars A–4 and A–94.

[1] OMB, Circular A–4, *Regulatory Analysis* (Sept. 17, 2003), *available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf.*

[2] Exec. Order No. 12866, 58 FR 51735 (Oct. 4, 1993).

[3] Public Law 106–554, 624, 114 Stat. 2763A–161 (codified at 31 U.S.C. 1105 note).

[4] OMB, Circular A–94, *Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs* (Oct. 29, 1992), *available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A94/a094.pdf.*

[5] *See* OMB, Draft for Public Review: Circular A–4, *Regulatory Analysis* (Apr. 6, 2023), *available at https://www.whitehouse.gov/wp-content/uploads/2023/04/DraftCircularA-4.pdf* (hereinafter Draft Circular A–4 Update); OMB, Draft for Public Review: Circular A–94, *Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs* (Apr. 6, 2023), *available at https://www.whitehouse.gov/wp-content/uploads/2023/04/CircularA94.pdf* (hereinafter Draft Circular A–94 Update).

[6] *See* Draft Circular A–4 Update 51–52 (''Many regulations will influence environmental or ecosystem services that directly impact the welfare of relevant populations. . . . Where you identify relevant ecosystem services, you should seek to monetize their impacts when feasible, quantify impacts when monetization is not feasible, and describe qualitatively impacts that are not monetized or quantified. See . . . forthcoming OMB guidance on ecosystem services for additional information and guidance.''); Draft Circular A–94 Update 8 (''Projects may directly affect or alter access to the natural environment and the benefits it provides. Analyses should account for relevant effects on ecosystem and environmental services when feasible. See forthcoming OMB guidance on ecosystem services for additional discussion on how to capture the welfare effects of ecosystem and environmental services.'').

[7] Executive Order No. 14072, *Strengthening the Nation's Forests, Communities, and Local Economies* § 4(b), 87 FR 24851, 24854 (Apr. 27, 2022).

II. Information About This Peer Review

OMB is seeking nominations of individuals with demonstrated and nationally recognized expertise in ecosystem services and natural assets. OMB seeks diverse perspectives, including relevant natural science (*e.g.,* ecology, biology, marine sciences, or hydrology), systems science (*e.g.,* ecosystem ecology or biogeochemistry), applied science (*e.g.,* civil or environmental engineering), and environmental and resource economics disciplines. Nominations of individuals with expertise in multiple disciplines and perspectives are encouraged. A balanced review panel should include experts who together possess the necessary domains of knowledge and a breadth of economic and scientific perspectives to provide rigorous peer review. All nominations will be evaluated for real or perceived conflicts of interest and independence.

To form the list of candidate external reviewers, nominations submitted in response to this notice will be considered along with candidates identified using traditional techniques (*e.g.,* a literature search) to identify additional qualified candidates in the disciplines listed above. After consideration of public nominations, a final multi-disciplinary panel of four to six peer reviewers will be selected from the pool. Selection criteria to be used for panel membership include: (a) distinguished and nationally recognized technical expertise, as well as experience; (b) availability and willingness to serve; and (c) real or perceived conflicts of interest and independence.

Process and Deadline for Submitting Nominations: Any person or organization may nominate individuals qualified in the areas described above. Self-nominations are permitted. Submit your nominations by email to *MBX.OMB.OIRA.ESGuidancePeerReview@omb.eop.gov* (subject line: Peer Review Nomination for Ecosystem Services Guidance). To receive full consideration, nominations should include all of the following information: contact information for the person making the nomination; the nominee's contact information and institutional affiliation; the nominee's disciplinary and specific areas of expertise; and the nominee's résumé or curriculum vitae or equivalent information about their current position, educational background, expertise, and experience. To assess conflicts of interest and independence for nominees being considered for the peer review, OMB will seek to identify, among other factors, professional affiliation with the Executive Office of the President within the last 3 years, current contracts with the Federal government to conduct regulatory impact analysis or other decision support analyses, and regular business streams to advocate for or critique regulatory impact analyses on behalf of non-federal entities.

Richard L. Revesz,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 2023–11130 Filed 5–24–23; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: (22–XXX)]

National Environmental Policy Act; Mars Sample Return Campaign

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of the Mars Sample Return (MSR) Campaign Final Programmatic Environmental Impact Statement (PEIS).

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA); Executive Order 12114, *Environmental Effects Abroad of Major Federal Actions;* the Council on Environmental Quality's NEPA implementing regulations, NASA's procedures for implementing NEPA, and Department of the Air Force (DAF) procedures for implementing NEPA, NASA announces the availability of the MSR Campaign Final PEIS. The Final PEIS provides information and analysis related to the potential environmental impacts associated with the proposed action to retrieve a scientifically selected set of samples from Mars and transport them to Earth for scientific analysis and research. Cooperating agencies for this effort include the DAF for Hill Air Force Base, Utah, and Cape Canaveral Space Force Station, Florida; the Department of the Army for Dugway Proving Ground; the U.S. Department of Agriculture; and the U.S. Department of Health and Human Services—Centers for Disease Control and Prevention.

DATES: NASA will document its decision regarding alternative implementation in a Record of Decision (ROD), which would be signed no sooner than June 26, 2023, after the 30-day mandatory Final PEIS waiting period is complete as required by 40 CFR 1506.11(b)(2).

ADDRESSES: The Final PEIS and other informational materials are available at *https://www.nasa.gov/feature/nepa-mars-sample-return-campaign.* All comments received on the Draft EIS are available in their entirety on the MSR Campaign Docket at *https://www.regulations.gov/document/NASA-2022-0002-0175.*

FOR FURTHER INFORMATION CONTACT: Mr. Steve Slaten, NASA Jet Propulsion Laboratory, by electronic mail at *Mars-sample-return-nepa@lists.nasa.gov* or by telephone at 202–358–0016. For questions regarding viewing the Docket, please call Docket Operations, telephone: 202–366–9317 or 202–366–9826.

SUPPLEMENTARY INFORMATION: NASA, in coordination with the European Space Agency, proposes to conduct a campaign to retrieve samples from Mars and transport them to Earth. A scientifically selected set of samples (*i.e.,* Martian rocks, regolith, and atmosphere), acquired and cached on the surface of Mars by the Perseverance rover, would be returned to Earth for scientific analysis and research. The proposed sample landing location is the DAF- managed Utah Test and Training Range, with additional activities potentially occurring on the U.S. Army's Dugway Proving Ground. The Final PEIS provides information and analysis related to the potential environmental impacts associated with this proposed action.

The proposed action and a no action alternative were evaluated in the Final PEIS. Under the no action alternative, the MSR Campaign would not be undertaken and investigation of Mars as a planetary system would be severely constrained due to the cost and complexity of sending into space (and operating) science instruments capable of conducting the appropriate level of sample analysis in space or on Mars where in situ analyses could be performed. The environmental resource areas analyzed in the Final PEIS include health and safety, cultural resources, hazardous materials and waste, soils and geology, biological resources, water resources, air quality and climate, land use, socioeconomics, environmental justice/protection of children, noise, and infrastructure. No significant adverse impacts were identified in the Final PEIS.

Comments and stakeholder input received within the Draft PEIS comment period were considered during the development of the Final PEIS. NASA released the Draft PEIS for comment from November 4, 2022, through December 19, 2022. During the 45-day review and comment period, NASA held two virtual and two in-person

public meetings (one in Wendover, UT and the other in Salt Lake City, UT). The Final PEIS provides details on substantive comments received during the comment period and the public meetings, as well as NASA responses to those comments.

NASA provided press releases to local newspapers and distributed letters to stakeholders, Native American tribes, and other interested parties. In addition to availability on the website (*https://www.nasa.gov/feature/nepa-mars-sample-return-campaign*), hard copies of the Final PEIS will be made available at the following public libraries.

- Cocoa Beach Public Library, 550 N Brevard Avenue, Cocoa Beach, FL 32931
- Central Brevard Library and Reference Center, 308 Forrest Avenue, Cocoa, FL 32922
- Cape Canaveral Public Library, 201 Polk Avenue, Cape Canaveral, FL 32920
- Titusville Public Library, 2121 S Hopkins Avenue, Titusville, FL 32780
- Melbourne Library, 540 E Fee Avenue, Melbourne, FL 32901
- Merritt Island Public Library, 1195 N Courtenay Parkway, Merritt Island, FL 32953
- NASA Headquarters Library, 300 E Street SW #1120, Washington DC 20024
- Tooele City Public Library, 128 West Vine Street, Tooele, UT 84074
- Grantsville Library, 42 Bowery Street, Grantsville, UT 84029
- Brigham City Public Library, 26 E Forest Street, Brigham City, UT 84302
- Tremonton Municipal Library, 210 N Tremont Street, Tremont, UT 84337
- West Wendover Branch Library, 590 Camper Drive, West Wendover, NV 89883
- Garland Public Library, 86 W Factory Street, Garland, UT 84312

Joel Carney,

Assistant Administrator, Office of Strategic Infrastructure.

[FR Doc. 2023–11156 Filed 5–24–23; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0079]

Draft Interim Staff Guidance: Advanced Reactor Content of Application Project Chapter 12, ''Post-Construction Inspection, Testing, and Analysis Program''

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on its draft Interim Staff Guidance (ISG) DANU–ISG–2022–06, Chapter 12, ''Post-Construction Inspection, Testing, and Analysis Program.'' The purpose of this proposed ISG is to provide guidance to assist the NRC staff in determining whether an application for a non-light water reactor (non-LWR) design that uses the Licensing Modernization Project (LMP) process meets the minimum requirements for construction permits, operating licenses, manufacturing licenses, standard design approval, or design certifications.

DATES: Submit comments by July 10, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission 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 *http://www.regulations.gov* and search for Docket ID NRC–2022–0079. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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: Michael Orenak, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3229, email: *Michael.Orenak@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0079 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0079.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 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–2022–0079 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. Background

The NRC anticipates the submission of advanced power-reactor applications within the next few years based on preapplication engagement initiated by several prospective applicants. Because many of these designs are non-LWRs,

the NRC is developing technology-inclusive, risk-informed, performance-based guidance to support the development and review of these non-LWR applications. The proposed guidance will facilitate the development and review of non-LWR applications for construction permits or operating licenses under part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' or combined licenses, manufacturing licenses, standard design approval, and design certifications under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' The NRC is developing a rule to amend 10 CFR parts 50 and 52 (RIN 3150-Al66). The NRC staff notes this proposed ISG may need to be updated to conform to changes to 10 CFR parts 50 and 52, if any, adopted through that rulemaking. Further, as of the date of this draft ISG, the NRC is developing an optional performance-based, technology-inclusive regulatory framework for licensing nuclear power plants designated as 10 CFR part 53, ''Licensing and Regulation of Advanced Nuclear Reactors,'' (RIN 3150–AK31). The NRC intends to revise this proposed guidance in updated form as a part of the ongoing rulemaking for 10 CFR part 53.

To standardize the development of content of a non-LWR application, the staff focused on two activities: the Advanced Reactor Content of Application Project (ARCAP) and the Technology-Inclusive Content of Application Project (TICAP). The ARCAP is an NRC-led activity that is intended to result in guidance for a complete non-LWR application for review under 10 CFR part 50 or 10 CFR part 52, and which the staff would update, as appropriate, pending the issuance of the 10 CFR part 50 and 10 CFR part 52 rulemaking as previously mentioned in this notice, or if the Commission issues a final 10 CFR part 53 rule. As a result, the ARCAP is broad and encompasses several industry-led and NRC-led guidance document development activities aimed at facilitating a consistent approach to the development of application documents.

The TICAP is an industry-led activity that is focused on providing guidance on the appropriate scope and depth of information related to the specific portions of the safety analysis report that describe the fundamental safety functions of the design and document the safety analysis of the facility using the LMP-based approach. The LMP-based approach is described in Regulatory Guide (RG) 1.233, ''Guidance for a Technology-Inclusive, Risk-Informed, and Performance-Based Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors,'' (ADAMS Accession No. ML20091L698).

The ARCAP draft ISG titled ''Review of Risk-Informed, Technology Inclusive Advanced Reactor Applications—Roadmap'' (ARCAP Roadmap ISG) provides a general overview of the information that should be included in a non-LWR application. The ARCAP Roadmap ISG also provides a review roadmap for the NRC staff with the principal purpose of ensuring consistency, quality, and uniformity of NRC staff reviews. The ARCAP Roadmap ISG includes references to eight other ARCAP draft ISGs and a TICAP draft regulatory guide (DG) that are the subject of separate **Federal Register** notices (FRNs) requesting comment on these guidance documents. Information regarding the eight other ARCAP draft ISGs and the TICAP DG can be found in the ''Availability of Documents'' section of this FRN.

III. Request for Comment

The ARCAP draft ISG titled, ''Chapter 12, 'Post-construction Inspection, Testing, and Analysis Program [PITAP],' '' that is the subject of this FRN for which the staff is seeking comment, was developed because the current application and review guidance related to PITAP is directly applicable only to light water reactors and may not fully (or efficiently) identify the information to be included in a technology-inclusive, risk-informed, and performance-based application or provide a review approach for such an application. The Chapter 12 draft ISG also refers to several NRC-issued, approved, or endorsed documents and the NRC is requesting comment on this proposed ISG's use of those documents.

Additionally, the staff is issuing for public comment a draft regulatory analysis. The staff developed a regulatory analysis to assess the value of issuing or revising a regulatory guide as well as alternative courses of action. The development of both application guidance and staff review guidance is warranted. If finalized, this ISG will serve as the non-LWR application and review guidance for PITAP.

IV. Availability of Documents

The table in this notice provides the document description, ADAMS accession number, and, if appropriate, the docket identification number referencing the request for public comment on supporting documents associated with the document that is the subject of this FRN.

Document description	ADAMS accession No.	*Regulations.gov* docket ID No.
Draft Interim Staff Guidance DANU–ISG–2022–01 ''Advanced Reactor Content of Application Project, 'Review of Risk-Informed, Technology Inclusive Advanced Reactor Applications—Roadmap' ''.	ML22048B546	NRC–2022–0074
Draft Interim Staff Guidance DANU–ISG–2022–02, ''Advanced Reactor Content of Application Project Chapter 2, 'Site Information' ''.	ML22048B541	NRC–2022–0075
Draft Interim Staff Guidance DANU–ISG–2022–03, ''Advanced Reactor Content of Application Project Chapter 9, 'Control of Routine Plant Radioactive Effluents, Plant Contamination and Solid Waste' ''.	ML22048B543	NRC–2022–0076
Draft Interim Staff Guidance DANU–ISG–2022–04, ''Advanced Reactor Content of Application Project Chapter 10, 'Control of Occupational Dose' ''.	ML22048B544	NRC–2022–0077
Draft Interim Staff Guidance DANU–ISG–2022–05, ''Advanced Reactor Content of Application Project Chapter 11, 'Organization and Human-System Considerations' ''.	ML22048B542	NRC–2022–0078
Draft Interim Staff Guidance DANU–ISG–2022–06, ''Advanced Reactor Content of Application Project Chapter 12, 'Post-Construction Inspection, Testing, and Analysis Program' ''.	ML22048B545	NRC–2022–0079
Draft Interim Staff Guidance DANU–ISG–2022–07, ''Advanced Reactor Content of Application Project, 'Risk-informed Inservice Inspection/Inservice Testing' ''.	ML22048B549	NRC–2022–0080
Draft Interim Staff Guidance DANU–ISG–2022–08, ''Advanced Reactor Content of Application Project, 'Risk-Informed Technical Specifications' ''.	ML22048B548	NRC–2022–0081
Draft Interim Staff Guidance DANU–ISG–2022–09, ''Advanced Reactor Content of Application Project, 'Risk-informed Performance-based Fire Protection Program (for Operations)' ''.	ML22048B547	NRC–2022–0082

Document description	ADAMS accession No.	*Regulations.gov* docket ID No.
DG–1404, ''Guidance for a Technology-Inclusive Content of Application Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors''.	ML22076A003	NRC–2022–0073
Regulatory Analysis for ARCAP ISGs	ML23093A099	NRC–2022–0074

V. Backfitting, Forward Fitting, and Issue Finality

DANU–ISG–2022–06, if finalized, would not constitute backfitting as defined in 10 CFR 50.109, ''Backfitting,'' and as described in Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52. The guidance would not apply to any current licensees or applicants or existing or requested approvals under 10 CFR part 52, and therefore its issuance cannot be a backfit or forward fit or affect issue finality. Further, as explained in DANU–ISG–2022–06, applicants and licensees would not be required to comply with the positions set forth in DANU–ISG–2022–06.

Dated: May 22, 2023.

For the Nuclear Regulatory Commission.

Steven T. Lynch,

Chief, Advanced Reactor Policy Branch, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–11190 Filed 5–24–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0082]

Draft Interim Staff Guidance: Advanced Reactor Content of Application Project, ''Risk-informed Performance-Based Fire Protection Program (for Operations)''

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on its draft Interim Staff Guidance (ISG) DANU–ISG–2022–09, ''Risk-informed Performance-based Fire Protection Program (for Operations).'' The purpose of this proposed ISG is to provide guidance to assist the NRC staff in determining whether an application for a non-light water reactor (non-LWR) design that uses the Licensing Modernization Project (LMP) process meets the minimum requirements for construction permits, operating licenses, combined licenses, manufacturing licenses, standard design approval, or design certifications.

DATES: Submit comments by July 10, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission 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 *http://www.regulations.gov* and search for Docket ID NRC–2022–0082. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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: Michael Orenak, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3229, email: *Michael.Orenak@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0082 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0082.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 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–2022–0082 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. Background

The NRC anticipates the submission of advanced power-reactor applications within the next few years based on preapplication engagement initiated by several prospective applicants. Because many of these designs are non-LWRs, the NRC is developing technology-inclusive, risk-informed, performance-based guidance to support the development and review of these non-LWR applications. The proposed guidance will facilitate the development and review of non-LWR applications for construction permits or operating licenses under part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' or combined licenses, manufacturing licenses, standard design approval, or design certifications under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' The NRC is developing a rule to amend 10 CFR parts 50 and 52 (RIN 3150-Al66). The NRC staff notes this proposed ISG may need to be updated to conform to changes to 10 CFR parts 50 and 52, if any, adopted through that rulemaking. Further, as of the date of this draft ISG, the NRC is developing an optional performance-based, technology-inclusive regulatory framework for licensing nuclear power plants designated as 10 CFR part 53, ''Licensing and Regulation of Advanced Nuclear Reactors,'' (RIN 3150–AK31). The NRC intends to revise this proposed guidance as a part of the ongoing rulemaking for 10 CFR part 53.

To standardize the development of content of a non-LWR application, the staff focused on two activities: the Advanced Reactor Content of Application Project (ARCAP) and the Technology-Inclusive Content of Application Project (TICAP). The ARCAP is an NRC-led activity that is intended to result in guidance for a complete non-LWR application for review under 10 CFR part 50 or 10 CFR part 52, and which the staff would update, as appropriate, pending the issuance of the 10 CFR part 50 and 10 CFR part 52 rulemaking as previously mentioned in this notice, or if the Commission issues a final 10 CFR part 53 rule. As a result, the ARCAP is broad and encompasses several industry-led and NRC-led guidance document development activities aimed at facilitating a consistent approach to the development of application documents.

The TICAP is an industry-led activity that is focused on providing guidance on the appropriate scope and depth of information related to the specific portions of the safety analysis report that describe the fundamental safety functions of the design and document the safety analysis of the facility using the LMP-based approach. The LMP-based approach is described in Regulatory Guide (RG) 1.233, ''Guidance for a Technology-Inclusive, Risk-Informed, and Performance-Based Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors,'' (ADAMS Accession No. ML20091L698).

The ARCAP draft ISG titled ''Review of Risk-Informed, Technology Inclusive Advanced Reactor Applications—Roadmap'' (ARCAP Roadmap ISG) provides a general overview of the information that should be included in a non-LWR application. The ARCAP Roadmap ISG also provides a review roadmap for the NRC staff with the principal purpose of ensuring consistency, quality, and uniformity of NRC staff reviews. The ARCAP Roadmap ISG includes references to eight other ARCAP draft ISGs and a TICAP draft regulatory guide (DG) that are the subject of separate **Federal Register** notices (FRNs) requesting comment on these guidance documents. Information regarding the eight other ARCAP draft ISGs and the TICAP DG can be found in the ''Availability of Documents'' section of this FRN.

III. Request for Comment

The ARCAP draft ISG titled, ''Risk-informed Performance-based Fire Protection Program (for Operations),'' that is the subject of this FRN for which the staff is seeking comment, was developed because the current application and review guidance related to the fire protection program (for operations) is directly applicable only to light water reactors and may not fully (or efficiently) identify the information to be included in a technology-inclusive, risk-informed, and performance-based application or provide a review approach for such an application. The Fire Protection Program (for Operations) draft ISG also refers to several NRC-issued, approved, or endorsed documents and the NRC is requesting comment on this proposed ISG's use of those documents.

Additionally, the staff is issuing for public comment a draft regulatory analysis. The staff developed a regulatory analysis to assess the value of issuing or revising a regulatory guide as well as alternative courses of action. The development of both application guidance and staff review guidance is warranted. If finalized, this ISG will serve as the non-LWR application and review guidance for the fire protection program (for operations).

IV. Availability of Documents

The table in this notice provides the document description, ADAMS accession number, and, if appropriate, the docket identification number referencing the request for public comment on supporting documents associated with the document that is the subject of this FRN.

Document description	ADAMS accession No.	*Regulations.gov* docket ID No.
Draft Interim Staff Guidance DANU–ISG–2022–01 ''Advanced Reactor Content of Application Project, 'Review of Risk-Informed, Technology Inclusive Advanced Reactor Applications—Roadmap' ''.	ML22048B546	NRC–2022–0074
Draft Interim Staff Guidance DANU–ISG–2022–02, ''Advanced Reactor Content of Application Project Chapter 2, 'Site Information' ''.	ML22048B541	NRC–2022–0075
Draft Interim Staff Guidance DANU–ISG–2022–03, ''Advanced Reactor Content of Application Project Chapter 9, 'Control of Routine Plant Radioactive Effluents, Plant Contamination and Solid Waste' ''.	ML22048B543	NRC–2022–0076
Draft Interim Staff Guidance DANU–ISG–2022–04, ''Advanced Reactor Content of Application Project Chapter 10, 'Control of Occupational Dose' ''.	ML22048B544	NRC–2022–0077
Draft Interim Staff Guidance DANU–ISG–2022–05, ''Advanced Reactor Content of Application Project Chapter 11, 'Organization and Human-System Considerations' ''.	ML22048B542	NRC–2022–0078
Draft Interim Staff Guidance DANU–ISG–2022–06, ''Advanced Reactor Content of Application Project Chapter 12, 'Post-Construction Inspection, Testing, and Analysis Program' ''.	ML22048B545	NRC–2022–0079
Draft Interim Staff Guidance DANU–ISG–2022–07, ''Advanced Reactor Content of Application Project, 'Risk-informed Inservice Inspection/Inservice Testing' ''.	ML22048B549	NRC–2022–0080

Document description	ADAMS accession No.	*Regulations.gov* docket ID No.
Draft Interim Staff Guidance DANU–ISG–2022–08, ''Advanced Reactor Content of Application Project, 'Risk-Informed Technical Specifications' ''.	ML22048B548	NRC–2022–0081
Draft Interim Staff Guidance DANU–ISG–2022–09, ''Advanced Reactor Content of Application Project, 'Risk-informed Performance-based Fire Protection Program (for Operations)' ''.	ML22048B547	NRC–2022–0082
DG–1404, ''Guidance for a Technology-Inclusive Content of Application Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors''.	ML22076A003	NRC–2022–0073
Regulatory Analysis for ARCAP ISGs	ML23093A099	NRC–2022–0074

V. Backfitting, Forward Fitting, and Issue Finality

DANU–ISG–2022–09, if finalized, would not constitute backfitting as defined in 10 CFR 50.109, ''Backfitting,'' and as described in Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52. The guidance would not apply to any current licensees or applicants or existing or requested approvals under 10 CFR part 52, and therefore its issuance cannot be a backfit or forward fit or affect issue finality. Further, as explained in DANU–ISG–2022–09, applicants and licensees would not be required to comply with the positions set forth in DANU–ISG–2022–09.

Dated: May 22, 2023.

For the Nuclear Regulatory Commission.

Steven T. Lynch,

Chief, Advanced Reactor Policy Branch, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–11184 Filed 5–24–23; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2022–0074]

Draft Interim Staff Guidance: Review of Risk-Informed, Technology Inclusive Advanced Reactor Applications—Roadmap

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on its draft Interim Staff Guidance (ISG) DANU–ISG–2022–01, ''Review of Risk-Informed, Technology Inclusive Advanced Reactor Applications—Roadmap.'' The purpose of this proposed ISG is to provide guidance to assist the NRC staff in determining whether an application for a non-light water reactor (non-LWR) design that uses the Licensing Modernization Project (LMP) process meets the minimum requirements for construction permits, operating licenses, combined licenses, manufacturing licenses, standard design approval, or design certifications.

DATES: Submit comments by July 10, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission 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 *http://www.regulations.gov* and search for Docket ID NRC–2022–0074. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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: Joseph Sebrosky, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1132, email: *Joseph.Sebrosky@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0074 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0074.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 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–2022–0074 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. Background

The NRC anticipates the submission of advanced power-reactor applications within the next few years based on preapplication engagement initiated by several prospective applicants. Because many of these designs are non-LWRs, the NRC is developing technology-inclusive, risk-informed, performance-based guidance to support the development and review of these non-LWR applications. The proposed guidance will facilitate the development and review of non-LWR applications for construction permits or operating licenses under part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' or combined licenses, manufacturing licenses, standard design approval, or design certifications under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' The NRC is developing a rule to amend 10 CFR parts 50 and 52 (RIN 3150-Al66). The NRC staff notes this proposed ISG may need to be updated to conform to changes to 10 CFR parts 50 and 52, if any, adopted through that rulemaking. Further, as of the date of this draft ISG, the NRC is developing an optional performance-based, technology-inclusive regulatory framework for licensing nuclear power plants designated as 10 CFR part 53, ''Licensing and Regulation of Advanced Nuclear Reactors,'' (RIN 3150–AK31). The NRC intends to revise this proposed guidance as a part of the ongoing rulemaking for 10 CFR part 53.

To standardize the development of content of a non-LWR application, the staff focused on two activities: the Advanced Reactor Content of Application Project (ARCAP) and the Technology-Inclusive Content of Application Project (TICAP). The ARCAP is an NRC-led activity that is intended to result in guidance for a complete non-LWR application for review under 10 CFR part 50 or 10 CFR part 52, and which the staff would update, as appropriate, pending the issuance of the 10 CFR part 50 and 10 CFR part 52 rulemaking as previously mentioned in this notice, or if the Commission issues a final 10 CFR part 53 rule. As a result, the ARCAP is broad and encompasses several industry-led and NRC-led guidance document development activities aimed at facilitating a consistent approach to the development of application documents.

The TICAP is an industry-led activity that is focused on providing guidance on the appropriate scope and depth of information related to the specific portions of the safety analysis report that describe the fundamental safety functions of the design and document the safety analysis of the facility using the LMP-based approach. The LMP-based approach is described in Regulatory Guide (RG) 1.233, ''Guidance for a Technology-Inclusive, Risk-Informed, and Performance-Based Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors,'' (ADAMS Accession No. ML20091L698).

III. Request for Comment

The ARCAP draft ISG titled ''Review of Risk-Informed, Technology Inclusive Advanced Reactor Applications—Roadmap'' (ARCAP Roadmap ISG) that is the subject of this **Federal Register** notice (FRN) for which the staff is seeking comment, was developed to provide a general overview of the information that should be included in a non-LWR application. The ARCAP Roadmap ISG also provides a review roadmap for the NRC staff with the principal purpose of ensuring consistency, quality, and uniformity of NRC staff reviews. The ARCAP Roadmap ISG includes references to eight other ARCAP draft ISGs and a TICAP draft regulatory guide (DG) that are the subject of separate FRNs requesting comment on these guidance documents. Information regarding the eight other ARCAP draft ISGs and the TICAP DG can be found in the ''Availability of Documents'' section of this FRN. The ARCAP Roadmap ISG also refers to a wide variety of NRC-issued, approved, or endorsed documents and the NRC is requesting comment on this proposed ISG's use of those documents.

Additionally, the staff is issuing for public comment a draft regulatory analysis. The staff developed a regulatory analysis to assess the value of issuing or revising a regulatory guide as well as alternative courses of action.

The NRC staff is not seeking public comment on the italicized text found in ARCAP Roadmap ISG, Appendix C, ''Construction Permit Guidance.'' The italicized text found in Appendix C is applicable to both light water reactors (LWR) and non-LWRs and is based on guidance found in DNRL–ISG–2022–01, ''Safety Review of Light-Water Power Reactor Construction Permit Applications,'' (ADAMS Accession No. ML22189A099). The staff sought public comment on this LWR Construction Permit (CP) ISG as documented in the **Federal Register** on December 14, 2021 (86 FR 71101) and May 6, 2022 (87 FR 27195). The final ISG was issued on November 14, 2022 (87 FR 68202). Details regarding the status of the LWR CP ISG can be found at *https://www.regulations.gov* under Docket ID NRC–2021–0162.

In addition, the staff plans to update the ARCAP Roadmap ISG upon completing other documents under development and listed in ARCAP Roadmap ISG, Appendix D. The staff is not requesting comment on any of those documents at this time. The NRC staff will request comment on the documents in Appendix D to the extent normal NRC processes call for publication of any one of these documents for public comment.

IV. Availability of Documents

The table in this notice provides the document description, ADAMS accession number, and, if appropriate, the docket identification number referencing the request for public comment on supporting documents associated with the document that is the subject of this FRN.

Document description	ADAMS accession No.	*Regulations.gov* docket ID No.
Draft Interim Staff Guidance DANU–ISG–2022–01 ''Advanced Reactor Content of Application Project, 'Review of Risk-Informed, Technology Inclusive Advanced Reactor Applications—Roadmap' ''.	ML22048B546	NRC–2022–0074.
Draft Interim Staff Guidance DANU–ISG–2022–02, ''Advanced Reactor Content of Application Project Chapter 2, 'Site Information' ''.	ML22048B541	NRC–2022–0075.

Document description	ADAMS accession No.	*Regulations.gov* docket ID No.
Draft Interim Staff Guidance DANU–ISG–2022–03, ''Advanced Reactor Content of Application Project Chapter 9, 'Control of Routine Plant Radioactive Effluents, Plant Contamination and Solid Waste' ''.	ML22048B543	NRC–2022–0076.
Draft Interim Staff Guidance DANU–ISG–2022–04, ''Advanced Reactor Content of Application Project Chapter 10, 'Control of Occupational Dose' ''.	ML22048B544	NRC–2022–0077.
Draft Interim Staff Guidance DANU–ISG–2022–05, ''Advanced Reactor Content of Application Project Chapter 11, 'Organization and Human-System Considerations' ''.	ML22048B542	NRC–2022–0078.
Draft Interim Staff Guidance DANU–ISG–2022–06, ''Advanced Reactor Content of Application Project Chapter 12, 'Post-Construction Inspection, Testing, and Analysis Program' ''.	ML22048B545	NRC–2022–0079.
Draft Interim Staff Guidance DANU–ISG–2022–07, ''Advanced Reactor Content of Application Project, 'Risk-informed Inservice Inspection/Inservice Testing' ''.	ML22048B549	NRC–2022–0080.
Draft Interim Staff Guidance DANU–ISG–2022–08, ''Advanced Reactor Content of Application Project, 'Risk-Informed Technical Specifications'.	ML22048B548	NRC–2022–0081.
Draft Interim Staff Guidance DANU–ISG–2022–09, ''Advanced Reactor Content of Application Project, 'Risk-informed Performance-based Fire Protection Program (for Operations)' ''.	ML22048B547	NRC–2022–0082.
DG–1404, ''Guidance for a Technology-Inclusive Content of Application Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors''.	ML22076A003	NRC–2022–0073.
Regulatory Analysis for ARCAP ISGs	ML23093A099	NRC–2022–0074.

V. Backfitting, Forward Fitting, and Issue Finality

DANU–ISG–2022–01, if finalized, would not constitute backfitting as defined in 10 CFR 50.109, ''Backfitting,'' and as described in Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52. The guidance would not apply to any current licensees or applicants or existing or requested approvals under 10 CFR part 52, and therefore its issuance cannot be a backfit or forward fit or affect issue finality. Further, as explained in DANU–ISG–2022–01, applicants and licensees would not be required to comply with the positions set forth in DANU–ISG–2022–01.

Dated: May 22, 2023.

For the Nuclear Regulatory Commission.

Steven T. Lynch,

Chief, Advanced Reactor Policy Branch, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–11186 Filed 5–24–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0081]

Draft Interim Staff Guidance: Advanced Reactor Content of Application Project, ''Risk-informed Technical Specifications''

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on its draft Interim Staff Guidance (ISG) DANU–ISG–2022–08, ''Risk-informed Technical Specifications.'' The purpose of this proposed ISG is to provide guidance to assist the NRC staff in determining whether an application for a non-light water reactor (non-LWR) design that uses the Licensing Modernization Project (LMP) process meets the minimum requirements for construction permits, operating licenses, combined licenses, manufacturing licenses, standard design approval, or design certifications.

DATES: Submit comments by July 10, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission 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 *http://www.regulations.gov* and search for Docket ID NRC–2022–0081. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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: Michael Orenak, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3229, email: *Michael.Orenak@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0081 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0081.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR,

Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 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–2022–0081 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. Background

The NRC anticipates the submission of advanced power-reactor applications within the next few years based on preapplication engagement initiated by several prospective applicants. Because many of these designs are non-LWRs, the NRC is developing technology-inclusive, risk-informed, performance-based guidance to support the development and review of these non-LWR applications. The proposed guidance will facilitate the development and review of non-LWR applications for construction permits or operating licenses under part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' or combined licenses, manufacturing licenses, standard design approval, or design certifications under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' The NRC is developing a rule to amend 10 CFR parts 50 and 52 (RIN 3150-Al66). The NRC staff notes this proposed ISG may need to be updated to conform to changes to 10 CFR parts 50 and 52, if any, adopted through that rulemaking. Further, as of the date of this draft ISG, the NRC is developing an optional performance-based, technology-inclusive regulatory framework for licensing nuclear power plants designated as 10 CFR part 53, ''Licensing and Regulation of Advanced Nuclear Reactors,'' (RIN 3150–AK31). The NRC intends to revise this proposed guidance as a part of the ongoing rulemaking for 10 CFR part 53.

To standardize the development of content of a non-LWR application, the staff focused on two activities: the Advanced Reactor Content of Application Project (ARCAP) and the Technology-Inclusive Content of Application Project (TICAP). The ARCAP is an NRC-led activity that is intended to result in guidance for a complete non-LWR application for review under 10 CFR part 50 or 10 CFR part 52, and which the staff would update, as appropriate, pending the issuance of the 10 CFR part 50 and 10 CFR part 52 rulemaking as previously mentioned in this notice, or if the Commission issues a final 10 CFR part 53 rule. As a result, the ARCAP is broad and encompasses several industry-led and NRC-led guidance document development activities aimed at facilitating a consistent approach to the development of application documents.

The TICAP is an industry-led activity that is focused on providing guidance on the appropriate scope and depth of information related to the specific portions of the safety analysis report that describe the fundamental safety functions of the design and document the safety analysis of the facility using the LMP-based approach. The LMP-based approach is described in Regulatory Guide (RG) 1.233, ''Guidance for a Technology-Inclusive, Risk-Informed, and Performance-Based Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors,'' (ADAMS Accession No. ML20091L698).

The ARCAP draft ISG titled ''Review of Risk-Informed, Technology Inclusive Advanced Reactor Applications—Roadmap'' (ARCAP Roadmap ISG) provides a general overview of the information that should be included in a non-LWR application. The ARCAP Roadmap ISG also provides a review roadmap for the NRC staff with the principal purpose of ensuring consistency, quality, and uniformity of NRC staff reviews. The ARCAP Roadmap ISG includes references to eight other ARCAP draft ISGs and a TICAP draft regulatory guide (DG) that are the subject of separate **Federal Register** notices (FRNs) requesting comment on these guidance documents. Information regarding the eight other ARCAP draft ISGs and the TICAP DG can be found in the ''Availability of Documents'' section of this FRN.

III. Request for Comment

The ARCAP draft ISG titled, ''Risk-informed Technical Specifications,'' that is the subject of this FRN for which the staff is seeking comment, was developed because the current application and review guidance related to technical specifications is applicable only to light water reactors and may not fully (or efficiently) identify the information to be included in a technology-inclusive, risk-informed, and performance-based application or provide a review approach for such an application. The Risk-informed Technical Specifications draft ISG also refers to several NRC-issued, approved, or endorsed documents and the NRC is requesting comment on this proposed ISG's use of those documents.

Additionally, the staff is issuing for public comment a draft regulatory analysis. The staff developed a regulatory analysis to assess the value of issuing or revising a regulatory guide as well as alternative courses of action. The development of both application guidance and staff review guidance is warranted. If finalized, this ISG will serve as the non-LWR application and review guidance for risk-informed technical specifications.

The Risk-informed Technical Specification draft ISG correlates the text in 10 CFR 50.36, ''Technical specifications,'' with the analysis and outputs of the risk-informed approach described in Nuclear Energy Institute 18–04, Revision 1, ''Risk-Informed Performance-Based Technology Guidance for Non-Light Water Reactors,'' (ADAMS Accession No. ML19241A472), and with the principal design criteria applicable to the design. In addition to general comments on this draft ISG, the NRC is seeking public comment on whether the correlation previously described can be interpreted as a departure from the regulation text and whether the NRC staff will need to consider whether exemptions are necessary.

IV. Availability of Documents

The table in this notice provides the document description, ADAMS accession number, and, if appropriate, the docket identification number referencing the request for public comment on supporting documents

associated with the document that is the subject of this FRN.

Document description	ADAMS accession No.	*Regulations.gov* docket ID No.
Draft Interim Staff Guidance DANU–ISG–2022–01 ''Advanced Reactor Content of Application Project, 'Review of Risk-Informed, Technology Inclusive Advanced Reactor Applications—Roadmap' ''.	ML22048B546	NRC–2022–0074
Draft Interim Staff Guidance DANU–ISG–2022–02, ''Advanced Reactor Content of Application Project Chapter 2, 'Site Information' ''.	ML22048B541	NRC–2022–0075
Draft Interim Staff Guidance DANU–ISG–2022–03, ''Advanced Reactor Content of Application Project Chapter 9, 'Control of Routine Plant Radioactive Effluents, Plant Contamination and Solid Waste' ''.	ML22048B543	NRC–2022–0076
Draft Interim Staff Guidance DANU–ISG–2022–04, ''Advanced Reactor Content of Application Project Chapter 10, 'Control of Occupational Dose' ''.	ML22048B544	NRC–2022–0077
Draft Interim Staff Guidance DANU–ISG–2022–05, ''Advanced Reactor Content of Application Project Chapter 11, 'Organization and Human-System Considerations' ''.	ML22048B542	NRC–2022–0078
Draft Interim Staff Guidance DANU–ISG–2022–06, ''Advanced Reactor Content of Application Project Chapter 12, 'Post-Construction Inspection, Testing, and Analysis Program' ''.	ML22048B545	NRC–2022–0079
Draft Interim Staff Guidance DANU–ISG–2022–07, ''Advanced Reactor Content of Application Project, 'Risk-informed Inservice Inspection/Inservice Testing' ''.	ML22048B549	NRC–2022–0080
Draft Interim Staff Guidance DANU–ISG–2022–08, ''Advanced Reactor Content of Application Project, 'Risk-Informed Technical Specifications' ''.	ML22048B548	NRC–2022–0081
Draft Interim Staff Guidance DANU–ISG–2022–09, ''Advanced Reactor Content of Application Project, 'Risk-informed Performance-based Fire Protection Program (for Operations)' ''.	ML22048B547	NRC–2022–0082
DG–1404, ''Guidance for a Technology-Inclusive Content of Application Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors''.	ML22076A003	NRC–2022–0073
Regulatory Analysis for ARCAP ISGs	ML23093A099	NRC–2022–0074

V. Backfitting, Forward Fitting, and Issue Finality

DANU–ISG–2022–08, if finalized, would not constitute backfitting as defined in 10 CFR 50.109, ''Backfitting,'' and as described in Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52. The guidance would not apply to any current licensees or applicants or existing or requested approvals under 10 CFR part 52, and therefore its issuance cannot be a backfit or forward fit or affect issue finality. Further, as explained in DANU–ISG–2022–08, applicants and licensees would not be required to comply with the positions set forth in DANU–ISG–2022–08.

Dated: May 22, 2023.

For the Nuclear Regulatory Commission.

Steven T. Lynch,

Chief, Advanced Reactor Policy Branch, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–11187 Filed 5–24–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0078]

Draft Interim Staff Guidance: Advanced Reactor Content of Application Project Chapter 11, ''Organization and Human-System Considerations''

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on its draft Interim Staff Guidance (ISG) DANU–ISG–2022–05, Chapter 11, ''Organization and Human-System Considerations.'' The purpose of this proposed ISG is to provide guidance to assist the NRC staff in determining whether an application for a non-light water reactor (non-LWR) design that uses the Licensing Modernization Project (LMP) process meets the minimum requirements for construction permits, operating licenses, combined licenses, manufacturing licenses, standard design approval, or design certifications.

DATES: Submit comments by July 10, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission 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 *http://www.regulations.gov* and search for Docket ID NRC–2022–0078. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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: Michael Orenak, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3229, email: *Michael.Orenak@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0078 when contacting the NRC about the availability of information for this action. You may obtain publicly

available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0078.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

• *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 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–2022–0078 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. Background

The NRC anticipates the submission of advanced power-reactor applications within the next few years based on preapplication engagement initiated by several prospective applicants. Because many of these designs are non-LWRs, the NRC is developing technology-inclusive, risk-informed, performance-based guidance to support the development and review of these non-LWR applications. The proposed guidance will facilitate the development and review of non-LWR applications for construction permits or operating licenses under part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' or combined licenses, manufacturing licenses, standard design approval, or design certifications under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' The NRC is developing a rule to amend 10 CFR parts 50 and 52 (RIN 3150–Al66). The NRC staff notes this proposed ISG may need to be updated to conform to changes to 10 CFR parts 50 and 52, if any, adopted through that rulemaking. Further, as of the date of this draft ISG, the NRC is developing an optional performance-based, technology-inclusive regulatory framework for licensing nuclear power plants designated as 10 CFR part 53, ''Licensing and Regulation of Advanced Nuclear Reactors,'' (RIN 3150–AK31). The NRC intends to revise this proposed guidance as a part of the ongoing rulemaking for 10 CFR part 53.

To standardize the development of content of a non-LWR application, the staff focused on two activities: the Advanced Reactor Content of Application Project (ARCAP) and the Technology-Inclusive Content of Application Project (TICAP). The ARCAP is an NRC-led activity that is intended to result in guidance for a complete non-LWR application for review under 10 CFR part 50 or 10 CFR part 52, and which the staff would update, as appropriate, pending the issuance of the 10 CFR part 50 and 10 CFR part 52 rulemaking as previously mentioned in this notice, or if the Commission issues a final 10 CFR part 53 rule. As a result, the ARCAP is broad and encompasses several industry-led and NRC-led guidance document development activities aimed at facilitating a consistent approach to the development of application documents.

The TICAP is an industry-led activity that is focused on providing guidance on the appropriate scope and depth of information related to the specific portions of the safety analysis report that describe the fundamental safety functions of the design and document the safety analysis of the facility using the LMP-based approach. The LMP-based approach is described in Regulatory Guide (RG) 1.233, ''Guidance for a Technology-Inclusive, Risk-Informed, and Performance-Based Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors,'' (ADAMS Accession No. ML20091L698).

The ARCAP draft ISG titled ''Review of Risk-Informed, Technology Inclusive Advanced Reactor Applications—Roadmap'' (ARCAP Roadmap ISG) provides a general overview of the information that should be included in a non-LWR application. The ARCAP Roadmap ISG also provides a review roadmap for the NRC staff with the principal purpose of ensuring consistency, quality, and uniformity of NRC staff reviews. The ARCAP Roadmap ISG includes references to eight other ARCAP draft ISGs and a TICAP draft regulatory guide (DG) that are the subject of separate **Federal Register** notices (FRNs) requesting comment on these guidance documents. Information regarding the eight other ARCAP draft ISGs and the TICAP DG can be found in the ''Availability of Documents'' section of this FRN.

III. Request for Comment

The ARCAP draft ISG titled, ''Chapter 11, 'Organization and Human-System Considerations,' '' that is the subject of this FRN for which the staff is seeking comment, was developed because the current application and review guidance related to organization and human-systems interface considerations is directly applicable only to light water reactors and may not fully (or efficiently) identify the information to be included in a technology-inclusive, risk-informed, and performance-based application or provide a review approach for such an application. The Chapter 11 draft ISG also refers to several NRC-issued, approved, or endorsed documents and the NRC is requesting comment on this proposed ISG's use of those documents.

Additionally, the staff is issuing for public comment a draft regulatory analysis. The staff developed a regulatory analysis to assess the value of issuing or revising a regulatory guide as well as alternative courses of action. The development both application guidance and staff review guidance is warranted. If finalized, this ISG will serve as the non-LWR application and

review guidance for organization and human-system interface considerations.

IV. Availability of Documents

The table in this notice provides the document description, ADAMS accession number, and, if appropriate, the docket identification number referencing the request for public comment on supporting documents associated with the document that is the subject of this FRN.

Document description	ADAMS accession No.	*Regulations.gov* docket ID No.
Draft Interim Staff Guidance DANU–ISG–2022–01 "Advanced Reactor Content of Application Project, 'Review of Risk-Informed, Technology Inclusive Advanced Reactor Applications—Roadmap' ".	ML22048B546	NRC–2022–0074
Draft Interim Staff Guidance DANU–ISG–2022–02, "Advanced Reactor Content of Application Project Chapter 2, 'Site Information' ".	ML22048B541	NRC–2022–0075
Draft Interim Staff Guidance DANU–ISG–2022–03, "Advanced Reactor Content of Application Project Chapter 9, 'Control of Routine Plant Radioactive Effluents, Plant Contamination and Solid Waste' ".	ML22048B543	NRC–2022–0076
Draft Interim Staff Guidance DANU–ISG–2022–04, "Advanced Reactor Content of Application Project Chapter 10, 'Control of Occupational Dose' ".	ML22048B544	NRC–2022–0077
Draft Interim Staff Guidance DANU–ISG–2022–05, "Advanced Reactor Content of Application Project Chapter 11, 'Organization and Human-System Considerations' ".	ML22048B542	NRC–2022–0078
Draft Interim Staff Guidance DANU–ISG–2022–06, "Advanced Reactor Content of Application Project Chapter 12, 'Post-Construction Inspection, Testing, and Analysis Program' ".	ML22048B545	NRC–2022–0079
Draft Interim Staff Guidance DANU–ISG–2022–07, "Advanced Reactor Content of Application Project, 'Risk-informed Inservice Inspection/Inservice Testing' ".	ML22048B549	NRC–2022–0080
Draft Interim Staff Guidance DANU–ISG–2022–08, "Advanced Reactor Content of Application Project, 'Risk-Informed Technical Specifications' ".	ML22048B548	NRC–2022–0081
Draft Interim Staff Guidance DANU–ISG–2022–09, "Advanced Reactor Content of Application Project, 'Risk-informed Performance-based Fire Protection Program (for Operations)' ".	ML22048B547	NRC–2022–0082
DG–1404, "Guidance for a Technology-Inclusive Content of Application Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors".	ML22076A003	NRC–2022–0073
Regulatory Analysis for ARCAP ISGs	ML23093A099	NRC–2022–0074

V. Backfitting, Forward Fitting, and Issue Finality

DANU–ISG–2022–05, if finalized, would not constitute backfitting as defined in 10 CFR 50.109, "Backfitting," and as described in Management Directive (MD) 8.4, "Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests"; constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52. The guidance would not apply to any current licensees or applicants or existing or requested approvals under 10 CFR part 52, and therefore its issuance cannot be a backfit or forward fit or affect issue finality. Further, as explained in DANU–ISG–2022–05, applicants and licensees would not be required to comply with the positions set forth in DANU–ISG–2022–05.

Dated: May 22, 2023.

For the Nuclear Regulatory Commission.

Steven T. Lynch,

Chief, Advanced Reactor Policy Branch, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–11183 Filed 5–24–23; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2022–0076]

Draft Interim Staff Guidance: Advanced Reactor Content of Application Project Chapter 9, "Control of Routine Plant Radioactive Effluents, Plant Contamination and Solid Waste"

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on its draft Interim Staff Guidance (ISG) DANU–ISG–2022–03, Chapter 9, "Control of Routine Plant Radioactive Effluents, Plant Contamination and Solid Waste." The purpose of this proposed ISG is to provide guidance to assist the NRC staff in determining whether an application for a non-light water reactor (non-LWR) design that uses the Licensing Modernization Project (LMP) process meets the minimum requirements for construction permits, operating licenses, combined licenses, manufacturing licenses, standard design approval, or design certifications.

DATES: Submit comments by July 10, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission 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 *http://www.regulations.gov* and search for Docket ID NRC–2022–0076. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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: Michael Orenak, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3229, email: *Michael.Orenak@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0076 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0076.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov*. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
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B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0076 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.

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II. Background

The NRC anticipates the submission of advanced power-reactor applications within the next few years based on preapplication engagement initiated by several prospective applicants. Because many of these designs are non-LWRs, the NRC is developing technology-inclusive, risk-informed, performance-based guidance to support the development and review of these non-LWR applications. The proposed guidance will facilitate the development and review of non-LWR applications for construction permits or operating licenses under part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' or combined licenses, manufacturing licenses, standard design approval, or design certifications under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' The NRC is developing a rule to amend 10 CFR parts 50 and 52 (RIN 3150–Al66). The NRC staff notes this proposed ISG may need to be updated to conform to changes to 10 CFR parts 50 and 52, if any, adopted through that rulemaking. Further, as of the date of this draft ISG, the NRC is developing an optional performance-based, technology-inclusive regulatory framework for licensing nuclear power plants designated as 10 CFR part 53, ''Licensing and Regulation of Advanced Nuclear Reactors,'' (RIN 3150–AK31). The NRC intends to revise this proposed guidance as a part of the ongoing rulemaking for 10 CFR part 53.

To standardize the development of content of a non-LWR application, the staff focused on two activities: the Advanced Reactor Content of Application Project (ARCAP) and the Technology-Inclusive Content of Application Project (TICAP). The ARCAP is an NRC-led activity that is intended to result in guidance for a complete non-LWR application for review under 10 CFR part 50 or 10 CFR part 52, and which the staff would update, as appropriate, pending the issuance of the 10 CFR part 50 and 10 CFR part 52 rulemaking as previously mentioned in this notice, or if the Commission issues a final 10 CFR part 53 rule. As a result, the ARCAP is broad and encompasses several industry-led and NRC-led guidance document development activities aimed at facilitating a consistent approach to the development of application documents.

The TICAP is an industry-led activity that is focused on providing guidance on the appropriate scope and depth of information related to the specific portions of the safety analysis report that describe the fundamental safety functions of the design and document the safety analysis of the facility using the LMP-based approach. The LMP-based approach is described in Regulatory Guide (RG) 1.233, ''Guidance for a Technology-Inclusive, Risk-Informed, and Performance-Based Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors,'' (ADAMS Accession No. ML20091L698).

The ARCAP draft ISG titled ''Review of Risk-Informed, Technology Inclusive Advanced Reactor Applications—Roadmap'' (ARCAP Roadmap ISG) provides a general overview of the information that should be included in a non-LWR application. The ARCAP roadmap ISG also provides a review roadmap for the NRC staff with the principal purpose of ensuring consistency, quality and uniformity of NRC staff reviews. The ARCAP Roadmap ISG includes references to eight other ARCAP draft ISGs and a TICAP draft regulatory guide (DG) that are the subject of separate **Federal Register** notices (FRNs) requesting comment on these guidance documents. Information regarding the eight other ARCAP draft ISGs and the TICAP DG can be found in the ''Availability of Documents'' section of this FRN.

III. Request for Comment

The ARCAP draft ISG titled, ''Chapter 9, 'Control of Routine Plant Radioactive Effluents, Plant Contamination and Solid Waste,' '' that is the subject of this FRN for which the staff is seeking comment, was developed because the current application and review guidance related to control of routine plant radioactive effluents, plant contamination, and solid waste is directly applicable only to light water reactors and may not fully (or efficiently) identify the information to be included in a technology-inclusive, risk-informed, and performance-based application or provide a review approach for such an application. The Chapter 9 draft ISG also refers to several NRC-issued, approved, or endorsed documents and the NRC is requesting comment on this proposed ISG's use of those documents.

Additionally, the staff is issuing for public comment a draft regulatory analysis. The staff developed a

regulatory analysis to assess the value of issuing or revising a regulatory guide as well as alternative courses of action. The development of both application guidance and staff review guidance is warranted. If finalized, this ISG will serve as the non-LWR application and review guidance for control of routine plant radioactive effluents, plant contamination and solid waste.

IV. Availability of Documents

The table in this notice provides the document description, ADAMS accession number, and, if appropriate, the docket identification number referencing the request for public comment on supporting documents associated with the document that is the subject of this FRN.

Document description	ADAMS accession No.	*Regulations.gov* docket ID No.
Draft Interim Staff Guidance DANU–ISG–2022–01 ''Advanced Reactor Content of Application Project, 'Review of Risk-Informed, Technology Inclusive Advanced Reactor Applications—Roadmap' ''.	ML22048B546	NRC–2022–0074
Draft Interim Staff Guidance DANU–ISG–2022–02, ''Advanced Reactor Content of Application Project Chapter 2, 'Site Information' ''.	ML22048B541	NRC–2022–0075
Draft Interim Staff Guidance DANU–ISG–2022–03, ''Advanced Reactor Content of Application Project Chapter 9, 'Control of Routine Plant Radioactive Effluents, Plant Contamination and Solid Waste' ''.	ML22048B543	NRC–2022–0076
Draft Interim Staff Guidance DANU–ISG–2022–04, ''Advanced Reactor Content of Application Project Chapter 10, 'Control of Occupational Dose' ''.	ML22048B544	NRC–2022–0077
Draft Interim Staff Guidance DANU–ISG–2022–05, ''Advanced Reactor Content of Application Project Chapter 11, 'Organization and Human-System Considerations' ''.	ML22048B542	NRC–2022–0078
Draft Interim Staff Guidance DANU–ISG–2022–06, ''Advanced Reactor Content of Application Project Chapter 12, 'Post-Construction Inspection, Testing, and Analysis Program' ''.	ML22048B545	NRC–2022–0079
Draft Interim Staff Guidance DANU–ISG–2022–07, ''Advanced Reactor Content of Application Project, 'Risk-informed Inservice Inspection/Inservice Testing' ''.	ML22048B549	NRC–2022–0080
Draft Interim Staff Guidance DANU–ISG–2022–08, ''Advanced Reactor Content of Application Project, 'Risk-Informed Technical Specifications' ''.	ML22048B548	NRC–2022–0081
Draft Interim Staff Guidance DANU–ISG–2022–09, ''Advanced Reactor Content of Application Project, 'Risk-informed Performance-based Fire Protection Program (for Operations)' ''.	ML22048B547	NRC–2022–0082
DG–1404, ''Guidance for a Technology-Inclusive Content of Application Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors''.	ML22076A003	NRC–2022–0073
Regulatory Analysis for ARCAP ISGs	ML23093A099	NRC–2022–0074

V. Backfitting, Forward Fitting, and Issue Finality

DANU–ISG–2022–03, if finalized, would not constitute backfitting as defined in 10 CFR 50.109, ''Backfitting,'' and as described in Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52. The guidance would not apply to any current licensees or applicants or existing or requested approvals under 10 CFR part 52, and therefore its issuance cannot be a backfit or forward fit or affect issue finality. Further, as explained in DANU–ISG–2022–03, applicants and licensees would not be required to comply with the positions set forth in DANU–ISG–2022–03.

Dated: May 22, 2023.

For the Nuclear Regulatory Commission.

Steven T. Lynch,

Chief, Advanced Reactor Policy Branch, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–11191 Filed 5–24–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–0925; NRC–2023–0087]

Cimarron Environmental Response Trust; Cimarron Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to provide comments, request a hearing and to petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received a license amendment application from Cimarron Environmental Response Trust (CERT or the applicant) for the Cimarron Facility, located in the city of Guthrie, which is in Logan County, Oklahoma. The license authorizes Possession of Byproduct, Source, and Special Nuclear Material (SNM–928). In this amendment request, CERT requests approval of its proposed Facility Decommissioning Plan (DP), Revision 3 for the Cimarron Facility. The requested license amendment is necessary for CERT to complete the remaining decommissioning activities needed for the NRC to release the Cimarron site for unrestricted use. The requested license amendment is also necessary to ultimately terminate SNM–928; however, license termination is a separate action that requires a separate application from CERT and a separate NRC finding that the site is suitable for release. Because the license application contains Sensitive Unclassified Non-Safeguards Information (SUNSI), an order imposes procedures to obtain access to this type of information for contention preparation.

DATES: Submit comments by June 26, 2023. A request for a hearing or petition for leave to intervene must be filed by July 24, 2023. Any potential party as defined in section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR) who believes access to SUNSI is necessary to respond to this notice must request document access by June 5, 2023.

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–2023–0087. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the ''For Further Information Contact'' section of this document.

• *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: James Smith, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6103; email: *James.Smith@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0087 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–2023–0087.

• *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 acceptance letter, dated March 30, 2023 (ADAMS Accession No. ML23074A100), contains a table with 29 documents and their accession numbers referenced in the license amendment request, dated October 7, 2022 (ADAMS Accession No. ML22284A145).

• *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–2023–0087 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. Introduction

The NRC has received, by letter dated October 7, 2022, an application to amend SNM–928, which authorizes Possession of Byproduct, Source, and Special Nuclear Material (SNM–928). The amendment requests approval of its proposed Facility Decommissioning Plan (DP), Revision 3 for the Cimarron Facility in Guthrie, Oklahoma and incorporation of the DP into its license, by license amendment.

Since the Cimarron site has been in decommissioning status, materials and equipment, buildings and structures, and surface and subsurface soils have been decommissioned and much of the original site has been released from license. Previously, the site used monitored natural attenuation to reduce uranium concentrations in the groundwater to levels that would meet the groundwater release criteria specified in the license. However, in some portions of the site, uranium in the groundwater exceeds those levels. In 2015, CERT therefore requested revisions to the DP to modify the plan from monitored natural attenuation to, instead, allow for active groundwater remediation with the goal of meeting the 180 picoCuries per liter total uranium criteria for unrestricted use. In the intervening years, CERT revised the DP several times to address additional technical and funding issues regarding the active groundwater remediation plan, but, previously, the information submitted was not sufficient to support a complete review. The licensee now seeks approval of Revision 3 of the DP, which provides further details regarding the active groundwater remediation plans that specifically target areas for groundwater remediation where the concentration of uranium in groundwater exceeds the NRC Criterion for unrestricted release, as specified in the license.

In addition to incorporating the revised DP into the license, CERT also requests several other revisions to SNM–928. The license amendment would authorize the possession of Technetium-99 (Tc-99) as a contaminant in groundwater. Unrestricted release criteria for Tc-99 are not stipulated in license SNM–928. However, Tc-99 exists in the groundwater as a contaminant from the residual Tc-99 in the uranium hexafluoride cylinders used at the facility. Addition of the Tc-99 to the license would allow the licensee to possess and dispose of any contaminated material because treatment of the groundwater may result in concentration of the Tc-99 in the ion exchange media above acceptable concentration limits. Any waste stream containing detectable Tc-99 would have to be disposed of as low-level radioactive waste.

The license amendment would also distinguish between the possession limit for ''in-process'' U–235 and U–235 in packaged waste that complies with fissile exemption criteria. Distinguishing between the possession limit for ''in-process'' U–235 and U–235 in packaged waste that complies with fissile exemption criteria will clarify the requirements for each type of material that is possessed to avoid confusion in the future during operation of the groundwater treatment facility.

Additionally, the license amendment would clarify the authorized place of use to include subsurface areas where the groundwater exceeds the NRC Criterion, and areas where such licensed material will be transported or managed. Clarifying the authorized place of use to include areas previously released from the license, in which groundwater exceeding the NRC Criterion is present in the subsurface and areas where such licensed material will be transported or managed, will clearly define the authorized places of use requiring radiological controls and surveillance during the life of the treatment facility. This will also inform the areas needing characterization in future final status surveys to eventually terminate the license at the end of the groundwater treatment process.

Finally, the license amendment would eliminate references to documents relevant to previous

decommissioning activities of facilities and soil that are no longer relevant to ongoing decommissioning activities. Eliminating references to documents relevant to previously existing decommissioning activities of facilities and soil that are no longer relevant to ongoing decommissioning activities will eliminate confusion in identifying program requirements that are relevant to the operation of the groundwater treatment facility and not pre-existing and released facilities.

An NRC administrative completeness review found the application acceptable for a technical review (ADAMS Accession No. ML23074A100). Prior to approving the proposed action, the NRC will need to make the findings required by the Atomic Energy Act of 1954 as amended (the Act), and the NRC's regulations. The NRC's findings will be documented in a safety evaluation report and an environmental assessment. The environmental assessment will be the subject of a subsequent notice in the **Federal Register**.

III. Notice and Solicitation of Comments

In accordance with 10 CFR 20.1405, the Commission is providing notice and soliciting comments from local and State governments in the vicinity of the site and any Federally recognized Indian tribe that could be affected by the decommissioning. This notice and solicitation of comments is published pursuant to 10 CFR 20.1405, which provides for publication in the **Federal Register** and in a forum, such as local newspapers, letters to State or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site. Comments should be provided within 30 days of the date of this notice.

IV. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the NRC's public website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate*.

V. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings

must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing or opportunity for hearing, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Licensing, Hearings, and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email addresses for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2), the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated: May 19, 2023.

For the Nuclear Regulatory Commission.

Brooke P. Clark,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing or opportunity for hearing, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requestor to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Agreement or Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement or Affidavit for SUNSI.
A	If access granted: issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Agreements or Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or notice of opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2023–11128 Filed 5–24–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0077]

Draft Interim Staff Guidance: Advanced Reactor Content of Application Project Chapter 10, "Control of Occupational Dose"

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on its draft Interim Staff Guidance (ISG) DANU–ISG–2022–04, Chapter 10, "Control of Occupational Dose." The purpose of this proposed ISG is to provide guidance to assist the NRC staff in determining whether an application for a non-light water reactor (non-LWR) design that uses the Licensing Modernization Project (LMP) process meets the minimum requirements for construction permits, operating licenses, manufacturing licenses, standard design approval, or design certifications.

DATES: Submit comments by July 10, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission 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.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012, 78 FR 34247, June 7, 2013) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

• *Federal rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2022–0077. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *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: Michael Orenak, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3229, email: *Michael.Orenak@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0077 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0077.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

• *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 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–2022–0077 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. Background

The NRC anticipates the submission of advanced power-reactor applications within the next few years based on preapplication engagement initiated by several prospective applicants. Because many of these designs are non-LWRs, the NRC is developing technology-inclusive, risk-informed, performance-based guidance to support the development and review of these non-LWR applications. The proposed guidance will facilitate the development and review of non-LWR applications for construction permits or operating licenses under part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' or combined licenses, manufacturing licenses, standard design approval, or design certifications under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' The NRC is developing a rule to amend 10 CFR parts 50 and 52 (RIN 3150–Al66). The NRC staff notes this proposed ISG may need to be updated to conform to changes to 10 CFR parts 50 and 52, if any, adopted through that rulemaking. Further, as of the date of this draft ISG, the NRC is developing an optional performance-based, technology-inclusive regulatory framework for licensing nuclear power plants designated as 10 CFR part 53, ''Licensing and Regulation of Advanced Nuclear Reactors,'' (RIN 3150–AK31). The NRC intends to revise this proposed guidance as a part of the ongoing rulemaking for 10 CFR part 53.

To standardize the development of content of a non-LWR application, the staff focused on two activities: the Advanced Reactor Content of Application Project (ARCAP) and the Technology-Inclusive Content of Application Project (TICAP). The ARCAP is an NRC-led activity that is intended to result in guidance for a complete non-LWR application for review under 10 CFR part 50 or 10 CFR part 52, and which the staff would update, as appropriate, pending the issuance of the 10 CFR part 50 and 10 CFR part 52 rulemaking as previously mentioned in this notice, or if the Commission issues a final 10 CFR part 53 rule. As a result, the ARCAP is broad and encompasses several industry-led and NRC-led guidance document development activities aimed at facilitating a consistent approach to the development of application documents.

The TICAP is an industry-led activity that is focused on providing guidance on the appropriate scope and depth of information related to the specific portions of the safety analysis report that describe the fundamental safety functions of the design and document the safety analysis of the facility using the LMP-based approach. The LMP-based approach is described in Regulatory Guide (RG) 1.233, ''Guidance for a Technology-Inclusive, Risk-Informed, and Performance-Based Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors,'' (ADAMS Accession No. ML20091L698).

The ARCAP draft ISG titled ''Review of Risk-Informed, Technology Inclusive Advanced Reactor Applications—Roadmap'' (ARCAP Roadmap ISG) provides a general overview of the information that should be included in a non-LWR application. The ARCAP Roadmap ISG also provides a review roadmap for the NRC staff with the principal purpose of ensuring consistency, quality, and uniformity of NRC staff reviews. The ARCAP Roadmap ISG includes references to eight other ARCAP draft ISGs and a TICAP draft regulatory guide (DG) that are the subject of separate **Federal Register** notices (FRNs) requesting comment on these guidance documents. Information regarding the eight other ARCAP draft ISGs and the TICAP DG

can be found in the ''Availability of Documents'' section of this FRN.

III. Request for Comment

The ARCAP draft ISG titled, ''Chapter 10, 'Control of Occupational Dose,' '' that is the subject of this FRN for which the staff is seeking comment, was developed because the current application and review guidance related to control of occupational doses is directly applicable only to light water reactors and may not fully (or efficiently) identify the information to be included in a technology-inclusive, risk-informed, and performance-based application or provide a review approach for such an application. The Chapter 10 draft ISG also refers to several NRC-issued, approved, or endorsed documents and the NRC is requesting comment on this proposed ISG's use of those documents.

Additionally, the staff is issuing for public comment a draft regulatory analysis. The staff developed a regulatory analysis to assess the value of issuing or revising a regulatory guide as well as alternative courses of action. The development of both application guidance and staff review guidance is warranted. If finalized, this ISG will serve as the non-LWR application and review guidance for control of occupational dose.

IV. Availability of Documents

The table in this notice provides the document description, ADAMS accession number, and, if appropriate, the docket identification number referencing the request for public comment on supporting documents associated with the document that is the subject of this FRN.

Document description	ADAMS accession No.	*Regulations.gov* docket ID No.
Draft Interim Staff Guidance DANU–ISG–2022–01 "Advanced Reactor Content of Application Project, 'Review of Risk-Informed, Technology Inclusive Advanced Reactor Applications—Roadmap' ".	ML22048B546	NRC–2022–0074
Draft Interim Staff Guidance DANU–ISG–2022–02, ''Advanced Reactor Content of Application Project Chapter 2, 'Site Information' ''.	ML22048B541	NRC–2022–0075
Draft Interim Staff Guidance DANU–ISG–2022–03, ''Advanced Reactor Content of Application Project Chapter 9, 'Control of Routine Plant Radioactive Effluents, Plant Contamination and Solid Waste' ''.	ML22048B543	NRC–2022–0076
Draft Interim Staff Guidance DANU–ISG–2022–04, ''Advanced Reactor Content of Application Project Chapter 10, 'Control of Occupational Dose' ''.	ML22048B544	NRC–2022–0077
Draft Interim Staff Guidance DANU–ISG–2022–05, ''Advanced Reactor Content of Application Project Chapter 11, 'Organization and Human-System Considerations' ''.	ML22048B542	NRC–2022–0078
Draft Interim Staff Guidance DANU–ISG–2022–06, ''Advanced Reactor Content of Application Project Chapter 12, 'Post-Construction Inspection, Testing, and Analysis Program' ''.	ML22048B545	NRC–2022–0079
Draft Interim Staff Guidance DANU–ISG–2022–07, ''Advanced Reactor Content of Application Project, 'Risk-informed Inservice Inspection/Inservice Testing' ''.	ML22048B549	NRC–2022–0080
Draft Interim Staff Guidance DANU–ISG–2022–08, ''Advanced Reactor Content of Application Project, 'Risk-Informed Technical Specifications' ''.	ML22048B548	NRC–2022–0081
Draft Interim Staff Guidance DANU–ISG–2022–09, ''Advanced Reactor Content of Application Project, 'Risk-informed Performance-based Fire Protection Program (for Operations)' ''.	ML22048B547	NRC–2022–0082
DG–1404, ''Guidance for a Technology-Inclusive Content of Application Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors''.	ML22076A003	NRC–2022–0073
Regulatory Analysis for ARCAP ISGs	ML23093A099	NRC–2022–0074

V. Backfitting, Forward Fitting, and Issue Finality

DANU–ISG–2022–04, if finalized, would not constitute backfitting as defined in 10 CFR 50.109, ''Backfitting,'' and as described in Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52. The guidance would not apply to any current licensees or applicants or existing or requested approvals under 10 CFR part 52, and therefore its issuance cannot be a backfit or forward fit or affect issue finality. Further, as explained in DANU–ISG–2022–04, applicants and licensees would not be required to comply with the positions set forth in DANU–ISG–2022–04.

Dated: May 22, 2023.

For the Nuclear Regulatory Commission.

Steven T. Lynch,

Chief, Advanced Reactor Policy Branch, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–11181 Filed 5–24–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0080]

Draft Interim Staff Guidance: Advanced Reactor Content of Application Project, "Risk-informed Inservice Inspection/ Inservice Testing"

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on its draft Interim Staff Guidance (ISG) DANU–ISG–2022–07, ''Risk-informed Inservice Inspection/ Inservice Testing.'' The purpose of this proposed ISG is to provide guidance to assist the NRC staff in determining whether an application for a non-light water reactor (non-LWR) design that uses the Licensing Modernization Project (LMP) process meets the minimum requirements for construction permits, operating licenses, combined license, manufacturing licenses, standard design approval, or design certifications.

DATES: Submit comments by July 10, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission 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 *http://www.regulations.gov* and search for Docket ID NRC–2022–0080. Address

questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *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: Michael Orenak, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3229, email: *Michael.Orenak@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0080 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0080.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

• *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 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–2022–0080 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. Background

The NRC anticipates the submission of advanced power-reactor applications within the next few years based on preapplication engagement initiated by several prospective applicants. Because many of these designs are non-LWRs, the NRC is developing technology-inclusive, risk-informed, performance-based guidance to support the development and review of these non-LWR applications. The proposed guidance will facilitate the development and review of non-LWR reactor applications for construction permits or operating licenses under part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' or combined licenses, manufacturing licenses, standard design approval, or design certifications under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' The NRC is developing a rule to amend 10 CFR parts 50 and 52 (RIN 3150–AI66). The NRC staff notes this proposed ISG may need to be updated to conform to changes to 10 CFR parts 50 and 52, if any, adopted through that rulemaking. Further, as of the date of this draft ISG, the NRC is developing an optional performance-based, technology-inclusive regulatory framework for licensing nuclear power plants designated as 10 CFR part 53, ''Licensing and Regulation of Advanced Nuclear Reactors,'' (RIN 3150–AK31). The NRC intends to revise this proposed guidance as a part of the ongoing rulemaking for 10 CFR part 53.

To standardize the development of content of a non-LWR application, the staff focused on two activities: the Advanced Reactor Content of Application Project (ARCAP) and the Technology-Inclusive Content of Application Project (TICAP). The ARCAP is an NRC-led activity that is intended to result in guidance for a complete non-LWR application for review under 10 CFR part 50 or 10 CFR part 52, and which the staff would update, as appropriate, pending the issuance of the 10 CFR part 50 and 10 CFR part 52 rulemaking as previously mentioned in this notice, or if the Commission issues a final 10 CFR part 53 rule. As a result, the ARCAP is broad and encompasses several industry-led and NRC-led guidance document development activities aimed at facilitating a consistent approach to the development of application documents.

The TICAP is an industry-led activity that is focused on providing guidance on the appropriate scope and depth of information related to the specific portions of the safety analysis report that describe the fundamental safety functions of the design and document the safety analysis of the facility using LMP-based approach. The LMP-based approach is described in Regulatory Guide (RG) 1.233, ''Guidance for a Technology-Inclusive, Risk-Informed, and Performance-Based Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors,'' (ADAMS Accession No. ML20091L698).

The ARCAP draft ISG titled ''Review of Risk-Informed, Technology Inclusive Advanced Reactor Applications—Roadmap'' (ARCAP Roadmap ISG) provides a general overview of the information that should be included in a non-LWR application. The ARCAP Roadmap ISG also provides a review roadmap for the NRC staff with the principal purpose of ensuring consistency, quality, and uniformity of NRC staff reviews. The ARCAP Roadmap ISG includes references to eight other ARCAP draft ISGs and a TICAP draft regulatory guide (DG) that are the subject of separate **Federal Register** notices (FRNs) requesting comment on these guidance documents. Information regarding the eight other ARCAP draft ISGs and the TICAP DG can be found in the ''Availability of Documents'' section of this FRN.

III. Request for Comment

The ARCAP draft ISG titled, ''Risk-informed Inservice Inspection/Inservice Testing [ISI/IST],'' that is the subject of this FRN for which the staff is seeking comment, was developed because the current application and review guidance related to ISI and IST programs are based on requirements found in 10 CFR 50.55a, ''Codes and standards,'' that are only applicable to, and focus on, large light water reactor (LWR) technologies. In addition, the current application and review guidance for large LWR ISI and IST programs may not fully (or efficiently) identify the information to be included in a technology-inclusive, risk-informed, and performance-based application or provide a review approach for an application using non-LWR technologies. The Risk-informed ISI/IST draft ISG also refers to several NRC-issued, approved, or endorsed documents and the NRC is requesting comment on this proposed ISG's use of those documents.

Additionally, the staff is issuing for public comment a draft regulatory analysis. The staff developed a regulatory analysis to assess the value of issuing or revising a regulatory guide as well as alternative courses of action. The development of both application guidance and staff review guidance is warranted. If finalized, this ISG will serve as the non-LWR application and review guidance for risk-informed ISI and IST programs.

IV. Availability of Documents

The table in this notice provides the document description, ADAMS accession number, and, if appropriate, the docket identification number referencing the request for public comment on supporting documents associated with the document that is the subject of this FRN.

Document description	ADAMS accession No.	*Regulations.gov* docket ID No.
Draft Interim Staff Guidance DANU–ISG–2022–01 ''Advanced Reactor Content of Application Project, 'Review of Risk-Informed, Technology Inclusive Advanced Reactor Applications—Roadmap' ''.	ML22048B546	NRC–2022–0074
Draft Interim Staff Guidance DANU–ISG–2022–02, ''Advanced Reactor Content of Application Project Chapter 2, 'Site Information' ''.	ML22048B541	NRC–2022–0075
Draft Interim Staff Guidance DANU–ISG–2022–03, ''Advanced Reactor Content of Application Project Chapter 9, 'Control of Routine Plant Radioactive Effluents, Plant Contamination and Solid Waste' ''.	ML22048B543	NRC–2022–0076
Draft Interim Staff Guidance DANU–ISG–2022–04, ''Advanced Reactor Content of Application Project Chapter 10, 'Control of Occupational Dose' ''.	ML22048B544	NRC–2022–0077
Draft Interim Staff Guidance DANU–ISG–2022–05, ''Advanced Reactor Content of Application Project Chapter 11, 'Organization and Human-System Considerations' ''.	ML22048B542	NRC–2022–0078
Draft Interim Staff Guidance DANU–ISG–2022–06, ''Advanced Reactor Content of Application Project Chapter 12, 'Post-Construction Inspection, Testing, and Analysis Program' ''.	ML22048B545	NRC–2022–0079
Draft Interim Staff Guidance DANU–ISG–2022–07, ''Advanced Reactor Content of Application Project, 'Risk-informed Inservice Inspection/Inservice Testing' ''.	ML22048B549	NRC–2022–0080
Draft Interim Staff Guidance DANU–ISG–2022–08, ''Advanced Reactor Content of Application Project, 'Risk-Informed Technical Specifications' ''.	ML22048B548	NRC–2022–0081
Draft Interim Staff Guidance DANU–ISG–2022–09, ''Advanced Reactor Content of Application Project, 'Risk-informed Performance-based Fire Protection Program (for Operations)' ''.	ML22048B547	NRC–2022–0082
DG–1404, ''Guidance for a Technology-Inclusive Content of Application Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors''.	ML22076A003	NRC–2022–0073
Regulatory Analysis for ARCAP ISGs	ML23093A099	NRC–2022–0074

V. Backfitting, Forward Fitting, and Issue Finality

DANU–ISG–2022–07, if finalized, would not constitute backfitting as defined in 10 CFR 50.109, ''Backfitting,'' and as described in Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52. The guidance would not apply to any current licensees or applicants or existing or requested approvals under 10 CFR part 52, and therefore its issuance cannot be a backfit or forward fit or affect issue finality. Further, as explained in DANU–ISG–2022–07, applicants and licensees would not be required to comply with the positions set forth in DANU–ISG–2022–07.

Dated: May 22, 2023.

For the Nuclear Regulatory Commission.

Steven T. Lynch,

Chief, Advanced Reactor Policy Branch, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–11180 Filed 5–24–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0075]

Draft Interim Staff Guidance: Advanced Reactor Content of Application Project Chapter 2, ''Site Information''

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on its draft Interim Staff Guidance (ISG) DANU–ISG–2022–02, Chapter 2, ''Site Information.'' The purpose of this proposed ISG is to provide guidance to assist the NRC staff in determining whether an application for a non-light water reactor (non-LWR) design that uses the Licensing Modernization Project (LMP) process meets the minimum requirements for construction permits, operating licenses, combined licenses, manufacturing licenses, standard design approval, or design certifications.

DATES: Submit comments by July 10, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission 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 *http://www.regulations.gov* and search for Docket ID NRC–2022–0075. Address

questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *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: Michael Orenak, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3229, email: *Michael.Orenak@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0075 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0075.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

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B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0075 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. Background

The NRC anticipates the submission of advanced power-reactor applications within the next few years based on preapplication engagement initiated by several prospective applicants. Because many of these designs are non-LWRs, the NRC is developing technology-inclusive, risk-informed, performance-based guidance to support the development and review of these non-LWR applications. The proposed guidance will facilitate the development and review of non-LWR applications for construction permits or operating licenses under part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' or combined licenses, manufacturing licenses, standard design approval, or design certifications under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' The NRC is developing a rule to amend 10 CFR parts 50 and 52 (RIN 3150-AI66). The NRC staff notes this proposed ISG may need to be updated to conform to changes to 10 CFR parts 50 and 52, if any, adopted through that rulemaking. Further, as of the date of this draft ISG, the NRC is developing an optional performance-based, technology-inclusive regulatory framework for licensing nuclear power plants designated as 10 CFR part 53, ''Licensing and Regulation of Advanced Nuclear Reactors,'' (RIN 3150–AK31). The NRC intends to revise this proposed guidance as a part of the ongoing rulemaking for 10 CFR part 53.

To standardize the development of content of a non-LWR application, the staff focused on two activities: the Advanced Reactor Content of Application Project (ARCAP) and the Technology-Inclusive Content of Application Project (TICAP). The ARCAP is an NRC-led activity that is intended to result in guidance for a complete non-LWR application for review under 10 CFR part 50 or 10 CFR part 52, and which the staff would update, as appropriate, pending the issuance of the 10 CFR part 50 and 10 CFR part 52 rulemaking as previously mentioned in this notice, or if the Commission issues a final 10 CFR part 53 rule. As a result, the ARCAP is broad and encompasses several industry-led and NRC-led guidance document development activities aimed at facilitating a consistent approach to the development of application documents.

The TICAP is an industry-led activity that is focused on providing guidance on the appropriate scope and depth of information related to the specific portions of the safety analysis report that describe the fundamental safety functions of the design and document the safety analysis of the facility using the LMP-based approach. The LMP-based approach is described in Regulatory Guide (RG) 1.233, ''Guidance for a Technology-Inclusive, Risk-Informed, and Performance-Based Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors,'' (ADAMS Accession No. ML20091L698).

The ARCAP draft ISG titled ''Review of Risk-Informed, Technology Inclusive Advanced Reactor Applications—Roadmap'' (ARCAP Roadmap ISG) provides a general overview of the information that should be included in a non-LWR application. The ARCAP Roadmap ISG also provides a review roadmap for the NRC staff with the principal purpose of ensuring consistency, quality, and uniformity of NRC staff reviews. The ARCAP Roadmap ISG includes references to eight other ARCAP draft ISGs and a TICAP draft regulatory guide (DG) that are the subject of separate **Federal Register** notices (FRNs) requesting comment on these guidance documents. Information regarding the eight other ARCAP draft ISGs and the TICAP DG can be found in the ''Availability of Documents'' section of this FRN.

III. Request for Comment

The ARCAP draft ISG titled, ''Chapter 2, 'Site Information,' '' that is the subject of this FRN for which the staff is seeking comment, was developed because the current application and review guidance related to control of site information is directly applicable only to light water reactors and may not fully (or efficiently) identify the information to be included in a technology-inclusive, risk-informed, and performance-based application or provide a review approach for such an application. The Chapter 2 draft ISG also refers to several NRC-issued, approved, or endorsed documents and the NRC is requesting comment on this proposed ISG's use of those documents.

Additionally, the staff is issuing for public comment a draft regulatory analysis. The staff developed a regulatory analysis to assess the value of issuing or revising a regulatory guide as well as alternative courses of action. The development of both application guidance and staff review guidance is warranted. If finalized, this ISG will serve as the non-LWR application and review guidance for site information.

IV. Availability of Documents

The table in this notice provides the document description, ADAMS accession number, and, if appropriate, the docket identification number referencing the request for public comment on supporting documents associated with the document that is the subject of this FRN.

Document description	ADAMS accession No.	*Regulations.gov* Docket ID No.
Draft Interim Staff Guidance DANU–ISG–2022–01 ''Advanced Reactor Content of Application Project, 'Review of Risk-Informed, Technology Inclusive Advanced Reactor Applications—Roadmap' ''.	ML22048B546	NRC–2022–0074
Draft Interim Staff Guidance DANU–ISG–2022–02, ''Advanced Reactor Content of Application Project Chapter 2, 'Site Information' ''.	ML22048B541	NRC–2022–0075
Draft Interim Staff Guidance DANU–ISG–2022–03, ''Advanced Reactor Content of Application Project Chapter 9, 'Control of Routine Plant Radioactive Effluents, Plant Contamination and Solid Waste' ''.	ML22048B543	NRC–2022–0076
Draft Interim Staff Guidance DANU–ISG–2022–04, ''Advanced Reactor Content of Application Project Chapter 10, 'Control of Occupational Dose' ''.	ML22048B544	NRC–2022–0077
Draft Interim Staff Guidance DANU–ISG–2022–05, ''Advanced Reactor Content of Application Project Chapter 11, 'Organization and Human-System Considerations' ''.	ML22048B542	NRC–2022–0078
Draft Interim Staff Guidance DANU–ISG–2022–06, ''Advanced Reactor Content of Application Project Chapter 12, 'Post-Construction Inspection, Testing, and Analysis Program' ''.	ML22048B545	NRC–2022–0079
Draft Interim Staff Guidance DANU–ISG–2022–07, ''Advanced Reactor Content of Application Project, 'Risk-informed Inservice Inspection/Inservice Testing' ''.	ML22048B549	NRC–2022–0080
Draft Interim Staff Guidance DANU–ISG–2022–08, ''Advanced Reactor Content of Application Project, 'Risk-Informed Technical Specifications' ''.	ML22048B548	NRC–2022–0081
Draft Interim Staff Guidance DANU–ISG–2022–09, ''Advanced Reactor Content of Application Project, 'Risk-informed Performance-based Fire Protection Program (for Operations)' ''.	ML22048B547	NRC–2022–0082
DG–1404, ''Guidance for a Technology-Inclusive Content of Application Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors''.	ML22076A003	NRC–2022–0073
Regulatory Analysis for ARCAP ISGs	ML23093A099	NRC–2022–0074

V. Backfitting, Forward Fitting, and Issue Finality

DANU–ISG–2022–02, if finalized, would not constitute backfitting as defined in 10 CFR 50.109, ''Backfitting,'' and as described in Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52. The guidance would not apply to any current licensees or applicants or existing or requested approvals under 10 CFR part 52, and therefore its issuance cannot be a backfit or forward fit or affect issue finality. Further, as explained in DANU–ISG–2022–02, applicants and licensees would not be required to comply with the positions set forth in DANU–ISG–2022–02.

Dated: May 22, 2023.

For the Nuclear Regulatory Commission.

Steven T. Lynch,

Chief, Advanced Reactor Policy Branch, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–11182 Filed 5–24–23; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Virtual Public Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act, notice is hereby given that a virtual meeting of the Federal Prevailing Rate Advisory Committee will be held on Thursday, June 15, 2023. There will be no in-person gathering for this meeting.

DATES: The virtual meeting will be held on June 15, 2023, beginning at 10:00 a.m. (ET).

ADDRESSES: The meeting will convene virtually.

FOR FURTHER INFORMATION CONTACT: Ana Paunoiu, 202–606–2858, or email *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal prevailing rate employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are

available to the public. Reports for calendar years 2008 to 2020 are posted at *http://www.opm.gov/fprac.* Previous reports are also available, upon written request to the Committee.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee at Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 7H31, 1900 E Street NW, Washington, DC 20415, (202) 606–2858.

This meeting is open to the public, with an audio option for listening. This notice sets forth the agenda for the meeting and the participation guidelines.

Meeting Agenda. The tentative agenda for this meeting includes the following Federal Wage System items:

- The definition of Monroe County, PA
- The definition of San Joaquin County, CA
- The definition of the Salinas-Monterey, CA, wage area
- The definition of the Puerto Rico wage area

Public Participation: The June 15, 2023, meeting of the Federal Prevailing Rate Advisory Committee is open to the public through advance registration. Public participation is available for the meeting. All individuals who plan to attend the virtual public meeting to listen must register by sending an email to *pay-leave-policy@opm.gov* with the subject line ''June 15, 2023'' no later than Tuesday, June 13, 2023.

The following information must be provided when registering:

- Name.
- Agency and duty station.
- Email address.
- Your topic of interest.

Members of the press, in addition to registering for this event, must also RSVP to *media@opm.gov* by June 13, 2023.

A confirmation email will be sent upon receipt of the registration. Audio teleconference information for participation will be sent to registrants the morning of the virtual meeting.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2023–11221 Filed 5–24–23; 8:45 am]

BILLING CODE 6325–49–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Renewal of a Previously Approved Information Collection: Questionnaire for National Security Positions, Standard Form 86 (SF 86)

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Office of Personnel Management (OPM) proposes to request the Office of Management and Budget (OMB) to renew a previously-approved information collection request (ICR), Questionnaire for National Security Positions, Standard Form 86 (SF 86).

DATES: Comments will be accepted until July 24, 2023.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number and title, by the following method:

Federal Rulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

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

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by email to *SuitEAForms@opm.gov,* or by contacting Alexys Stanley, 202–606–1800, or U. S. Office of Personnel Management, Suitability Executive Agent Programs, P.O. Bo 699, Slippery Rock, PA 16057.

SUPPLEMENTARY INFORMATION: OPM is soliciting comments for this collection as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106). OPM is particularly interested in comments that:

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; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Background

The Questionnaire for National Security Positions, Standard Form 86 (SF 86) is completed by civilian employees of the Federal Government, military personnel, and non-federal employees, including general contractors and individuals otherwise not directly employed by the Federal Government but who perform work for or on behalf of the Federal Government. For applicants for civilian Federal employment, the SF 86 is to be used only after a conditional offer of employment has been made. The Electronic Questionnaires for Investigations Processing (e-QIP) is a web-based system application that houses the SF 86. A variable in assessing burden hours is the nature of the electronic application. The electronic application includes branching questions and instructions which provide for a tailored collection from the respondent based on varying factors in the respondent's personal history. The burden on the respondent is reduced when the respondent's personal history is not relevant to particular questions, since the question branches, or expands for additional details, only for those persons who have pertinent information to provide regarding that line of questioning. Accordingly, the burden on the respondent will vary depending on whether the information collection relates to the respondent's personal history.

OPM recommends renewal of the form without any proposed changes. This recommendation is due to the forthcoming plan to replace the SF–86 with the Personnel Vetting Questionnaire, which is currently under review for approval by the Office of Management and Budget (87 FR 71700 and 88 FR 12703).

Analysis

Agency: U.S. Office of Personnel Management.

Title: Questionnaire for National Security Positions, Standard Form 86 (SF 86).

OMB Number: 3206–0005.

Frequency: On occasion.

Affected Public: Individuals.

Number of Respondents: 470,124.

Estimated Time per Respondent: 150 minutes.

Total Burden Hours: 1,175,310.

Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

[FR Doc. 2023–11119 Filed 5–24–23; 8:45 am]

BILLING CODE 6325–53–P

POSTAL SERVICE

Product Change—Priority Mail, First-Class Package Service & Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* May 25, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 15, 2023, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail, First-Class Package Service & Parcel Select Contract 19 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–158, CP2023–162.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–11121 Filed 5–24–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail, First-Class Package Service & Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* May 25, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 18, 2023, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail, First-Class Package Service & Parcel Select Contract 22 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–161, CP2023–165.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–11124 Filed 5–24–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service™.

ACTION: Notice of a modified system of records.

SUMMARY: The United States Postal Service™ (USPS™) is proposing to revise one General and one Customer Privacy Act Systems of Records. These updates are being made to support an initiative to promote individual and team efficiency and productivity through competition and the use of analytics.

DATES: These revisions will become effective without further notice on June 26, 2023, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be submitted via email to the Privacy and Records Management Office, United States Postal Service Headquarters (*uspsprivacyfedregnotice@usps.gov*). Arrangements to view copies of any written comments received, to facilitate public inspection, will be made upon request.

FOR FURTHER INFORMATION CONTACT: Janine Castorina, Chief Privacy and Records Management Officer, Privacy and Records Management Office at *uspsprivacyfedregnotice@usps.gov* or 202–268–2000.

SUPPLEMENTARY INFORMATION:

I. Background

This notice is in accordance with the Privacy Act requirement that agencies publish their systems of records in the **Federal Register** when there is a revision, change, or addition, or when the agency establishes a new system of records.

The Postal Service is proposing to modify the following SORs to support competition-based performance analysis to support productivity and team collaboration:

- USPS SOR 100.200 Employee Performance Records
- USPS SOR 830.000 Customer Service and Correspondence

II. Rationale for Changes to USPS Privacy Act Systems of Records

The Postal Service continuously seeks to improve its efficiency and improve productivity. To that end, the Postal Service seeks to implement a customer relationship management software application that takes existing sales employee data, customer metrics, and employee goal data, and creates a dashboard to improve accountability and promote friendly competition amongst team members. This application will allow managers to set metrics and establish targeted goals, then allow employees to view their status on those goals.

To support the implementation of this application, the Postal Service will revise two Systems of Records to reflect this initiative.

USPS 100.200 Employee Performance Records will be revised to reflect the performance tracking and metric capabilities of the new application. USPS 100.200 will be modified as follows:

—Two new purposes, 5 and 6

—Two new Categories of Records, 4 and 5

USPS 830.000 will be revised to reflect the integration with existing workplace and Customer Relationship Management data. USPS 830.000 will be modified as follows:

—System Location has been revised to reflect updated organization name

—Three new purposes, 8 through 10

—Additions to Categories of Individuals to reflect the new collection points

—Two new Categories of Records, 7 and 8

—Record Source Categories has been modified to reflect the new method of data collection

—Policies of Practices for Retrieval of Records has been updated to reflect the new methods of retrievability

—Policies And Practices For Retention And Disposal Of Records has been

updated to reflect retention times for the new data.

III. Description of the Modified System of Records

Pursuant to 5 U.S.C. 552a (e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed revisions has been sent to Congress and to the Office of Management and Budget for their evaluations. The Postal Service does not expect these amended systems of records to have any adverse effect on individual privacy rights. The notices for USPS 100.200 Employee Performance Records and USPS SOR 830.000 Customer Service and Correspondence are provided below in their entirety:

SYSTEM NAME AND NUMBER:

USPS 100.200 Employee Performance Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

USPS facilities where employee performance is evaluated or measured.

SYSTEM MANAGER(S):

Vice President, Human Resources, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

Vice President, Government Relations and Public Policy, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 410, 1001, 1005, and 1206.

PURPOSE(S) OF THE SYSTEM:

1. To provide managers and supervisors with decision making information for training needs, promotion, assignment considerations, or other job-related actions.

2. To administer achievement award programs and pay for performance.

3. To improve relations and communication between managers and employees by soliciting employee feedback, and to improve management and supervisor leadership skills.

4. To document USPS Business interactions and meetings for historical purposes.

5. To track employee performance and productivity through dashboard metrics and analysis.

6. To set and track employee goals relating to Customer Relationship Management Software metrics.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former USPS employees, including supervisors and managers who are responsible for a work location.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Employee information:* Name, Social Security Number, Employee Identification Number, postal assignment information, work contact information, username, email address, finance number(s), duty location, and pay location.

2. *Employee performance information:* Records related to individual performance evaluation; reports about supervisors and managers who are responsible for a work location; employee recognition; and safe driver awards.

3. *USPS Business information:* Records maintained regarding an employee's use of record tracking system; records maintained regarding employee's participation and/or presence representing the USPS in meetings and discussions; information regarding USPS meetings, such as time, place, topics discussed, and attendees.

4. *Employee scorecard analysis:* Scorecard Metrics, Scorecard Activity Score, Scorecard Objective Score, Scorecard Smart Target, Scorecard Target, Leaderboard Standings, Competition Name, Competition Results, Formula Metrics, Formula Builder Metrics, Accolade Achievements, Goal Name, Goal Description, Goal Category, Goal Visibility, Goal Owner, Goal Category, Workflow Name, Workflow Description, Workflow Hierarchy Level, Workflow Time Group, Competitor Name, Competitor Rank, Competitor Score, Competitor Selection, Group Name, Workflow Metric, Workflow Message, Workflow Image, Workflow Entities, Workflow Action, Workflow Status, Workflow Rank, Workflow Operator, Workflow Value, Workflow Schedule, Workflow Creator, Accolade Name.

5. *Customer Relationship Management Software Metrics:* Opportunity ID, Approval Status, Stage Name, Sales Area, Sales District, Sales Title, Opportunity Owner, Owner Alias, Created Date, Current Stage Entry Date, Opportunity Name, Actual Start Date, Opportunistic Strategy, Product Group, Product Category, Account, Expected State, Lead Source, Lead Source Type, Created By, Amount Year-to-date, User Area, User District, Amount, Account Name, Opportunity Name, Lead Source Category, Age of Opportunity, Company Overview, Business Need, Solution, Results, Point of Entry Area, Point of Entry City State, Alias, Full Name, Title, Year-to-date Revenue, Tear-to-date Target, Over/Under Target, Percentage Over/Under Target, Year-to-date Supply, Over/Under Year-to-date Supply, Percentage Over/Under Year-to-date Supply, Current Quarter to Date Sales Revenue, Current Entire Quarter Target, Remain to Quarter Target, Percentage Over/Under Quarter Target, EAS Level, Number Closed Sales Pending Sales Representative Submission, Number Closed Sales Pending Management Approval, Update Status Message, Company ID, User ID, Service, Action, Service Access ID, Service Response, Account Street, Account City, Account State, Account ZIP Code, Region, Report District, Number of Sales, Dollar Amount, Report Area, Report Title, Registration Match, Product Category, Actual Mailing, Actual Shipping, Actual Total, Interaction Type, Number of Calls, Average Talk Time, Longest Call, Resource Name, Rowlev, Interaction ID, Start Time, End Time, Representative, Call Info, Technical Result, Incoming Phone Number, Sort, Call Type, Start Est, End Est, Status, Result Reason, Talk Time, Est Logout, Est Playback Duration, Customer Relationship Software Link, Priority Mail Number of Sales, Priority Mail Dollar Amount, Parcel/Package Number of Sales, Parcel/Packages Dollar Amount, First Class Mail Number of Sales, First Class Mail Dollar Amount, Closed Sales Area, Closed Sales District, Pricing Category, Contract Status, New Sale, Opportunity Record Type, VP Group, Lead Owner, Days Since Lead was Created, Lead ID Link, Days Owned, Lead Age, Lead Contact, Region/Team, Total Phone Calls, Total In-Person Visits, Total Video Conferences with Customer, Total Emails, Number of Active Reps with Activity, Average Phone Calls Per Rep, Average In-Person Visits Per Rep, Average Video Conferences with Customer, Average Emails Per Rep, Assigned to Area, Assigned to District, Type 2, Task/Event Record, Related To, Subject, Priority, Task, Assignee, Assigned Alias, Description, Seller's Name, Virtual Meetings, Appointment Scheduled Last 14 Days, Appointments Scheduled Next 14 Days, Appointments Kept, Stalled Opportunities, Funnel Health, Stage 4 Opportunity Review, Stage 5 Opportunities Not Submitted, Directed Activities Review, Coachable Moments, Action Items.

RECORD SOURCE CATEGORIES:

Employees and employees' supervisor or manager.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Standard routine uses 1. through 9. apply. In addition:

a. When records about the receipt of an award by an employee, including driver safety records, are of news interest and consistent with the public's right to know, the records may be disclosed to the news media or the National Safety Council.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated database, computer storage media, digital files, and paper files.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

By employee name, email address, username, Social Security Number, Employee Identification Number, or duty or pay location.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Pay for performance evaluation records are retained 5 years. Individual performance evaluations are retained 5 years or until separation of the employee, whichever comes first.

2. Incentive award records are retained 7 years. Length of service award records are retained 1 year. Non-USPS awards are retained 2 years. Letters of commendation and appreciation (excluding permanent copies filed in the OPF or eOPF) are retained 2 years.

3. Employee survey records are retained 5 years.

4. Safe Driver Award records are retained 2 years from date of separation, expiration of license, rescission of authorization, transfer of driver into a nondriving status, or other transfer, whichever comes first.

5. Active employee data is retained until the employee no longer is active or has access to the tracking system; USPS business information which may contain employee names is retained indefinitely for historical purposes.

Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections. Computers are protected by mechanical locks, card key systems, or other physical access control methods.

The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.5.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures.

NOTIFICATION PROCEDURES:

Individuals wanting to know if information about them is maintained in this system must address inquiries to the facility head where currently or last employed. Headquarters employees must submit inquiries to Human Resources or Government Relations and Public Policy, 475 L'Enfant Plaza SW, Washington, DC 20260.

Inquiries must include full name, Social Security Number or Employee Identification Number, name and address of facility where last employed, and dates of USPS employment.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

June 17, 2011, 76 FR 35483; April 29, 2005, 70 FR 22516.

SYSTEM NAME AND NUMBER:

830.000 Customer Service and Correspondence

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

USPS Customer Experience, Headquarters; Integrated Business Solutions Services Centers; the National Customer Support Center (NCSC); districts, Post Offices contractor sites; and detached mailing units at customer sites

SYSTEM MANAGER(S):

Chief Customer and Marketing Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404.

PURPOSE(S) OF THE SYSTEM:

1. To enable review and response services for customer inquiries and concerns regarding USPS and its products and services.

2. To ensure that customer accounts and needs are attended to in a timely manner.

3. To enhance the customer experience by improving the security of Change of Address (COA) and Hold Mail processes.

4. To protect USPS customers from becoming potential victims of mail fraud and identity theft.

5. To identify and mitigate potential fraud in the COA and Hold Mail processes.

6. To verify a customer's identity when applying for COA and Hold Mail services.

7. To support (or facilitate) the administration of Operation Santa, Letters to Santa, or similar programs.

8. To track employee performance and productivity through dashboard metrics and analysis.

9. To set and track employee goals relating to Customer Relationship Management Software metrics

10. To create competitions to encourage productivity and promote team effectiveness.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records relating to customers who contact customer service by online and offline channels. This includes customers making inquiries via email, 1–800–ASKUSPS, other toll-free contact centers, or the Business Service Network (BSN), as well as customers with product-specific service or support issues.

This system also contains records relating to employees who utilize the dashboard analysis and productivity application.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Customer information: Customer and key contact name, mail and email address, phone and/or fax number; customer ID(s); title, role, and employment status; company name, location, type and URL; vendor and/or contractor information.

2. Identity verification information: Last four digits of Social Security Number (SSN), username and/or password, DU–N–S Number, mailer ID number, publisher ID number, security level and clearances, and business customer number.

3. Product and/or service use information: Product and/or service type, product numbers, technology specifications, quantity ordered, logon and product use dates and times, case number, pickup number, article number, and ticket number.

4. Payment information: Credit and/or debit card number, type, and expiration date; billing information; checks, money orders, or other payment method.

5. Customer preferences: Drop ship sites and media preference.

6. Service inquiries and correspondence: Contact history; nature of inquiry, dates and times, comments, status, resolution, and USPS personnel involved.

7. *Employee scorecard analysis:* Scorecard Metrics, Scorecard Activity Score, Scorecard Objective Score, Scorecard Smart Target, Scorecard Target, Leaderboard Standings, Competition Name, Competition Results, Formula Metrics, Formula Builder Metrics, Accolade Achievements, Goal Name, Goal Description, Goal Category, Goal Visibility, Goal Owner, Goal Category, Workflow Name, Workflow Description, Workflow Hierarchy Level, Workflow Time Group, Competitor Name, Competitor Rank, Competitor Score, Competitor Selection, Group Name, Workflow Metric, Workflow Message, Workflow Image, Workflow Entities, Workflow Action, Workflow Status, Workflow Rank, Workflow Operator, Workflow Value, Workflow Schedule, Workflow Creator, Accolade Name.

8. *Customer Relationship Management Software Metrics:* Opportunity ID, Approval Status, Stage Name, Sales Area, Sales District, Sales Title, Opportunity Owner, Owner Alias, Created Date, Current Stage Entry Date, Opportunity Name, Actual Start Date, Opportunistic Strategy, Product Group, Product Category, Account, Expected State, Lead Source, Lead Source Type, Created By, Amount Year-to-date, User Area, User District, Amount, Account Name, Opportunity Name, Lead Source Category, Age of Opportunity, Company Overview, Business Need, Solution, Results, Point of Entry Area, Point of Entry City State, Alias, Full Name, Title, Year-to-date Revenue, Tear-to-date Target, Over/Under Target, Percentage Over/Under Target, Year-to-date Supply, Over/Under Year-to-date Supply, Percentage Over/Under Year-to-date Supply, Current Quarter to Date Sales Revenue, Current Entire Quarter Target, Remain to Quarter Target, Percentage Over/Under Quarter Target, EAS Level, Number Closed Sales Pending Sales Representative Submission, Number Closed Sales Pending Management Approval, Update Status Message, Company ID, User ID, Service, Action, Service Access ID, Service Response, Account Street, Account City, Account State, Account ZIP Code, Region, Report District, Number of Sales, Dollar Amount, Report Area, Report Title, Registration Match, Product Category, Actual Mailing, Actual Shipping, Actual Total, Interaction Type, Number of Calls, Average Talk Time, Longest Call, Resource Name, Rowlev, Interaction ID, Start Time, End Time, Representative, Call Info, Technical Result, Incoming Phone Number, Sort, Call Type, Start Est, End Est, Status, Result Reason, Talk Time, Est Logout, Est Playback Duration, Customer Relationship Software Link, Priority Mail Number of Sales, Priority Mail Dollar Amount, Parcel/Package Number of Sales, Parcel/Packages Dollar Amount, First Class Mail Number of Sales, First Class Mail Dollar Amount, Closed Sales Area, Closed Sales District, Pricing Category, Contract Status, New Sale, Opportunity Record Type, VP Group, Lead Owner, Days Since Lead was Created, Lead ID Link, Days Owned, Lead Age, Lead Contact, Region/Team, Total Phone Calls, Total In-Person Visits, Total Video Conferences with Customer, Total Emails, Number of Active Reps with Activity, Average Phone Calls Per Rep, Average In-Person Visits Per Rep, Average Video Conferences with Customer, Average Emails Per Rep, Assigned to Area, Assigned to District, Type 2, Task/Event Record, Related To, Subject, Priority, Task, Assignee, Assigned Alias, Description, Seller's Name, Virtual Meetings, Appointment Scheduled Last 14 Days, Appointments Scheduled Next 14 Days, Appointments Kept, Stalled Opportunities, Funnel Health, Stage 4 Opportunity Review, Stage 5 Opportunities Not Submitted, Directed Activities Review, Coachable Moments, Action Items.

RECORD SOURCE CATEGORIES:

For Customer Service and Correspondence: Customers and, for call center operations, commercially available sources of names, addresses, and telephone numbers.

For Employee Dashboard Analysis: Customer Relationship Management Software.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Standard routine uses 1. through 7., 10., and 11. apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated databases, computer storage media, and paper.

POLICIES OF PRACTICES FOR RETRIEVAL OF RECORDS:

By customer name, customer ID(s), mail or email address, phone number, customer account number, case number, article number, pickup number, last four digits of SSN, ZIP Code, other customer identifier, employee name, employee email.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Customer care records for *usps.com* products are retained 90 days.
2. Records related to 1–800–ASK–USPS, Delivery Confirmation service, Special Services, and international call centers are retained 1 year.
3. Customer complaint letters are retained 6 months and automated complaint records are retained 3 years.
4. Business Service Network records are retained 5 years.
5. Records related to Operation Santa, Letters to Santa, or similar programs are retained 6 months after the new calendar year.
6. Other records are retained 2 years after resolution of the inquiry.
7. Records relating to Dashboard Metric Analysis are retained for 1 year.

Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software. Online data transmissions are protected by encryption.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.5.

CONTESTING RECORD PROCEDURES

See Notification Procedure and Record Access Procedures above.

NOTIFICATION PROCEDURES:

Customers wanting to know if information about them is maintained in this system of records must address inquiries to the system manager in writing. Inquiries should include name, address, and other identifying information.

EXEMPTIONS PROMULGATED FROM THIS SYSTEM:

None.

HISTORY:

December 12, 2018, *83 FR 63912;* June 27, 2012, *77 FR 38342;* April 29, 2005, *70 FR 22516.*

Tram T. Pham,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2023–11112 Filed 5–24–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* May 25, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 19, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 120 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–163, CP2023–167.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–11120 Filed 5–24–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail, First-Class Package Service & Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* May 25, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 19, 2023, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail, First-Class Package Service & Parcel Select Contract 23 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–162, CP2023–166.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–11125 Filed 5–24–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail, First-Class Package Service & Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* May 25, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 17, 2023, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail, First-Class Package Service & Parcel Select Contract 21 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–160, CP2023–164.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–11123 Filed 5–24–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail, First-Class Package Service & Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* May 25, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 17, 2023, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail, First-Class Package Service & Parcel Select Contract 20 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–159, CP2023–163.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–11122 Filed 5–24–23; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97528; File No. SR–ICEEU–2023–009]

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to Amendments of the Investment Management Procedures

May 19, 2023.

I. Introduction

On March 23, 2023, ICE Clear Europe Limited (''ICE Clear Europe''), filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Investment Management Procedures (the ''Investment Management Procedures'' or the ''Procedures''). The Proposed Rule Change was published for comment in the **Federal Register** on April 5, 2023.[3] The Commission has not received any comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

ICE Clear Europe is registered with the Commission as a clearing agency for the purpose of clearing security-based swaps.[4] In its role as a clearing agency for clearing security-based swaps, ICE Clear Europe holds and invests assets for a number of reasons. For example, ICE Clear Europe's Clearing Members transfer to ICE Clear Europe cash and other assets to satisfy their margin and guaranty fund requirements.[5] ICE Clear Europe also contributes money to the guaranty fund, and maintains regulatory capital (money that ICE Clear Europe sets aside in order to comply with regulatory requirements to which it is subject).[6] ICE Clear Europe invests cash received from Clearing Members, its own contributions to the guaranty fund, and its regulatory capital with the goal of obtaining a reasonable rate of return while also maintaining sufficient liquidity for its payment obligations and safeguarding the principal of cash. The Investment Management Procedures set out how ICE Clear Europe will make these investments. They provide the permitted investments and related concentration limits for ICE Clear Europe when investing or securing (i) cash received from Clearing Members, (ii) ICE Clear Europe's contributions to the guaranty fund, and (iii) ICE Clear Europe's own regulatory capital.

The proposed rule change relates to the third category, investments of ICE Clear Europe's own regulatory capital. Currently, the Procedures contain a Table of Authorised Investments and Concentration Limits for ICEU's Regulatory Capital (the ''Table''). The Table provides, among other things, the instruments in which ICE Clear Europe may invest its regulatory capital and the maximum maturity that those investments may have.

The proposed rule change edits the maximum maturity of certain investments in sovereign and government agency bonds listed in the Table. Currently, the Table allows ICE Clear Europe to purchase US Sovereign Bonds, UK Sovereign Bonds, EU Sovereign Bonds, US Government Agency Bonds, UK Government Agency Bonds, and EU Government Agency Bonds (collectively, the ''permitted investments''), each with a ninety-day maximum maturity. The proposed rule change sets the maximum maturity of these permitted investments at thirteen months.

This change—extending the maximum maturity from ninety days to thirteen months—would align the maximum maturity for ICE Clear Europe's investment of its regulatory capital with the maximum maturity ICE Clear Europe currently applies to its investment of cash provided by Clearing Members and ICE Clear Europe's own contribution to the guaranty fund.[7] Thus, the proposed change would establish a single, consistent maximum maturity for ICE Clear Europe's investment in sovereign and government agency bonds, regardless of whether the source of the cash being invested is from Clearing Members, ICE Clear Europe's contributions to the guaranty fund, or its regulatory capital.

There are two primary reasons for the proposed change. First, it would eliminate what ICE Clear Europe views as an unnecessary limitation on the maximum maturities of permitted investments.[8] Although ICE Clear Europe's regulatory capital serves a different purpose from its Clearing Member cash and skin-in-the-game default resources, ICE Clear Europe believes that the same principles of capital preservation and maintaining high levels of liquidity are appropriate with respect to all the cash it manages, regardless of whether the cash is regulatory capital, collateral provided by Clearing Members, or ICE Clear Europe's own contributions to the guaranty fund. As such, ICE Clear Europe determined that it is not necessary for the maximum maturity for investments of its regulatory capital to be more restrictive than for its other investments of cash.[9]

Second, the proposed change would provide ICE Clear Europe with the flexibility to invest its regulatory capital in longer-term sovereign and government bonds than the Procedures currently permit. Although the additional maturity is only ten months, the additional flexibility may allow ICE Clear Europe to plan for longer investments and avoid having to invest or reinvest in shorter duration instruments during potential periods of market volatility.[10]

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[11] For the reasons discussed below, the Commission finds that the proposed rule change is consistent with section

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 97224 (Mar. 30, 2023), 88 FR 20200 (April 5, 2023) (File No. SR–ICEEU–2023–009) (''Notice'').

[4] Capitalized terms not otherwise defined herein have the meanings assigned to them in the Procedures or the ICE Clear Europe Clearing Rules.

[5] ICE Clear Europe's Clearing Rules note that initial margin means ''the Permitted Cover required to be provided or actually provided . . . to the Clearing House as collateral for the obligations of a Clearing Member or Sponsored Principal in respect of CDS Contracts . . . .'' ICE Clear Europe Clearing Rules Rule 101. Guaranty fund contributions serve to secure the obligations of a Clearing Member to ICE Clear Europe and may be used to cover losses sustained by ICE Clear Europe in the event of a default of the Clearing Member. ICE Clear Europe Clearing Rules Rule 1103.

[6] ICE Clear Europe is subject to regulatory capital requirements under its supervision by the Commission, the Bank of England, the Commodity Futures Trading Commission, and as a third-country central counterparty recognized by the European Securities and Markets Authority. For a further discussion of these requirements, *see* Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to the Capital Replenishment Plan, Exchange Act Release No. 97018 (Mar. 2, 2023), 88 FR 14412 (Mar. 8, 2023) (SR–ICEEU–2022–027).

[7] Currently, the Procedures permit ICE Clear Europe to invest Clearing Member cash and ICE Clear Europe's skin-in-the-game in the purchase of permitted investments with a maximum maturity of thirteen months. Notice, 88 FR at 20200.

[8] Notice, 88 FR at 20201.

[9] *Id.*

[10] *Id.* at 20200.

[11] 15 U.S.C. 78s(b)(2)(C).

17A(b)(3)(F) of the Act,[12] and Rule 17Ad–22(e)(16).[13]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Europe be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[14] The proposed rule change is consistent with section 17A(b)(3)(F)[15] because it improves ICE Clear Europe's ability to manage its investments without subjecting its investments to significantly greater risk.

The Commission believes that the changes to the Procedures discussed above help to improve ICE Clear Europe's management of its investments. As noted above, ICE Clear Europe's Procedures prohibit it from investing its regulatory capital in permitted investments that have a maturity greater than ninety days. At times, this limitation could subject ICE Clear Europe's regulatory capital to reinvestment risk[16] and volatility risk.[17] Under the proposed rule change, ICE Clear Europe can more effectively utilize investment strategies that would allow it to mitigate some of this reinvestment and volatility risk by purchasing longer term instruments when appropriate. Such flexibility could be important in light of current and expected market conditions, including to assist ICE Clear Europe in avoiding having to invest or reinvest in shorter duration instruments during potential periods of market volatility.

For the above reasons, the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.[18]

B. Consistency With Rule 17Ad–22(e)(16) Under the Act

Rule 17Ad–22(e)(16) requires that ICE Clear Europe establish, implement, maintain, and enforce, written policies and procedures reasonably designed to safeguard its own and its participants' assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market, and liquidity risks.[19] The Commission previously found that applying the Procedures to ICE Clear Europe's regulatory capital helps ICE Clear Europe to safeguard its own and its Clearing Members' assets and helps ICE Clear Europe to invest such assets in instruments with minimal credit, market, and liquidity risks.[20] As discussed above, the Procedures would continue to apply to ICE Clear Europe's regulatory capital, with the only change being that ICE Clear Europe could invest its regulatory capital in instruments with a maturity of up to thirteen months, rather than ninety days.

Even with this change, the Commission continues to believe that ICE Clear Europe would safeguard its regulatory capital and invest it in instruments with minimal credit, market, and liquidity risks. The Commission believes this to be the case because investing in instruments with a maturity of up to thirteen months, rather than ninety days, could allow ICE Clear Europe to avoid having to invest or reinvest in shorter duration instruments during potential periods of market volatility. Moreover, the maximum maturity for regulatory capital would be the same as what the Commission previously approved for investments of cash from Clearing Members and ICE Clear Europe's skin in the game.[21]

For the above reasons, the proposed rule change is consistent with Rule 17Ad–22(e)(16) under the Act.[22]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act, and in particular, Section 17A(b)(3)(F) of the Act[23] and Rule 17Ad–22(e)(16) thereunder.[24]

It is therefore ordered pursuant to section 19(b)(2) of the Act that the Proposed Rule Change (SR–ICEEU–2023–009) be, and hereby is, approved.[25]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[26]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–11111 Filed 5–24–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–21, OMB Control No. 3235–0025]

Proposed Collection; Comment Request; Extension: Rule 30e–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''Paperwork Reduction Act''), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 30e–1 (17 CFR 270.30e–1) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') generally requires a registered investment company (''fund'') to transmit to its shareholders, at least semi-annually, reports containing the information that is required to be included in such reports by the fund's registration statement form under the Investment Company Act. The purpose of the collection of information required by rule 30e–1 is to provide fund shareholders with current information about the operation of their funds in accordance with Section 30 of the Investment Company Act.

Approximately 11,840 funds, respond to rule 30e-1 annually.[1] We estimate that it takes approximately 147 hours to comply with the collection of information associated with rule 30e–1

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[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(16).

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] Reinvestment risk is the risk that an investor will be unable to reinvest assets received from an investment at a rate comparable to their current rate of return.

[17] Volatility risk in this context, *i.e.,* sovereign and government agency bonds, refers to the risk that a bond's price will fluctuate due to changing interest rates.

[18] 15 U.S.C. 78q–1(b)(3)(F).

[19] 17 CFR 240.17Ad–22(e)(16).

[20] Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to the ICE Clear Europe Investment Management Procedures and Treasury and Banking Services Policy, Securities Exchange Act Release No. 89211 (July 1, 2020), 85 FR 41082, 41086 (July 8, 2020) (File No. SR–ICEEU–2020–002).

[21] *Id.;* Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Partial Amendment No. 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1 and Partial Amendment No. 2, To Revise the ICE Clear Europe Treasury and Banking Services Policy, Liquidity Management Procedures, Investment Management Procedures and Unsecured Credit Limits Procedures, Securities Exchange Act Release No. 86891 (Sept. 6, 2019), 84 FR 48191 (Sept. 12, 2019) (File No. SR–ICEEU–2019–012).

[22] 17 CFR 240.17Ad–22(e)(16).

[23] 15 U.S.C. 78q–1(b)(3)(F).

[24] 17 CFR 240.17Ad–22(e)(16).

[25] In approving the Proposed Rule Change, the Commission considered the proposal's impacts on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[26] 17 CFR 200.30–3(a)(12).

[1] Includes all open-end funds, including ETFs, registered on Form N–1A.

per fund. This time is spent, for example, preparing, reviewing, and certifying the reports, as well as the website availability requirements and delivery of shareholder reports upon request requirements. Accordingly, we calculate the total estimated annual internal burden of responding to rule 30e–1 to be approximately 1,738,428 hours (146.8 hours × 11,840 funds). In addition to the burden hours, we estimate that the total cost burden of compliance with the information collection requirements of rule 30e–1 is approximately $13,105 per fund. This includes, for example, the cost of goods and services purchased to prepare, comply with website availability requirements, and deliver reports upon request under the amendments to rule 30e–1, such as for the services of independent auditors and outside counsel. Accordingly, we calculate the total external cost burden associated with rule 30e–1 to be approximately $155,164,791.

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. The collection of information under rule 30e–1 is mandatory. The information provided under rule 30e–1 will not be kept confidential. 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.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by July 24, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 22, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–11200 Filed 5–24–23; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Information Collection for State Trade and Export Promotion (STEP) Grant Program

AGENCY: U.S. Small Business Administration.

ACTION: 60-day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before July 24, 2023.

ADDRESSES: Send all comments to Shadetra Robinson, STEP Program Director, Office of International Trade, Small Business Administration, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Shadetra Robinson, STEP Program Director, Office of International Trade, Small Business Administration, *shadetra.robinson@sba.gov,* 202–205–6725, or Curtis B. Rich, Agency Clearance Officer, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The primary objective of the STEP Client Report form is to collect data on the quarterly progress of grantees of the SBA's State Trade and Export Promotion (STEP) program. These data will be used to understand how states have improved their trade and export activities and revenue. The STEP program has two primary objectives: (1) increase the number of small businesses that are exporting and (2) increase the value of exports for small businesses that are currently exporting. To achieve these objectives, SBA provides state-level grant recipients with funding for nine activities, including participation in foreign trade missions, design of marketing media, and trade show exhibitions.

Data from the STEP Client Report will provide SBA with critical information about the impact of various strategies used to advance trade and export activities in each state. These data will also provide an understanding of the specific ways in which funded activities meet SBA's goal of improving small business trade and export productivity. These data may inform strategies that can be replicated by other small businesses. These data are not currently being collected elsewhere and are critical to understanding the outcomes of STEP grantee activities.

Solicitation of Public Comments

SBA is requesting comments on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

OMB Control Number: 3245–0413.

Title: STEP Program Quarterly Client Reporting Form.

Description of Respondents: State administrators in states that receive an SBA STEP grant.

Form Number: N/A.

Total Estimated Annual Responses: 90.

Total Estimated Annual Hour Burden: 360 hours.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2023–11150 Filed 5–24–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17932 and #17933; TENNESSEE Disaster Number TN–00146]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Tennessee

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Tennessee (FEMA–4712–DR), dated 05/17/2023.

Incident: Severe Storms, Straight-line Winds, and Tornado.

Incident Period: 03/01/2023 through 03/03/2023.

DATES: Issued on 05/17/2023.

Physical Loan Application Deadline Date: 07/17/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 02/20/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/17/2023, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Benton, Bledsoe, Campbell, Carroll, Cheatham, Clay, Crockett, Davidson, Decatur, Dickson, Fentress, Gibson, Giles, Grundy, Hamilton, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Lake, Lauderdale, Lawrence, Lewis, Macon, Madison, Marion, Meigs, Monroe, Montgomery, Moore, Obion, Perry, Pickett, Polk, Rhea, Robertson, Stewart, Sumner, Tipton, Wayne, White.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17932 C and for economic injury is 17933 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–11145 Filed 5–24–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17935 and #17936; TEXAS Disaster Number TX–00653]

Administrative Declaration of a Disaster for the State of Texas

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Texas dated 05/22/2023.

Incident: Severe Storms, Thunderstorms, Large Hail and Straight-Line Winds.

Incident Period: 04/28/2023.

DATES: Issued on 05/22/2023.

Physical Loan Application Deadline Date: 07/21/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 02/22/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Hidalgo.

Contiguous Counties:

Texas: Brooks, Cameron, Kenedy, Starr, Willacy.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.750
Homeowners without Credit Available Elsewhere	2.375
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17935 B and for economic injury is 17936 0.

The State which received an EIDL Declaration # is Texas.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2023–11204 Filed 5–24–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17868 and #17869; KENTUCKY Disaster Number KY–00099]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the Commonwealth of Kentucky

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Kentucky (FEMA–4702–DR), dated 04/10/2023.

Incident: Severe Storms, Straight-line Winds, Tornadoes, Flooding, Landslides, and Mudslides.

Incident Period: 03/03/2023 through 03/04/2023.

DATES: Issued on 05/18/2023.

Physical Loan Application Deadline Date: 06/09/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 01/10/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Kentucky, dated 04/10/2023, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Boyle, Clinton, Fayette, Henderson, Jessamine, McCreary, Mercer, Pulaski, Russell, Shelby, Wayne.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–11152 Filed 5–24–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12086]

Bureau of Oceans and International Environmental and Scientific Affairs; Annual Determination and Certification of Shrimp-Harvesting Nations

ACTION: Notice of annual determination and certification.

SUMMARY: On May 12th, 2023, the Department of State determined and certified to Congress that wild-caught shrimp harvested in the following nations, particular fisheries of certain nations, and Hong Kong are eligible to enter the United States: Argentina, Australia (Northern Prawn Fishery, the Queensland East Coast Trawl Fishery, the Spencer Gulf, and the Torres Strait Prawn Fishery), the Bahamas, Belgium, Belize, Canada, Chile, Colombia, Costa Rica, Denmark, the Dominican Republic, Ecuador, El Salvador, Estonia, Fiji, France (French Guiana), Gabon, Germany, Guatemala, Guyana, Honduras, Iceland, Ireland, Italy (giant red shrimp), Jamaica, Japan (shrimp baskets in Hokkaido), Republic of Korea (mosquito nets), Mexico, the Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Oman, Panama, Peru, Russia, Spain (Mediterranean red shrimp), Sri Lanka, Suriname, Sweden, the United Kingdom, and Uruguay. For nations, economies, and fisheries not listed above, only shrimp harvested from aquaculture is eligible to enter the United States. All shrimp imports into the United States must be accompanied by the DS–2031 Shrimp Exporter's/ Importer's Declaration.

DATES: This determination and certification notice is effective on May 25, 2023.

FOR FURTHER INFORMATION CONTACT: Jared Milton, section 609 Program Manager, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, 2201 C Street NW, Washington, DC 20520–2758; telephone: (202) 647–3263; email: *DS2031@ state.gov.*

SUPPLEMENTARY INFORMATION: Section 609 of Public Law 101–162 (''sec. 609'') prohibits imports of wild-caught shrimp or products from shrimp harvested with commercial fishing technology unless the President certifies to the Congress by May 1, 1991, and annually thereafter, that either: (1) the harvesting nation has adopted a regulatory program governing the incidental taking of relevant species of sea turtles in the course of commercial shrimp harvesting that is comparable to that of the United States and that the average rate of that incidental taking by the vessels of the harvesting nation is comparable to the average rate of incidental taking of sea turtles by United States vessels in the course of such harvesting; or (2) the particular fishing environment of the harvesting nation does not pose a threat of the incidental taking of sea turtles in the course of shrimp harvesting. The President has delegated the authority to make this certification to the Secretary of State (''Secretary'') who further delegated the authority within the Department of State (''Department''). The Revised Guidelines for the Implementation of Sec. 609 were published in the **Federal Register** on July 8, 1999, at 64 FR 36946.

On May 12th, 2023, the Department certified to Congress the following nations pursuant to section 609(b)(2)(A) and (B) on the basis that they have adopted a regulatory program governing the incidental taking of relevant species of sea turtles in the course of commercial shrimp harvesting that is comparable to that of the United States and that the average rate of that incidental taking by the vessels of the harvesting nation is comparable to the average rate of incidental taking of such sea turtles by United States vessels in the course of such harvesting: Colombia, Ecuador, El Salvador, Gabon, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Nigeria, Panama, and Suriname. The Department also certified pursuant to section 609(b)(2)(C) several shrimp-harvesting nations and one economy as having fishing environments that do not pose a threat to sea turtles, including the following nations with shrimping grounds only in cold waters where the risk of taking sea turtles is negligible: Argentina, Belgium, Canada, Chile, Denmark, Estonia, Germany, Iceland, Ireland, the Netherlands, New Zealand, Norway, Russia, Sweden, the United Kingdom, and Uruguay. Additionally, the Department certified pursuant to section 609(b)(2)(C) that the following nations and Hong Kong only harvest shrimp using small boats with crews of less than five that use manual rather than mechanical means to retrieve nets or catch shrimp using other methods that do not pose a threat of incidental taking of sea turtles: the Bahamas, Belize, Costa Rica, the Dominican Republic, Fiji, Jamaica, Oman, Peru, and Sri Lanka.

The Department has certified the above listed nations and Hong Kong pursuant to sec. 609, and shrimp and products from shrimp are eligible for importation into the United States utilizing the Shrimp Exporter's/ Importer's Declaration (''DS–2031'') Box 7(B) provision for shrimp ''harvested in the waters of a nation currently certified pursuant to section 609 of Public Law 101–162.''

Shrimp and products of shrimp harvested with turtle excluder devices (''TEDs'') in an uncertified nation may, under specific circumstances, be eligible for importation into the United States under the DS–2031 Box 7(A)(2) provision for shrimp harvested by commercial shrimp trawl vessels using TEDs comparable in effectiveness to those required in the United States. Use of this provision requires that the Secretary or his or her delegate determine in advance that the government of the harvesting nation has put in place adequate procedures to monitor the use of TEDs in the specific fishery in question and to ensure the accurate completion of the DS–2031 forms. At this time, the Department has determined that only shrimp and products from shrimp harvested in the Northern Prawn Fishery, the Queensland East Coast Trawl Fishery, and the Torres Strait Prawn Fishery in Australia, and in the French Guiana domestic trawl fishery of France are eligible for entry under this provision. A responsible government official of Australia or France must sign in Block 8 of the DS–2031 form accompanying these imports into the United States. The Department suspended the determinations for the Malaysian states of Kelantan, Terengganu, Pahang, and Johor (effective for Malaysia with Dates of Export June 1st and after).

In addition, shrimp and products of shrimp harvested in a manner or under circumstances determined by the Department of State not to pose a threat of the incidental taking of sea turtles may, under specific circumstances, be eligible for importation into the United States under the DS–2031 Box 7(A)(4) provision for ''shrimp harvested in a manner or under circumstances determined by the Department of State not to pose a threat of the incidental taking of sea turtles.'' The Department has determined that shrimp and products from shrimp harvested in the Spencer Gulf region in Australia, with shrimp baskets in Hokkaido, Japan, with ''mosquito'' nets in the Republic of

Korea, Mediterranean red shrimp (*Aristeus antennatus*) and products from that shrimp harvested in the Mediterranean Sea in Spain, and giant red shrimp (*Aristaeomorpha foliacea*) and products from that shrimp harvested in Italy may be imported into the United States under the DS–2031 Box 7(A)(4) provision. A responsible government official of Australia, Japan, the Republic of Korea, Spain, or Italy must sign in Block 8 of the DS–2031 form accompanying these imports into the United States.

A completed DS–2031 Shrimp Exporter's/Importer's Declaration (''DS–2031'') must accompany all imports of shrimp and products from shrimp into the United States.

Importers of shrimp and products from shrimp harvested in certified nations and Hong Kong must either provide the DS–2031 form to Customs and Border Protection at the port of entry or provide the information required by the DS–2031 through the Automated Commercial Environment. Importers of shrimp and products from shrimp from certified nations and Hong Kong should mark the box 7(B) provision for shrimp ''harvested in the waters of a nation currently certified pursuant to section 609 of Public Law 101–162'' regardless of whether the shrimp is wild-caught or the product of aquaculture. DS–2031 forms accompanying all imports of shrimp and products from shrimp harvested in uncertified nations and economies, to include all fisheries with determinations, must be originals with Box 7(A)(1), 7(A)(2), or 7(A)(4) checked, consistent with the form's instructions with regard to the method of harvest of the shrimp and based on any relevant prior determinations by the Department, and signed by a responsible government official of the harvesting nation. The Department did not determine that shrimp or products from shrimp harvested in a manner as described in 7(A)(3) in any uncertified nation or economy is eligible to enter the United States. The importation of wild-caught shrimp from any nation or fishery without a certification or determination will not be allowed.

The Department has communicated these certifications and determinations under Sec. 609 to the Offices of Field Operations and of Trade at U.S. Customs and Border Protection.

Maxine A. Burkett,

Deputy Assistant Secretary for Oceans, Fisheries, and Polar Affairs, Department of State.

[FR Doc. 2023–11115 Filed 5–24–23; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice: 12087]

Notice of Determinations; Additional Culturally Significant Objects Being Imported for Exhibition—Determinations: "The Tudors: Art and Majesty in Renaissance England" Exhibition

SUMMARY: On August 15, 2022, notice was published on page 50159 of the **Federal Register** (volume 87, number 156) of determinations pertaining to certain objects to be included in an exhibition entitled ''The Tudors: Art and Majesty in Renaissance England.'' On December 29, 2022, notice was published on page 80246 of the **Federal Register** (volume 87, number 249) of determinations pertaining to a certain additional object to be included in the aforesaid exhibition. Notice is hereby given of the following determinations: I hereby determine that certain additional objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the aforesaid exhibition at the Fine Arts Museums of San Francisco, Legion of Honor, San Francisco, California, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street, NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Scott Weinhold,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–11168 Filed 5–24–23; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

30-Day Notice of Intent To Seek Extension of Approval of Collection: Recordations (Rail and Water Carrier Liens), Water Carrier Tariffs, and Agricultural Contract Summaries

AGENCY: Surface Transportation Board.

ACTION: Notice and request for comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for the extension (without change) of the collections required by statute for rail or water carrier equipment liens (recordations), water carrier tariffs, and rail agricultural contract summaries, as described in more detail below.

DATES: Comments on these information collections should be submitted by June 26, 2023.

ADDRESSES: Written comments should be identified as ''Paperwork Reduction Act Comments, Recordations (Rail and Water Carrier Liens), Water Carrier Tariffs, and Agricultural Contract Summaries.'' Written comments for the proposed information collections should be submitted via *www.reginfo.gov/public/do/PRAMain.* This information collection can be accessed by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. As an alternative, written comments may be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Michael J. McManus, Surface Transportation Board Desk Officer: via email at *oira_submission@omb.eop.gov;* by fax at (202) 395–1743; or by mail to Room 10235, 725 17th Street NW, Washington, DC 20503.

Please also direct all comments to Chris Oehrle, PRA Officer, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, or to *PRA@stb.gov.* When submitting comments, please refer to ''Paperwork Reduction Act Comments, Recordations

(Rail and Water Carrier Liens), Water Carrier Tariffs, and Agricultural Contract Summaries.'' For further information regarding this collection, contact Mike Higgins at (866) 254–1792 (toll-free) or 202–245–0238, or by emailing *rcpa@stb.gov.* Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Board previously published a notice about this collection in the **Federal Register** (88 FR 16513 (March 17, 2023)). That notice allowed for a 60-day public review and comment period. No comments were received.

Comments are requested concerning each collection as to (1) whether the particular collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Submitted comments will be included and summarized in the Board's request for OMB approval.

Description of Collections

Collection Number 1

Title: Agricultural Contract Summaries.

OMB Control Number: 2140–0024.

Form Number: None.

Type of Review: Extension without change.

Number of Respondents: Approximately 10 (six Class I [large] railroads and a limited number of other railroads).

Frequency: On occasion. (Over the last three years, respondents have filed an average of 172 agricultural contract summaries per year. The same number of filings is expected during each of the next three years.)

Estimated Time per Response: Approximately 0.25 hours.

Total Burden Hours (annually including all respondents): 43 hours (172 submissions × 0.25 hours estimated per submission).

Total Annual ''Non-hour Burden'' Cost: There are no non-hourly burden costs for this collection. The collection is filed electronically.

Needs and Uses: Under 49 U.S.C. 10709(d), railroads are required to file a summary of the nonconfidential terms of any contract for the transportation of agricultural products.

Collection Number 2

Title: Recordations (Rail and Water Carrier Liens).

OMB Control Number: 2140–0025.

Form Number: None.

Type of Review: Extension without change.

Respondents: Parties holding liens on rail equipment or water carrier vessels, and carriers filing proof that a lien has been removed.

Number of Respondents: Approximately 50 respondents.

Frequency: On occasion. (Over the last three years, respondents have filed an average of 1,850 responses per year. The same number of filings is expected during each of the next three years.)

Estimated Time Per Response: Approximately 0.25 hours.

Total Burden Hours (annually including all respondents): 462.5 hours (1,850 submissions × 0.25 hours estimated per response)

Total ''Non-hour Burden'' Cost: There are no non-hourly burden costs for this collection. The collection may be filed electronically.

Needs and Uses: Under 49 U.S.C. 11301 and 49 CFR part 1177, liens on rail equipment or water carrier vessels must be filed with the STB in order to perfect a security interest in the equipment. Subsequent amendments, assignments of rights, or release of obligations under such instruments must also be filed with the agency. This information is maintained by the Board for public inspection. Recordation at the STB obviates the need for recording the liens in individual States.

Collection Number 3

Title: Water Carrier Tariffs.

OMB Control Number: 2140–0026.

Form Number: None.

Type of Review: Extension without change.

Respondents: Water carriers that provide freight transportation in noncontiguous domestic trade.

Number of Respondents: Approximately 22.

Frequency: Annual certification.

Total Burden Hours (annually including all respondents): 77 hours (22 annual filings × 3.5 hours estimated time per certification).

Total ''Non-Hour Burden'' Cost: There are no non-hourly burden costs for this collection. The annual certifications will be submitted electronically.

Needs and Uses: Under 49 U.S.C. 13702(b) and 49 CFR part 1312, in lieu of individual tariffs, water carriers that provide freight transportation in noncontiguous domestic trade (*i.e.,* shipments moving to or from Alaska, Hawaii, or the U.S. territories or possessions (Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands) to or from the mainland U.S.) may file an annual certification with the Board that includes the internet address of a website containing a list of current and historical tariffs (including prices and fees that the water carrier charges to the shipping public).

Under the PRA, a Federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Section 3507(b) of the PRA requires, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: May 22, 2023.

Stefan Rice,

Clearance Clerk.

[FR Doc. 2023–11197 Filed 5–24–23; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

30-Day Notice of Intent To Seek Extension of Approval of Collection: Rail Depreciation Studies

AGENCY: Surface Transportation Board.

ACTION: Notice and request for comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for an extension of the collection of Rail Depreciation Studies, described below.

DATES: Comments on this information collection should be submitted by June 26, 2023.

ADDRESSES: Written comments should be identified as ''Paperwork Reduction Act Comments, Surface Transportation Board, Rail Depreciation Studies.'' Written comments for the proposed information collection should be submitted via *www.reginfo.gov/public/do/PRAMain.* This information collection can be accessed by selecting ''Currently under Review—Open for Public Comments'' or by using the

search function. As an alternative, written comments may be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Michael J. McManus, Surface Transportation Board Desk Officer: via email at *oira_submission@omb.eop.gov;* by fax at (202) 395–1743; or by mail to Room 10235, 725 17th Street NW, Washington, DC 20503.

Please also direct all comments to Chris Oehrle, PRA Officer, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, or to *PRA@stb.gov.* When submitting comments, please refer to ''Paperwork Reduction Act Comments, Rail Depreciation Studies.'' For further information regarding this collection, contact Pedro Ramirez at (202) 245–0333 or *pedro.ramirez@stb.gov.* Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Board previously published a notice about this collection in the **Federal Register** (88 FR 16512 (March 17, 2023)). That notice allowed for a 60-day public review and comment period. No comments were received.

Comments are requested concerning each collection as to (1) whether the particular collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Submitted comments will be included and summarized in the Board's request for OMB approval.

Subjects: In this notice, the Board is requesting comments on the extension of the following information collection:

Description of Collection

Title: Rail Depreciation Studies.

OMB Control Number: 2140–0028.

Form Number: None.

Type of Review: Extension without change.

Respondents: Class I railroads.

Number of Respondents: Seven.

Estimated Time per Response: Approximately 250 hours per study (estimating that studies will require between 125 hours and 375 hours depending on the extent to which the carrier provides assistance to outside consultants performing the study for them).

Frequency of Response: Bi-annual. (Under 49 CFR part 1201, sections 4–1 to 4–4, the Board requires all Class I (large) carriers to submit depreciation studies no less frequently than every three years for equipment property and every six years for road property. That means that for any given six-year period, the Class I railroads must submit no fewer than three depreciation reports, or the equivalent of 0.5 depreciation reports per year.)

Total Annual Hour Burden: 875 hours (250 hours × 0.5 studies/year × 7 Class I railroads).

Total Annual ''Non-Hour Burden'' Cost: Approximately $210,000 per year. Board staff estimates that each biennial study will cost between $20,000 and $100,000 to reflect recent price escalation, which converts to an annual cost of approximately $10,000-$50,000 per year. Using an average cost ($30,000 per year X 7 Class I railroads), the non-hour burden cost is estimated to be approximately $210,000 per year.

Needs and Uses: Under 49 CFR part 1201, sections 4–1 to 4–4, the Board is required to identify those classes of property for which rail carriers may include depreciation charges under operating expenses, and the Board must also prescribe a rate of depreciation that may be charged to those classes of property. Under 49 U.S.C. 11145, Class I rail carriers are required to submit Depreciation Studies to the Board. Information in these studies is not available from any other source. The Board uses the information in these studies to prescribe depreciation rates. These depreciation rate prescriptions state the period for which the depreciation rates therein are applicable. Class I railroads apply the prescribed depreciation rates to their investment base to determine monthly and annual depreciation expense. This expense is included in the railroads' operating expenses, which are reported in their R–1 reports (OMB Control Number 2140–0009). Operating expenses are used to develop operating costs for application in various proceedings before the Board, such as in rate reasonableness cases and in the determination of railroad ''revenue adequacy.''

Under the PRA, a Federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Section 3507(b) of the PRA requires, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Information from certain schedules contained in these reports is available at the Board's website at *www.stb.gov* by navigating to ''Reports & Data'' and clicking on ''Economic Data.'' Information in these reports is not available from any other source.

Dated: May 22, 2023.

Stefan Rice,

Clearance Clerk.

[FR Doc. 2023–11198 Filed 5–24–23; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

30-Day Notice of Intent To Seek Extension of Approval of Collection: Arbitration ''Opt-In'' Notices

AGENCY: Surface Transportation Board.

ACTION: Notice and request for comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for an extension of the collection of Arbitration ''Opt-in'' Notices, described below.

DATES: Comments on this information collection should be submitted by June 26, 2023.

ADDRESSES: Written comments should be identified as ''Paperwork Reduction Act Comments, Arbitration 'Opt-In' Notices.'' Written comments for the proposed information collection should be submitted via *www.reginfo.gov/public/do/PRAMain.* This information collection can be accessed by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. As an alternative, written comments may be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Michael J. McManus, Surface Transportation Board Desk Officer: via email at *oira_submission@omb.eop.gov;* by fax at (202) 395–1743; or by mail to Room 10235, 725 17th Street NW, Washington, DC 20503.

Please also direct all comments to Chris Oehrle, PRA Officer, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, or to *PRA@stb.gov.* When submitting comments, please refer to ''Paperwork

Reduction Act Comments, Arbitration 'Opt-In' Notices.'' For further information regarding this collection, contact Mike Higgins at (866) 254–1792 (toll-free) or 202–245–0238, or by emailing *rcpa@stb.gov.* Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Board previously published a notice about this collection in the **Federal Register** (88 FR 16515 (Mar. 17, 2023)). That notice allowed for a 60-day public review and comment period. No comments were received.

Comments are requested concerning each collection as to (1) whether the particular collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Submitted comments will be included and summarized in the Board's request for OMB approval.

Description of Collection

Title: Arbitration ''Opt-in'' Notices.

OMB Control Number: 2140–0020.

Form Number: None.

Type of Review: Extension without change.

Respondents: All regulated rail carriers.

Number of Respondents: One (Since the ''opt-in'' notice was initiated ten years ago, only a limited number of notices have been filed. Staff estimates that one notice will be filed per year.)

Estimated Time per Response: 0.5 hours.

Frequency: Annually.

Total Burden Hours (annually including all respondents): 0.5 hours.

Total ''Non-hour Burden'' Cost: None identified. Filings are submitted electronically to the Board.

Needs and Uses: Under 49 CFR 1108.3, rail carriers subject to the Board's jurisdiction may agree to participate in the Board's arbitration program by filing a notice with the Board to ''opt in.'' Once a rail carrier is participating in the Board's arbitration program, it may discontinue its participation only by filing a notice to ''opt out'' with the Board, which would become effective 90 days after its filing.

Under the PRA, a Federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Section 3507(b) of the PRA requires, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: May 22, 2023.

Stefan Rice,

Clearance Clerk.

[FR Doc. 2023–11196 Filed 5–24–23; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

30-Day Notice of Intent To Seek Extension of Approval of Collection: System Diagram Maps

AGENCY: Surface Transportation Board.

ACTION: Notice and request for comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for an extension of the collection of system diagram maps, described below.

DATES: Comments on this information collection should be submitted by June 26, 2023.

ADDRESSES: Written comments should be identified as ''Paperwork Reduction Act Comments, Surface Transportation Board, System Diagram Maps.'' Written comments for the proposed information collection should be submitted via *www.reginfo.gov/public/do/PRAMain.* This information collection can be accessed by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. As an alternative, written comments may be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Michael J. McManus, Surface Transportation Board Desk Officer: via email at *oira_submission@omb.eop.gov;* by fax at (202) 395–1743; or by mail to Room 10235, 725 17th Street NW, Washington, DC 20503.

Please also direct all comments to Chris Oehrle, PRA Officer, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, or to *PRA@stb.gov.* When submitting comments, please refer to ''Paperwork Reduction Act Comments, System Diagram Maps.'' For further information regarding this collection, contact Pedro Ramirez at (202) 245–0333 or *pedro.ramirez@stb.gov.* Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Board previously published a notice about this collection in the **Federal Register** (88 FR 16514 (March 17, 2023)). That notice allowed for a 60-day public review and comment period. No comments were received.

Comments are requested concerning each collection as to (1) whether the particular collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Submitted comments will be included and summarized in the Board's request for OMB approval.

Description of Collection

Title: System Diagram Maps (or, in the case of Class III carriers, the alternative narrative description of rail system).

OMB Control Number: 2140–0003.

Form Number: None.

Type of Review: Extension without change.

Respondents: Common carrier freight railroads that are either new or reporting changes in the status of one or more of their rail lines.

Number of Respondents: 1.

Estimated Time per Response: 5 hours.

Frequency of Response: On occasion.

Total Annual Burden Hours: 5 hours.

Total ''Non-Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified. The information may be submitted electronically.

Needs and Uses: Under 49 CFR 1152.10–1152.13, railroads subject to the Board's jurisdiction must keep current system diagram maps on file, or alternatively, in the case of a Class III carrier, must submit the same information in narrative form. The information sought in this collection identifies all lines in a particular railroad's system, categorized to

indicate the likelihood that service on a particular line will be abandoned and/or whether service on a line is currently provided under the financial assistance provisions of 49 U.S.C. 10904. Carriers are obligated to amend these maps as the need to change the category of any particular line arises.

Under the PRA, a Federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Section 3507(b) of the PRA requires, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: May 22, 2023.

Stefan Rice,

Clearance Clerk.

[FR Doc. 2023–11195 Filed 5–24–23; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2020–0499; Summary Notice No.—2023–09]

Petition for Exemption; Summary of Petition Received; Zipline, Inc.

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before June 14, 2023.

ADDRESSES: Send comments identified by docket number FAA–2020–0499 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

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

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nia Daniels, (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 18, 2023.

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2020–0499.

Petitioner: Zipline, Inc.

Section of 14 CFR Affected: 91.7(a), 91.113, 135.25(a)(1), 135.25 (a)(2), 135.205(a), and 135.243(b)(1).

Description of Relief Sought: Zipline, Inc. seeks a revision to its Exemption No. 19111B to enable it to use its Detect and Avoid systems to deconflict with other aircraft during beyond visual line of sight operations, in lieu of using visual observers.

[FR Doc. 2023–11028 Filed 5–23–23; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2022–0124; Summary Notice No. –2023–19]

Petition for Exemption; Summary of Petition Received; Phoenix Air Unmanned, LLC

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before June 14, 2023.

ADDRESSES: Send comments identified by docket number FAA–2022–0124 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

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

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time.

Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Ngo, 202–267–9677, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 18, 2023.

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2022–0124.

Petitioner: Phoenix Air Unmanned, LLC.

Section(s) of 14 CFR Affected: §§ 61.3(a)(1)(i), 61.23(a)(2), 89.105, 91.119(c), 91.121, 91.151(b), 91.403(b), 91.405(a), 91.407(a)(1), 91.409(a)(1), 91.409(a)(2), 91.417(a), and 91.417(b).

Description of Relief Sought: Phoenix Air Unmanned, LLC (PAU) seeks relief to operate the SwissDrones SVO 50 V2 Unmanned Aircraft System (UAS) for the purposes of linear infrastructure operations, including aerial work, aerial photography, survey, and powerline and pipeline patrol and inspection. These operations include beyond visual line of sight (BVLOS) operations over certain roads and transient operations over people within the right of way (ROW). Operations that do not meet the criteria for BVLOS due to population density, roadway congestion, proximity to airports, and/or airspace may still be flown within VLOS of the PIC with certain restrictions. Moreover, PAU requests relief to the remote identification of unmanned aircraft regulation until the time that the manufacturer's equipment is available.

[FR Doc. 2023–11027 Filed 5–23–23; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2019–0628; Summary Notice No.—2023–06]

Petition for Exemption; Summary of Petition Received; UPS Flight Forward, Inc.

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before June 14, 2023.

ADDRESSES: Send comments identified by docket number FAA–2019–0628 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

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

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nia Daniels, (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 18, 2023.

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2019–0628.

Petitioner: UPS Flight Forward, Inc.

Sections of 14 CFR Affected: §§ 61.23(a)(2), 91.113, 91.119, 135.24(3)(b)(1), 135.205(a).

Description of Relief Sought: UPS Flight Forward, Inc. (UPS FF) petitions for an exemption from Title 14 of Federal Regulations §§ 61.23(a)(2), 91.113, 91.119, 135.24(3)(b)(1), and 135.205(a) to allow it to do the following: incorporate a remote operations center (ROC) allowing a remote pilot in command (RPIC) to operate flights in outlying locations from a ROC in a different location; use its Matternet M2 and a ground based surveillance system coupled to a suite of situational awareness tools that would replace the use of visual observers for beyond visual line of sight operations. Additionally, UPS FF also requests that the RPICs in part 135 operations maintain a Third-Class Medical Certificate, instead of a Second-Class Medical Certificate.

[FR Doc. 2023–11026 Filed 5–23–23; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2022–0921; Summary Notice No. –2022–42]

Petition for Exemption; Summary of Petition Received; uAvionix Corporation.

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before June 14, 2023.

ADDRESSES: Send comments identified by docket number FAA–2022–0921 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow

the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

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

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 683–7788, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 18, 2023.

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2022–0921

Petitioner: uAvionix Corporation

Section(s) of 14 CFR Affected: §§ 61.3(a)(1)(i), 61.3(c)(1), 91.7(a), 91.9(b)(2), 91.119(c), 91.121, 91.151, 91.203(a) and (b), 91.403(a) and (b), 91.405(a), 91.407(a)(1) and (2), 91.409(a)(1) and (2), and 91.417(a) and (b).

Description of Relief Sought: uAvionix Corporation requests an exemption to permit beyond visual line of sight (BVLOS) operations for the purpose of research and development with the Rapace electric vertical takeoff and landing (eVTOL) unmanned aircraft system (UAS) in accordance with Part 91.113(b) waiver provisions and operating limitations stipulated as part of the Rapace's Special Airworthiness Certificate in the Experimental Category (SAC–EC). The Rapace unmanned aircraft has an empty weight of 12 pounds (lbs.) and a maximum takeoff weight of 26.5 lbs. The petitioner also requests relief from the 14 CFR 61.3(a)(1) requirement to hold a pilot certificate issued under Part 61, and instead requests the pilot in command (PIC) hold a Remote Pilot Certificate and complete operator developed training specific to the UAS and the operating environment.

[FR Doc. 2023–11025 Filed 5–23–23; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0235]

Agency Information Collection Activities; Approval of a New Information Collection Request: Crash Causal Factors Program: Knowledge of Systems and Processes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. This ICR relates to the planned ''Study of Commercial Motor Vehicle Crash Causation,'' mandated by Congress in the Infrastructure and Investment Jobs Act (IIJA). To plan and execute this study, FMCSA must collect information from the States and local jurisdictions to understand their interest or ability to participate in the study. FMCSA will collect information on existing crash data collection processes, systems, and resources and commercial motor vehicle (CMV) enforcement funding mechanisms and sources.

DATES: Comments on this notice must be received on or before June 26, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection (IC) should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this IC by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Kelly Stowe, Office of Analysis, Research, and Technology/Research Division, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; 202–366–2646; *kelly.stowe@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Crash Causal Factors Program: Knowledge of Systems and Processes.

OMB Control Number: 2126–00XX.

Type of Request: New ICR.

Respondents: State and local Government employees (first-line supervisors of police and detectives; police and sheriff's patrol officers; general and operations managers; chief executives; computer and information systems managers; and computer and mathematical operations workers).

Estimated Number of Respondents: 1,320 respondents.

Estimated Time per Response: 1.61 hours (rounded) per response, average (across all ICs).

Expiration Date: N/A. This is a new ICR.

Frequency of Response: Once for each IC.

Estimated Total Annual Burden: 2,124 hours total, or 708 hours annually (51 annual hours for State computer and information systems managers + 9 annual hours for local computer and information systems managers + 119 annual hours for State police and sheriff's patrol officers + 9 annual hours for local police and sheriff's patrol officers + 114.75 annual hours for State first-line supervisors of police and detectives + 42.75 annual hours for local first-line supervisors of police and detectives + 114.75 annual hours for State general and operations managers + 40.5 annual hours for local general and operations managers + 114.75 annual hours for State chief executives + 40.5 annual hours for local chief executives + 34 annual hours for State computer and mathematical operations workers + 18 annual hours for local computer and mathematical operations workers = 708 annual hours).

Background

On December 27, 2020, the Consolidated Appropriations Act, 2021 (Pub. L. 116–260), was signed into law, appropriating $30 million to FMCSA to ''carry out [a] study of the cause[s] of large truck crashes.'' On November 14, 2021, the President signed into law the IIJA (Pub. L. 117–58), which contains requirements for a larger study under

section 23006, ''Study of Commercial Motor Vehicle Crash Causation.'' The requirements under section 23006 define the scope of the study to include all CMVs as defined in 49 U.S.C. 31132.

Section 23006(b)(1) of the IIJA requires the Secretary to ''carry out a comprehensive study to determine the causes of, and contributing factors to, crashes that involve a commercial motor vehicle.'' Section 23006(b)(2) further requires the Secretary to:

A. Identify data requirements, data collection procedures, reports, and any other measures that can be used to improve the ability of States and the Secretary to evaluate future crashes involving CMVs;

B. Monitor crash trends and identify causes and contributing factors; and

C. Develop effective safety improvement policies and programs.

To meet the requirements of section 23006, FMCSA is establishing a Crash Causal Factors Program. Through this program, FMCSA will execute a multi-phased study of crash causal factors, with Phase 1 focused on fatal crashes involving Class 7/8 large trucks. This Phase 1 effort is referred to as the Large Truck Crash Causal Factors Study. Future phases of the study will focus on different CMV populations (such as medium-duty trucks) or crash severities (*e.g.,* serious injury crashes).

Congress anticipated that FMCSA would need to consult with the States and a variety of other experts when planning and executing the study, as noted in section 23006(d), which reads: ''In designing and carrying out the study, the Secretary may consult with individuals or entities with expertise on—

1. Crash causation and prevention;
2. Commercial motor vehicles, commercial drivers, and motor carriers, including passenger carriers;
3. Highways and noncommercial motor vehicles and drivers;
4. Federal and State highway and motor carrier safety programs;
5. Research methods and statistical analysis; and
6. Other relevant topics, as determined by the Secretary.''

This IC will collect data from Federal, State, and local highway and motor carrier safety programs. It will focus on identifying and documenting States' and local jurisdictions' ability to participate in the study; agreements that the States or jurisdictions will require to participate in the study; existing crash data collection processes, systems, training, and quality control processes; and CMV enforcement funding mechanisms and sources.

How the Agency Will Use Collected Information

FMCSA will use collected information from four ICs:

- IC–1: Identifying Points of Contact
- IC–2: Sample Design; Partnerships and Coordination
- IC–3: Crash Data Collection
- IC–4: CMV Enforcement Resources and Funding

Information collected under these four ICs will inform various elements of the study plan, including the sample design, data collection plans, participation agreements, resourcing plans, and development of the study database. Below are additional details on how FMCSA will use collected information to develop various study plan elements.

IC–1: Identifying Points of Contact

Before collecting information for ICs 2, 3, and 4, FMCSA will first need to identify the appropriate points of contact in each State and a sample of local jurisdictions for the remaining IC components. Once FMCSA obtains contact information from the States, the Agency will distribute a web-based survey for IC–2, IC–3, and IC–4 to the relevant point of contact in each State or jurisdiction. Below are additional details on how FMCSA will use collected information to develop various study plan elements.

IC–2: Sample Design; Partnerships and Coordination

The original Large Truck Crash Causation Study conducted from 2001 through 2003 leveraged the sample design from the National Highway Traffic Safety Administration's (NHTSA) National Automotive Sampling System (NASS) Crashworthiness Data System (CDS). NHTSA has since developed the Crash Investigation Sampling System (CISS), which replaces NASS CDS. Both NASS CDS and CISS are focused on crashes involving passenger vehicles (*i.e.,* passenger cars, light trucks, vans, and utility vehicles). Neither sampling system was designed to collect data on a representative sample of crashes involving CMVs. NHTSA acknowledged this in its 2019 sample design and weighting documentation for CISS, stating in a discussion on special crash populations, ''The most efficient way to study a rare population is to design a special study that solely targets that particular rare population.'' As a result, FMCSA is planning to develop a new sample design specific to crashes involving CMVs. However, FMCSA cannot simply select a random sample of State and local jurisdictions to include in the sample design. The Agency will need to identify an appropriate mix of State and local jurisdictions to allow for a nationally representative sample design. Participating States and local jurisdictions will be asked to collect and share the required study data and troubleshoot study-related issues as they arise. The information collected under IC–2 will inform the sample design for this study. It will also provide important information about State- or local jurisdiction-required participation and data sharing agreements.

IC–3: Crash Data Collection

FMCSA is planning to leverage existing State and local jurisdiction resources (where possible) to collect required study data. This will be a complex effort that will require substantial information sharing and coordination between participating States/jurisdictions and FMCSA.

Under IC–3, FMCSA will seek to learn more about the data elements that State and local jurisdictions are already collecting; State and local jurisdiction CMV crash reporting criteria and notification processes; State and local jurisdiction crash data collection systems and processes (*e.g.,* what systems exist, who owns the system(s), whether the system can interface with other systems, etc.); existing crash data collection trainings offered by the State/jurisdiction; and crash data quality reviews that States and local jurisdictions currently conduct. The Agency will use this information to inform the study crash data collection plan and requirements for the study database.

IC–4: CMV Enforcement Resources and Funding

FMCSA must collect information from States and local jurisdictions to understand whether existing commercial vehicle enforcement resources can meet the study needs, and if not, to determine how much additional funding or resources jurisdictions will require to collect the necessary data. IC–4 will identify available CMV enforcement resources within States/jurisdictions, funding sources for existing commercial vehicle enforcement resources and activities (*e.g.,* State-funded versus FMCSA grant-funded), and whether there is a mechanism for the local jurisdiction to receive study funding through FMCSA's grant programs (*i.e.,* as a sub-grantee). Information collected under IC–4 will also inform FMCSA resourcing plans outside of the States/jurisdictions.

Method of Collection

FMCSA will collect the required information for IC–1 via email. For ICs 2, 3, and 4, FMCSA will leverage a web-based survey application combined with email to collect information. FMCSA believes that all respondents will have State or local government-provided information technology equipment (*e.g.,* laptops, mobile devices, etc.) and internet access; as such, the Agency believes electronic submissions will be most cost-effective and efficient for respondents (as opposed to mail-based submissions or some other means). FMCSA estimates that 100 percent of submissions will be electronic.

Results of Data Collection

FMCSA does not plan to publish results from this data collection. Results from this data collection, which will be descriptive and/or qualitative in nature, will inform the study sample design, participation agreements, data collection plans, resource plans, and study database requirements. No complex analytical techniques will be used. Final results from the overall study, once completed, will be published in a final study report. Findings from the overall study will ultimately inform the identification and development of countermeasures to prevent crashes involving CMVs.

As part of the Crash Causal Factors Program, this IC supports the DOT Strategic Goal of Safety.

Response to Public Comments

On December 27, 2022, FMCSA published a 60-day notice in the **Federal Register** seeking public comment on this proposed IC (87 FR 79419). FMCSA received six comments, two of which were unrelated to this ICR or the Large Truck Crash Causal Factors Study. Below are summaries of the four relevant comments received, along with FMCSA's responses.

Eric Hein (Two Comments)

Eric Hein submitted two comments. The first comment included (1) a letter that discussed underreporting of fatal side underride crashes in NHTSA's Fatality Analysis Reporting System (FARS) and requested inclusion of side underride guard research in the Large Truck Crash Causal Factors Study, and (2) a report examining underreporting of side underride crashes in FARS. The second comment included revised versions of the letter and report that Mr. Hein had submitted earlier in the comment period.

Agency Response: Mr. Hein's comments are not related to the proposed IC, but they are relevant to the Large Truck Crash Causal Factors Study in general. While the Agency cannot predict what types of crashes will occur in study locations during the data collection period, if side underride crashes do occur, FMCSA plans to collect relevant data to enable detailed analysis of such crashes. Before collecting crash data for the study, FMCSA will issue a separate 60-day notice announcing the proposed IC and requesting comments from the public. FMCSA invites Mr. Hein to submit additional comments at that time.

Industry Associations (Two Comments)

The American Trucking Associations (ATA) submitted a letter expressing support for the proposed IC, along with a copy of the comments they submitted in response to FMCSA's request for information (RFI) on the Large Truck Crash Causal Factors Study, published January 15, 2020 (85 FR 2481).

The Owner-Operator Independent Drivers Association (OOIDA) submitted a letter that (1) expressed support for the proposed IC, and (2) reiterated several comments the association had previously submitted in response to FMCSA's January 2020 RFI on the Large Truck Crash Causal Factors Study.

Agency Response: FMCSA acknowledges and appreciates ATA's and OOIDA's support of the proposed IC and the Large Truck Crash Causal Factors Study. The Agency previously reviewed ATA's and OOIDA's comments on the January 2020 RFI and has taken those comments, along with all other comments received on the docket for that RFI, into consideration during the study planning process. The Agency will take ATA's and OOIDA's comments into consideration when developing the crash data collection ICR.

Public Comments Invited: You are asked to comment on any aspect of this IC, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2023–11189 Filed 5–24–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2023–0011]

Agency Information Collection Activity Under OMB Review: Urbanized Area Formula Program

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve the extension of a currently approved information collection.

DATES: Comments must be submitted before July 24, 2023.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Website: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (*Note:* The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.
2. *Fax:* 202–366–7951.
3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to internet users, without change, to *www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal**

Register published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov.* Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Bathrick at (202) 366–9955, or email: *Mark.Bathrick@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) the necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: 49 U.S.C. 5307 Urbanized Area Formula Program.

OMB Number: 2132–0502.

Background: The Urbanized Area Formula Funding program (49 U.S.C. 5307) makes federal resources available to urbanized areas and to governors for transit capital and operating assistance in urbanized areas and for transportation-related planning. An urbanized area is an incorporated area with a population of 50,000 or more that is designated as such by the U.S. Department of Commerce, Bureau of the Census. Funding is made available to designated recipients that are public bodies with the legal authority to receive and dispense federal funds. Governors, responsible local officials and publicly owned operators of transit services shall designate a recipient to apply for, receive, and dispense funds for urbanized areas pursuant to 49USCA5307(a)(2). The governor or governor's designee acts as the designated recipient for urbanized areas between 50,000 and 200,000. For urbanized areas with 200,000 in population and over, funds are apportioned and flow directly to a designated recipient selected locally to apply for and receive Federal funds. For urbanized areas under 200,000 in population, the funds are apportioned to the governor of each state for distribution. Eligible activities include: planning, engineering, design and evaluation of transit projects and other technical transportation-related studies; capital investments in bus and bus-related activities such as replacement, overhaul and rebuilding of buses, crime prevention and security equipment and construction of maintenance and passenger facilities; and capital investments in new and existing fixed guideway systems including rolling stock, overhaul and rebuilding of vehicles, track, signals, communications, and computer hardware and software. In addition, associated transit improvements and certain expenses associated with mobility management programs are eligible under the program. All preventive maintenance and some Americans with Disabilities Act complementary paratransit service costs are considered capital costs. For urbanized areas with populations less than 200,000, operating assistance is an eligible expense. Urbanized areas of 200,000 or more may not use funds for operating assistance unless identified by FTA as eligible under the Special Rule.

Respondents: State or local governmental entities that operates a public transportation service.

Estimated Annual Number of Respondents: 5,864.

Estimated Total Annual Burden: 114,008.

Frequency: Annually.

Nadine Pembleton,

Deputy Associate Administrator, Office of Administration.

[FR Doc. 2023–11113 Filed 5–24–23; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2023–0012]

Agency Information Collection Activity Under OMB Review: New Freedom Program

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve the extension of a currently approved information collection.

DATES: Comments must be submitted before July 24, 2023.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Website: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (*Note:* The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.
2. *Fax:* 202–366–7951.
3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to internet users, without change, to *www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov.* Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Destiny Buchanan at (202) 493–8018, or email: *Destiny.Buchanan@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information

collection, including: (1) the necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: 49 U.S.C. 5317—New Freedom Program.

OMB Number: 2132–0565.

Background: The purpose of the New Freedom program was to make grants available to assist states and designated recipients to reduce barriers to transportation services and expand the transportation mobility options available to people with disabilities beyond the requirements of the Americans with Disabilities Act (ADA) of 1990. The New Freedom program was repealed in 2012 with the enactment of the Moving Ahead for Progress in the 21st Century Act (MAP–21). However, funds previously authorized for programs repealed by MAP–21 remain available for their originally authorized purposes until the period of availability expires, the funds are fully expended, the funds are rescinded by Congress, or the funds are otherwise reallocated. To meet program oversight responsibilities, FTA must continue to collect information until the period of availability expires, the funds are fully expended, the funds are rescinded by Congress, or the funds are otherwise reallocated. Grant recipients are required to make information available to the public and to publish a program of projects which identifies the sub-recipients and projects for which the State or designated recipient is applying for financial assistance. FTA uses the information to monitor the grantees' progress in implementing and completing project activities. FTA collects performance information annually from designated recipients in rural areas, small urbanized areas, other direct recipients for small urbanized areas, and designated recipients in urbanized areas of 200,000 persons or greater.

Respondents: State or local government, private non-profit organizations and public transportation authorities.

Estimated Annual Number of Respondents: 33.

Estimated Total Annual Burden: 1,320.

Frequency: Annually.

Nadine Pembleton,

Deputy Associate Administrator, Office of Administration.

[FR Doc. 2023–11114 Filed 5–24–23; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans and Community Oversight and Engagement Board, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. ch. 10, that the Veterans and Community Oversight and Engagement Board (VCOEB) will meet on June 21–22, 2023, at The Bob Hope Patriotic Hall, 1816 S Figueroa St., Los Angeles, CA. The meeting sessions will begin and end as follows:

Date	Time
June 21, 2023 ...	8:30 a.m. to 5:00 p.m.—Pacific Daylight Time (PDT).
June 22, 2023 ...	8:30 a.m. to 2:15 p.m.—(PDT).

The meetings are open to the public and will be recorded.

The Board was established by the West Los Angeles Leasing Act of 2016 on September 29, 2016. The purpose of the Board is to provide advice and make recommendations to the Secretary of Veterans Affairs on identifying the goals of the community and Veteran partnership; improving services and outcomes for Veterans, members of the Armed Forces, and the families of such Veterans and members; and on the implementation of the Draft Master Plan approved by VA Secretary on January 28, 2016, and on the creation and implementation of any successor master plans.

On Wednesday, June 21, 2023, from 8:30 a.m. to 5:00 p.m., the Committee will meet in open session with key staff of the VA Greater Los Angeles Healthcare System, (VAGLAHS). The agenda will include opening remarks from the Committee Chair, Executive Sponsor, and other VA officials. There will be a general update from the Director of the VA Greater Los Angeles Healthcare System (VAGLAHS). The Senior Executive Homeless Agent, (Greater Los Angeles), Office of the Secretary, will provide an overview of Ongoing efforts associated with Area Median Income and the impact of VA disability benefits on eligibility for low-income housing. The Board will receive a comprehensive presentation on Homeless Veterans' Reintegration Program/Employment Programs. The Community Engagement and Reintegration Service Office will provide an overview of the Coordinated Entry System, and a comprehensive trend analysis of the data reflected on the VAGLAHS Dashboard. The Community Engagement and Reintegration Service Office will also provide an overview of the Housing Navigating Contracts, and an update on plans for future use of the CTRS site. The Office of Asset and Enterprises Management will present detailed information on the VAGLAMC campus parcel release plan.

On Thursday, June 22, 2023, the Board will reconvene in open session from 8:30 a.m. to 2:15 p.m., at The Bob Hope Patriotic Hall, 1816 S Figueroa St., Los Angeles, CA. Each Enhanced Use Lease developer is scheduled to provide an updated status of ongoing construction to include projected completion date, proposed move in plan, current selected service provider, and funding commitment levels. VAGLAHS will provide a status of all Fiscal Year 2023 Enhanced Use Lease (EUL) infrastructure projects. The Board has also requested a status on efforts associated with Master Plan 2025 projections. The Board's subcommittees on Outreach and Community Engagement with Services and Outcomes, and Master Plan with Services and Outcomes will provide an out brief to the full Board and update on draft recommendations to be considered for forwarding to the Secretary of Veterans Affairs.

Time will be allocated for receiving public comments on June 21, at 1:00 p.m. Individuals wishing to make public comments should contact Chihung Szeto at (562) 708–9959 or at *Chihung.Szeto@va.gov* and are requested to submit a 1–2-page summary of their comments for inclusion in the official meeting record. Only those members of the public (first 12 public comment registrants) who have confirmed registrations to provide public comment will be allowed to provide public comment. In the interest of time, each speaker will be held to 5-minute time limit. The Committee will accept written comments from interested parties on issues outlined in the meeting agenda, from June 15 through June 27, 2023. If public members are interested in attending the meeting virtually, please access the WEBEX meeting link below. The link will be active from 8:00 a.m.–5:45 p.m. (PDT), 21 June 2023 and 8:00 a.m.–2:30 p.m. (PDT), 22 June 2023.

Join From Meeting Link

https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=mb1f81aac66de4936bd3f0b082e538f69

Join by Meeting Number

Meeting number (access code): 2762 529 1546
Meeting password: 5CutKtWS@32
Tap to join from a mobile device (attendees only):
+14043971596,,27625291546## USA Toll Number

Join by Phone

14043971596 USA Toll Number
Global call-in numbers | Toll-free calling restrictions
Dial *27625291546@veteransaffairs.webex.com*

You can also dial 207.182.190.20 and enter your meeting number.

Need help? Go to *https://help.webex.com.*

Any member of the public seeking additional information should contact Mr. Eugene W. Skinner Jr. at (202) 631–7645 or at *Eugene.Skinner@va.gov.*

Dated: May 19, 2023.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–11110 Filed 5–24–23; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part II

Department of Energy

10 CFR Part 431

Energy Conservation Program: Energy Conservation Standards for Refrigerated Bottled or Canned Beverage Vending Machines; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2020–BT–STD–0014]

RIN 1904–AE68

Energy Conservation Program: Energy Conservation Standards for Refrigerated Bottled or Canned Beverage Vending Machines

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

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The Energy Policy and Conservation Act, as amended (EPCA), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including refrigerated bottled or canned beverage vending machines (BVMs). EPCA also requires the U.S. Department of Energy (DOE) to periodically determine whether more stringent standards would be technologically feasible and economically justified, and would result in significant energy savings. In this notice of proposed rulemaking (NOPR), DOE proposes amended energy conservation standards for BVMs, and also announces a public meeting to receive comment on these proposed standards and associated analyses and results.

DATES:

Comments: DOE will accept comments, data, and information regarding this NOPR no later than July 24, 2023.

Meeting: DOE will hold a public meeting via webinar on Wednesday, June 7, 2023, from 1:00 p.m. to 4:00 p.m. See section VII, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Comments regarding the likely competitive impact of the proposed standard should be sent to the U.S. Department of Justice (DOJ) contact listed in the **ADDRESSES** section on or before June 26, 2023.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov* under docket number EERE–2020–BT–STD–0014. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2020–BT–STD–0014, by any of the following methods:

Email: BVM2020STD0014@ee.doe.gov. Include the docket number number EERE–2020–BT–STD–0014 in the subject line of the message.

Postal Mail: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

Hand Delivery/Courier: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section VII of this document.

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

The docket web page can be found at *www.regulations.gov/docket/EERE-2020-BT-STD-0014.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VII of this document for information on how to submit comments through *www.regulations.gov.*

EPCA requires the Attorney General to provide DOE a written determination of whether the proposed standard is likely to lessen competition. The DOJ Antitrust Division invites input from market participants and other interested persons with views on the likely competitive impact of the proposed standard. Interested persons may contact the Division at *energy.standards@usdoj.gov* on or before the date specified in the **DATES** section. Please indicate in the ''Subject'' line of your email the title and docket number of this proposed rulemaking.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Sarah Butler, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–1777. Email: *Sarah.Butler@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

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I. Synopsis of the Proposed Rule

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

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) EPCA also provides that not later than 3 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(3)(B))

In accordance with these and other statutory provisions discussed in this document, DOE proposes amended energy conservation standards for BVMs. The proposed standards, which are expressed in maximum daily energy consumption as a function of refrigerated volume, if adopted, would apply to all BVMs listed in Table I.1 manufactured in, or imported into, the United States starting on the date 3 years after the publication of the final rule for this proposed rulemaking.

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR BVMS

Equipment class	Maximum daily energy consumption (kilowatt hours per day)
Class A	0.029 × V* + 1.34.
Class B	0.029 × V* + 1.21.
Combination A	0.048 × V* + 1.50.
Combination B	0.052 × V* + 0.96.

*V is the representative value of refrigerated volume (ft^3) of the BVM model, as calculated pursuant to 10 CFR 429.52(a)(3).

[1] All references to EPCA in this document refer to the statute as amended through the Infrastructure Investment and Jobs Act, Public Law 117–58 (Nov. 15, 2021).

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

[3] Because Congress included BVMs in Part A of Title III of EPCA, the consumer product provisions of Part A (rather than the industrial equipment provisions of Part A–1) apply to BVMs. DOE placed the regulatory requirements specific to BVMs in 10 CFR part 431, "Energy Efficiency Program for Certain Commercial and Industrial Equipment" as a matter of administrative convenience based on their type and will refer to BVMs as "equipment" throughout this document because of their placement in 10 CFR part 431. Despite the placement of BVMs in 10 CFR part 431, the relevant provisions of Title A of EPCA and 10 CFR part 430, which are applicable to all product types specified in Title A of EPCA, are applicable to BVMs. *See* 74 FR 44914, 44917 (Aug. 31, 2009) and 80 FR 45758, 45759 (Jul. 31, 2015). The regulatory provisions of 10 CFR 430.33 and 430.34 and subparts D and E of 10 CFR part 430 are applicable to BVMs.

A. Benefits and Costs to Consumers

Table I.2 presents DOE's evaluation of the economic impacts of the proposed standards on consumers of BVMs, as measured by the average life-cycle cost (LCC) savings and the simple payback period (PBP).[4] The PBP is less than the average lifetime of BVMs, which is estimated to be 13.4 years (see section IV.F of this document).

TABLE I.2—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF REFRIGERATED BOTTLED OR CANNED BEVERAGE VENDING MACHINES

Equipment class	Average LCC savings * (2021$)	Simple payback period (years)
Class A	(5.52)	5.7
Class B	206.01	1.2
Combination A	190.03	1.4
Combination B	287.16	2.2

* The savings represent the average LCC for affected consumers.

DOE's analysis of the impacts of the proposed standards on consumers is described in section IV.F of this document.

B. Impact on Manufacturers

The industry net present value (INPV) is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2028–2057). Using a real discount rate of 8.5 percent, DOE estimates that the INPV for manufacturers of BVMs in the case without amended standards is $85.5 million in 2021$. Under the proposed standards, the change in INPV is estimated to range from a loss of 2.2 percent to a gain 0.6 percent, which is approximately −$1.9 million to $0.5 million. In order to bring equipment into compliance with amended standards, it is estimated that the industry would incur total conversion costs of $1.5 million.

DOE's analysis of the impacts of the proposed standards on manufacturers is described in section IV.J of this document. The analytic results of the manufacturer impact analysis (MIA) are presented in section V.B.2 of this document.

C. National Benefits and Costs[5]

DOE's analyses indicate that the proposed energy conservation standards for BVMs would save a significant amount of energy. Relative to the case without amended standards, the lifetime energy savings for BVMs purchased in the 30-year period that begins in the anticipated year of compliance with the amended standards (2028–2057) amount to 0.09 quadrillion British thermal units (Btu or quads).[6] This represents a savings of 30 percent relative to the energy use of this equipment in the case without amended standards (referred to as the ''no-new-standards case'').

The cumulative net present value (NPV) of total consumer benefits of the proposed standards for BVMs ranges from $0.09 billion (at a 7-percent discount rate) to $0.25 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating cost savings minus the estimated increased product costs for BVMs purchased in 2028–2057.

In addition, the proposed standards for BVMs are projected to yield significant environmental benefits. DOE estimates that the proposed standards would result in cumulative emission reductions (over the same period as for energy savings) of 3.0 million metric tons (Mt)[7] of carbon dioxide (CO_2), 1.4 thousand tons of sulfur dioxide (SO_2), 4.7 thousand tons of nitrogen oxides (NO_X), 21 thousand tons of methane (CH_4), 0.03 thousand tons of nitrous oxide (N_2O), and 0.009 tons of mercury (Hg).[8]

DOE estimates the value of climate benefits from a reduction in greenhouse gases (GHGs) using four different estimates of the social cost of CO_2 (SC–CO_2), the social cost of methane (SC–CH_4), and the social cost of nitrous oxide (SC–N_2O). Together these represent the social cost of GHGs (''SC–GHGs''). DOE used interim SC–GHG values developed by an Interagency Working Group on the Social Cost of Greenhouse Gases (IWG).[9] The derivation of these values is discussed in section IV.L of this document. For presentational purposes, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are estimated to be $0.14 billion. DOE does not have a single central SC–GHG point estimate and it emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates.

DOE estimated the monetary health benefits of SO_2 and NO_X emissions reductions using benefit per ton estimates from the scientific literature, as discussed in section IV.L of this document. DOE estimated the present value of the health benefits would be $0.10 billion using a 7-percent discount rate and $0.27 billion using a 3-percent discount rate.[10] DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects, such as health benefits from reductions in direct $PM_{2.5}$ emissions.

Table I.3 summarizes the monetized benefits and costs expected to result from the proposed standards for BVMs. There are other important unquantified effects, including certain unquantified climate benefits, unquantified public health benefits from the reduction of toxic air pollutants and other emissions, unquantified energy security benefits, and distributional effects, among others. The monetization of climate and health benefits that have been quantified is explained in section IV.L of this document.

[4] The average LCC savings refer to consumers that are affected by a standard and are measured relative to the efficiency distribution in the no-new-standards case, which depicts the market in the compliance year in the absence of new or amended standards (see section IV.F.9 of this document). The simple PBP, which is designed to compare specific efficiency levels, is measured relative to the baseline product (see section IV.C of this document).

[5] All monetary values in this document are expressed in 2021 dollars.

[6] The quantity refers to full-fuel-cycle (FFC) energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.1 of this document.

[7] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

[8] DOE calculated emissions reductions relative to the no-new-standards case, which reflects key assumptions in the *Annual Energy Outlook 2022* (*AEO2022*). *AEO2022* represents current federal and state legislation and final implementation of regulations as of the time of its preparation. See section IV.K of this document for further discussion of *AEO2022* assumptions that effect air pollutant emissions.

[9] To monetize the benefits of reducing GHG emissions this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the IWG. (''February 2021 SC–GHG TSD''*). www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.*

[10] DOE estimates the economic value of these emissions reductions resulting from the considered TSLs for the purpose of complying with the requirements of E.O. 12866.

TABLE I.3—SUMMARY OF MONETIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR REFRIGERATED BOTTLED OR CANNED BVMS

[TSL 4]

	Billion ($2021)
3% discount rate	
Consumer Operating Cost Savings	0.33
Climate Benefits *	0.14
Health Benefits **	0.27
Total Benefits †	0.75
Consumer Incremental Product Costs ‡	0.08
Net Benefits	0.66
7% discount rate	
Consumer Operating Cost Savings	0.14
Climate Benefits * (3% discount rate)	0.14
Health Benefits **	0.10
Total Benefits†	0.38
Consumer Incremental Product Costs‡	0.05
Net Benefits	0.33

Note: This table presents the costs and benefits associated with BVMs shipped in 2028–2057. These results include benefits to consumers which accrue after 2057 from the products shipped in 2028–2057.

* Climate benefits are calculated using four different estimates of the social cost of carbon ($SC–CO_2$), methane ($SC–CH_4$), and nitrous oxide ($SC–N_2O$) (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate) (see section IV.L of this document). Together these represent the global SC–GHG. For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown; however, DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates. To monetize the benefits of reducing GHG emissions, this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the IWG.

** Health benefits are calculated using benefit per ton values for NO_X and SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. See section IV.L of this document for more details.

† Total and net benefits include those consumer, climate, and health benefits that can be quantified and monetized. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but DOE does not have a single central SC–GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates.

‡ Costs include incremental equipment costs as well as installation costs.

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are (1) the reduced consumer operating costs, minus (2) the increase in product purchase prices and installation costs, plus (3) the value of climate and health benefits of emission reductions, all annualized.[11]

The national operating cost savings are domestic private U.S. consumer monetary savings that occur as a result of purchasing the covered equipment and are measured for the lifetime of BVMs shipped in 2028–2057. The benefits associated with reduced emissions achieved as a result of the proposed standards are also calculated based on the lifetime of BVMs shipped in 2028–2057. Total benefits for both the 3-percent and 7-percent cases are presented using the average GHG social costs with a 3-percent discount rate. Estimates of SC–GHG values are presented for all four discount rates in section V.B.6 of this document.

Table I.4 presents the total estimated monetized benefits and costs associated with the proposed standard, expressed in terms of annualized values. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and health benefits from reduced NO_X and SO_2 emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the standards proposed in this rule is $5.8 million per year in increased equipment costs, while the estimated annual benefits are $16 million in reduced equipment operating costs, $8.5 million in climate benefits, and $12 million in health benefits. In this case. The net benefit would amount to $30 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards is $4.9 million per year in increased equipment costs, while the estimated annual benefits are $20 million in reduced operating costs, $8.5 million in climate benefits, and $16 million in health benefits. In this case, the net benefit would amount to $39 million per year.

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR BEVERAGE VENDING MACHINES

[TSL 4]

	Million 2021$/year		
	Primary estimate	Low net benefits estimate	High net benefits estimate
3% discount rate			
Consumer Operating Cost Savings	20	19	20
Climate Benefits *	8.5	8.5	8.5
Health Benefits **	16	16	17
Total Benefits †	44	44	45
Consumer Incremental Product Costs ‡	4.9	5.2	4.9

[11] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2021, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.,* 2030), and then discounted the present value from each year to 2021. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year, that yields the same present value.

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR BEVERAGE VENDING MACHINES—Continued

[TSL 4]

	Million 2021$/year		
	Primary estimate	Low net benefits estimate	High net benefits estimate
Net Benefits	39	38	40
7% discount rate			
Consumer Operating Cost Savings	16	15	16
Climate Benefits * (3% discount rate)	8.5	8.5	8.5
Health Benefits **	12	12	12
Total Benefits †	36	35	36
Consumer Incremental Product Costs ‡	5.8	6.0	5.7
Net Benefits	30	29	31

Note: This table presents the costs and benefits associated with BVMs shipped in 2028–2057. These results include benefits to consumers which accrue after 2057 from the products shipped in 2028–2057. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the *AEO2022* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in sections IV.F.1 and IV.H.3 of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* Climate benefits are calculated using four different estimates of the global SC–GHG (see section IV.L of this document). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are shown; however, DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates. To monetize the benefits of reducing GHG emissions, this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the IWG.

** Health benefits are calculated using benefit per ton values for NO_X and SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. See section IV.L of this document for more details.

† Total benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate.

‡ Costs include incremental equipment costs as well as installation costs.

DOE's analysis of the national impacts of the proposed standards is described in sections IV.H, IV.K, and IV.L of this document.

D. Conclusion

DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. Specifically, with regards to technological feasibility, equipment achieving these standard levels is already commercially available for all product classes covered by this proposal. As for economic justification, DOE's analysis shows that the benefits of the proposed standard exceed, to a great extent, the burdens of the proposed standards.

Using a 7-percent discount rate for consumer benefits and costs and NO_X and SO_2 reduction benefits, and a 3-percent discount rate case for GHG social costs, the estimated cost of the proposed standards for BVMs is $5.8 million per year in increased equipment costs, while the estimated annual benefits are $16 million in reduced equipment operating costs, $8.5 million in climate benefits, and $12 million in health benefits. The net benefit amounts to $30 million per year.

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[12] For example, some covered products and equipment have substantial energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis.

As previously mentioned, the standards are projected to result in estimated national energy savings of 0.09 quad full-fuel-cycle (FFC), the equivalent of the primary annual energy use of 2.4 million homes. In addition, they are projected to reduce CO_2 emissions by 3.0 Mt. Based on these findings, DOE has initially determined the energy savings from the proposed standard levels are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B). A more detailed discussion of the basis for these tentative conclusions is contained in the remainder of this document and the accompanying technical support document (TSD).

DOE also considered more stringent energy efficiency levels (ELs) as potential standards, and is still considering them in this rulemaking. However, DOE has tentatively concluded that the potential burdens of the more stringent energy efficiency levels would outweigh the projected benefits.

Based on consideration of the public comments DOE receives in response to this document and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy efficiency levels presented in this document that are either higher or lower than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part.

II. Introduction

The following section briefly discusses the statutory authority underlying this proposed rule, as well as some of the relevant historical background related to the establishment of standards for BVMs.

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of

[12] The numeric threshold for determining the significance of energy savings established in a final rule published on February 14, 2020 (85 FR 8626, 8670) was subsequently eliminated in a final rule published on December 13, 2021 (86 FR 70892).

consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include BVM equipment, the subject of this document. (42 U.S.C. 6295(v)) EPCA directed DOE to prescribe energy conservation standards for BVMs not later than 4 years after August 8, 2005. (42 U.S.C 6295(v)(1)) EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1))

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

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

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(o)(3)(A) and 42 U.S.C. 6295(r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for BVMs appear at title 10 of the Code of Federal Regulations (CFR) part 431, subpart Q, appendix B.

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including BVMs. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy (Secretary) determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6295(o)(3)(B)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3))

Moreover, DOE may not prescribe a standard (1) for certain products, including BVMs, if no test procedure has been established for the product, or (2) if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(A)–(B)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

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

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

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

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

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

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

(7) Other factors the Secretary of Energy (''Secretary'') considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of product that has the same function or intended use, if DOE determines that products within such group (A) consume a different kind of energy from that consumed by other covered products within such type (or class), or (B) have a capacity or other performance-related feature that other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Finally, pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (''EISA 2007''), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010 is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE

reviewed the operating modes available for BVM equipment and determined that this equipment does not have operating modes that meet the definition of standby mode or off mode, as established at 42 U.S.C. 6295(gg)(3). Specifically, BVM equipment is typically always providing at least one main function—refrigeration. (42 U.S.C. 6295(gg)(1)(A)) DOE recognizes that in a unique equipment design, the low power mode includes disabling the refrigeration system, while for other equipment the low power mode controls only elevate the thermostat set point. Because low power modes still include some amount of refrigeration for most equipment, DOE believes that such a mode does not constitute a ''standby mode,'' as defined by EPCA, for BVM equipment. Therefore, DOE believes that BVM equipment does not operate under standby and off mode conditions as defined in EPCA, and that the energy use of BVM equipment would be captured in any standard established for active mode energy use. This NOPR does not specifically address standby and off mode energy consumption for this equipment.

B. Background

1. Current Standards

In the final rule published on January 8, 2016, DOE prescribed the current energy conservation standards for BVM equipment manufactured on and after January 8, 2019 (''January 2016 Final Rule''). 81 FR 1028. These standards are set forth in DOE's regulations at 10 CFR 431.296(b) and are repeated in Table II.1.

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR REFRIGERATED BOTTLED OR CANNED BEVERAGE VENDING MACHINES

Equipment class	Maximum daily energy consumption (kilowatt hours per day)
Class A	0.052 × V† + 2.43.
Class B	0.052 × V† + 2.20.
Combination A	0.086 × V† + 2.66.
Combination B	0.111 × V† + 2.04.

† ''V'' is the representative value of refrigerated volume (ft3) of the BVM model, as calculated pursuant to 10 CFR 429.52(a)(3).

2. History of Standards Rulemaking for BVMs

On June 10, 2020, DOE published a request for information (''June 2020 RFI'') that identified various issues on which DOE sought comment to inform its determination of whether the standards need to be amended. 85 FR 35394.

On April 26, 2022, DOE published a notice that announced the availability of the preliminary analysis (''April 2022 Preliminary Analysis'') it conducted for purposes of evaluating the need for amended energy conservation standards for BVM equipment. 87 FR 24469. In that notification, DOE sought comment on the analytical framework, models, and tools that DOE used to evaluate efficiency levels for BVM equipment, the results of preliminary analyses performed, and the potential energy conservation standard levels derived from these analyses, which DOE presented in the accompanying preliminary TSD (''April 2022 Preliminary TSD'').

On May 23, 2022, DOE held a public webinar in which it presented the methods and analysis in the April 2022 Preliminary Analysis and solicited public comment.[13]

DOE received comments in response to the April 2022 Preliminary Analysis from the interested parties listed in Table II.2.

TABLE II.2—APRIL 2022 PRELIMINARY ANALYSIS WRITTEN COMMENTS

Commenter(s)	Abbreviation	Comment No. in the docket	Commenter type
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy.	ASAP, ACEEE	15	Efficiency Organization.
National Automated Merchandising Association	NAMA	14	Trade Association.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[14] To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the May 2022 public meeting, DOE cites the written comments throughout this document. Any oral comments provided during the webinar that are not substantively addressed by written comments are summarized and cited separately throughout this document.

C. Deviation from Process Rule

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A (''Process Rule''), DOE notes that it is deviating from the provision in the Process Rule regarding the pre-NOPR and NOPR stages for an energy conservation standards rulemaking.

1. Framework Document

Section 6(a)(2) of the Process Rule states that if DOE determines it is appropriate to proceed with a rulemaking, the preliminary stages of a rulemaking to issue or amend an energy conservation standard that DOE will undertake will be a framework document and preliminary analysis, or an advance notice of proposed rulemaking. While DOE published a preliminary analysis for this rulemaking (*see* 87 FR 24469), DOE did not publish a framework document in conjunction with the preliminary analysis. DOE notes, however, that chapter 2 of the preliminary technical support document that accompanied the preliminary analysis—entitled *Analytical Framework, Comments from Interested Parties, and DOE Responses*—describes the general analytical framework that DOE uses in evaluating and developing potential amended energy conservation standards.[15] As such, publication of a separate Framework Document would be largely redundant of previously published documents.

2. Public Comment Period

Section 6(f)(2) of the Process Rule specifies that the length of the public

[13] See *www.regulations.gov/document/EERE-2020-BT-STD-0014-0013* for a PDF version of the transcript.

[14] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop energy conservation standards for BVMs. (Docket No. EERE–2020–BT–STD–0014, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

[15] The preliminary technical support document is available at *www.regulations.gov/document/EERE-2020-BT-STD-0014-0007*.

comment period for a NOPR will be not less than 75 calendar days. For this NOPR, DOE has opted instead to provide a 60-day comment period. DOE is opting to deviate from the 75-day comment period because stakeholders have already been afforded multiple opportunities to provide comments on this proposed rulemaking. As noted previously, DOE requested comment on various issues pertaining to this standards proposed rulemaking in the June 2020 RFI and provided stakeholders with a 60-day comment period. 85 FR 35394. Additionally, DOE initially provided a 60-day comment period for stakeholders to provide input on the analyses presented in the April 2022 Preliminary TSD. 87 FR 24469. The analytical assumptions and approaches used for the analyses conducted for this NOPR are similar to those used for the preliminary analysis. Therefore, DOE believes a 60-day comment period is appropriate and will provide interested parties with a meaningful opportunity to comment on the proposed rule.

3. Amended Test Procedures

NAMA requested that DOE finish the test procedure rulemaking before the standards rulemaking process begins. (NAMA, No. 14 at p. 16).

Section 8(d)(1) of the Process Rule specifies that test procedure rulemakings establishing methodologies used to evaluate proposed energy conservation standards will be finalized prior to publication of a NOPR proposing new or amended energy conservation standards. Additionally, new test procedures and amended test procedures that impact measured energy use or efficiency will be finalized at least 180 days prior to the close of the comment period for (1) a NOPR proposing new or amended energy conservation standards or (2) a notice of proposed determinaton that standards do not need to be amended. In the BVM test procedure final rule issued on April 25, 2023 (April 2023 Test Procedure Final Rule), DOE amended the test procedures for BVMs.[16] DOE determined that the amendments adopted will not alter (*i.e.,* will not impact) the measured efficiency of BVMs. *Id.* As such, the requirement that the amended test procedure be finalized at least 180 days prior to the close of the comment period for this NOPR do not apply.

[16] See *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=29.*

III. General Discussion

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

A. General Comments

This section summarizes general comments received from interested parties regarding rulemaking timing and process.

NAMA requested that DOE pay considerable attention to the economic impacts of new energy regulations on an industry under pressure due to factors such as the COVID–19 pandemic and the switch from hydrofluorocarbons (HFCs) to lower global warming potential (GWP) chemicals. (NAMA, No. 14 at p. 3)

NAMA commented to ask that DOE return to in-person meetings, stating that while electronic meetings provide value, they present challenges to full dialogue on these important subjects. (NAMA, No. 14 at p. 3)

NAMA commented that DOE should not discount the time and resources needed to evaluate and respond to all proposed test procedures and energy conservation standards for multiple products proposed over a short period, as is currently the case. (NAMA, No. 14 at p. 16) It noted that when these rulemakings occur simultaneously, as they are now and have in the past, the cumulative burden increases substantially. *Id.*

NAMA commented that it requested an extension to the Cooperative Research and Development Agreement (CRADA) between the NAMA Foundation, DOE, and the Oak Ridge National Laboratory (ORNL) so that the remaining items revolving around energy efficiency gains can be studied, and asked that DOE wait until the CRADA is finished before pursuing a regulation. (NAMA, No. 14 at p. 9) NAMA also commented that in the preliminary analysis TSD, DOE recognizes the existence of the CRADA between NAMA, DOE, and ORNL; however, NAMA stated the status of this CRADA is not current or correct in the TSD. *Id.* NAMA stated that most of the activities of the 2019–2021 CRADA were directed toward reduction of the risk involved in a possible leak situation if it were ever to occur. *Id.* NAMA commented that ORNL did extensive testing on leak scenarios and proposed new methods to reduce the risk from such a leak in a public space. *Id.* NAMA stated that, in nearly all the scenarios tested by ORNL, this involved the use of additional fans to circulate air. *Id.* NAMA commented that the energy used by additional ventilation is not accounted for in the preliminary analysis TSD and that, according to the proposed DOE test procedure, BVM manufacturers would be penalized to use additional ventilation and thus to reduce the safety risk. *Id.*

DOE has evaluated potential improvements to the energy efficiency of BVMs to support this NOPR through testing, teardowns, manufacturer interviews, market review, and comments submitted by stakeholders. DOE welcomes any additional comments and supporting data, including any additional results of the CRADA, in response to this NOPR.

In the April 2023 Test Procedure Final Rule, DOE determined to amend the test procedure to include additional instructions for refrigerant leak mitigation controls.[17] DOE specified that for refrigerant leak mitigation controls that are independent from the refrigeration or vending performance of the BVM, such controls must be disconnected, disabled, or otherwise de-energized for the duration of testing. *Id.* For refrigerant leak mitigation controls that are integrated into the BVM cabinet such that they cannot be de-energized without disabling the refrigeration or vending functions of the BVM or modifying the circuitry, such controls must be placed in an external accessory standby mode, if available, or their lowest energy-consuming state. *Id.*

Section 2.5.1.1 of the preliminary analysis TSD states that DOE acknowledges the ongoing research at ORNL. DOE recognized that leak mitigation technologies are still under development and continues to request comment and data on the use of such technologies and how they may impact BVM energy use. *Id.* DOE acknowledged that ASHRAE 15–2019, ASHRAE 34–2019, and UL 541 specified limitations on placing beverage vending machines using propane refrigerant in hallways or corridors and that these industry standards are often adopted as part of local codes. *Id.* DOE noted that, since the initial publication of the standards, addenda[18] to ASHRAE 15 and 34 have been published to remove the limitations on placing beverage vending machines using propane in hallways or

[17] See *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=29.*

[18] ASHRAE 15–2019 Addendum C, published August 2020, and ASHRAE 34–2019 Addendum F, published December 2019, specifically address this issue and can be accessed at *www.techstreet.com/ashrae/standards/ashrae15-2019-packaged-w-34-2019?product_id=2046531.*

corridors. *Id.* These addenda specify a maximum charge limit based on the lower flammability limit of a refrigerant. *Id.* For BVM equipment using propane, the maximum charge limit permitted under the addenda is 114 grams. *Id.* DOE determined in the preliminary analysis TSD that this charge limit would allow BVM units in all equipment classes and available sizes to transition to propane without restricting installation locations of BVM units for end users. *Id.* Similarly, DOE states that it has already observed in the market and tested BVM units utilizing flammable refrigerants, specifically R–290. *Id.* In this NOPR, DOE has tentatively determined, based on manufacturer interviews, test data, and teardown data, that BVM units in all equipment classes and available sizes can use a R–290 charge of 114 grams or less. DOE has not observed any refrigeration leak mitigation controls that consume additional energy on BVMs using flammable refrigerants and, based on interviews conducted in support of this NOPR, refrigeration leak mitigation controls on BVMs using R–290 are not required because all BVMs use less than 114 grams of R–290. See chapter 5 of the NOPR TSD for additional discussion.

B. Scope of Coverage

This NOPR covers equipment that meet the definition of a refrigerated bottled or canned beverage vending machine, as codified at 10 CFR 431.292.

A ''refrigerated bottled or canned beverage vending machine'' is defined as a commercial refrigerator (as defined in 10 CFR 431.62) that cools bottled or canned beverages and dispenses the bottled or canned beverages on payment. 10 CFR 431.292.

See section IV.A.1 of this document for discussion of the equipment classes analyzed in this NOPR.

C. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6293) Manufacturers of covered products must use these test procedures to certify to DOE that their product complies with energy conservation standards and to quantify the efficiency of their product. DOE's current energy conservation standards for BVM equipment are expressed in terms of maximum daily energy consumption as a function of the refrigerated volume of the equipment; see 10 CFR 431.296(b).

D. Technological Feasibility

1. General

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

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

2. Maximum Technologically Feasible Levels

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

E. Energy Savings

1. Determination of Savings

For each trial standard level (TSL), DOE projected energy savings from the application of the TSL to BVMs purchased in the 30-year period that begins in the year of compliance with the proposed standards (2028–2057).[19] The savings are measured over the entire lifetime of BVMs purchased in the previous 30-year period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of amended energy conservation standards.

DOE used its national impact analysis (NIA) spreadsheet model to estimate national energy savings (NES) from potential amended or new standards for BVMs. The NIA spreadsheet model (described in section IV.H of this document) calculates energy savings in terms of site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports NES in terms of primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. DOE also calculates NES in terms of FFC energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards.[20] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.H.1 of this document.

NAMA commented that DOE overestimated energy savings over the 30 year analysis period. (NAMA, No. 14 at p. 14) DOE clarifies that the energy savings referenced are FFC energy savings, where the energy usage calculated by NAMA appears to be site energy usage. DOE also clarifies that energy savings are based on 30 years of shipments, but BVMs shipped in year

[19] Each TSL is composed of specific efficiency levels for each product class. The TSLs considered for this NOPR are described in section V.A of this document. DOE conducted a sensitivity analysis that considers impacts for products shipped in a 9-year period.

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

30 can continue to save energy until they are retired from service.

2. Significance of Savings

To adopt any new or amended standards for a covered product, DOE must determine that such action would result in significant energy savings. (42 U.S.C. 6295(o)(3)(B))

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[21] For example, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis, taking into account the significance of cumulative FFC national energy savings, the cumulative FFC emissions reductions, and the need to confront the global climate crisis, among other factors. DOE has initially determined the energy savings from the proposed standard levels are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B).

F. Economic Justification

1. Specific Criteria

As noted previously, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) The following sections discuss how DOE has addressed each of those seven factors in this proposed rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential amended standard on manufacturers, DOE conducts an MIA, as discussed in section IV.J of this document. DOE first uses an annual cash flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include (1) INPV, which values the industry on the basis of expected future cash flows, (2) cash flows by year, (3) changes in revenue and income, and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and PBP associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national NPV of the consumer costs and benefits expected to result from particular standards. DOE also evaluates the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard.

b. Savings in Operating Costs Compared to Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analyses.

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

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

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

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section III.E of this document, DOE uses the NIA spreadsheet models to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing product classes and evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards proposed in this document would not reduce the utility or performance of the products under consideration in this rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) DOE will transmit a copy of this proposed rule to the Attorney General with a request that the DOJ provide its determination on this issue. DOE will publish and

[21] The numeric threshold for determining the significance of energy savings established in a final rule published on February 14, 2020 (85 FR 8626, 8670), was subsequently eliminated in a final rule published on 13 December 2021 (86 FR 70892).

respond to the Attorney General's determination in the final rule. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information to send comments to DOJ.

f. Need for National Energy Conservation

DOE also considers the need for national energy and water conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from the proposed standards are likely to provide improvements to the security and reliability of the Nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the Nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the Nation's needed power generation capacity, as discussed in section IV.M of this document.

DOE maintains that environmental and public health benefits associated with the more efficient use of energy are important to take into account when considering the need for national energy conservation. The proposed standards are likely to result in environmental benefits in the form of reduced emissions of air pollutants and GHGs associated with energy production and use. DOE conducts an emissions analysis to estimate how potential standards may affect these emissions, as discussed in section IV.K of this document; the estimated emissions impacts are reported in section V.B.6 of this document. DOE also estimates the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L of this document.

g. Other Factors

In determining whether an energy conservation standard is economically justified, DOE may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent DOE identifies any relevant information regarding economic justification that does not fit into the other categories described previously, DOE could consider such information under ''other factors.''

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effects that proposed energy conservation standards would have on the PBP for consumers. These analyses include, but are not limited to, the 3-year PBP contemplated under the rebuttable presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.F of this document.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this proposed rulemaking with regard to BVM equipment. Separate subsections address each component of DOE's analyses.

DOE used several analytical tools to estimate the impact of the standards proposed in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential amended or new energy conservation standards. The national impacts analysis uses a second spreadsheet set that provides shipments projections and calculates national energy savings and net present value of total consumer costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (GRIM), to assess manufacturer impacts of potential standards. These three spreadsheet tools are available on the DOE website for this proposed rulemaking: *www.regulations.gov/docket/EERE-2020-BT-STD-0014.* For this NOPR analysis, the Energy Information Administration (EIA) *Annual Energy Outlook 2022* (*AEO2022*),[22] a widely known energy projection for the United States, was used for the life-cycle cost, emissions, and utility impact analyses, which was current for the analysis phase. However, near the time of publication of the NOPR, EIA released *AEO2023.* DOE plans to shift to *AEO2023* in the final rule analysis. A preliminary review of the electricity prices in *AEO2023* indicates lower electricity prices than *AEO2022* in the Reference case. Lower electricity prices could reduce the life-cycle savings and affect the related payback period calculations. DOE will update other variables and data sets in the final rule analysis in addition to use of *AEO2023,* as well as incorporate feedback from commenters.

A. Market and Technology Assessment

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

1. Equipment Classes

When evaluating and establishing energy conservation standards, DOE may establish separate standards for a group of covered products (*i.e.,* establish a separate product class) if DOE determines that separate standards are justified based on the type of energy used, or if DOE determines that a product's capacity or other performance-related feature justifies a different standard. (42 U.S.C. 6295(q)) In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. *Id.*

DOE currently separates BVM equipment into four equipment classes categorized by physical characteristics

[22] U.S. Department of Energy–Energy Information Administration. *Annual Energy Outlook 2022.* Washington, DC. Available at *https://www.eia.gov/outlooks/archive/aeo22//.*

that affect equipment utility and equipment efficiency: (1) whether 25 percent or more of the surface area on the front side of the BVM is transparent and (2) whether two or more compartments of the BVM are separated by a solid partition that may or may not share a product delivery chute, in which at least one compartment is designed to be refrigerated—as demonstrated by the presence of temperature controls—and at least one compartment is not (*i.e.,* a combination vending machine). The equipment classes are defined as follows:

Class A means a refrigerated bottled or canned beverage vending machine that is not a combination vending machine and in which 25 percent or more of the surface area on the front side of the beverage vending machine is transparent.

Class B means a refrigerated bottled or canned beverage vending machine that is not considered to be Class A and is not a combination vending machine.

Combination A means a combination vending machine where 25 percent or more of the surface area on the front side of the beverage vending machine is transparent.

Combination B means a combination vending machine that is not considered to be Combination A.

DOE currently sets forth energy conservation standards and relevant definitions for BVM equipment at 10 CFR 431.296 and 10 CFR 431.292, respectively, and the energy conservation standards are repeated in Table II.1.

a. Combination A

In the January 2016 Final Rule, DOE noted that the optional test protocol to determine the transparency of materials and the relative surface areas of transparent and non-transparent surfaces would be applicable to combination vending machines except that, the external surface areas surrounding the non-refrigerated compartment(s) would not be considered. 81 FR 1027, 1048. That is, all the surfaces that surround and enclose the compartment designed to be refrigerated (as demonstrated by the presence of temperature controls) as well as any surfaces that do not enclose any product-containing compartments (*e.g.,* surfaces surrounding any mechanical equipment or containing the product selection and delivery apparatus) would be considered in the calculation of transparent and non-transparent surface area for a BVM, as shown in Figure IV.1. *Id.*

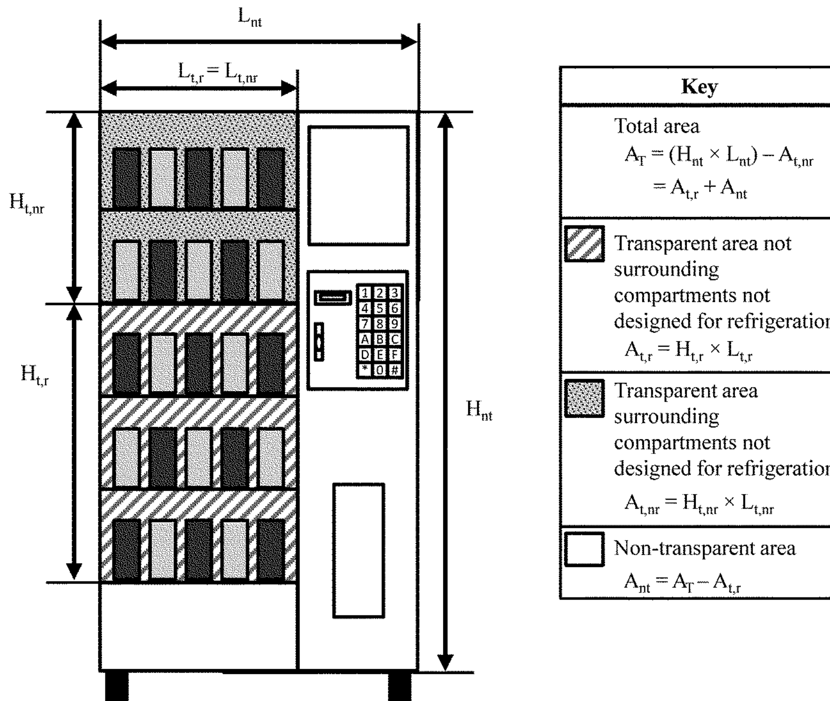

Figure IV.1 Determination of Transparent and Non-Transparent Area for a Combination Vending Machine with Products Arranged Horizontally. 81 FR 1027, 1049.

DOE notes that the January 2016 Final Rule and Figure IV.1 do not mention the solid partition that separates two or more compartments in a combination vending machine. The definition of combination vending machine at 10 CFR 431.292 does not limit the size or shape of the solid partition that might separate refrigerated and non-refrigerated subcompartments. Based on BVM teardowns conducted in support of this NOPR, DOE has initially determined that the solid partition projected to the front surface would constitue a small portion of the overall transparent surface area calculation. DOE has observed solid partitions with a projected front surface area of 0.5 inches of thickness and span the width of the internal compartment resulting in approximately 1.0% of the front surface area. Therefore, in this NOPR, DOE proposes to clarify that the solid partition would be considered in the calculation of transparent and non-transparent surface area for BVM equipment up to the centerline of the solid partition projected to the front surface for the surfaces that surround and enclose the compartment designed to be refrigerated (as demonstrated by the presence of temperature controls).

The definition of Combination A requires that ''25 percent or more of the surface area on the front side of the beverage vending machine is transparent.'' 10 CFR 431.292. Consistent with the January 2016 Final Rule, DOE proposes to revise the definition of Combination A to clarify the exclusion of the external surface areas surrounding the non-refrigerated compartment(s) in the calculation of surface areas of transparent and non-transparent surfaces:

Combination A means a combination vending machine where 25 percent or more of the surface area on the front side of the beverage vending machine that surrounds the refrigerated compartment(s) is transparent.

DOE requests comment on its proposal to revise the definition of Combination A.

2. Technology Options

In the preliminary market analysis and technology assessment, DOE identified 29 technology options that would be expected to improve the efficiency of BVM equipment, as measured by the DOE test procedure and shown in Table IV.1.

TABLE IV.1—TECHNOLOGY OPTIONS FOR REFRIGERATED BOTTLED OR CANNED BEVERAGE VENDING MACHINES IN THE APRIL 2022 PRELIMINARY TSD

Technology options
Insulation:
Improved resistivity of insulation (insulation type).
Increased insulation thickness.
Vacuum insulated panels.
Improved Glass Packs:
Low-E coatings.
Inert gas fill.
Vacuum insulated glass.
Additional panes.
Frame design.
Compressor:
Improved compressor efficiency.
Variable speed compressors.
Linear compressors.
Evaporator:
Increased surface area.
Tube and fin enhancements (including microchannel designs).
Low pressure differential evaporator.
Condenser:
Increased surface area.
Tube and fin enhancements (including microchannel designs).
Microchannel heat exchanger.
Fans and Fan Motors:
Evaporator fan motors.
Evaporator fan blades.
Evaporator fan controls.
Condenser fan motors.
Condenser fan blades.
Other Technologies:
Lighting.
Anti-sweat heater controls.
Defrost systems.
Expansion valve improvements:
Alternative refrigerants.
Low power payment mechanisms.
Low power states.

DOE received several comments in response to the April 2022 Preliminary Analysis regarding the technology options.

a. Compressors

NAMA commented that, at the present time, variable speed and two-speed compressors are not available for the size range of compressors for most BVMs. (NAMA, No. 14 at p. 24)

NAMA commented that when moving from single speed compressors to variable speed compressors, in order to take full advantage of this level of energy efficiency, other components, such as metering devices (*i.e.,* expansion valves and capillary tubes), must be changed. (NAMA, No. 14 at p. 24) NAMA added that a control system will have to be added to monitor the system of the compressor, the cycle, the temperatures, and environmental conditions, and that these changes must be factored into the total cost. *Id.* NAMA commented that it is necessary for DOE to understand that the refrigeration cycle is only on for 20–25 percent of the time and that any savings must be allocated across the full set of DOE test procedure measurements. *Id.*

NAMA also commented that linear compressors are not available for BVMs and are many years away from concept design. In addition, NAMA commented that several manufacturers of linear compressors appear to have discontinued production. (NAMA, No. 14 at p. 24)

DOE has reviewed variable speed compressors available on the market and found that variable speed compressors are offered at the same cooling capacities as single speed compressors currently used in BVMs. All variable speed compressors observed had more than two speeds.

In this NOPR, DOE did not assume that additional components other than the variable speed compressor were required to reduce the energy use for the variable speed compressor design option. DOE is aware of refrigerant systems which use a capillary tube and a variable speed compressor which suggests that expansion valve changes are not necessary. Based on feedback received during manufacturer interviews, information collected during BVM teardowns, and market research, DOE has tentatively determined that control systems are already present in BVM equipment.

In the NOPR analysis, DOE considered the refrigeration cycle duration in the engineering analysis for the variable speed compressor design option. See chapter 5 of the NOPR TSD for additional details.

In the April 2022 Preliminary Analysis, DOE did not screen out linear compressors but did include linear compressors as a ''design option not directly analyzed.'' DOE included linear compressors as a technology option because compressor manufacturers had begun development on linear compressors for residential refrigerators. However, recent lawsuits and a lack of availability of linear compressors on the market have prevented further development of this technology for BVM equipment; therefore, DOE has tentatively determined that linear compressors meet the screening criterion of ''impacts on product utility or product availability.'' DOE has screened out linear compressors as a design option for improving the energy efficiency of BVM equipment. See section IV.B.1 of this document and chapter 4 of the NOPR TSD for additional details.

b. Alternative Refrigerants

NAMA commented that the changes necessary to adopt the lower GWP refrigerants are being made but have not been fully realized in all models of BVMs. (NAMA, No. 14 at p. 4) NAMA commented that DOE's statement that BVMs currently available on the market have already transitioned to R–290 refrigerant is incorrect. (NAMA, No. 14 at p. 16)

NAMA commented that the 114 grams of refrigerant that is allowed for the low GWP refrigerant is 36 grams less than what is allowed in a household or commercial refrigerator, which limits the size of the machine and restricts design options that require additional energy. (NAMA, No. 14 at p. 8)

DOE notes that the U.S. Environmental Protection Agency (EPA) proposed refrigerant restrictions pursuant to the American Innovation and Manufacturing Act (''AIM Act'')[23]

[23] Under subsection (i) of the AIM Act, entitled ''Technology Transitions,'' the EPA may by rule restrict the use of hydrofluorocarbons (HFCs) in sectors or subsectors where they are used. A person or entity may also petition EPA to promulgate such a rule. ''H.R.133—116th Congress (2019–2020): Consolidated Appropriations Act, 2021.'' *Congress.gov,* Library of Congress, 27 December

affecting BVM equipment in a NOPR published on December 15, 2022 (''December 2022 EPA NOPR''). 87 FR 76738. Specifically, EPA proposed prohibitions for new vending machines (EPA's term for this equipment) for the use of HFCs and blends containing HFCs that have a GWP of 150 or greater. 87 FR 76738, 76780. The proposal would prohibit manufacture or import of such vending machines starting January 1, 2025, and would ban sale, distribution, purchase, receive, or export of such vending machines starting January 1, 2026. 87 FR 76740. DOE considered the use of alternative refrigerants that are not prohibited for BVM equipment in the December 2022 EPA NOPR.

DOE notes that several manufactuerers currently rate BVM models to both ENERGY STAR [24] and DOE [25] with BVM equipment using R–290 and that manufacturers indicated in manufacturer interviews that the industry is planning to transition to R–290.

DOE is aware of the 114 gram charge limit for R–290 in BVM equipment located in a public corridor or lobby as specified in Addendum C to ANSI/ASHRAE Standard 15–2019, ''Safety Standard for Refrigeration Systems'' and UL 60335–2–89, ''Particular Requirements for Commercial Refrigerating Appliances and Ice-Makers with an Incorporated or Remote Refrigerant Unit or Motor-Compressor.'' Based on feedback received during manufacturer interviews, information collected during BVM teardowns, and market research, DOE has tentatively determined that the 114 gram charge limit does not restrict the size of the machine nor any technology options considered in this NOPR. DOE has tentatively determined that all BVM equipment can use less than 114 grams of R–290.

In response to the December 2022 EPA NOPR, this NOPR reflects the alternative refrigerant design changes made by manufacturers at the baseline levels for BVM equipment, which incorporate a refrigerant conversion to R–290 (*i.e.,* the most efficient refrigerant DOE is currently aware of on the market for BVM equipment), instead of as a design option as presented in the April 2022 Preliminary Analysis.

See section IV.C.1.a and chapter 5 of the NOPR TSD for additional details.

NAMA recommended that this be the last rulemaking to raise the issue of CO_2 as a refrigerant, and provided many details on the design differences and challenges in using CO_2 as a refrigerant. (NAMA, No. 14 at pp. 24–25)

While DOE mentioned CO_2 refrigerants in the April 2022 Preliminary TSD as background information on the January 2016 Final Rule, DOE did not consider CO_2 refrigerant as a technology option in the April 2022 Preliminary TSD or this NOPR.

c. Insulation

NAMA commented that the term ''extra insulation'' is vague, and manufacturers have been using ''extra'' insulation since the inception of BVMs. (NAMA, No. 14 at p. 21)

In the April 2022 Preliminary TSD, DOE provided context that ''extra insulation'' refers to an extra ¼ inch of insulation thickness. See chapter 5 of the April 2022 Preliminary TSD for additional details.

NAMA asserted that in low-volume manufacturing, with multiple variations of size, features, and designs, vacuum panels are not a feasible design option. (NAMA, No. 14 at p. 22) NAMA stated that vacuum panels often leak over time and return very little overall energy savings during the life of the product. *Id.* NAMA added that vacuum panels are very costly as individual parts, but even more so in tooling costs spread over very small volumes. *Id.*

Vacuum insulated panels (VIPs) may require cabinet redesign and additional tooling costs to properly incorporate VIPs in BVMs without leaks or damage to the panel. DOE has considered the investments required in additional tooling, equipment, and processes for any cabinet redesign in the engineering analysis (sunk cost per unit) and manufacturer impact analysis (capital conversion costs). See chapter 5 and 12 of the NOPR TSD for additional discussion on VIPs.

d. Fan Motors

NAMA commented that manufacturers changing to R–290 have already incorporated electronically commutated fan motors (ECMs) into their machines and many did this years ago. (NAMA, No. 14 at p. 21) NAMA added that, with the change to R–290, manufacturers of BVMs must utilize ADAC controls and components (sometimes called ''spark-proof'' motors). *Id.* NAMA further stated that current designs of permanent split capacitor motors (PSCs) are much more energy efficient than they were 5 or 10 years ago, and that NAMA approximates the energy use of an ECM to be higher than the value provided in the April 2022 Preliminary TSD. *Id.*

DOE considered the requirement for motors to be ''spark-proof'' for use with the R–290 refrigerant. DOE notes that, based on feedback received during manufacturer interviews, information collected during BVM teardowns, and market research, DOE has tentatively determined that manufacturers currently use shaded pole motors (SPMs), PSCs, and ECMs, although not all motor types are used in each BVM equipment class.

Based on feedback from commenters, market research, and additional testing, DOE has tentatively determined to update the fan motor efficiency assumptions in this NOPR. Consistent with commenters, DOE increased the assumed motor efficiency of SPMs and PSCs, and decreased the assumed motor efficiency of ECMs in this NOPR.

As noted in the April 2022 Preliminary TSD, DOE is also aware of an additional motor technology that is available for use in BVMs, permanent magnet synchronous (PMS) motors. PMS motor technology has shown the potential for motor efficiency improvement beyond ECMs, as indicated in a 2019 ORNL study comparing PMS motors and ECMs.[26] Due to the motor efficiency improvements PMS motors provide in comparison to ECMs, and based on DOE's updated fan motor efficiency assumptions (*i.e.,* ECM assumed efficiencies in this NOPR are less than the assumed PMS motor efficiencies), DOE has tentatively determined to include PMS motors as a design option for BVMs.

See chapter 5 of the NOPR TSD for additional details on fan motors.

e. Evaporators and Condensers

NAMA commented that true microchannel designs are prone to significant clogging and have been shown to exhibit pin-hole sized leaks, making them inadvisable with a flammable refrigerant. (NAMA, No. 14 at p. 23)

DOE acknowledges that microchannel condensers may experience clogging over the lifetime of a unit due to a lack of maintenance by the end user or other factors; however, DOE's BVM standards

2020, *www.congress.gov/bill/116thcongress/house-bill/133.*

[24] See *www.energystar.gov/productfinder/product/certified-vending-machines/results.*

[25] See *www.regulations.doe.gov/certification-data/CCMS-4-Refrigerated_Bottled_or_Canned_Beverage_Vending_Machines.html#q=Product_Group_s%3A%22Refrigerated%20Bottled%20or%20Canned%20Beverage%20Vending%20Machines%22.*

[26] Permanent Magnet Synchronous Motors for Commercial Refrigeration: Final Report, available at: *info.ornl.gov/sites/publications/Files/Pub115680.pdf.*

consider the performance of the unit as measured by the DOE BVM test procedure, which measures the performance of new BVMs. Additionally, tube and fin condensers may also experience clogging over the lifetime of a unit and require proper maintence of the condenser.

DOE notes that microchannel heat exchangers are currently used in a variety of applications, including mobile air-conditioning, commercial air-conditioning, residential air-conditioning, and commercial refrigeration equipment. Although DOE acknowledges that some microchannel condenser designs could have the potential to leak, DOE has observed the use of microchannel condensers with flammable refrigerants in similar applications (*e.g.,* automatic commercial ice makers). Additionally, pin-hole sized leaks are not unique to microchannel heat exchangers. Furthermore, DOE notes that the CRADA was established, in part, to mitigate leak risks and assess potential hazards, including flammability.[27]

f. Glass Packs

NAMA commented that the change from double pane to triple pane glass would require a significant increase in the overall structural design of the machine. (NAMA, No. 14 at p. 22) NAMA noted that the doors would have to increase in size, thickness, and weight, and that the wall structure and frame would have to be increased to accommodate the hanging weight. *Id.* NAMA added that the overall machine weight would increase, thereby increasing shipping weight and the corresponding transportation costs (and thus the carbon footprint of the machine). *Id.*

DOE observed both double pane and triple pane glass doors in BVM equipment and used the teardown analysis of units containing each door type to inform the NOPR analysis. DOE considered the additional cost related to structural changes when upgrading from double pane to triple pane glass doors. DOE did not receive any data which supported an increase in transporation costs when switching from double pane to triple pane glass doors. See chapter 5 of the NOPR TSD for additional detail.

g. Payment Mechanisms

ASAP and ACEEE encouraged DOE to include low-power coin and bill payment mechanisms as a design option in the engineering analysis, as BVMs are usually shipped with the payment mechanisms, and their energy consumption is captured in the test procedures. (ASAP & ACEEE, No. 15 at p. 1)

In the April 2023 Test Procedure Final Rule, DOE determined to maintain the current 0.20 kWh/day adder to account for the energy use of payment mechanisms.[28] The available information demonstrates that a wide (and growing) variety of payment systems are currently available on the market; the most common scenario is for the payment mechanism to be specified (and in some cases, provided) by the customer; and the customer may decide whether or not to have the payment mechanism installed by the BVM manufacturer at the time of sale. *Id.* Therefore, DOE did not consider low-power payment mechanisms as a design option in this NOPR. See chapter 5 of the NOPR TSD for additional details.

h. Low Power Modes

NAMA commented that it is unclear from the April 2022 Preliminary TSD exactly what DOE means by "automatic lighting controls." (NAMA, No. 14 at pp. 19, 20) NAMA added that most of the machines sold today will go into a "sleep" mode after a period of inactivity, which is not the type of proximity control system used in display case products. *Id.* NAMA further commented that customers do not want a vending machine to go completely to "sleep," because they want users to see the machine as fully functioning and not dark. *Id.* NAMA asserted that machines going completely "dark" is a change in utility of the machine and should be accounted for in a different category.

The "automatic lighting control" design option is based on the "accessory low power mode" section of the BVM test procedure which allows for 6 hours of operation in the accessory low power mode during the test (*i.e.,* the lowest energy-consuming lighting and control settings that constitute an accessory low power mode). Appendix B to subpart Q of 10 CFR part 431. Therefore, in the preliminary and NOPR analyses, DOE modeled 18 hours of light on time for the automatic lighting control design option and 6 hours of light off time.

"Accessory low power mode" is defined as a state in which a beverage vending machine's lighting and/or other energy-using systems are in low power mode, but that is not a refrigeration low power mode. Functions that may constitute an accessory low power mode may include, for example, dimming or turning off lights, but does not include adjustment of the refrigeration system to elevate the temperature of the refrigerated compartment(s). *Id.*

DOE notes that there are currently 17 out of 53 Class A and Combination A models certified to DOE's Compliance Certification Database (CCD)[29] that use accessory low power mode. DOE also notes that manufacturers provide information on their low power mode operation in the unit's user manual for varying customer demands.

NAMA commented that many BVMs can be programmed into an "energy saver" mode based on inactivity or schedule. (NAMA, No. 14 at p. 20) NAMA added that consumers can set the machine to somewhat reduce the refrigeration cycle during nighttime if the location is truly "shut down" for many hours, but that DOE only allows a credit of 3 percent for this feature. *Id.* NAMA stated that mandating some form of automatic low power mode is different and will be beneficial only if the low power mode period is significantly longer, adding that if it is short, the energy savings will be offset by the additional energy required to bring the product back to the lower temperature. *Id.*

NAMA commented most current customers of BVMs do not want a low power mode that affects the holding temperature or lengthens the pulldown time, and that any change to this could have a direct effect on the utility and performance of the machine and should be avoided. (NAMA, No. 14 at p. 20)

DOE acknowledges that there is variability in customer location and activity and that some of the energy savings of the low power mode will be offset by the pulldown period to return to normal operation. As noted in the BVM test procedure NOPR published on August 11, 2014 (2014 BVM test procedure NOPR), DOE understands that refrigeration low power modes are extremely variable in terms of their control strategies and operation and, in addition, may require specific instructions from the manufacturer to precisely modify or adjust the control systems to accommodate the specific provisions of the DOE test procedure. 79 FR 46908, 46924–46925. As noted in BVM test procedure final rule published on July 31, 2015 (2015 BVM test procedure Final Rule), DOE's estimate of 3 percent energy savings due to the

[27] See *www.energy.gov/eere/buildings/articles/five-new-cooperative-research-agreements-invest-efficiency-performance-and.*

[28] See *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=29.*

[29] See *www.regulations.doe.gov/certification-data/CCMS-4-Refrigerated_Bottled_or_Canned_Beverage_Vending_Machines.html#q=Product_Group_s%3A%22Refrigerated%20Bottled%20or%20Canned%20Beverage%20Vending%20Machines%22.* (Accessed February 9, 2023).

operation of low power modes is based on the data available and that DOE believes 3-percent is representative of the common types of refrigeration low power modes DOE has observed in the market place. 80 FR 45758, 45786. In the April 2023 Test Procedure Final Rule, DOE maintained the existing test procedure provisions and 3-percent energy credit for refrigeration low power mode.[30] In this NOPR, DOE has tentatively determined that 3-percent continues to be representative of the common types of refrigeration low power modes DOE has observed in the marketplace. See chapter 5 of the NOPR TSD for additional details.

DOE notes that there are currently 55 out of 107 BVM models certified to DOE's CCD[31] that use refrigeration low power mode. DOE also notes that manufacturers provide information on their low power mode operation in the unit's user manual for varying customer demands.

i. Additional Concerns

NAMA commented that several of the design options shown in the April 2022 Preliminary TSD (larger condensers or evaporators, more insulation, changes to type of glass) would require more space inside the machine, leading to a reduction in the overall capacity of the machine, which should be considered in the TSD. (NAMA, No. 14 at p. 11)

In this NOPR, DOE did not consider design options that expanded the size or footprint of BVM equipment (*e.g.,* larger condensers or evaporators, more insulation) because BVM equipment may be used in locations prioritizing smaller equipment footprints and an increase in cabinet sizes may adversely impact the availability of equipment at a given refrigerated volume. DOE assumed, based on feedback received during manufacturer interviews and from equipment teardowns, that the design options which changed the type of glass would not increase the door thickness but may require different frame materials or hinges, which DOE has considered as a cost adder to the design option in this NOPR. See chapter 5 of the NOPR TSD for additional details.

NAMA commented that several of the design options (*e.g.,* lower wattage refrigeration systems, vacuum panel insulation, different evaporators or condensers, and lower wattage fan motors) could potentially affect the overall performance of the machine, and therefore should be reviewed in the TSD not only for their energy efficiency but also the ability to maintain the critial design features and performance of these machines. (NAMA, No. 14 at p. 12)

In this NOPR, DOE did not consider design options that changed the measured performance as compared with existing BVM equipment. See chapter 5 of the NOPR TSD for additional details.

B. Screening Analysis

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

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

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

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

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

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

See sections 6(b)(3) and 7(b) of the Process Rule.

In summary, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis. The reasons for eliminating any technology are discussed in the following sections.

DOE did not receive any comments in response to the April 2022 Preliminary Analysis specific to the screening analysis.

1. Screened Out Technologies

For BVM equipment, the screening criteria were applied to the technology options to either retain or eliminate each technology for consideration in the engineering analysis.

In the April 2022 Preliminary Analysis, DOE did not screen out linear compressors but did include linear compressors as a ''design option not directly analyzed.'' DOE included linear compressors as a technology option because compressor manufacturers had begun development on linear compressors for residential refrigerators. However, recent lawsuits and a lack of availability of linear compressors on the market have prevented further development of this technology for BVM equipment; therefore, DOE has tentatively determined that linear compressors meet the screening criterion of ''impacts on product utility or product availability.'' DOE has tentatively determined to screen out linear compressors as a design option for improving the energy efficiency of BVM equipment in this NOPR. See chapter 4 of the NOPR TSD for additional details.

2. Remaining Technologies

Through a review of each technology, DOE tentatively concluded that all of the other identified technologies listed in section IV.A.2 of this document met all five screening criteria to be examined further as design options in DOE's NOPR analysis. In summary, DOE did not screen out the technology options in Table IV.2.

TABLE IV.2—RETAINED DESIGN OPTIONS FOR BVMS

Insulation	Condenser
Improved resistivity of insulation (insulation type)	Increased surface area.
Increased insulation thickness	Tube and fin enhancements (including microchannel designs).

[30] See *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=29.*

[31] See *www.regulations.doe.gov/certification-data/CCMS-4-Refrigerated_Bottled_or_Canned_Beverage_Vending_Machines.html#q=Product_Group_s%3A%22Refrigerated%20Bottled%20or%20Canned%20Beverage%20Vending%20Machines%22.* (Accessed February 9, 2023).

TABLE IV.2—RETAINED DESIGN OPTIONS FOR BVMS—Continued

Vacuum insulated panels	Microchannel heat exchanger.
Improved Glass Packs	Fans and Fan Motors
Low-E coatings	Evaporator fan motors.
Inert gas fill	Evaporator fan blades.
Vacuum insulated glass	Evaporator fan controls.
Additional panes	Condenser fan motors.
Frame design	Condenser fan blades.
Compressor	Other Technologies
Improved compressor efficiency	Lighting.
Variable speed compressors	Anti-sweat heater controls.
	Defrost systems.
Evaporator	Expansion valve improvements
Increased surface area	Alternative refrigerants.
Tube and fin enhancements (including microchannel designs)	Low power payment mechanisms.
Low pressure differential evaporator	Low power states.

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

C. Engineering Analysis

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

1. Efficiency Analysis

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

In this proposed rulemaking, DOE relies on a design option approach, supported with testing and reverse engineering multiple analysis units. DOE generally relied on test data and reverse engineering to inform a range of design options used to reduce energy use. The design options were incrementally added to the baseline configuration and continued through the ''max-tech'' configuration (*i.e.,* implementing the ''best available'' combination of available design options).

Consistent with the January 2016 Final Rule analysis (see chapter 5 of the January 2016 Final Rule TSD), DOE estimated the performance of design option combinations using an engineering analysis spreadsheet model. This model estimates the daily energy consumption of BVM equipment in kWh/day at various performance levels using a design option approach. The model calculates energy consumption at each performance level separately for each analysis configuration.

For Class A and Class B, DOE analyzed machines of different sizes to assess how energy use varies with size via energy testing and reverse engineering. In this NOPR, representative volumes were chosen for each equipment class, based on current market offerings: medium and large for Class A and Class B BVMs, and medium for Combination A and Combination B. These equipment classes and representative unit volumes are listed in Table IV.3.

TABLE IV.3—REPRESENTATIVE REFRIGERATED VOLUMES IN THE NOPR

Equipment class	Size	Representative volume (ft^3)
Class A	Medium	26
	Large	35
Class B	Medium	22
	Large	31
Combination A	Medium	11
Combination B	Medium	10

See chapter 5 of the NOPR TSD for additional detail on the different units analyzed.

a. Baseline Energy Use

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

For this NOPR, DOE considered the current standards for BVM equipment when developing the baseline energy use for each analyzed equipment class. For higher efficiency levels, DOE assessed BVM efficiencies as a percent improvement relative to the baseline. This provides a consistent efficiency comparison across each equipment class. DOE considered the efficiency improvements associated with implementing available design options beyond the baseline to the max-tech efficiency level.

In response to the April 2022 Preliminary Analysis, NAMA commented that most of the analysis appears to have been performed prior to 2020, yet the industry has been in the midst of considerable change from 2019 to 2022. (NAMA, No. 14 at p. 3)

NAMA commented that current machines on the market today that use low GWP refrigerants and incorporate most of the design options shown in Table 2.3 of the April 2022 Preliminary Analysis should be used together with current costs, and that these should be the baseline machines. (NAMA, No. 14 at p. 6) NAMA added that DOE should acknowledge the costs already incurred by manufacturers in order to meet the goals stated by the Biden Administration to reduce global warming. *Id.*

DOE expects that NAMA is referring to the December 2022 EPA NOPR in its comment regarding the goals stated by the Biden Administration to reduce global warming. As recommended by stakeholders, DOE is considering the cost and impact of the December 2022 EPA NOPR on this NOPR. The proposed date of the proposed GWP limit on BVMs is 2 years earlier than the expected compliance date for any amended BVM standards associated with the proposals in this document. Hence, the proposed refrigerant prohibitions listed in the December 2022 EPA NOPR are assumed to be enacted for the purpose of DOE's analysis in support of this NOPR.

Refrigerants not prohibited from use in BVM equipment in the December 2022 EPA NOPR are presumed to be permitted for use in BVM equipment. As noted in section IV.A.2.b, several manufactuerers currently rate BVM models to both ENERGY STAR [32] and DOE [33] with BVM equipment using R–290, manufacturers indicated in manufacturer interviews that the industry is planning to transition to R–290, and DOE has tentatively determined that all BVM equipment can use less than 114 grams of R–290.

DOE expects that the use of R–290 generally will improve efficiency as compared with the refrigerants currently in use (*e.g.,* R–134a), which are proposed to be prohibited by the December 2022 EPA NOPR, because R–290 has higher refrigeration cycle efficiency than the current refrigerants. Thus, DOE expects that the December 2022 EPA NOPR will require redesign that will improve efficiency of BVM equipment. Hence, the baseline levels for BVM equipment in this NOPR reflect the design changes made by manufacturers in response to the December 2022 EPA NOPR, which incorporate refrigerant conversion to R–290. The expected efficiency improvement associated with this refrigerant change varies by class and is presented in Table IV.4.

DOE's analysis considers that these efficiency improvements, equipment costs, and manufacturer investments required to comply with the December 2022 EPA NOPR will be in effect prior to the time of compliance for the proposed amended DOE BVM standards for all BVM equipment classes and sizes. DOE updated its baseline equipment costs to reflect current costs based on feedback received during manufacturer interviews, information collected during BVM teardowns, and market research.

TABLE IV.4—PROPOSED DECEMBER 2022 EPA NOPR R–290 ENERGY USE BASELINE

Equipment class	Energy use reduction below DOE standard (%)
Class A	12.7
Class B	15.1
Combination A	19.6
Combination B	14.7

The expected efficiency improvement associated with this refrigerant change is based on R–290 single speed compressors currently available on the market suitable for BVM equipment. In this NOPR, DOE did not consider additional single speed compressor efficiency improvements beyond the baseline because DOE expects that the single speed compressors currently available on the market for refrigerants used to comply with the December 2022 EPA NOPR represent the maximum single speed compressor efficiency achievable for each respective equipment class.

NAMA commented that the improved evaporator coils design option seems to be indicating a high fin density and higher pitched coils, but any increase in fin density may increase the fan motor power required and energy

[32] See *www.energystar.gov/productfinder/product/certified-vending-machines/results.*

[33] See *www.regulations.doe.gov/certification-data/CCMS-4-Refrigerated_Bottled_or_Canned_Beverage_Vending_Machines.html#q=Product_Group_s%3A%22Refrigerated%20Bottled%20or%20Canned%20Beverage%20Vending%20Machines%22.*

consumption. (NAMA, No. 14 at p. 20) NAMA added that current designs are optimized based on cost versus energy efficiency, and that changes would increase capital costs. *Id.*

In the April 2022 Preliminary Analysis, DOE analyzed ''baseline'' and ''high efficiency'' evaporator and condenser design options, consistent with the January 2016 Final Rule. Based on stakeholder comments, interviews with manufacturers, and CoilDesigner simulation, DOE tentatively determined that the ''high efficiency'' evaporator and condenser design options are representative of current manufacturer designs. Therefore, DOE tentatively determined to analyze the ''high efficiency'' evaporator and condenser coil as ''baseline'' in this NOPR and remove the ''high efficiency'' evaporator and condenser design options in the NOPR. See chapter 5 of the NOPR TSD for additional details.

NAMA commented that according to the Process Rule, DOE should not pursue a rulemaking if there were less than 0.30 quad of savings over 30 years, as the last published Process Rule dictates. (NAMA, No. 14 at p. 7) NAMA added that it doesn't believe there will be greater than 5–10 percent improvement in energy baseline by 2028 to justify the rule. *Id.* NAMA stated that, including the fact that many of the improvements in the design options have already been incorporated several years ago, the actual improvements it projected to be seen are much less than 10 percent. *Id.*

DOE notes that on December 13, 2021, DOE published a Final Rule which revised the Process Rule NAMA is referring to in its comment,[34] and determinations of significance for energy savings are made on a case-by-case basis. 86 FR 70892, 70906. DOE discusses the walk-down analysis to determine the TSL that represents the maximum improvement in energy efficiency that is technologically feasible and economically justified as required under EPCA in section V.C.1.

DOE requests comments on its proposal to use baseline levels for BVM equipment based upon the design changes made by manufacturers in response to the December 2022 EPA NOPR.

DOE further requests comment on its estimates of energy use reduction associated with the design changes made by manufacturers in response to the December 2022 EPA NOPR.

[34] See *www.regulations.gov/document/EERE-2021-BT-STD-0003-0075.*

b. Higher Efficiency Levels

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

After conducting the screening analysis described in section IV.B of this document and chapter 4 of the NOPR TSD, DOE considered the remaining design options in the engineering analysis to achieve higher efficiency levels. See chapter 5 of the NOPR TSD for additional detail on the design options.

NAMA commented that although DOE estimates 25 percent energy savings for improved evaporator coils, their review of design options indicates that this is overstated by a factor of 10. (NAMA, No. 14 at p. 20)

DOE expects that NAMA is referring to the total energy use reduction below the baseline at a given efficiency level instead of the energy use reduction for each design option. However, as discussed in section IV.C.1.a of this document, DOE tentatively determined to analyze the ''high efficiency'' evaporator coil as ''baseline'' in this NOPR and remove the ''high efficiency'' evaporator design option in the NOPR.

NAMA commented that for moving from single speed compressors to variable speed compressors, the promised energy savings is more in the area of 5–15 percent (depending on the model), rather than the 49 percent estimated in the April 2022 Preliminary Analysis TSD. (NAMA, No. 14 at p. 24)

DOE expects that NAMA is referring to the total energy use reduction below the baseline at a given efficiency level instead of the energy use reduction for each design option. In this NOPR, DOE assumed an energy use reduction of 7–14% for variable speed compressors compared to single speed compressors, depending on the equipment class, which is consistent with NAMA's estimates. See chapter 5 of the NOPR TSD for additional details.

NAMA commented that DOE's estimate of a 43 percent improvement in energy efficiency with the switch from double pane to triple pane glass is much higher than NAMA's estimate of 12–15 percent improvement in energy efficiency. (NAMA, No. 14 at p. 22)

DOE expects that NAMA is referring to the total energy use reduction below the baseline at a given efficiency level instead of the energy use reduction for each design option. In this NOPR, DOE assumed an energy use reduction of 1–3% for triple pane glass pack compared to double pane glass pack, depending on the equipment class, which is lower than NAMA's estimates but is consistent with data collected from teardowns and DOE's modeling. See chapter 5 of the NOPR TSD for additional details.

NAMA commented that when moving from triple pane glass to vacuum insulated glass, the efficiency improvements are in the vicinity of 2–3 percent gain. (NAMA, No. 14 at p. 24)

In this NOPR, DOE assumed an energy use reduction of approximately 1% for vacuum insulated glass compared to triple pane glass pack, which is consistent with NAMA's estimates. See chapter 5 of the NOPR TSD for additional details.

NAMA commented that there is not sufficient space in a BVM to allow for the recommended change to insulation thickness. (NAMA, No. 14 at p. 21) NAMA stated that there is not sufficient space to allow for insulation to equate to a reduction of even 10 percent in energy, much less 31 percent, without impacting utility and performance. *Id.*

DOE expects that NAMA is referring to the total energy use reduction below the baseline at a given efficiency level instead of the energy use reduction for each design option. In this NOPR, DOE did not consider design options that expanded the size or footprint of BVM equipment (*e.g.,* more insulation) because BVM equipment may be used in locations prioritizing smaller equipment footprints and an increase in cabinet sizes may adversely impact the availability of equipment at a given refrigerated volume. See chapter 5 of the NOPR TSD for additional details.

NAMA commented that it believes the 0.15 quad savings at max-tech is an inflated value based on errors in the engineering analysis, and asserted that the savings would in fact be considerably lower and no longer significant enough for the changes in regulation to be justified. (NAMA, No. 14 at p. 7)

In this NOPR, DOE estimates a combined total of 0.138 quads of FFC energy savings over the analysis period at the max-tech efficiency levels for BVM equipment. DOE has considered feedback from stakeholders, manufacturer interviews, and current market data to update its engineering analysis in this NOPR. See section V for additional details.

2. Cost Analysis

The cost analysis portion of the engineering analysis is conducted using one or a combination of cost approaches. The selection of cost approach depends on a suite of factors, including the availability and reliability

of public information, characteristics of the regulated equipment, and the availability and timeliness of purchasing the equipment on the market. The cost approaches are summarized as follows:

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

In the present case, DOE conducted the analysis using teardowns and feedback received from manufacturers during interviews. See chapter 5 of the NOPR TSD for additional details.

DOE received several comments in response to the April 2022 Preliminary Analysis regarding the cost analysis.

NAMA believes that DOE should factor the unprecedented increase in inflation of basic constituents of the BVM machine and its manufacturing into the costs shown for design options and the economic analysis. (NAMA, No. 14 at p. 10)

DOE used current prices when estimating the baseline manufacturer production costs and design option costs. See chapter 5 of the NOPR TSD for additional details.

NAMA commented that the analyses in the April 2022 Preliminary TSD do not address the major changes necessary to the machines to utilize the lower GWP refrigerants (*e.g.,* R–290). (NAMA, No. 14 at p. 4) NAMA asserted that for low GWP, flammable A–3 refrigerants to be allowed for use in machines, redesign of the evaporator and condensor system and the use of new compressors and expansion valves would be necessary. *Id.* Additionally, NAMA noted that all switches, electrical components, motors (including robotic or vend motors), wiring, and connectors must be compliant with ''spark-proof'' connections to shield against the possibility of a leak of such refrigerant. *Id.* NAMA commented that neither this level of redesign nor the use of these expensive components was addressed in the April 2022 Preliminary TSD. *Id.*

NAMA commented that the incremental cost given in the DOE chart of $11.28 to switch from an R–134 compressor to an R–290 compressor is inaccurate considering that the compressor is only one of many components that must change if the refrigerant is changed to an A–3 refrigerant. (NAMA, No. 14 at pp. 5, 19) NAMA stated that the increase in the cost of the compressor by itself is more than $40, and from their sample of five manufacturers, the cost of the change from R–134 to R–290 is approximately $200 per machine rather than $11.28 when all the components that must change are factored in. *Id.*

As discussed in section IV.C.1.a of this document, DOE has analyzed R–290 as the baseline refrigerant for this NOPR, and as a result, DOE updated its baseline equipment costs to reflect current costs based on feedback received during manufacturer interviews, information collected during BVM teardowns, and market research, which includes the costs for component changes and additions related to R–290. DOE's analysis considers that these efficiency improvements, equipment costs, and manufacturer investments required to comply with the December 2022 EPA NOPR will be in effect prior to the time of compliance for the proposed amended DOE BVM standards for all BVM equipment classes and sizes. See chapter 5 of the NOPR TSD for additional details.

NAMA commented that for moving from single speed compressors to variable speed compressors, the current data shows cost increases in other product categories much higher than the $103.12 shown, and that early cost estimates are more than $200 per machine. (NAMA, No. 14 at p. 24)

NAMA commented that DOE's estimate of $16.72 per machine for improved evaporator coils is significantly below NAMA's estimates of the parts alone, and that NAMA's initial estimate is double this amount and perhaps more when considering capital costs, design, and recertification. (NAMA, No. 14 at p. 20)

NAMA commented that DOE's estimated cost of $32.36 for the extra insulation likely does not factor in the cost of redesigning new tooling to encompass additional insulation. (NAMA, No. 14 at p. 21)

NAMA commented that the cost estimate of $15.31 for moving from tube and fin to microchannels is not realistic and is not borne out by discussion with vendors, as this change would require a complete redesign of all parts of the vending machine refrigeration system and would need to include a large associated capital cost. (NAMA, No. 14 at p. 23)

NAMA commented that the cost estimates its industry has seen are three to four times the cost of glass mentioned in the April 2022 Preliminary TSD when moving from triple pane glass to vacuum insulated glass. (NAMA, No. 14 at p. 24)

NAMA commented that the cost estimate of $72.84 with the switch to multiple panes of glass is about half of the total cost when considering increased structural components at extremely high volumes. (NAMA, No. 14 at p. 22) NAMA stated that because of these factors, most manufacturers would not realize this energy efficiency improvement and would see much higher costs for little or no energy improvement. *Id.*

DOE notes that, as discussed in section IV.C.1.a of this document, DOE did not analyze evaporator improvements or extra insulation as design options.

DOE assumed, based on feedback received during manufacturer interviews and from equipment teardowns, that the design options which changed the type of glass may require different frame materials or hinges, which DOE has considered as a cost adder to these design options in this NOPR.

DOE updated its baseline and design option costs to reflect current costs based on feedback received during manufacturer interviews, information collected during BVM teardowns, stakeholder comments, and market research. See chapter 5 of the NOPR TSD for additional details.

To account for manufacturers' non-production costs and profit margin, DOE applies a multiplier (the manufacturer markup) to the MPC. The resulting manufacturer selling price (MSP) is the price at which the manufacturer distributes a unit into commerce. DOE developed an average manufacturer markup by examining the annual Securities and Exchange Commission (SEC) 10–K reports filed by publicly traded manufacturers primarily engaged in equipment manufacturing and whose combined equipment range includes BVM equipment.

3. Cost-Efficiency Results

The results of the engineering analysis are reported as cost-efficiency data (or ''curves'') in the form of daily energy

consumption (in kWh) versus MSP (in dollars). DOE developed six curves representing the four equipment classes. The methodology for developing the curves started with determining the energy consumption for baseline equipment and MPCs for this equipment. Above the baseline, design options were implemented until all available technologies were employed (*i.e.,* at a max-tech level). See chapter 5 of the NOPR TSD for additional detail on the engineering analysis and appendix 5B of the NOPR TSD for complete cost-efficiency results.

D. Markups Analysis

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

For BVMs, the main parties in the distribution chain are manufacturers, wholesalers, and the end users.

DOE developed baseline and incremental markups for each actor in the distribution chain. Baseline markups are applied to the price of products with baseline efficiency, while incremental markups are applied to the difference in price between baseline and higher-efficiency models (the incremental cost increase). The incremental markup is typically less than the baseline markup and is designed to maintain similar per-unit operating profit before and after new or amended standards.[35]

DOE relied on economic data from the U.S. Census Bureau to estimate average baseline and incremental markups.

Chapter 6 of the NOPR TSD provides details on DOE's development of markups for BVMs.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of BVMs at different efficiencies in representative U.S. commercial and industrial buildings, and to assess the energy savings potential of increased BVM efficiency. For the NOPR analysis, DOE selected seven efficiency levels (ELs) for each equipment class, each characterized as a percentage of rated daily energy consumption from the baseline, up to the max-tech efficiency levels defined for each class in the engineering analysis. Each level with the corresponding percentage of baseline rated energy consumption varies by equipment class and can be found in Chapter 7 of the NOPR TSD.

The energy use analysis then estimates the range of energy use of BVMs in the field (*i.e.,* as they are actually used by consumers). The energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in operating costs that could result from adoption of amended or new standards.

The energy use analysis assessed the estimated annual energy consumption of a BVM installed in the field. DOE recognizes that a variety of factors may affect the energy use of a BVM, including ambient conditions, use and stocking profiles, and other factors. However, very limited data exist on field energy consumption of BVMs. DOE estimated that the daily energy consumption produced by the DOE test procedure is representative of the average daily energy consumption of a BVM in an indoor environment. DOE developed a methodology to account for the impact of ambient conditions on the average annual energy consumption. To model the annual energy consumption of each BVM unit, DOE separately estimated the energy use of BVMs located indoors and outdoors to account for the impact of ambient conditions on installed BVM energy use. Chapter 7 of the NOPR TSD provides details on DOE's energy use analysis for BVMs.

In response to the April 2022 Preliminary Analysis, NAMA commented that the energy used by additional ventilation to reduce the risk of a leak in a public space was not accounted for in the April 2022 Preliminary TSD. (NAMA, No. 14 at p. 9)

In response to the NAMA comment, DOE notes that the NAMA concern regarding additional ventilation needs is due to the presumed use of hydrocarbon refrigerants. DOE notes that the analysis assumes hydrocarbon refrigerants at all efficiency levels analyzed, including the baseline, and any building energy impact due to additional ventilation requirements in spaces surrounding BVMs is the same at all efficiency levels and does not impact the differential energy consumption between efficiency levels or the subsequent economic calculations.

NAMA commented that although DOE has asserted that coin and bill payment systems are typically included with BVMs as shipped, its survey has indicated that this is not uniform and is unique to certain manufacturers and customers. (NAMA, No. 14 at p. 12) NAMA also questioned whether the approximation of 0.2 kWh per day is accurate for the energy consumption of a payment mechanism, although it considers the present solution to be preferable to the significant amount of time it would take testing in laboratories to determine a more accurate approximation resulting in a difference of a fraction of a kWh per day. (NAMA, No. 14 at p. 13)

In the April 2023 Test Procedure Final Rule, DOE determined to maintain the current 0.20 kWh/day adder to account for the energy use of payment mechanisms.[36] The available information demonstrates that a wide (and growing) variety of payment systems are currently available on the market; the most common scenario is for the payment mechanism to be specified (and in some cases, provided) by the customer; and the customer may decide whether or not to have the payment mechanism installed by the BVM manufacturer at the time of sale. *Id.* Therefore, DOE did not consider low-power payment mechanisms as a design option in this NOPR. See chapter 5 of the NOPR TSD for additional details.

F. Life-Cycle Cost and Payback Period Analysis

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

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

[35] Because the projected price of standards-compliant products is typically higher than the price of baseline products, using the same markup for the incremental cost and the baseline cost would result in higher per-unit operating profit. While such an outcome is possible, DOE maintains that in markets that are reasonably competitive, it is unlikely that standards would lead to a sustainable increase in profitability in the long run.

[36] See *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=29.*

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

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

For each considered efficiency level in each equipment class, DOE calculated the LCC and PBP for a nationally representative set of consumers. As stated previously, DOE developed consumer samples from the most recent industry reports. For each sample consumer, DOE determined the energy consumption for the BVM and the appropriate energy price. By developing a representative sample of consumers, the analysis captured the variability in energy consumption and energy prices associated with the use of BVMs.

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

The computer model DOE uses to calculate the LCC relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and BVM user samples. For this rulemaking, the Monte Carlo approach is implemented in MS Excel together with the Crystal Ball ™ add-on.[37] The model calculated the LCC for products at each efficiency level for 10,000 consumers per simulation run. The analytical results include a distribution of 10,000 data points showing the range of LCC savings for a given efficiency level relative to the no-new-standards case efficiency distribution. In performing an iteration of the Monte Carlo simulation for a given consumer, equipment efficiency is chosen based on its probability. If the chosen equipment efficiency is greater than or equal to the efficiency of the standard level under consideration, the LCC calculation reveals that a consumer is not impacted by the standard level. By accounting for consumers who already purchase more efficient equipment, DOE avoids overstating the potential benefits from increasing equipment efficiency.

DOE calculated the LCC and PBP for consumers of BVMs as if each were to purchase a new BVM in the expected year of required compliance with new or amended standards. New and amended standards would apply to BVMs manufactured 3 years after the date on which any new or amended standard is published. (42 U.S.C. 6295(v)(3)) At this time, DOE estimates publication of a final rule in 2025. Therefore, for purposes of its analysis, DOE used 2028 as the first year of compliance with any amended standards for BVMs.

Table IV.5 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the NOPR TSD and its appendices.

TABLE IV.5—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSES*

Inputs	Source/method
Product Cost	Derived by multiplying MPCs by manufacturer and retailer markups and sales tax, as appropriate. Used historical data to derive a price scaling index to project product component costs.
Installation Costs	Installation costs for BVMs are subsumed in the MSP and markup and not modeled as an incremental cost.
Annual Energy Use	The total annual energy use varies by equipment class and efficiency level. Based on engineering and energy use analyses.
Energy Prices	*Electricity:* Based on EIA's Form 861 data for 2021. *Variability:* Energy prices determined for 50 states and the District of Columbia.
Energy Price Trends	Based on *AEO2022* price projections. *Variability:* Energy price trends vary by nine census regions.
Repair, Refurbishment and Maintenance Costs	Based on RS Means and United States Bureau of Labor Statistics data. Vary by efficiency level.
Product Lifetime	*Average:* 13.4 years.
Discount Rates	Approach involves identifying all possible debt or asset classes that might be used to purchase the considered equipment, or might be affected indirectly. Primary data source was Damodaran Online.
Compliance Date	2028.

* Not used for PBP calculation. References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the NOPR TSD.

In the April 2022 Preliminary Analysis, DOE requested comment on the overall methodology and results of the LCC and PBP analyses. In response to that request, NAMA made three comments.

NAMA stated that DOE should factor the unprecedented increase in inflation into the economic analysis in addition

[37] Crystal Ball ™ is commercially available software tool to facilitate the creation of these types of models by generating probability distributions and summarizing results within Excel, available at *www.oracle.com/technetwork/middleware/crystalball/overview/index.html* (last accessed July 6, 2018).

to the design option costs. (NAMA No. 14, at p. 10)

DOE acknowledges the comment from NAMA and applies the annual implicit price deflators for gross domestic product (GDP) from the U.S. Bureau of Economic Analysis to the LCC and PBP analyses to capture the impact of price changes between the years of available cost data and the analysis year. Equipment and design option costs are developed in the engineering analysis and are incorporated into the LCC and PBP analyses by being reflected in the MPCs.

In response to the April 2022 Preliminary Analysis, NAMA commented to request that in the Economic Impact Analysis on the cost of labor, real cases from 2021 and 2022 are used rather than the cost of labor in 2018. (NAMA, No. 14 at p. 11)

DOE acknowledges the comment from NAMA and will use the most recent data available for the LCC and PBP analyses. If the most recent data available is from prior to 2021, the annual implicit price deflators for GDP from the U.S. Bureau of Economic Analysis will be used to reflect the costs in the year 2021.

NAMA commented that in the April 2022 Preliminary Analysis, the lower efficiency levels resulted in trivial energy savings and the higher efficiency levels showed a large portion of consumers experiencing a net cost in the LCC analysis. (NAMA, No. 14 at p. 15)

DOE acknowledges the comment from NAMA and will consider total energy savings and the portion of consumers experiencing net cost when proposing new energy efficiency standards.

In response to the April 2022 Preliminary Analysis, NAMA commented that it is only at low efficiency levels where consumers or business owners do not experience a net cost according to DOE's analysis, and that energy savings at those levels are trivial and do not justify DOE setting new energy efficiency standards for BVMs. (NAMA, No. 14 at p. 15)

DOE acknowledges the comment from NAMA and considers the percentage of customers that experience a net benefit ot net cost in addition to energy savings in the economic analysis to determine if the proposed rule is economically justified.

1. Equipment Cost

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

BVMs are made of many different components. DOE's research indicates flat future prices for a majority of the components of BVMs. DOE included future price reductions for semiconductor and similar technologies. Semiconductor technology price learning applies to efficiency levels that include design options with higher-efficiency evaporator and condenser fan motors (*i.e.,* ECM and permanent magnet synchronous (PMS) motors). Price learning applies to a proportion of the motor cost representing the semiconductor technology. Some variable speed compressors have price learning. Therefore, DOE applied price learning to compressor components in BVM equipment at efficiency levels that included variable speed compressors.

2. Installation Cost

Installation costs for BVMs are subsumed in the MSP and markup and not modeled as an incremental cost. DOE found no evidence that installation costs would be impacted with increased efficiency levels.

3. Annual Energy Consumption

For each sampled consumer, DOE determined the energy consumption for a BVM at different efficiency levels using the approach described previously in section IV.E of this document.

4. Energy Prices

DOE derived electricity prices from the EIA energy price data by sector and by state(EIA Form 861) for average electricity price data for the commercial and industrial sectors. DOE used projections of these electricity prices for commercial and industrial consumers to estimate future energy prices in the LCC and PBP analyses. EIA's *AEO2022* was used as the source of projections for future electricity prices.

DOE developed 2021 commercial and industrial retail electricity prices for each state and the District of Columbia based on EIA Form 861. To estimate energy prices in future years, DOE multiplied the 2021 energy prices by the projection of annual average price changes for each of the nine census divisions from the Reference case in *AEO2022,* which has an end year of 2050.[38] To estimate price trends after 2050, the 2041–2050 average was used for all years DOE used EIA's 2018 Commercial Building Energy Consumption Survey [39] (CBECS 2018) to determine the difference in commercial energy prices by building type. DOE applied the ratio of a specific building type's electricity prices to average commercial electricity prices in the LCC and PBP analyses.

DOE's methodology allows electricity prices to vary by sector, state, region, and building type. In the analysis, variability in electricity prices is chosen to be consistent with the way the consumer economic and energy use characteristics are defined in the LCC analysis. Chapter 8 of the NOPR TSD provides more detail about DOE's approach to developing energy prices and price trends.

5. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing equipment components that have failed in an appliance; maintenance costs are associated with maintaining the operation of the product. Typically, small incremental increases in equipment efficiency entail no, or only minor, changes in repair and maintenance costs compared to baseline efficiency equipment. The repair cost is the cost to the consumer for replacing or repairing BVM components that have failed. For the LCC analysis, repair costs also include refurbishment costs and the cost of replacing BVM components routinely within the lifetime of a BVM. The LCC analysis models compressors, evaporator fan motors and condenser fan motors being repaired or replaced twice in the lifetime of the BVM. The maintenance cost is the cost to the consumer of maintaining equipment operation. Chapter 8 of the NOPR TSD provides more detail about DOE's maintenance, repair, and refurbishment cost calculations.

DOE request comments on the frequency and nature of compressor and motor repairs or replacements in BVMs.

6. Equipment Lifetime

For BVMs, DOE used information from various literature sources and input from manufacturers and other interested parties to establish equipment lifetimes for use in the LCC and PBP analyses. This analysis assumes an average lifetime of 13.4 years based on refurbishments of major components occurring twice during the life of the equipment at an interval of 4.5 years. This estimate is based on a 2010

[38] EIA. *Annual Energy Outlook 2022 with Projections to 2050.* Washington, DC. Available at *www.eia.gov/forecasts/aeo/* (last accessed February 2023).

[39] *www.eia.gov/consumption/commercial/.*

ENERGY STAR webinar,[40] which reported average lifetimes of 12 to 15 years, and data on the distribution of equipment ages in the stock of BVMs in the Pacific Northwest from the Northwest Power and Conservation Council 2007 Regional Technical Forum [41] (RTF), which observed the age of the units in service to be approximately 8 years on average.

In response to the April 2022 Preliminary Analysis, NAMA commented that DOE should develop a model showing what impact increasing the retail price of a new BVM has on purchasing refurbished machines and delaying purchases of new machines. (NAMA, No. 14 at p. 13) NAMA pointed out that any sale of a refurbished machine reduces the sales of a new machine designed to the new energy standards, thus increasing the amount of time that the overall impact on the net change to U.S. energy consumption of the United States by vending machines would occur. *Id.*

DOE acknowledges this comment and uses the data available to determine the lifetime assumptions of BVMs in the LCC and PBP analyses. DOE models two refurbishment processes, each adding to the average lifetime of equipment. DOE does not have data available to support how higher MSPs would impact the lifetime of BVMs. DOE uses the latest industry report to determine shipments and amount of annual shipments and sales of new BVMs.

7. Discount Rates

The discount rate is the rate at which future expenditures are discounted to establish their present value. In the calculation of LCC, DOE determined the discount rate by estimating the cost of capital for purchasers of BVMs. Most purchasers use both debt and equity capital to fund investments. Therefore, for most purchasers, the discount rate is the weighted-average cost of debt and equity financing, or the weighted-average cost of capital (WACC), less the expected inflation.

To estimate the WACC of BVM purchasers, DOE used a sample of nearly 1,200 companies grouped to be representative of operators of each of the commercial business types (health care, lodging, foodservice, retail, education, food sales, and offices) drawn from a database of 6,177 U.S. companies presented on the Damodaran Online website. This database includes most of the publicly traded companies in the United States. The WACC approach for determining discount rates accounts for the current tax status of individual firms on an overall corporate basis. DOE did not evaluate the marginal effects of increased costs, and, thus, depreciation due to more expensive equipment, on the overall tax status.

DOE used the final sample of companies to represent purchasers of BVMs. For each company in the sample, DOE combined company-specific information from the Damodaran Online website, long-term returns on the Standard & Poor's 500 stock market index from the Damodaran Online website, nominal long-term Federal government bond rates, and long-term inflation to estimate a WACC for each firm in the sample.

For most educational buildings and a portion of the office buildings and cafeterias occupied and/or operated by public schools, universities, and State and local government agencies, DOE estimated the cost of capital based on a 40-year geometric mean of an index of long-term tax-exempt municipal bonds (≤20 years). Federal office space was assumed to use the Federal bond rate, derived as the 40-year geometric average of long-term (≤10 years) U.S. government securities.

See chapter 8 of the NOPR TSD for further details on the development of consumer discount rates.

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

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

To estimate the energy efficiency distribution of BVMs for 2028, DOE relied on publicly available energy use data. Specifically, the market efficiency distribution was determined separately for each equipment class for which certification information was available in the DOE certification [42] and ENERGY STAR databases.[43] The estimated market shares for the no-new-standards case for BVMs are shown in Table IV.6. See chapter 8 of the NOPR TSD for further information on the derivation of the efficiency distributions.

TABLE IV.6—EFFICIENCY LEVEL DISTRIBUTION WITHIN EACH EQUIPMENT CLASS IN NO-NEW-STANDARDS CASE FOR BEVERAGE VENDING MACHINES

Equipment class	Efficiency level							
	0 (%)	1 (%)	2 (%)	3 (%)	4 (%)	5 (%)	6 (%)	7 (%)
Class A	67	17	0	11	0	0	0	6
Class B	44	44	0	11	0	0	0	0
Combo A	47	6	0	24	18	0	6	0
Combo B	100	0	0	0	0	0	0	0

The LCC Monte Carlo simulations draw from the efficiency distributions and randomly assign an efficiency to the BVMs purchased by each sample household in the no-new-standards case. The resulting percent shares within the sample match the market shares in the efficiency distributions.

9. Split Incentives

DOE understands that, in most cases, the purchasers of BVMs (a bottler or a vending services company) do not pay the energy costs for operation and thus will not directly reap any energy cost savings from more efficient equipment. However, DOE assumes that BVM owners will seek to pass on higher equipment costs to the users who pay the energy costs, if possible. DOE

[40] EPA. "Always Count Your Change, How ENERGY STAR Refrigerated Vending Machines Save Your Facility Money and Energy." 2010. *www.energystar.gov/ia/products/vending_machines/Vending_Machine_Webinar_Transcript.pdf.*

[41] Haeri, H., D. Bruchs, D. Korn, S. Shaw, J. Schott. Characterization and Energy Efficiency Opportunities in Vending Machines for the Northwestern US Market. Prepared for Northwest Power and Conservation Council Regional Technical Forum by Quantec, LLC and The Cadmus Group, Inc. Portland, OR. July 24, 2007.

[42] See *www.regulations.doe.gov/ccms.*

[43] See *www.energystar.gov/productfinder/product/certified-vending-machines/results.*

understands that the BVM owner typically has a financial arrangement with the company or institution on whose premises the BVM is located, in which the latter may pay a fee or receive a share of the revenue from the BVM. Thus, DOE expects that BVM owners could modify the arrangement to effectively pass on higher equipment costs. Therefore, DOE's LCC and PBP analyses uses the perspective that the company or institution on whose premises the BVM is located pays the higher equipment cost and receives the energy cost savings.

In response to the April 2022 Preliminary Analysis, NAMA commented that the purchaser of a refrigerated vending machine is typically not the company who will utilize the machine, and that the market explanation given in the April 2022 Preliminary Analysis TSD does not reflect this. (NAMA, No. 14 at p. 7)

DOE acknowledges the comment and agrees with NAMA that the purchaser of a BVM is not typically the same entity that utilizes the BVM and receives energy savings. DOE assumes in the LCC analysis that the increased purchase costs of higher-efficiency equipment is passed on to the entity that utilizes the BVM. The perspective of the LCC and PBP analyses is that the entity that utilizes the BVM effectively pays the higher equipment costs and receives the reduction in energy expenses.

10. Payback Period Analysis

The PBP is the amount of time (expressed in years) it takes the consumer to recover the additional installed cost of more efficient products, compared to baseline products, through energy cost savings. Payback periods that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. DOE refers to this as a ''simple PBP'' because it does not consider changes over time in operating cost savings. The PBP calculation uses the same inputs as the LCC analysis when deriving first-year operating costs.

As noted previously, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing equipment complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price projection for the year in which compliance with the amended standards would be required.

G. Shipments Analysis

DOE uses projections of annual product shipments to calculate the national impacts of potential amended or new energy conservation standards on energy use, NPV, and future manufacturer cash flows.[44] The shipments model takes an accounting approach, tracking market shares of each equipment class and the vintage of units in the stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in service product stocks for all years. The age distribution of in service product stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock.

In the BVM NOPR analysis, DOE modeled shipments of BVMs based on data from Vending Times State of the Industry Reports.[45] The industry reports BVM stock trends that were averaged and used to model annual shipments. Chapter 9 of the NOPR TSD includes more details on the BVM shipments analysis.

NAMA stated that DOE should consider the impact of major supply chain issues, disruptions, and shortages from the past 24 months as part of the impact of new energy efficiency standard levels. (NAMA, No. 14 at p. 10)

In response to the April 2022 Preliminary Analysis, NAMA commented that although they were unable to do a detailed analysis of the percentage of Class A, Class B, Class Combo A, and Class Combo B BVMs against the models, they believe that the percentage of Class A and Class Combo A are under-represented by the DOE assumption. (NAMA, No. 14 at p. 6)

DOE recognizes that the industry has been disrupted in recent years; therefore, DOE's shipment analysis uses data from recent industry reports that reflect the 2020 and 2021 BVM industry and the changes from years prior to 2020.

H. National Impact Analysis

The NIA assesses the NES and the NPV from a national perspective of total consumer costs and savings that would be expected to result from new or amended standards at specific efficiency levels.[46] (''Consumer'' in this context refers to consumers of the equipment being regulated.) DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual equipment shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the present analysis, DOE projected the energy savings, operating cost savings, equipment costs, and NPV of consumer benefits over the lifetime of BVMs sold from 2028 through 2057.

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

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

Table IV.7 summarizes the inputs and methods DOE used for the NIA analysis for the NOPR and discussion of these inputs and methods follows. See chapter 10 of the NOPR TSD for further details.

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

[45] Annual Report: State of the Industry 2021 *cdn.baseplatform.io/files/base/cygnus/vmw/document/2022/06/autm_SOI_NoAds.62b3896290401.pdf.*

[46] The NIA accounts for impacts in the 50 states and U.S. territories.

TABLE IV.7—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Compliance Date of Standard	2028.
Efficiency Trends	*No-new-standards case:* Standards cases:
Annual Energy Consumption per Unit	Annual weighted-average values are a function of energy use at each TSL.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each TSL. Incorporates projection of future equipment prices based on historical data.
Annual Energy Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.
Repair and Maintenance Cost per Unit	Annual values from the LCC analysis that increase with efficiency levels.
Energy Price Trends	*AEO2022* projections (to 2050) and extrapolation thereafter.
Energy Site-to-Primary and FFC Conversion	A time-series conversion factor based on *AEO2022.*
Discount Rate	3 percent and 7 percent.
Present Year	2022.

1. Product Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. Section IV.F.8 of this document describes how DOE developed an energy efficiency distribution for the no-new-standards case (which yields a shipment-weighted-average efficiency) for each of the considered equipment classes for the year of anticipated compliance with an amended or new standard. To project the trend in efficiency absent amended standards for BVMs over the entire shipments projection period, DOE assumed that the efficiency distribution will remain the same in future years due to lack of information available to inform a different trend. The approach is further described in chapter 10 of the NOPR TSD.

To develop standards case efficiency trends after 2028, DOE applied a ''roll-up'' scenario approach to establish the efficiency distribution for the compliance year. Under the ''roll-up'' scenario, DOE assumed that (1) equipment efficiencies in the no-new-standards case that do not meet the standard level under consideration will ''roll-up'' to meet the new standard level, and (2) equipment efficiencies above the standard level under consideration will not be affected.

2. National Energy Savings

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

In 2011, in response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and GHGs and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (Aug. 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that EIA's National Energy Modeling System (NEMS) is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (Aug. 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector[47] that EIA uses to prepare its *AEO.* The FFC factors incorporate losses in production and delivery in the case of natural gas (including fugitive emissions) and additional energy used to produce and deliver the various fuels used by power plants. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10D of the NOPR TSD.

[47] For more information on NEMS, refer to *The National Energy Modeling System: An Overview 2009,* DOE/EIA–0581(2009), October 2009. Available at *https://www.eia.gov/outlooks/aeo/nems/overview/pdf/0581(2009).pdf* (last accessed February 2023).

In response to the April 2022 Preliminary Analysis, NAMA commented that they believe the national energy savings estimated by DOE as 0.152 quads for CSL 6 are in fact the FFC savings, and that DOE should not be advertising a savings of 0.152 when the data show less. (NAMA, No. 14 at p. 15)

DOE acknowledges the comment and understands that FFC savings will be higher than primary savings. Both primary and FFC savings are reported in section V.B.3 of this document.

3. Net Present Value Analysis

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

As discussed in section IV.F.1 of this document, DOE developed BVM price trends based on historical PPI data. DOE applied the same trends to project prices for each product class at each considered efficiency level. PPI data was deflated using implicit GDP

deflators and found to be constant on average. Although prices for overall BVM equipment were found to be constant, DOE developed component price trends for certain design options using historical PPI data for semiconductors and related devices. Efficiency levels that include ECM and PMS motors, and variable speed compressors have price learning applied to the appropriate portion of the MSP. DOE found that prices for semiconductor related components decreased by 5.88 percent annually. DOE's projection of equipment prices is described in chapter 10 of the NOPR TSD.

To evaluate the effect of uncertainty regarding the price trend estimates, DOE investigated the impact of different product price projections on the consumer NPV for the considered TSLs for BVMs. In addition to the default price trend, DOE considered two product price sensitivity cases: (1) a high price decline case based on PPI data up to 2005 and (2) a low price decline case based on PPI data from 2005 onward. The derivation of these price trends are described in chapter 8 of the NOPR TSD.

The energy cost savings are calculated using the estimated electricity savings in each year and the projected price of electricity. To estimate energy prices in future years, DOE multiplied the average regional energy prices by the projection of annual national-average energy price changes in the *AEO2022* Reference case, which has an end year of 2050. To estimate price trends after 2050, the 2035–2050 average was used for all years. As part of the NIA, DOE also analyzed scenarios that used inputs from variants of the *AEO2022* Reference case that have lower and higher economic growth. Those cases have lower and higher energy price trends compared to the Reference case. NIA results based on these cases are presented in appendix 10B of the NOPR TSD.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this NOPR, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (OMB) to Federal agencies on the development of regulatory analysis.[48] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

I. Consumer Subgroup Analysis

In analyzing the potential impact of new or amended energy conservation standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by a new or amended national standard. The purpose of a subgroup analysis is to determine the extent of any such disproportional impacts. DOE evaluates impacts on particular subgroups of consumers by analyzing the LCC impacts and PBP for those particular consumers from alternative standard levels. For this NOPR, DOE identified manufacturing facilities that purchase their own BVMs as a relevant subgroup. These facilities typically have higher discount rates and lower electricity prices than the general population of BVM consumers. These two conditions make it likely that this subgroup will have the lowest LCC savings of any major consumer subgroup.

DOE used the LCC and PBP spreadsheet model to estimate the impacts of the considered efficiency levels on this subgroup. Chapter 11 in the NOPR TSD describes the consumer subgroup analysis.

J. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impacts of amended energy conservation standards on manufacturers of BVMs and to estimate the potential impacts of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects and includes analyses of projected industry cash flows, the INPV, investments in research and development (R&D) and manufacturing capital, and domestic manufacturing employment. Additionally, the MIA seeks to determine how amended energy conservation standards might affect manufacturing employment, capacity, and competition, as well as how standards contribute to overall regulatory burden. Finally, the MIA serves to identify any disproportionate impacts on manufacturer subgroups, including small business manufacturers.

The quantitative part of the MIA primarily relies on the GRIM, an industry cash flow model with inputs specific to this rulemaking. The key GRIM inputs include data on the industry cost structure, unit production costs, product shipments, manufacturer markups, and investments in R&D and manufacturing capital required to produce compliant products. The key GRIM outputs are the INPV, which is the sum of industry annual cash flows over the analysis period, discounted using the industry WACC, and the impact to domestic manufacturing employment. The model uses standard accounting principles to estimate the impacts of more stringent energy conservation standards on a given industry by comparing changes in INPV and domestic manufacturing employment between a no-new-standards case and the various standards cases (TSLs). To capture the uncertainty relating to manufacturer pricing strategies following amended standards, the GRIM estimates a range of possible impacts under different markup scenarios.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as a potential standard's impact on manufacturing capacity, competition within the industry, the cumulative impact of other DOE and non-DOE regulations, and impacts on manufacturer subgroups. The complete MIA is outlined in chapter 12 of the NOPR TSD.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the BVM manufacturing industry based on the market and technology assessment, preliminary manufacturer interviews, and publicly available information. This included a top-down analysis of BVM manufacturers that DOE used to derive preliminary financial inputs for the GRIM (*e.g.,* revenues; materials, labor, overhead, and depreciation expenses; selling, general, and administrative expenses (SG&A); and R&D expenses). DOE also used public sources of information to further calibrate its initial characterization of the BVM manufacturing industry, including company filings of form 10–K from the SEC,[49] corporate annual reports, the

[48] United States Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Section E. Available at *georgewbush-whitehouse.archives.gov/omb/memoranda/m03-21.html* (last accessed February 2023).

[49] U.S. Securities and Exchange Commission. Company Filings. Available at *https://www.sec.gov/edgar/searchedgar/companysearch.html.*

U.S. Census Bureau's *Economic Census*,[50] and reports from Dunn & Bradstreet.[51]

In Phase 2 of the MIA, DOE prepared a framework industry cash flow analysis to quantify the potential impacts of amended energy conservation standards. The GRIM uses several factors to determine a series of annual cash flows starting with the announcement of the standard and extending over a 30-year period following the compliance date of the standard. These factors include annual expected revenues, costs of sales, SG&A and R&D expenses, taxes, and capital expenditures. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) creating a need for increased investment, (2) raising production costs per unit, and (3) altering revenue due to higher per-unit prices and changes in sales volumes.

In addition, during Phase 2, DOE developed interview guides to distribute to manufacturers of BVMs in order to develop other key GRIM inputs, including product and capital conversion costs, and to gather additional information on the anticipated effects of energy conservation standards on revenues, direct employment, capital assets, industry competitiveness, and subgroup impacts.

In Phase 3 of the MIA, DOE conducted structured, detailed interviews with representative manufacturers. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to validate assumptions used in the GRIM and to identify key issues or concerns. See section IV.J.3 of this document for a description of the key issues raised by manufacturers during the interviews. As part of Phase 3, DOE also evaluated subgroups of manufacturers that may be disproportionately impacted by amended standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash flow analysis. Such manufacturer subgroups may include small business manufacturers, low-volume manufacturers, niche players, and/or manufacturers exhibiting a cost structure that largely differs from the industry average. DOE identified one subgroup for a separate impact analysis—small business manufacturers. The small business subgroup is discussed in section VI.B of this document and in chapter 12 of the NOPR TSD.

2. Government Regulatory Impact Model and Key Inputs

DOE uses the GRIM to quantify the changes in cash flow due to amended standards that result in a higher or lower industry value. The GRIM uses a standard, annual discounted cash flow analysis that incorporates manufacturer costs, markups, shipments, and industry financial information as inputs. The GRIM models changes in costs, distribution of shipments, investments, and manufacturer margins that could result from an amended energy conservation standard. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning in 2023 (the base year of the analysis) and continuing to 2057. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. For manufacturers of BVMs, DOE used a real discount rate of 8.5 percent, which was derived from industry financials and then modified according to feedback received during manufacturer interviews.

The GRIM calculates cash flows using standard accounting principles and compares changes in INPV between the no-new-standards case and each standards case. The difference in INPV between the no-new-standards case and a standards case represents the financial impact of the amended energy conservation standard on manufacturers. As discussed previously, DOE developed critical GRIM inputs using a number of sources, including publicly available data, results of the engineering analysis, and information gathered from industry stakeholders during the course of manufacturer interviews. The GRIM results are presented in section V.B.2 of this document. Additional details about the GRIM, the discount rate, and other financial parameters can be found in chapter 12 of the NOPR TSD.

a. Manufacturer Production Costs

Manufacturing more efficient equipment is typically more expensive than manufacturing baseline equipment due to the use of more complex components, which are typically more costly than baseline components. The changes in the MPCs of covered products can affect the revenues, gross margins, and cash flow of the industry.

As discussed in section IV.C.1 of this document, DOE conducted a market analysis of currently available models listed in DOE's CCD to determine which efficiency levels were most representative of the current distribution of BVMs available on the market. DOE determined MPCs using teardowns and feedback received from manufacturers during interviews. See chapter 5 of the NOPR TSD for additional details.

DOE seeks comment on the method for estimating manufacturing production costs.

See section VII.E of this document for a list of issues on which DOE seeks comment.

b. Shipments Projections

The GRIM estimates manufacturer revenues based on total unit shipment projections and the distribution of those shipments by efficiency level. Changes in sales volumes and efficiency mix over time can significantly affect manufacturer finances. For this analysis, the GRIM uses the NIA's annual shipment projections derived from the shipments analysis from 2023 (the base year) to 2057 (the end year of the analysis period). See chapter 9 of the NOPR TSD for additional details.

c. Product and Capital Conversion Costs

Amended energy conservation standards could cause manufacturers to incur conversion costs to bring their production facilities and equipment designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered efficiency level in each product class. For the MIA, DOE classified these conversion costs into two major groups: (1) product conversion costs and (2) capital conversion costs. Product conversion costs are investments in research, development, testing, marketing, and other non-capitalized costs necessary to make product designs comply with amended energy conservation standards. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new compliant product designs can be fabricated and assembled.

To evaluate the level of conversion costs manufacturers would likely incur to comply with amended energy conservation standards, DOE relied on estimates of equipment and tooling from feedback from manufacturer interviews. DOE contractors reached out to all five of the original equipment manufacturers (OEMs) identified in the CCD database, two of which agreed to be interviewed. These two OEMs are manufacturers of Class A, Class B, Combo A, and Combo B equipment. DOE used market share weighted feedback from the interviews

[50] The U.S. Census Bureau. Quarterly Survey of Plant Capacity Utilization. Available at *www.census.gov/programs-surveys/qpc/data/tables.html.*

[51] The Dun & Bradstreet Hoovers login is available at *app.dnbhoovers.com.*

to extrapolate industry-level product conversion costs from the manufacturer feedback.

Feedback from manufacturers on capital and product conversion costs allowed DOE to create industry estimates, scaled by market share and model count, in order to model the incremental investment required at different efficiency levels.

In general, DOE assumes all conversion-related investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the new standard. The conversion cost figures used in the GRIM can be found in section V.B.2 of this document. For additional information on the estimated capital and product conversion costs, see chapter 12 of the NOPR TSD.

d. Manufacturer Markup Scenarios

MSPs include direct manufacturing production costs (*i.e.,* labor, materials, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied non-production cost markups to the MPCs estimated in the engineering analysis for each product class and efficiency level. Modifying these markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards case markup scenarios to represent uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards: (1) a preservation of gross margin percentage markup scenario and (2) a preservation of per-unit operating profit markup scenario. These scenarios lead to different markup values that, when applied to the MPCs, result in varying revenue and cash flow impacts.

Under the preservation of gross margin percentage scenario, DOE applied a single uniform ''gross margin percentage'' markup across all efficiency levels, which assumes that manufacturers would be able to maintain the same amount of profit as a percentage of revenues at all efficiency levels within a product class. As manufacturer production costs increase with efficiency, this scenario implies that the per-unit dollar profit will increase. DOE estimated gross margin percentages of 22 percent for Class A, 17 percent for Class B, 36 percent for Combo A, and 36 percent for Combo B. Manufacturers tend to believe it is optimistic to assume that they would be able to maintain the same gross margin percentage as their production costs increase, particularly for minimally efficient products. Therefore, this scenario represents a high bound to industry profitability under an amended energy conservation standard.

Under the preservation of per-unit operating profit markup scenario, DOE modeled a situation in which manufacturers are not able to increase per-unit operating profit in proportion to increases in manufacturer production costs. In the preservation of operating profit scenario, as the cost of production goes up under a standards case, manufacturers are generally required to reduce their manufacturer markups to a level that maintains no-new-standards case operating profit. DOE implemented this scenario in the GRIM by lowering the manufacturer markups at each TSL to yield approximately the same earnings before interest and taxes in the standards case as in the no-new-standards case in the year after the compliance date of the amended standards. The implicit assumption behind this scenario is that the industry can only maintain its operating profit in absolute dollars after the standard. A comparison of industry financial impacts under the two manufacturer markup scenarios is presented in section V.B.2.a of this document.

A comparison of industry financial impacts under the two markup scenarios is presented in section V.B.2.a of this document.

3. Manufacturer Interviews

DOE interviewed two of the five OEMs identified in the CCD. Participants included manufacturers of Class A, Class B, and Combo B BVMs.

In interviews, DOE asked manufacturers to describe their major concerns regarding this proposed rulemaking. The following section highlights manufacturer concerns that helped inform the projected potential impacts of an amended standard on the industry. Manufacturer interviews are conducted under non-disclosure agreements (NDAs), so DOE does not document these discussions in the same way that it does public comments in the comment summaries and DOE's responses throughout the rest of this document.

Manufacturers raised concerns about the potentially high levels of investment necessary under updated standards, citing high conversion costs associated with increased insulation thickness and VIPs. In particular, these changes would necessitate large investments in tooling and product redesign.

Manufacturers also cited concern regarding cost of the potential concurrent refrigerant transition outlined in the recent EPA rulemaking. This transition will require manufacturers to make investments independent of amended DOE standards.

Manufacturers also raised concern over the feasibility of further efficiency improvements, citing the incorporation of many DOE design options into baseline equipment. As an example, some of the design options included in the preliminary analysis are already incorporated in baseline models, such as evaporator fan motor controllers and high-efficiency lighting.

4. Discussion of MIA Comments

In response to the April 2022 Preliminary Analysis, NAMA commented that the 6-year ''lock-in'' provision in the statutory structure is designed to give manufacturers time to generate sufficient cash flow to recoup any necessary investments and financial costs/returns, and that when there are multiple regulations on the same product within the 6-year lock-in period (such as refrigerant transition, a new test procedure on payment systems, and new energy efficiency regulations), the second regulation violates the recoupment assumption inherent in the first one. (NAMA, No. 14 at p. 16–17) EPCA provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) Although DOE considers cumulative regulatory burden in its analysis, DOE does not have the authority to delay review of its regulations in accordance with EPCA due to regulations issued by other Federal agencies.

NAMA stated that the existing GRIM model does not consider this situation, and that it produces an increase in value from the early write-off of any past investment. *Id.* NAMA noted that the GRIM accelerates depreciation (a non-cash item) due to the early write-off of past investment, by lowering tax cash costs, and that the simplest way to resolve this is to do a consolidated analysis for multiple regulations starting from the time of the first regulation. (NAMA, No. 14 at p. 17) NAMA added that although DOE has noted that such an analysis would require counting both the costs/investments and revenues/profits for both products, this is correct and is a feature, not a deficiency. *Id.* NAMA commented that DOE should be

analyzing and assessing the change in combined industry value for these products, or for the same product multiple times. *Id.* NAMA stated that if this is not possible, then DOE should incorporate a value reduction factor in the first post-regulation year of the analysis that subtracts the value lost from the remaining years of the previous regulation. *Id.* NAMA also commented that it urged DOE to incorporate the financial results of the current Cumulative Regulatory Burden analysis directly into the MIA. (NAMA, No. 14 at p. 17) NAMA suggested doing this by adding the combined costs of complying with multiple regulations into the product conversion costs in the GRIM model. *Id.* NAMA commented that an appropriate approach would be to include the costs to manufacturers of responding to and monitoring regulations. *Id.*

NAMA also made a range of comments related to the phase out of certain refrigerants under consideration by the EPA. DOE notes that the costs associated with the refrigerant transition are not a direct result of amended standards, however DOE has considered the implications of these transition costs in its analysis.

DOE did not publish a GRIM in the preliminary analysis phase. However, DOE has published a GRIM as part of the NOPR analysis. In that GRIM DOE accounts for the investments manufacturers must make in order to adopt R–290 as a refrigerant for BVMs in 2025.

DOE analyzes cumulative regulatory burden pursuant to the Process Rule. Pursuant to the Process Rule, DOE will recognize and consider the overlapping effects on manufacturers of new or revised DOE standards and other Federal regulatory actions affecting the same products or equipment. The results of this analysis can be found in section V.B.2.e of this document.

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of CO_2, NO_X, SO_2, and Hg. The second component estimates the impacts of potential standards on emissions of two additional GHGs, CH_4 and N_2O, as well as the reductions to emissions of other gases due to ''upstream'' activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion.

The analysis of electric power sector emissions of CO_2, NO_X, SO_2, and Hg uses emissions factors intended to represent the marginal impacts of the change in electricity consumption associated with amended or new standards. The methodology is based on results published for the *AEO,* including a set of side cases that implement a variety of efficiency-related policies. The methodology is described in appendix 13A in the NOPR TSD. The analysis presented in this notice uses projections from *AEO2022.* Power sector emissions of CH_4 and N_2O from fuel combustion are estimated using Emission Factors for Greenhouse Gas Inventories published by the EPA.[52] FFC upstream emissions, which include emissions from fuel combustion during extraction, processing, and transportation of fuels, and ''fugitive'' emissions (direct leakage to the atmosphere) of CH_4 and CO_2 are estimated based on the methodology described in chapter 15 of the NOPR TSD.

The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. For power sector emissions, specific emissions intensity factors are calculated by sector and end use. Total emissions reductions are estimated using the energy savings calculated in the national impact analysis.

1. Air Quality Regulations Incorporated in DOE's Analysis

DOE's no-new-standards case for the electric power sector reflects the *AEO,* which incorporates the projected impacts of existing air quality regulations on emissions. *AEO2022* generally represents current legislation and environmental regulations, including recent government actions, that were in place at the time of preparation of *AEO2022,* including the emissions control programs discussed in the following paragraphs.[53]

SO_2 emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (DC). (42 U.S.C. 7651 *et seq.*) SO_2 emissions from numerous States in the eastern half of the United States are also limited under the Cross-State Air Pollution Rule (CSAPR). 76 FR 48208 (Aug. 8, 2011). CSAPR requires these States to reduce certain emissions, including annual SO_2 emissions, and went into effect as of January 1, 2015.[54] *AEO2022* incorporates implementation of CSAPR, including the update to the CSAPR ozone season program emission budgets and target dates issued in 2016. 81 FR 74504 (Oct. 26, 2016). Compliance with CSAPR is flexible among EGUs and is enforced through the use of tradable emissions allowances. Under existing EPA regulations, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by another regulated EGU.

However, beginning in 2016, SO_2 emissions began to fall as a result of the Mercury and Air Toxics Standards (MATS) for power plants. 77 FR 9304 (Feb. 16, 2012). In the MATS final rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (HAP), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions are being reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. In order to continue operating, coal power plants must have either flue gas desulfurization or dry sorbent injection systems installed. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Because of the emissions reductions under the MATS, it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by another regulated EGU. Therefore, energy conservation standards that decrease electricity

[52] Available at *www.epa.gov/sites/production/files/2021-04/documents/emission-factors_apr2021.pdf.* Last accessed July 12, 2021.

[53] For further information, see the Assumptions to *AEO2022* report that sets forth the major assumptions used to generate the projections in the Annual Energy Outlook. Available at *www.eia.gov/outlooks/aeo/assumptions/* (last accessed February 15, 2023).

[54] CSAPR requires states to address annual emissions of SO_2 and NO_X, precursors to the formation of fine particulate matter ($PM_{2.5}$) pollution, in order to address the interstate transport of pollution with respect to the 1997 and 2006 $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS). CSAPR also requires certain states to address the ozone season (May–September) emissions of NO_X, a precursor to the formation of ozone pollution, in order to address the interstate transport of ozone pollution with respect to the 1997 ozone NAAQS. 76 FR 48208 (Aug. 8, 2011). EPA subsequently issued a supplemental rule that included an additional five states in the CSAPR ozone season program; 76 FR 80760 (Dec. 27, 2011) (Supplemental Rule).

generation would generally reduce SO_2 emissions. DOE estimated SO_2 emissions reduction using emissions factors based on *AEO2022.*

CSAPR also established limits on NO_X emissions for numerous States in the eastern half of the United States. Energy conservation standards would have little effect on NO_X emissions in those States covered by CSAPR emissions limits if excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions from other EGUs. In such a case, NO_X emissions would remain near the limit even if electricity generation goes down. A different case could possibly result, depending on the configuration of the power sector in the different regions and the need for allowances, such that NO_X emissions might not remain at the limit in the case of lower electricity demand. In this case, energy conservation standards might reduce NO_X emissions in covered States. Despite this possibility, DOE has chosen to be conservative in its analysis and has maintained the assumption that standards will not reduce NO_X emissions in States covered by CSAPR. Energy conservation standards would be expected to reduce NO_X emissions in the States not covered by CSAPR. DOE used *AEO2022* data to derive NO_X emissions factors for the group of States not covered by CSAPR.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would be expected to slightly reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO2022,* which incorporates the MATS.

L. Monetizing Emissions Impacts

As part of the development of this proposed rule, for the purpose of complying with the requirements of Executive Order (E.O.) 12866, DOE considered the estimated monetary benefits from the reduced emissions of CO_2, CH_4, N_2O, NO_X, and SO_2 that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the projection period for each TSL. This section summarizes the basis for the values used for monetizing the emissions benefits and presents the values considered in this NOPR.

To monetize the benefits of reducing GHG emissions, this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the IWG.

1. Monetization of Greenhouse Gas Emissions

DOE estimates the monetized benefits of the reductions in emissions of CO_2, CH_4, and N_2O by using a measure of the SC of each pollutant (*e.g.,* SC–CO_2). These estimates represent the monetary value of the net harm to society associated with a marginal increase in emissions of these pollutants in a given year, or the benefit of avoiding that increase. These estimates are intended to include (but are not limited to) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services.

DOE exercises its own judgment in presenting monetized climate benefits as recommended by applicable Executive Orders, and DOE would reach the same conclusion presented in this proposed rulemaking in the absence of SC–GHGs. That is, SC–GHGs, whether measured using the February 2021 interim estimates presented by the IWG or by another means, did not affect the rule ultimately proposed by DOE.

DOE estimated the global social benefits of CO_2, CH_4, and N_2O reductions using SC–GHG values that were based on the interim values presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990,* published in February 2021 by the IWG. The SC–GHGs is the monetary value of the net harm to society associated with a marginal increase in emissions in a given year, or the benefit of avoiding that increase. In principle, SC–GHGs includes the value of all climate change impacts, including (but not limited to) changes in net agricultural productivity, human health effects, property damage from increased flood risk and natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services. The SC–GHGs, therefore, reflects the societal value of reducing emissions of the gas in question by 1 metric ton. The SC–GHGs is the theoretically appropriate value to use in conducting benefit-cost analyses of policies that affect CO_2, N_2O, and CH_4 emissions. As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agrees that the interim SC–GHG estimates represent the most appropriate estimate of the SC–GHGs until revised estimates have been developed reflecting the latest, peer-reviewed science.

The SC–GHG estimates presented here were developed over many years, using a transparent process, peer-reviewed methodologies, the best science available at the time of that process, and input from the public. Specifically, in 2009, the IWG, which included DOE and other executive branch agencies and offices, was established to ensure that agencies were using the best available science and to promote consistency in the social cost of carbon (SC–CO_2) values used across agencies. The IWG published SC–CO_2 estimates in 2010 that were developed from an ensemble of three widely cited integrated assessment models (IAMs) that estimate global climate damages using highly aggregated representations of climate processes and the global economy combined into a single modeling framework. The three IAMs were run using a common set of input assumptions in each model for future population, economic, and CO_2 emissions growth, as well as equilibrium climate sensitivity—a measure of the globally averaged temperature response to increased atmospheric CO_2 concentrations. These estimates were updated in 2013 based on new versions of each IAM. In August 2016, the IWG published estimates of the social cost of methane (SC–CH_4) and nitrous oxide (SC–N_2O) using methodologies that are consistent with the methodology underlying the SC–CO_2 estimates. The modeling approach that extends the IWG SC–CO_2 methodology to non-CO_2 GHGs has undergone multiple stages of peer review. The SC–CH_4 and SC–N_2O estimates were developed by Marten *et al.*[55] and underwent a standard double-blind peer review process prior to journal publication. In 2015, as part of the response to public comments received for a 2013 solicitation for comments on the SC–CO_2 estimates, the IWG announced a National Academies of Sciences, Engineering, and Medicine review of the SC–CO_2 estimates to offer advice on how to approach future updates to ensure that the estimates continue to reflect the best available science and methodologies. In January 2017, the National Academies released

[55] Marten, A.L., E.A. Kopits, C.W. Griffiths, S.C. Newbold, and A. Wolverton. Incremental CH_4 and N_2O mitigation benefits consistent with the US Government's SC–CO_2 estimates. *Climate Policy.* 2015. 15(2): pp. 272–298.

their final report, ''Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide,'' and recommended specific criteria for future updates to the SC–CO_2 estimates, a modeling framework to satisfy the specified criteria, and both near-term updates and longer-term research needs pertaining to various components of the estimation process.[56] Shortly thereafter, in March 2017, President Trump issued E.O. 13783, which disbanded the IWG, withdrew the previous TSDs, and directed agencies to ensure SC–CO_2 estimates used in regulatory analyses are consistent with the guidance contained in OMB's Circular A–4, ''including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates.'' (E.O. 13783, section 5(c)). Benefit-cost analyses following E.O. 13783 used SC–GHG estimates that attempted to focus on the U.S.-specific share of climate change damages as estimated by the models and were calculated using two discount rates recommended by Circular A–4, 3 percent and 7 percent. All other methodological decisions and model versions used in SC–GHG calculations remained the same as those used by the IWG in 2010 and 2013.

On January 20, 2021, President Biden issued E.O. 13990, which re-established the IWG and directed it to ensure that the U.S. government's estimates of the social cost of carbon and other GHGs reflect the best available science and the recommendations of the National Academies (2017). The IWG was tasked with first reviewing the SC–GHG estimates currently used in Federal analyses and publishing interim estimates within 30 days of the Executive order that reflect the full impact of GHG emissions, including by taking global damages into account. The interim SC–GHG estimates published in February 2021 are used here to estimate the climate benefits for this proposed rulemaking. The Executive order instructs the IWG to undertake a fuller update of the SC–GHG estimates by January 2022 that takes into consideration the advice of the National Academies (2017) and other recent scientific literature. The February 2021 SC–GHG TSD provides a complete discussion of the IWG's initial review conducted under E.O.13990. In particular, the IWG found that the SC–GHG estimates used under E.O. 13783 fail to reflect the full impact of GHG emissions in multiple ways.

First, the IWG found that the SC–GHG estimates used under E.O. 13783 fail to fully capture many climate impacts that affect the welfare of U.S. citizens and residents, and those impacts are better reflected by global measures of the SC–GHG. Examples of omitted effects from the E.O. 13783 estimates include direct effects on U.S. citizens, assets, and investments located abroad, supply chains, U.S. military assets and interests abroad, and tourism, and spillover pathways such as economic and political destabilization and global migration that can lead to adverse impacts on U.S. national security, public health, and humanitarian concerns. In addition, assessing the benefits of U.S. GHG mitigation activities requires consideration of how those actions may affect mitigation activities by other countries, as those international mitigation actions will provide a benefit to U.S. citizens and residents by mitigating climate impacts that affect U.S. citizens and residents. A wide range of scientific and economic experts have emphasized the issue of reciprocity as support for considering global damages of GHG emissions. If the United States does not consider impacts on other countries, it is difficult to convince other countries to consider the impacts of their emissions on the United States. The only way to achieve an efficient allocation of resources for emissions reduction on a global basis—and so benefit the United States and its citizens—is for all countries to base their policies on global estimates of damages. As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agrees with this assessment; therefore, in this proposed rule, DOE centers attention on a global measure of SC–GHG. This approach is the same as that taken in DOE regulatory analyses from 2012 through 2016. A robust estimate of climate damages that accrue only to U.S. citizens and residents does not currently exist in the literature. As explained in the February 2021 TSD, existing estimates are both incomplete and an underestimate of total damages that accrue to the citizens and residents of the United States because they do not fully capture the regional interactions and spillovers discussed above, nor do they include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature. As noted in the February 2021 SC–GHG TSD, the IWG will continue to review developments in the literature, including more robust methodologies for estimating a U.S.-specific SC–GHG value, and explore ways to better inform the public of the full range of carbon impacts. As a member of the IWG, DOE will continue to follow developments in the literature pertaining to this issue.

Second, the IWG found that the use of the social rate of return on capital (7 percent under current OMB Circular A–4 guidance) to discount the future benefits of reducing GHG emissions inappropriately underestimates the impacts of climate change for the purposes of estimating the SC–GHG. Consistent with the findings of the National Academies (2017) and the economic literature, the IWG continued to conclude that the consumption rate of interest is the theoretically appropriate discount rate in an intergenerational context,[57] and recommended that discount rate uncertainty and relevant aspects of intergenerational ethical considerations be accounted for in selecting future discount rates.

Furthermore, the damage estimates developed for use in the SC–GHG are estimated in consumption-equivalent terms, and so an application of OMB Circular A–4's guidance for regulatory analysis would then use the consumption discount rate to calculate the SC–GHG. DOE agrees with this assessment and will continue to follow developments in the literature pertaining to this issue. DOE also notes that while OMB Circular A–4, as published in 2003, recommends using 3-percent and 7-percent discount rates as ''default'' values, Circular A–4 also reminds agencies that ''different

[56] National Academies of Sciences, Engineering, and Medicine. *Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide.* 2017. The National Academies Press: Washington, DC.

[57] Interagency Working Group on Social Cost of Carbon. *Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866.* 2010. United States Government. (Last accessed April 15, 2022.) *www.epa.gov/sites/default/files/2016-12/documents/scc_tsd_2010.pdf;* Interagency Working Group on Social Cost of Carbon. *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.* 2013. Last accessed April 15, 2022. *www.federalregister.gov/documents/2013/11/26/2013-28242/technical-support-document-technical-update-of-the-social-cost-of-carbon-for-regulatory-impact;* Interagency Working Group on Social Cost of Greenhouse Gases, United States Government. Technical Support Document: Technical Update on the Social Cost of Carbon for Regulatory Impact Analysis-Under Executive Order 12866. August 2016. (Last accessed January 18, 2022.) *www.epa.gov/sites/default/files/2016-12/documents/sc_co2_tsd_august_2016.pdf;* Interagency Working Group on Social Cost of Greenhouse Gases, United States Government. Addendum to Technical Support Document on Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide. August 2016. (Last accessed January 18, 2022.) *www.epa.gov/sites/default/files/2016-12/documents/addendum_to_sc-ghg_tsd_august_2016.pdf.*

regulations may call for different emphases in the analysis, depending on the nature and complexity of the regulatory issues and the sensitivity of the benefit and cost estimates to the key assumptions.'' On discounting, Circular A–4 recognizes that ''special ethical considerations arise when comparing benefits and costs across generations,'' and Circular A–4 acknowledges that analyses may appropriately ''discount future costs and consumption benefits. . .at a lower rate than for intragenerational analysis.'' In the 2015 Response to Comments on the Social Cost of Carbon for Regulatory Impact Analysis, OMB, DOE, and the other IWG members recognized that ''Circular A–4 is a living document'' and ''the use of 7 percent is not considered appropriate for intergenerational discounting. There is wide support for this view in the academic literature, and it is recognized in Circular A–4 itself.'' Thus, DOE concludes that a 7-percent discount rate is not appropriate to apply to value the SC–GHGs in the analysis presented in this analysis.

To calculate the present and annualized values of climate benefits, DOE uses the same discount rate as the rate used to discount the value of damages from future GHG emissions, for internal consistency. That approach to discounting follows the same approach that the February 2021 TSD recommends ''to ensure internal consistency—*i.e.,* future damages from climate change using the SC–GHG at 2.5 percent should be discounted to the base year of the analysis using the same 2.5-percent rate.'' DOE has also consulted the National Academies' 2017 recommendations on how SC–GHG estimates can ''be combined in RIAs with other cost and benefits estimates that may use different discount rates.'' The National Academies reviewed several options, including ''presenting all discount rate combinations of other costs and benefits with SC–GHG estimates.''

As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agrees with the above assessment and will continue to follow developments in the literature pertaining to this issue. While the IWG works to assess how best to incorporate the latest, peer-reviewed science to develop an updated set of SC–GHG estimates, it set the interim estimates to be the most recent estimates developed by the IWG prior to the group being disbanded in 2017. The estimates rely on the same models and harmonized inputs and are calculated using a range of discount rates. As explained in the February 2021 SC–GHG TSD, the IWG has recommended that agencies revert to the same set of four values drawn from the SC–GHG distributions based on three discount rates as were used in regulatory analyses between 2010 and 2016 and were subject to public comment. For each discount rate, the IWG combined the distributions across models and socioeconomic emissions scenarios (applying equal weight to each) and then selected a set of four values recommended for use in benefit-cost analyses—an average value resulting from the model runs for each of three discount rates (2.5 percent, 3 percent, and 5 percent), plus a fourth value, selected as the 95th percentile of estimates based on a 3-percent discount rate. The fourth value was included to provide information on potentially higher-than-expected economic impacts from climate change. As explained in the February 2021 SC–GHG TSD, and DOE agrees, this update reflects the immediate need to have an operational SC–GHG for use in regulatory benefit-cost analyses and other applications that was developed using a transparent process, peer-reviewed methodologies, and the science available at the time of that process. Those estimates were subject to public comment in the context of dozens of proposed rulemakings as well as in a dedicated public comment period in 2013.

There are a number of limitations and uncertainties associated with the SC–GHG estimates. First, the current scientific and economic understanding of discounting approaches suggests discount rates appropriate for intergenerational analysis in the context of climate change are likely to be less than 3 percent, near 2 percent or lower.[58] Second, the IAMs used to produce these interim estimates do not include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature and the science underlying their ''damage functions'' (*i.e.,* the core parts of the IAMs that map global mean temperature changes and other physical impacts of climate change into economic (both market and nonmarket) damages) lags behind the most recent research. For example, limitations include the incomplete treatment of catastrophic and non-catastrophic impacts in the integrated assessment models, their incomplete treatment of adaptation and technological change, the incomplete way in which inter-regional and intersectoral linkages are modeled, uncertainty in the extrapolation of damages to high temperatures, and inadequate representation of the relationship between the discount rate and uncertainty in economic growth over long time horizons. Likewise, the socioeconomic and emissions scenarios used as inputs to the models do not reflect new information from the last decade of scenario generation or the full range of projections. The modeling limitations do not all work in the same direction in terms of their influence on the SC–CO_2 estimates. However, as discussed in the February 2021 TSD, the IWG has recommended that, taken together, the limitations suggest that the interim SC–GHG estimates used in this proposed rule likely underestimate the damages from GHG emissions. DOE concurs with this assessment.

DOE's derivations of the SC–CO_2, SC–N_2O, and SC–CH_4 values used for this NOPR are discussed in the following sections, and the results of DOE's analyses estimating the benefits of the reductions in emissions of these GHGs are presented in section V.B.6 of this document.

a. Social Cost of Carbon

The SC–CO_2 values used for this NOPR were based on the values presented for the IWG's February 2021 TSD. Table IV.7 shows the updated sets of SC–CO_2 estimates from the IWG's TSD in 5-year increments from 2020 to 2050. The full set of annual values that DOE used is presented in appendix 14A of the NOPR TSD. For purposes of capturing the uncertainties involved in the regulatory impact analysis, DOE has determined it is appropriate to include all four sets of SC–CO_2 values, as recommended by the IWG.[59]

[58] Interagency Working Group on Social Cost of Greenhouse Gases (IWG). 2021. Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990. February. United States Government. Available at *www.whitehouse.gov/briefing-room/blog/2021/02/26/a-return-to-science-evidence-based-estimates-of-the-benefits-of-reducing-climate-pollution/.*

[59] For example, the February 2021 TSD discusses how the understanding of discounting approaches suggests that discount rates appropriate for intergenerational analysis in the context of climate change may be lower than 3 percent.

TABLE IV.8—ANNUAL SC–CO_2 VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050

[2021$ per metric ton CO_2]

Year	Discount rate and statistic			
	5% Average	3% Average	2.5% Average	3% 95th percentile
2020	14	51	76	152
2025	17	56	83	169
2030	19	62	89	187
2035	22	67	96	206
2040	25	73	103	225
2045	28	79	110	242
2050	32	85	116	260

For 2051 to 2070, DOE used SC–CO_2 estimates published by EPA, adjusted to 2021$.[60] These estimates are based on methods, assumptions, and parameters identical to the 2020–2050 estimates published by the IWG (which were based on EPA modeling).

DOE multiplied the CO_2 emissions reduction estimated for each year by the SC–CO_2 value for that year in each of the four cases. DOE adjusted the values to 2021$ using the implicit price deflator for GDP from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SC–CO_2 values in each case.

b. Social Cost of Methane and Nitrous Oxide

The SC–CH_4 and SC–N_2O values used for this NOPR were based on the values developed for the February 2021 TSD. Table IV.8 shows the updated sets of SC–CH_4 and SC–N_2O estimates from the latest interagency update in 5-year increments from 2020 to 2050. The full set of annual values used is presented in appendix 14A of the NOPR TSD. To capture the uncertainties involved in the regulatory impact analysis, DOE has determined it is appropriate to include all four sets of SC–CH_4 and SC–N_2O values, as recommended by the IWG. DOE derived values after 2050 using the approach described above for the SC–CO_2.

TABLE IV.9—ANNUAL SC–CH_4 AND SC–N_2O VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050

[2021$ per metric ton]

Year	SC–CH_4				SC–N_2O			
	Discount rate and statistic				Discount rate and statistic			
	5% Average	3% Average	2.5% Average	3% 95th Percentile	5% Average	3% Average	2.5% Average	3% 95th Percentile
2020	670	1,500	2,000	3,900	5,800	18,000	27,000	48,000
2025	800	1,700	2,200	4,500	6,800	21,000	30,000	54,000
2030	940	2,000	2,500	5,200	7,800	23,000	33,000	60,000
2035	1,100	2,200	2,800	6,000	9,000	25,000	36,000	67,000
2040	1,300	2,500	3,100	6,700	10,000	28,000	39,000	74,000
2045	1,500	2,800	3,500	7,500	12,000	30,000	42,000	81,000
2050	1,700	3,100	3,800	8,200	13,000	33,000	45,000	88,000

DOE multiplied the CH_4 and N_2O emissions reduction estimated for each year by the SC–CH_4 and SC–N_2O estimates for that year in each of the cases. DOE adjusted the values to 2021$ using the implicit price deflator for GDP from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the cases using the specific discount rate that had been used to obtain the SC–CH_4 and SC–N_2O estimates in each case.

2. Monetization of Other Emissions Impacts

For the NOPR, DOE estimated the monetized value of NO_X and SO_2 emissions reductions from electricity generation using the latest benefit per ton estimates for that sector from the EPA's Benefits Mapping and Analysis Program.[61] DOE used EPA's values for $PM_{2.5}$-related benefits associated with NO_X and SO_2 and for ozone-related benefits associated with NO_X for 2025, 2030, and 2040, calculated with discount rates of 3 percent and 7 percent. DOE used linear interpolation to define values for the years not given in the 2025 to 2040 period; for years beyond 2040, the values are held constant. DOE combined the EPA benefit per ton estimates with regional information on electricity consumption and emissions to define weighted-average national values for NO_X and SO_2 as a function of sector (see appendix 14B of the NOPR TSD).

DOE multiplied the site emissions reduction (in tons) in each year by the associated $/ton values, and then discounted each series using discount rates of 3 percent and 7 percent, as appropriate.

M. Utility Impact Analysis

The utility impact analysis estimates the changes in installed electrical capacity and generation projected to result for each considered TSL. The analysis is based on published output from the NEMS associated with *AEO2022*. NEMS produces the *AEO*

[60] See EPA, *Revised 2023 and Later Model Year Light-Duty Vehicle GHG Emissions Standards: Regulatory Impact Analysis,* Washington, DC, December 2021. Available at: *nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1013ORN.pdf* (last accessed January 13, 2023).

[61] *Estimating the Benefit per Ton of Reducing $PM_{2.5}$ Precursors from 21 Sectors. www.epa.gov/benmap/estimating-benefit-ton-reducing-pm25-precursors-21-sectors.*

Reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. For the current analysis, impacts are quantified by comparing the levels of electricity sector generation, installed capacity, fuel consumption, and emissions in the *AEO2022* Reference case and various side cases. Details of the methodology are provided in the appendices to chapters 13 and 15 of the NOPR TSD.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity, and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of potential new or amended energy conservation standards.

N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a proposed standard. Employment impacts from new or amended energy conservation standards include both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the equipment subject to standards, their suppliers, and related service firms. The MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more efficient appliances. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, caused by (1) reduced spending by consumers on energy, (2) reduced spending on new energy supply by the utility industry, (3) increased consumer spending on the products to which the new standards apply and other goods and services, and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS). BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[62] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, the BLS data suggest that net national employment may increase due to shifts in economic activity resulting from energy conservation standards.

DOE estimated indirect national employment impacts for the standard levels considered in this NOPR using an input/output model of the U.S. economy called Impact of Sector Energy Technologies (ImSET).[63] ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (I–O) model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model that has structural coefficients that characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use.

DOE notes that ImSET is not a general equilibrium forecasting model, and that there are uncertainties involved in projecting long-term employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may overestimate actual job impacts over the long run for this rule. Therefore, DOE used ImSET only to generate results for near-term timeframes, where these uncertainties are reduced. For more details on the employment impact analysis, see chapter 16 of the NOPR TSD.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for BVMs. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for BVMs, and the standards levels that DOE is proposing to adopt in this NOPR. Additional details regarding DOE's analyses are contained in the NOPR TSD supporting this document.

A. Trial Standard Levels

In general, DOE typically evaluates potential amended standards for products and equipment by grouping individual efficiency levels for each class into TSLs. Use of TSLs allows DOE to identify and consider manufacturer cost interactions between the equipment classes, to the extent that there are such interactions, and market cross elasticity from consumer purchasing decisions that may change when different standard levels are set.

In the analysis conducted for this NOPR, DOE analyzed the benefits and burdens of five TSLs for BVMs. DOE developed TSLs that combine efficiency levels for each analyzed equipment class. Table V.1 presents the TSLs and the corresponding efficiency levels that DOE has identified for potential amended energy conservation standards for BVMs. TSL 5 represents the max-tech energy efficiency for all equipment classes. TSL 4 represents the efficiency levels with the maximum NPV at 3 percent. TSL 3 represents the maximum efficiency level with positive NPV at 7 percent and positive average LCC savings for each equipment class. As shown in Table V.1, TSL 3 includes higher efficiency products for Class B, Combo A, and Combo B than TSL 4. The TSL ordering is based on total NES, which is greater in TSL 4 due to Class A representing over half of BVM shipments. TSL 2 represents efficiency levels with maximum LCC savings. TSL 1 represents EL2 for all equipment classes. DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in the NOPR TSD.

[62] *See* U.S. Department of Commerce—Bureau of Economic Analysis. *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II).* 1997. U.S. Government Printing Office: Washington, DC. Available at *https://www.bea.gov/sites/default/files/methodologies/RIMSII_User_Guide.pdf* (last accessed February 2023).

[63] Livingston, O.V., S.R. Bender, M.J. Scott, and R.W. Schultz. *ImSET 4.0: Impact of Sector Energy Technologies Model Description and User Guide.* 2015. Pacific Northwest National Laboratory: Richland, WA. PNNL–24563.

TABLE V.1—TRIAL STANDARD LEVELS FOR BEVERAGE VENDING MACHINES

Equipment class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Class A	EL2	EL3	EL5	EL6	EL 7
Class B	EL2	EL3	EL5	EL4	EL 7
Combo A	EL2	EL3	EL5	EL4	EL 7
Combo B	EL2	EL4	EL6	EL5	EL 7

Table V.2 presents the TSLs and the corresponding percent reduction below the baseline daily energy consumption for each equipment class.

TABLE V.2—TRIAL STANDARD LEVELS FOR BEVERAGE VENDING MACHINES

Equipment class	TSL 1 (%)	TSL 2 (%)	TSL 3 (%)	TSL 4 (%)	TSL 5 (%)
Class A	15	20	30	37	47.6
Class B	25	30	40	35	59.6
Combo A	20	25	35	30	48.9
Combo B	25	40	50	45	62.9

DOE constructed the TSLs for this NOPR to include efficiency levels representative of efficiency levels with similar characteristics (*i.e.,* using similar technologies and/or efficiencies, and having roughly comparable equipment availability). The use of representative efficiency levels provided for greater distinction between the TSLs. While representative efficiency levels were included in the TSLs, DOE considered all efficiency levels as part of its analysis.[64]

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on BVM consumers by looking at the effects that potential amended standards at each TSL would have on the LCC and PBP analyses. DOE also examined the impacts of potential standards on selected consumer subgroups. These analyses are discussed in the following sections.

a. Life-Cycle Cost and Payback Period

In general, higher-efficiency equipment affects consumers in two ways: (1) purchase price increases and (2) annual operating costs decrease. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* product price plus installation costs) and operating costs (*i.e.,* annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the NOPR TSD provides detailed information on the LCC and PBP analyses.

Table V.3 shows LCC and PBP results by TSL including the shipment weighted average results for each TSL. Table V.4 through Table V.11 show the LCC and PBP results for the TSLs considered for each equipment class. In the first of each pair of tables, the simple payback is measured relative to the baseline equipment. In the second table, impacts are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (see section IV.F.8 of this document). Because some consumers purchase equipment with higher efficiency in the no-new-standards case, the average savings are less than the difference between the average LCC of the baseline product and the average LCC at each TSL. The savings refer only to consumers who are affected by a standard at a given TSL. Those who already purchase a product with efficiency at or above a given TSL are not affected. Consumers for whom the LCC increases at a given TSL experience a net cost.

The analysis results indicate that consumers either benefit or are unaffected by setting standards at TSLs 1 or 2. At TSL 3, 28 percent of the market would experience net costs and at TSL 4, 34 percent of the market for BVMs would experience a net cost.

TABLE V.3—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR BEVERAGE VENDING MACHINES

Equipment class	Average LCC savings * (2021$)	Consumers that experience net cost (%)	Average LCC savings * (2021$)	Consumers that experience net cost (%)	Average LCC savings * (2021$)	Consumers that experience net cost (%)
	TSL 1		TSL 2		TSL 3	
Class A	$150	0	$203	0	$99	28
Class B	167	0	212	0	146	17
Combo A	212	0	263	0	43	49
Combo B	214	0	326	0	94	37
Weighted Average **	166	0	222	0	107	28
	TSL 4		TSL 5			
Class A	(6)	59	(695)	93		
Class B	206	2	(199)	84		

[64] Efficiency levels that were analyzed for this NOPR are discussed in section IV.E of this document. Results by efficiency level are presented in TSD chapters 8, 10, and 12.

TABLE V.3—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR BEVERAGE VENDING MACHINES—Continued

Equipment class	Average LCC savings * (2021$)	Consumers that experience net cost (%)	Average LCC savings * (2021$)	Consumers that experience net cost (%)	Average LCC savings * (2021$)	Consumers that experience net cost (%)
Combo A	190	12	(851)	99		
Combo B	287	0	(239)	85		
Weighted Average **	97	34	(532)	90		

* LCC savings reflect affected consumers only.
** Weighted by shares of each equipment class in total projected shipments in 2028.

TABLE V.4—AVERAGE LCC AND PBP RESULTS FOR BEVERAGE VENDING MACHINES CLASS A

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	$3,970	$495	$5,621	$9,591		13.4
1	2	3,979	477	5,440	9,418	0.5	13.4
2	3	3,987	471	5,379	9,366	0.7	13.4
3	5	4,118	458	5,328	9,446	4.0	13.4
4	6	4,228	450	5,322	9,551	5.7	13.4
5	7	5,034	437	5,206	10,240	18.3	13.4

TABLE V.5—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR CLASS A

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * (2021$)	Percent of consumers that experience net cost (%)
1	2	$150	0
2	3	203	0
3	5	99	28
4	6	(6)	59
5	7	(695)	93

* LCC savings reflect affected consumers only.

TABLE V.6—AVERAGE LCC AND PBP RESULTS FOR BEVERAGE VENDING MACHINES CLASS B

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	$3,178	$474	$5,412	$8,590		13.4
1	2	3,193	449	5,160	8,353	0.6	13.4
2	3	3,199	444	5,109	8,308	0.7	13.4
3	5	3,294	434	5,058	8,351	2.8	13.4
4	4	3,220	439	5,071	8,292	1.2	13.4
5	7	3,736	414	4,960	8,696	9.2	13.4

TABLE V.7—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR BEVERAGE VENDING MACHINES CLASS B

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * (2021$)	Percent of consumers that experience net cost (%)
1	2	$167	0
2	3	212	0
3	5	146	17
4	4	206	2
5	7	(199)	84

* LCC savings reflect affected consumers only.

TABLE V.8—AVERAGE LCC AND PBP RESULTS FOR BEVERAGE VENDING MACHINES COMBO A

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	$3,990	$489	$5,551	$9,541	....	13.4
1	2	3,998	466	5,321	9,319	0.4	13.4
2	3	4,005	460	5,264	9,268	0.5	13.4
3	5	4,145	448	5,224	9,369	3.8	13.4
4	4	4,037	454	5,223	9,260	1.4	13.4
5	7	5,097	432	5,175	10,272	19.5	13.4

TABLE V.9—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR BEVERAGE VENDING MACHINES COMBO A

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * (2021$)	Percent of consumers that experience net cost (%)
1	2	212	0
2	3	263	0
3	5	43	49
4	4	190	12
5	7	(851)	99

* LCC savings reflect affected consumers only.

TABLE V.10—AVERAGE LCC AND PBP RESULTS FOR BEVERAGE VENDING MACHINES COMBO B

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	$3,725	$463	$5,297	$9,023	....	13.4
1	2	3,735	441	5,073	8,809	0.4	13.4
2	4	3,758	427	4,939	8,697	0.9	13.4
3	6	3,956	418	4,972	8,928	5.1	13.4
4	5	3,814	423	4,921	8,736	2.2	13.4
5	7	4,347	406	4,914	9,261	10.9	13.4

TABLE V.11—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR BEVERAGE VENDING MACHINES COMBO B

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * (2021$)	Percent of consumers that experience net cost (%)
1	2	$214	0
2	4	326	0
3	6	94	37
4	5	287	0
5	7	(239)	85

* LCC savings reflect affected consumers only.

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impact of the considered TSLs on manufacturing facilities that purchase their own BVMs due to the lower electricity prices and higher discount rates compared to other BVM consumer building types. DOE identified manufacturing facilities that purchase their own BVMs as a relevant subgroup because these facilities typically have higher discount rates and lower electricity prices than the general population of BVM consumers. These two conditions make it likely that this subgroup will have the lowest LCC savings of any major consumer subgroup. Table V.12 through Table V.15 compare the average LCC savings and PBP at each efficiency level for the consumer subgroup with similar metrics for the entire consumer sample for BVMs. Chapter 11 of the NOPR TSD presents the complete LCC and PBP results for the subgroup analysis.

TABLE V.12—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL BUILDINGS; CLASS A

	Manufacturing	Full building sample
Average LCC Savings* (2021$)		
TSL 1	$105	$150
TSL 2	141	203
TSL 3	15	99
TSL 4	(109)	(6)
TSL 5	(834)	(695)
Payback Period (years)		
TSL 1	0.6	0.5
TSL 2	0.9	0.7
TSL 3	5.2	4.0
TSL 4	7.4	5.7
TSL 5	23.7	18.3
Consumers With Net Benefit (%)		
TSL 1	84	84
TSL 2	84	84
TSL 3	41	67
TSL 4	14	36
TSL 5	0	2
Consumers With Net Cost (%)		
TSL 1	0	0
TSL 2	0	0
TSL 3	53	28
TSL 4	81	59
TSL 5	94	93

* The savings represent the average LCC for affected consumers.

TABLE V.13—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL BUILDINGS; CLASS B

	Manufacturing	Full building sample
Average LCC Savings* (2021$)		
TSL 1	$117	$167
TSL 2	147	212
TSL 3	63	146
TSL 4	135	206
TSL 5	(332)	(199)
Payback Period (years)		
TSL 1	0.8	0.6
TSL 2	0.9	0.7
TSL 3	3.7	2.8
TSL 4	1.5	1.2
TSL 5	11.9	9.2
Consumers With Net Benefit (%)		
TSL 1	89	89
TSL 2	89	89
TSL 3	69	83
TSL 4	93	98
TSL 5	6	16
Consumers With Net Cost (%)		
TSL 1	0	0
TSL 2	0	0
TSL 3	31	17
TSL 4	7	2
TSL 5	94	84

* The savings represent the average LCC for affected consumers.

TABLE V.14—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL BUILDINGS; COMBO A

	Manufacturing	Full building sample
Average LCC Savings* (2021$)		
TSL 1	$149	$212
TSL 2	184	263
TSL 3	(25)	43
TSL 4	120	190
TSL 5	(953)	(851)
Payback Period (years)		
TSL 1	0.5	0.4
TSL 2	0.7	0.5
TSL 3	4.9	3.8
TSL 4	1.8	1.4
TSL 5	25.3	19.5
Consumers With Net Benefit (%)		
TSL 1	52	52
TSL 2	52	52
TSL 3	31	45
TSL 4	57	64
TSL 5	0	1
Consumers With Net Cost (%)		
TSL 1	0	0
TSL 2	0	0
TSL 3	63	49
TSL 4	19	12
TSL 5	100	99

* The savings represent the average LCC for affected consumers.

TABLE V.15—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL BUILDINGS; COMBO B

	Manufacturing	Full building sample
Average LCC Savings* (2021$)		
TSL 1	$150	$214
TSL 2	224	326
TSL 3	(25)	94
TSL 4	174	287
TSL 5	(387)	(239)
Payback Period (years)		
TSL 1	0.6	0.4
TSL 2	1.2	0.9
TSL 3	6.6	5.1
TSL 4	2.8	2.2
TSL 5	14.2	10.9
Consumers With Net Benefit (%)		
TSL 1	100	100
TSL 2	100	100
TSL 3	22	63
TSL 4	100	100
TSL 5	3	15
Consumers With Net Cost (%)		
TSL 1	0	0
TSL 2	0	0
TSL 3	78	37
TSL 4	0	0
TSL 5	97	85

* The savings represent the average LCC for affected consumers.

c. Rebuttable Presumption Payback

As discussed in section II.A of this document, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for equipment that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. In calculating a rebuttable presumption PBP for each of the considered TSLs, DOE used discrete values, and, as required by EPCA, based the energy use calculation on the DOE test procedure for BVMs. In contrast, the PBPs presented in section V.B.1.a of this document were calculated using distributions that reflect the range of energy use in the field.

Table V.16 presents the rebuttable presumption PBPs for the considered TSLs for BVMs. While DOE examined the rebuttable presumption criterion, it considered whether the standard levels considered for the NOPR are economically justified through a more detailed analysis of the economic impacts of those levels, pursuant to 42 U.S.C. 6295(o)(2)(B)(i), that considers the full range of impacts to the consumer, manufacturer, Nation, and environment. The results of that analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification.

TABLE V.16 REBUTTABLE PRESUMPTION PAYBACK PERIODS

Equipment class	Median payback period (years)				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Class A	0.4	0.5	2.3	4.0	5.7
Class B	0.6	0.6	1.2	0.7	4.4
Combo A	0.4	0.4	1.4	0.5	6.5
Combo B	0.4	0.5	2.2	0.9	5.1

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of BVMs. The following section describes the expected impacts on manufacturers at each considered TSL. Chapter 12 of the NOPR TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

In this section, DOE provides GRIM results from the analysis, which examines changes in the industry that would result from a standard. Table V.17 and Table V.18 summarize the estimated financial impacts (represented by changes in INPV) of potential amended energy conservation standards on manufacturers of BVMs, as well as the conversion costs that DOE estimates manufacturers of BVMs would incur at each TSL.

As discussed in section IV.J.2.d of this document, DOE modeled two scenarios to evaluate a range of cash flow impacts on the BVM industry: (1) the preservation of gross margin percentage scenario and (2) the preservation of operating profit. Under the preservation of gross margin percentage scenario, DOE applied a single uniform ‘‘gross margin percentage’’ across all efficiency levels. As MPCs increase with efficiency, this scenario implies that the absolute dollar markup will increase. DOE estimated gross margin percentages of 18 percent for Class A, 15 percent for Class B, 26 percent for Combo A, and 26 percent for Combo B.[65]

This manufacturer markup is the same as the one DOE assumed in the engineering analysis and the no-new-standards case of the GRIM. Because this scenario assumes that a manufacturer's absolute dollar markup would increase as MPCs increase in the standards cases, it represents the upper-bound to industry profitability under potential new energy conservation standards.

The preservation of operating profit scenario reflects manufacturers' concerns about their inability to maintain margins as MPCs increase to reach more stringent efficiency levels. In this scenario, while manufacturers make the necessary investments required to convert their facilities to produce compliant equipment, operating profit does not change in absolute dollars and decreases as a percentage of revenue.

Each of the modeled manufacturer markup scenarios results in a unique set of cash flows and corresponding industry values at each TSL. In the following discussion, the INPV results refer to the difference in industry value between the no-new-standards case and each standards case resulting from the sum of discounted cash flows from 2023 through 2057. To provide perspective on the short-run cash flow impact, DOE includes in the discussion of results a comparison of free cash flow between the no-new-standards case and the standards case at each TSL in the year before new standards are required.

TABLE V.17—MANUFACTURER IMPACT ANALYSIS FOR BVMS UNDER THE PRESERVATION OF GROSS MARGIN SCENARIO

	Units	No-new-standards case	Trial standard level*				
			1	2	3	4	5
INPV	*2021$ millions*	85.5	85.4	85.5	86.1	85.9	68.0
Change in INPV	*2021$ millions*		0.0	0.0	0.7	0.5	(17.5)
	%		0.0	0.0	0.8	0.6	(20.4)
Product Conversion Costs	*2021$ millions*		0.2	0.3	2.3	1.5	9.6
Capital Conversion Costs	*2021$ millions*		0.0	0.0	0.0	0.0	26.9
Total Investment Required**	*2021$ millions*		0.2	0.3	2.5	1.5	36.5

* Numbers in parentheses indicate a negative number.
** Numbers may not sum exactly due to rounding.

[65] This corresponds to manufacturer markups of 1.22 for Class A, 1.17 for Class B, and 1.36 for Combo A and B.

TABLE V.18—MANUFACTURER IMPACT ANALYSIS FOR BVMS UNDER THE PRESERVATION OF OPERATING PROFIT SCENARIO

	Units	No-new-standards case	Trial standard level*				
			1	2	3	4	5
INPV	*2021$ millions*	85.5	85.3	85.3	82.9	83.6	56.3
Change in INPV	*2021$ millions*		(0.2)	(0.2)	(2.5)	(1.9)	(29.2)
	%		(0.2)	(0.2)	(3.0)	(2.2)	(34.1)
Product Conversion Costs	*2021$ millions*		0.2	0.3	2.3	1.5	9.6
Capital Conversion Costs	*2021$ millions*		0.0	0.0	0.0	0.0	26.9
Total Investment Required**	*2021$ millions*		0.2	0.3	2.5	1.5	36.5

* Numbers in parentheses indicate a negative number.
** Numbers may not sum exactly due to rounding.

At TSL 5, DOE estimates that impacts on INPV would range from −$29.2 million to $17.5 million, or a change in INPV of −34.1 to −20.4 percent. At TSL 5, industry free cash flow is negative $8.6 million, which is a decrease of $15.4 million compared to the no-new-standards case value of $6.8 million in 2027, the year leading up to the proposed standards. Industry conversion costs total $36.5 million.

At TSL 5, the shipment-weighted-average MPC for BVMs increases by 21.4 percent relative to the no-new-standards case shipment-weighted-average MPC for all BVMs in 2030. Under both manufacurer markup scenarios, industry faces a drop in INPV. The reduction in INPV is driven by the high conversion costs. Product conversion costs could reach $9.6 million and capital conversion costs could reach $26.9 million. At this level, DOE expects that all equipment classes would require the use of VIPs for roughly half the cabinet surface area, the best available-efficiency variable-speed compressor, permanent magnet synchronous evaporator and condenser fan motors, microchannel condenser, refrigeration low power mode (per the DOE test procedure), and evaporator fan controls. The adoption of VIPs is the largest driver of conversion costs. Higher product conversion costs after typically needed to implement VIP designs, which are not found in BVMs today, for prototyping and testing for VIP placement, design, and sizing. Additionally, extensive incorporation of VIPs can require significant capital expenditures due to the need for more careful product handling and conveyor and investments in hard tooling for the VIP installation process. In the preservation of gross margin markup scenario, the increase in average MPC and corresponding increase in revenue is outweighed by the $36.5 million in conversion costs, resulting in a negative change in INPV at TSL 5.

Under the preservation of operating profit markup scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the 21.4 percent shipment-weighted-average MPC increase results in a reduction in the manufacturer markup. This reduction in the manufacturer markup and the $36.5 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 5 under the preservation of operating profit markup scenario.

At TSL 4, DOE estimates that impacts on INPV would range from −$1.9 million to $0.5 million, or a change in INPV of −2.2 to 0.6 percent. At TSL 4, industry free cash flow is $6.3 million, which is a decrease of $0.5 million compared to the no-new-standards case value of $6.8 million in 2027, the year leading up to the proposed standards. Industry conversion costs total $1.5 million.

At TSL 4, the shipment-weighted-average MPC for BVMs increases by 5.0 percent relative to the no-new-standards case shipment-weighted-average MPC for all BVMs in 2028. In the preservation of gross margin markup scenario, the increase in cash-flows from increased MSPs outweigh the upfront conversion investments manufacturers make and result in a slightly positive change in INPV at TSL 4.

Under the preservation of operating profit markup scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the 5.0 percent shipment-weighted-average MPC increase results in a reduction in the manufacturer markup. This reduction in the manufacturer markup and the $1.5 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 4 under the preservation of operating profit markup scenario.

At TSL 3, DOE estimates that impacts on INPV would range from −$3.0 million to $0.7 million, or a change in INPV of −3.0 to 0.8 percent. At TSL 3, industry free cash flow is $6.0 million, which is a decrease of $0.8 million compared to the no-new-standards case value of $6.8 million in 2027, the year leading up to the proposed standards. Industry conversion costs total $2.3 million.

At TSL 3, the shipment-weighted-average MPC for BVMs increases by 5.7 percent relative to the no-new-standards case shipment-weighted-average MPC for all BVMs in 2028. In the preservation of gross margin markup scenario, the increase in cash-flows from increased MSPs outweigh the upfront conversion investments manufacturers make and result in a slightly positive change in INPV at TSL 3.

Under the preservation of operating profit markup scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the 5.7 percent shipment-weighted-average MPC increase results in a reduction in the manufacturer markup after the analyzed compliance year. This reduction in the manufacturer markup and the $2.3 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 3 under the preservation of operating profit markup scenario.

At TSL 2, DOE estimates that impacts on INPV would range from −$0.2 million to $0.0 million, or a change in INPV of −0.2 to 0.0 percent. At TSL 2, industry free cash flow is $6.7 million, which is a decrease of $0.1 million compared to the no-new-standards case value of $6.8 million in 2027, the year leading up to the proposed standards. Industry conversion costs total $0.3 million.

At TSL 2, the shipment-weighted-average MPC for BVMs is anticipated to increase by less than 1 percent relative to the no-new-standards case shipment-weighted-average MPC for all BVMs in

2028. In the preservation of gross margin markup scenario, the increase in cash-flows from increased MSPs outweigh the limited conversion investments manufacturers make and result in a slightly positive change in INPV at TSL 2.

Under the preservation of operating profit markup scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the slight shipment-weighted-average MPC increase results in a reduction in the manufacturer markup after the analyzed compliance year. This reduction in the manufacturer markup and the $0.3 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 2 under the preservation of operating profit markup scenario.

At TSL 1, DOE estimates that impacts on INPV would range from −$0.2 million to $0.0, or a change in INPV of −0.2 to 0.0 percent. At TSL 1, industry free cash flow is $6.7 million, which is a decrease of $0.1 million compared to the no-new-standards case value of $6.8 million in 2027, the year leading up to the proposed standards. Industry conversion costs total $0.2 million.

At TSL 1, the shipment-weighted-average MPC for BVMs increases by less than 1 percent relative to the no-new-standards case shipment-weighted-average MPC for all BVMs in 2028. In the preservation of gross margin markup scenario, the increase in cash-flows from increased MSPs outweigh the mild conversion investments manufacturers make and result in a slightly positive change in INPV at TSL 1.

Under the preservation of operating profit markup scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the slight shipment-weighted-average MPC increase results in a reduction in the manufacturer markup after the analyzed compliance year. This reduction in the manufacturer markup and the $0.2 million in conversion costs incurred by manufacturers cause a slightly negative change in INPV at TSL 1 under the preservation of operating profit markup scenario.

b. Direct Impacts on Employment

To quantitatively assess the potential impacts of amended energy conservation standards on direct employment in the BVM industry, DOE used the GRIM to estimate the domestic labor expenditures and number of direct employees in the no-new-standards case and in each of the standards cases during the analysis period. Labor expenditures related to product manufacturing depend on the labor intensity of the product, the sales volume, and an assumption that wages remain fixed in real terms over time. The total labor expenditures in each year are calculated by multiplying the total MPCs by the labor percentage of MPCs. The total labor expenditures in the GRIM were then converted to total production employment levels by dividing production labor expenditures by the average fully burdened wage multiplied by the average number of hours worked per year per production worker. To do this, DOE relied on the *ASM*[66] inputs: Production Workers Annual Wages, Production Workers Annual Hours, Production Workers for Pay Period, and Number of Employees. DOE also relied on the BLS employee compensation data[67] to determine the fully burdened wage ratio. The fully burdened wage ratio factors in paid leave, supplemental pay, insurance, retirement and savings, and legally required benefits.

The number of production employees is then multiplied by the U.S. labor percentage to convert total production employment to total domestic production employment. The U.S. labor percentage represents the industry fraction of domestic manufacturing production capacity for the covered product. This value is derived from manufacturer interviews, product database analysis, and publicly available information. DOE estimates that 70 percent of BVMs are produced domestically.

The domestic production employees estimate covers production line workers, including line supervisors, who are directly involved in fabricating and assembling equipment within the OEM facility. Workers performing services that are closely associated with production operations, such as materials handling tasks using forklifts, are also included as production labor. DOE's estimates only account for production workers who manufacture the specific equipment covered by this proposed rulemaking.

Non-production employees account for the remainder of the direct employment figure. The non-production employees estimate covers domestic workers who are not directly involved in the production process, such as sales, engineering, human resources, and management. Using the amount of domestic production workers calculated above, non-production domestic employees are extrapolated by multiplying the ratio of non-production workers in the industry compared to production employees. DOE assumes that this employee distribution ratio remains constant between the no-new-standards case and standards cases.

Direct employment is the sum of domestic production employees and non-production employees. Using the GRIM, DOE estimates in the absence of new energy conservation standards there would be 448 domestic employees for BVMs in 2028. Table V.19 shows the range of the impacts of energy conservation standards on U.S. manufacturing employment in the BVMs industry. The following discussion provides a qualitative evaluation of the range of potential impacts presented in Table V.19.

TABLE V.19—DOMESTIC DIRECT EMPLOYMENT IMPACTS FOR BEVERAGE VENDING MACHINE MANUFACTURERS IN 2028

	No-new-standards case	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Direct Employment in 2028	468	469	470	465	463	464
Potential Changes in Direct Employment Workers in 2028 *		(65) to 1	(65) to 2	(64) to (3)	(65) to (5)	(64) to (4)

* DOE presents a range of potential employment impacts. Numbers in parentheses denote negative values.

[66] U.S. Census Bureau, *Annual Survey of Manufactures.* "Summary Statistics for Industry Groups and Industries in the U.S (2021)." Available at *https://www.census.gov/programs-surveys/asm/data.html* (Last accessed February 24, 2023).

[67] U.S. Bureau of Labor Statistics. *Industries at a Glance.* Available at *https://www.bls.gov/iag/tgs/iag333.htm.* Last accessed February 24, 2023.

The direct employment impacts shown in Table V.19 represent the potential domestic employment changes that could result following the compliance date for the BVM product classes in this proposal. Employment could increase or decrease due to the labor content of the various equipment being manufactured domestically. The upper bound estimate corresponds to an change in the number of domestic workers that would result from amended energy conservation standards if manufacturers continue to produce the same scope of covered equipment within the United States after compliance takes effect. The lower bound estimate represents the maximum decrease in production workers. In interviews, manufacturers raised concerns that their customers purchasing Class B equipment would shift toward purchasing Class A equipment if the prices of Class B equipment increased and approached the cost of Class A equipment. To establish a lower bound, DOE assumes a loss of direct employment commensurate with a potential loss of Class B shipments.

Additional detail on the analysis of direct employment can be found in chapter 12 of the NOPR TSD. Additionally, the employment impacts discussed in this section are independent of the employment impacts from the broader U.S. economy, which are documented in chapter 16 of the NOPR TSD.

c. Impacts on Manufacturing Capacity

In interviews, manufacturers noted that they have experience incorporating many of the design options that DOE considers in its engineering analysis. However, manufacturers noted that a few design options could lead to design and production challenges. In particular, manufacturers raised concerns about microchannel heat exchangers, vacuum insulated glass, and vacuum insulated panels. For microchannel exchangers, manufacturers were dubious about the performance gain from the design option and raised concerns about further performance issues in the field due to fouling of the channels. For vacuum insulated glass, manufacturers noted that prototypes did not provide the expected performance gains and the design option is not incorporated into any models today. For VIPs, manufacturers noted that they did not incorporate the design option into any models today. They noted that VIPs have a negative impact on the flow of foam within panels and reduce the overall rigidity of the cabinet. Manufacturers expected large investment to incorporate VIPs into their product design and to update production lines. With VIPs in particular, manufacturers were concerned about the engineering resources and level of investment required to redesign equipment to meet EPA refrigerant regulations by 2025 and again to meet amended standards in 2028.

d. Impacts on Subgroups of Manufacturers

Using average cost assumptions to develop industry cash-flow estimates may not capture the differential impacts among subgroups of manufacturers. Small manufacturers, niche players, or manufacturers exhibiting a cost structure that differs substantially from the industry average could be affected disproportionately. DOE investigated small businesses as a manufacturer subgroup that could be disproportionally impacted by energy conservation standards and could merit additional analysis. DOE did not identify any other adversely impacted manufacturer subgroups for this rulemaking based on the results of the industry characterization.

DOE analyzes the impacts on small businesses in a separate analysis in section VI.B of this document as part of the Regulatory Flexibility Analysis. For a discussion of the impacts on the small business manufacturer subgroup, see the Regulatory Flexibility Analysis in section VI.B of this document and chapter 12 of the NOPR TSD.

e. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the product-specific regulatory actions of other Federal agencies that affect the manufacturers of a covered product or equipment. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing equipment. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

Some BVM manufacturers also produce commercial refrigeration equipment (CRE). DOE published a CRE ECS preliminary analysis on June of 2022. (87 FR 38296). There is not yet a proposed or finalized amended standard. If DOE proposes or finalizes any energy conservation standards for CRE prior to finalizing amended energy conservation standards for BVMs, DOE will add CRE into its consideration of cumulative regulatory burden for the BVM final rule.

DOE notes that there is cumulative regulatory burden due to product-specific, Federal regulation from another agency that occurs within 3 years of the proposed compliance date for an amended standard. The U.S. Environmental Protection Agency (EPA) proposed refrigerant restrictions pursuant to the AIM Act [68] in a NOPR published on December 15, 2022 (''December 2022 EPA NOPR''). 87 FR 76738. Specifically, EPA proposed prohibitions for new vending machines (EPA's term for this equipment) for the use of HFCs and blends containing HFCs that have a GWP of 150 or greater. 87 FR 76780. The proposal would prohibit manufacture or import of such vending machines starting January 1, 2025, and would ban sale, distribution, purchase, receive, or export of such vending machines starting January 1, 2026. 87 FR 76740. In the engineering analysis, DOE considered the use of alternative refrigerants that are not prohibited for BVM equipment in the December 2022 EPA NOPR. DOE understands that adapting product lines to meet the current and upcoming refrigerant regulations requires significant development and testing time. In particular, DOE understands that switching from non-flammable to flammable refrigerants (*e.g.,* R–290) requires time and investment to redesign BVM models and upgrade production facilities to accommodate the additional structural and safety precautions required. As discussed in section IV.C.1 of this document, DOE anticipates BVM manufacturers transitioning all models to R–290 to comply with anticipated refrigeration regulations, such as the December 2022

[68] Under subsection (i) of the AIM Act, entitled ''Technology Transitions,'' the EPA may by rule restrict the use of hydrofluorocarbons (HFCs) in sectors or subsectors where they are used. A person or entity may also petition EPA to promulgate such a rule. ''H.R.133—116th Congress (2019–2020): Consolidated Appropriations Act, 2021.'' *Congress.gov*, Library of Congress, 27 December 2020, *www.congress.gov/bill/116thcongress/house-bill/133.*

EPA NOPR,[69] prior to the expected 2028 compliance date of potential energy conservation standards. Therefore, the engineering analysis assumes the use of R–290 compressors as a baseline design option for all equipment classes. See section IV.C.1 of this document for additional information on refrigerant assumptions in the engineering analysis. DOE accounted for the costs associated with redesigning BVMs to make use of flammable refrigerants and upgrading production facilities to accommodate flammable refrigerants in the GRIM under the assumption that three manufacturers of BVMs have yet to make the R–290 transition. These costs are modeled as an impact to industry cashflow. DOE relied on manufacturer feedback in confidential interviews and a report prepared for the EPA [70] to estimate the industry refrigerant transition costs. See section V.B.2.e of this document and chapter 12 of the NOPR TSD for additional discussion on cumulative regulatory burden.

DOE requests information regarding the impact of cumulative regulatory burden on manufacturers of BVMs associated with multiple DOE standards or product-specific regulatory actions of other Federal agencies.

3. National Impact Analysis

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

a. Significance of Energy Savings

To estimate the energy savings attributable to potential amended standards for BVMs, DOE compared their energy consumption under the no-new-standards case to their anticipated energy consumption under each TSL. The savings are measured over the entire lifetime of equipment purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2028–2057). Table V.20 presents DOE's projections of the NES for each TSL considered for BVMs. The savings were calculated using the approach described in section IV.H of this document.

TABLE V.20—CUMULATIVE NATIONAL ENERGY SAVINGS FOR BEVERAGE VENDING MACHINES; 30 YEARS OF SHIPMENTS
[2028–2057]

Discount rate	Trial standard level				
	1	2	3	4	5
	quads				
Primary energy	0.04	0.05	0.08	0.09	0.13
FFC energy	0.04	0.06	0.09	0.09	0.14

OMB Circular A–4 [71] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this proposed rulemaking, DOE undertook a sensitivity analysis using 9 years, rather than 30 years, of product shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[72] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to BVMs. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES sensitivity analysis results based on a 9-year analytical period are presented in Table V.21. The impacts are counted over the lifetime of BVMs purchased in 2028–2035.

TABLE V.21—CUMULATIVE NATIONAL ENERGY SAVINGS FOR REFRIGERATED BOTTLED OR CANNED BEVERAGE VENDING MACHINES; 9 YEARS OF SHIPMENTS
[2028–2035]

Discount rate	Trial standard level				
	1	2	3	4	5
	quads				
Primary energy	0.01	0.02	0.03	0.03	0.04
FFC energy	0.01	0.02	0.03	0.03	0.04

[69] The proposed rule was published on December 15, 2022. 87 FR 76738.

[70] *See* pp. 5–113 of the ''Global Non-CO_2 Greenhouse Gas Emission Projections & Marginal Abatement Cost Analysis: Methodology Documentation'' (2019). *www.epa.gov/sites/default/files/2019-09/documents/nonco2_methodology_report.pdf.*

[71] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. *obamawhitehouse.archives.gov/omb/circulars_a004_a-4* (last accessed January 2023).

[72] EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6 year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some products, the compliance period is 5 years rather than 3 years.

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSLs considered for BVMs. In accordance with OMB's guidelines on regulatory analysis,[73] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V.22 shows the consumer NPV results with impacts counted over the lifetime of products purchased in 2028–2057.

TABLE V.22—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR REFRIGERATED BOTTLED OR CANNED BEVERAGE VENDING MACHINES; 30 YEARS OF SHIPMENTS

[2028–2057]

Discount rate	Trial standard level				
	1	2	3	4	5
	billion 2021$				
3 percent	0.16	0.22	0.23	0.25	(0.31)
7 percent	0.07	0.09	0.08	0.09	(0.23)

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.23. The impacts are counted over the lifetime of products purchased in 2028–2035. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.23—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR REFRIGERATED BOTTLED OR CANNED BEVERAGE VENDING MACHINES; 9 YEARS OF SHIPMENTS

[2028–2035]

Discount rate	Trial standard level				
	1	2	3	4	5
	billion 2021$				
3 percent	0.07	0.09	0.07	0.07	(0.17)
7 percent	0.04	0.05	0.03	0.03	(0.14)

The previous results reflect the use of a default trend to estimate the change in price for BVMs over the analysis period (see section IV.H of this document). DOE also conducted a sensitivity analysis that considered one scenario with a lower rate of price decline than the Reference case and one scenario with a higher rate of price decline than the Reference case. The results of these alternative cases are presented in appendix 10C of the NOPR TSD. In the high-price-decline case, the NPV of consumer benefits is higher than in the default case. In the low-price-decline case, the NPV of consumer benefits is lower than in the default case.

c. Indirect Impacts on Employment

It is estimated that that amended energy conservation standards for BVMs would reduce energy expenditures for consumers of those products, with the resulting net savings being redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.N of this document, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered. There are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframes (2028–2032), in which these uncertainties are reduced.

The results suggest that the proposed amended standards would be likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the NOPR TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Products

As discussed in section IV.C.1.b of this document, DOE has tentatively concluded that the standards proposed in this NOPR would not lessen the utility or performance of the BVMs under consideration in this rulemaking. Manufacturers of these products currently offer units that meet or exceed the proposed standards.

5. Impact of Any Lessening of Competition

DOE considered any lessening of competition that would be likely to result from new or amended standards. As discussed in section III.F.1.e of this document, the Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination in writing to the Secretary, together with an analysis of the nature and extent of such impact. To assist the Attorney General in making this determination, DOE has provided DOJ with copies of this NOPR and the accompanying TSD for review. DOE will consider DOJ's comments on the proposed rule in determining whether to proceed to a final rule. DOE will

[73] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. *obamawhitehouse.archives.gov/omb/circulars_a004_a-4* (last accessed February 2023).

publish and respond to DOJ's comments in that document. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information to send comments to DOJ.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Chapter 15 in the NOPR TSD presents the estimated impacts on electricity generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this proposed rulemaking.

Energy conservation resulting from potential energy conservation standards for BVMs is expected to yield environmental benefits in the form of reduced emissions of certain air pollutants and GHGs. Table V.24 provides DOE's estimate of cumulative emissions reductions expected to result from the TSLs considered in this proposed rulemaking. The emissions were calculated using the multipliers discussed in section IV.K of this document. DOE reports annual emissions reductions for each TSL in chapter 13 of the NOPR TSD.

TABLE V.24—CUMULATIVE EMISSIONS REDUCTION FOR REFRIGERATED BOTTLED OR CANNED BEVERAGE VENDING MACHINES SHIPPED IN 2028–2057 *

	Trial standard level				
	1	2	3	4	5
Power Sector Emissions					
CO_2 (*million metric tons*)	1.26	1.73	2.65	2.83	1.26
CH_4 (*thousand tons*)	0.10	0.13	0.21	0.22	0.10
N_2O (*thousand tons*)	0.01	0.02	0.03	0.03	0.01
NO_X (*thousand tons*)	0.63	0.86	1.32	1.41	0.63
SO_2 (*thousand tons*)	0.60	0.82	1.27	1.35	0.60
Hg (*tons*)	0.004	0.005	0.008	0.009	0.004
Upstream Emissions					
CO_2 (*million metric tons*)	0.10	0.13	0.21	0.22	0.10
CH_4 (*thousand tons*)	9.20	12.65	19.42	20.72	9.20
N_2O (*thousand tons*)	0.00	0.00	0.00	0.00	0.00
NO_X (*thousand tons*)	1.47	2.02	3.11	3.32	1.47
SO_2 (*thousand tons*)	0.01	0.01	0.01	0.02	0.01
Hg (*tons*)	0.00001	0.00002	0.00003	0.00003	0.00001
CO_2 (*million metric tons*)	1.35	1.86	2.86	3.05	1.35
CH_4 (*thousand tons*)	9.29	12.78	19.63	20.93	9.29
N_2O (*thousand tons*)	0.01	0.02	0.03	0.03	0.01
NO_X (*thousand tons*)	2.10	2.89	4.43	4.73	2.10
SO_2 (*thousand tons*)	0.61	0.83	1.28	1.36	0.61
Hg (*tons*)	0.004	0.005	0.008	0.01	0.004

* Negative values refer to an increase in emissions.

As part of the analysis for this proposed rulemaking, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 that DOE estimated for each of the considered TSLs for BVMs. Section IV.L of this document discusses the SC–CO_2 values that DOE used. Table V.25 presents the value of CO_2 emissions reduction at each TSL for each of the SC–CO_2 cases. The time-series of annual values is presented for the proposed TSL in chapter 14 of the NOPR TSD.

TABLE V.25—PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR REFRIGERATED BOTTLED OR CANNED BEVERAGE VENDING MACHINES SHIPPED IN 2028–2057

TSL	SC–CO_2 Case			
	Discount rate and statistics			
	5% Average	3% Average	2.5% Average	3% 95th percentile
	million 2021$			
1	12	53	83	161
2	17	73	115	222
3	25	112	176	340
4	27	120	188	363
5	40	178	280	541

As discussed in section IV.L.2 of this document, DOE estimated the climate benefits likely to result from the reduced emissions of CH_4 and N_2O that DOE estimated for each of the considered TSLs for BVMs. Table V.26 presents the value of the CH_4 emissions reduction at each TSL, and Table V.27 presents the value of the N_2O emissions reduction at each TSL. The time-series of annual values is presented for the proposed TSL in chapter 14 of the NOPR TSD.

TABLE V.26—PRESENT VALUE OF METHANE EMISSIONS REDUCTION FOR REFRIGERATED BOTTLED OR CANNED BEVERAGE VENDING MACHINES SHIPPED IN 2028–2057

TSL	SC–CH_4 Case			
	Discount rate and statistics			
	5% Average	3% Average	2.5% Average	3% 95th percentile
	million 2021$			
1	3	10	14	27
2	4	14	19	36
3	7	22	30	57
4	8	23	33	62
5	12	35	50	93

TABLE V.27—PRESENT VALUE OF NITROUS OXIDE EMISSIONS REDUCTION FOR REFRIGERATED BOTTLED OR CANNED BEVERAGE VENDING MACHINES SHIPPED IN 2028–2057

TSL	SC–N_2O Case			
	Discount rate and statistics			
	5% Average	3% Average	2.5% Average	3% 95th percentile
	million 2021$			
1	0.04	0.17	0.26	0.45
2	0.06	0.23	0.35	0.61
3	0.09	0.36	0.56	0.96
4	0.10	0.39	0.61	1.05
5	0.14	0.59	0.92	1.58

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the global and U.S. economy continues to evolve rapidly. DOE, together with other Federal agencies, will continue to review methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. DOE notes that the proposed standards would be economically justified even without inclusion of monetized benefits of reduced GHG emissions.

DOE also estimated the monetary value of the health benefits associated with NO_X and SO_2 emissions reductions anticipated to result from the considered TSLs for BVMs. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V.28 presents the present value for NO_X emissions reduction for each TSL calculated using 7-percent and 3-percent discount rates, and Table V.29 presents similar results for SO_2 emissions reductions. The results in these tables reflect the application of EPA's low dollar-per-ton values, which DOE used to be conservative. The time-series of annual values is presented for the proposed TSL in chapter 14 of the NOPR TSD.

TABLE V.28—PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR REFRIGERATED BOTTLED OR CANNED BEVERAGE VENDING MACHINES SHIPPED IN 2028–2057

TSL	3% Discount rate	7% Discount rate
	million 2021$	
1	88	33
2	121	46
3	185	70
4	197	75
5	294	111

TABLE V.29—PRESENT VALUE OF SO_2 EMISSIONS REDUCTION FOR REFRIGERATED BOTTLED OR CANNED BEVERAGE VENDING MACHINES SHIPPED IN 2028–2057

TSL	3% Discount rate	7% Discount rate
	million 2021$	
1	34	13
2	47	18
3	72	28
4	76	29
5	114	44

Not all the public health and environmental benefits from the reduction of greenhouse gases, NO_X, and SO_2 are captured in the values above, and additional unquantified benefits from the reductions of those pollutants as well as from the reduction of direct PM and other co-pollutants may be significant. DOE has not included monetary benefits of the reduction of Hg emissions because the amount of reduction is very small.

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)). No other factors were considered in this analysis.

8. Summary of Economic Impacts

Table V.30 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced GHG, NO_X, and SO_2 emissions to the NPV of consumer benefits calculated for each TSL considered in this proposed rulemaking. The consumer benefits are domestic U.S. monetary savings that occur as a result of purchasing the covered equipment, and are measured for the lifetime of products shipped in 2028–2057. The climate benefits associated with reduced GHG emissions resulting from the adopted standards are global benefits, and are also calculated based on the lifetime of BVMs shipped in 2028–2057.

TABLE V.30—CONSUMER NPV COMBINED WITH PRESENT VALUE OF CLIMATE BENEFITS AND HEALTH BENEFITS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Using 3% discount rate for Consumer NPV and Health Benefits (billion 2021$)					
5% average SC–GHG case	0.30	0.41	0.52	0.56	0.15
3% average SC–GHG case	0.35	0.47	0.62	0.66	0.31
2.5% average SC–GHG case	0.38	0.52	0.70	0.74	0.43
3% 95th percentile SC–GHG case	0.47	0.65	0.89	0.95	0.74
Using 7% discount rate for Consumer NPV and Health Benefits (billion 2021$)					
5% average SC–GHG case	0.13	0.18	0.21	0.23	(0.02)
3% average SC–GHG case	0.18	0.24	0.31	0.33	0.14
2.5% average SC–GHG case	0.21	0.29	0.39	0.41	0.26
3% 95th percentile SC–GHG case	0.30	0.41	0.58	0.62	0.56

C. Conclusion

When considering new or amended energy conservation standards, the standards that DOE adopts for any type (or class) of covered equipment must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

For this NOPR, DOE considered the impacts of amended standards for BVMs at each TSL, beginning with the max-tech level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, tables in this section present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national standard and impacts on employment.

1. Benefits and Burdens of TSLs Considered for BVM Standards

Table V.31 and Table V.32 summarize the quantitative impacts estimated for each TSL for BVMs. The national impacts are measured over the lifetime of BVMs purchased in the 30-year period that begins in the anticipated year of compliance with amended standards (2028–2057). The energy savings, emissions reductions, and value of emissions reductions refer to FFC results. The efficiency levels contained in each TSL are described in section V.A of this document.

TABLE V.31—SUMMARY OF ANALYTICAL RESULTS FOR REFRIGERATED BOTTLED OR CANNED BEVERAGE VENDING MACHINE TSLS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Cumulative FFC National Energy Savings					
Quads	0.04	0.056	0.086	0.092	0.14
Cumulative FFC Emissions Reduction					
CO_2 (*million metric tons*)	1.4	1.9	2.9	3.0	4.5
CH_4 (*thousand tons*)	9	13	20	21	31
N_2O (*thousand tons*)	0.01	0.02	0.03	0.03	0.05
NO_X (*thousand tons*)	2.1	2.9	4.4	4.7	7.1
SO_2 (*thousand tons*)	0.6	0.8	1.3	1.4	2.0
Hg (*tons*)	0.004	0.005	0.008	0.009	0.013
Present Value of Benefits and Costs (3% discount rate, billion 2021$)					
Consumer Operating Cost Savings	0.17	0.24	0.32	0.33	0.47
Climate Benefits *	0.06	0.09	0.13	0.14	0.21
Health Benefits **	0.12	0.17	0.26	0.27	0.41
Total Benefits †	0.36	0.49	0.71	0.75	1.09
Consumer Incremental Product Costs ‡	0.01	0.02	0.08	0.08	0.78
Consumer Net Benefits	0.16	0.22	0.23	0.25	(0.31)
Total Net Benefits	0.35	0.47	0.62	0.66	0.31
Present Value of Benefits and Costs (7% discount rate, billion 2021$)					
Consumer Operating Cost Savings	0.07	0.10	0.13	0.14	0.19
Climate Benefits *	0.06	0.09	0.13	0.14	0.21
Health Benefits **	0.05	0.06	0.10	0.10	0.15
Total Benefits †	0.18	0.25	0.36	0.38	0.56
Consumer Incremental Product Costs ‡	0.00	0.01	0.05	0.05	0.42
Consumer Net Benefits	0.07	0.09	0.08	0.09	(0.23)
Total Net Benefits	0.18	0.24	0.31	0.33	0.14

Note: This table presents the costs and benefits associated with automatic commercial ice makers shipped in 2028–2057. These results include benefits to consumers that accrue after 2057 from the products shipped in 2028–2057.

* Climate benefits are calculated using four different estimates of the SC–CO_2, SC–CH_4, and SC–N_2O. Together, these represent the global SC–GHG. For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are shown; however, DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates. To monetize the benefits of reducing GHG emissions, this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the IWG.

** Health benefits are calculated using benefit per ton values for NO_X and SO_2. DOE is currently only monetizing (for NO_X and SO_2) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. The health benefits are presented at real discount rates of 3 and 7 percent. See section IV.L of this document for more details.

† Total and net benefits include consumer, climate, and health benefits. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but DOE does not have a single central SC–GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates.

‡ Costs include incremental equipment costs.

TABLE V.32 SUMMARY OF ANALYTICAL RESULTS FOR REFRIGERATED BOTTLED OR CANNED BEVERAGE VENDING MACHINE TSLS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1*	TSL 2*	TSL 3*	TSL 4*	TSL 5*
Manufacturer Impacts					
Industry NPV (*million 2021$*) (No-new-standards case INPV = 85.5)	85.3 to 85.4	85.3 to 85.5	82.9 to 86.1	83.6 to 85.9	56.3 to 68.0
Industry NPV *(% change*)	(0.2) to 0	(0.2) to 0	(3.0) to 0.8	(2.2) to 0.6	(34.1) to (20.4)
Consumer Average LCC Savings (2021$)					
Class A	$150	$203	$99	($6)	($823)
Class B	$167	$212	$117	$198	($280)
Combo A	$212	$263	$89	$207	($851)
Combo B	$214	$310	$37	$239	($245)
Shipment-Weighted-Average*	$166	$220	$98	$92	($625)
Consumer Simple PBP (years)					
Class A	0.5	0.7	4.0	5.7	23.5
Class B	0.6	0.7	3.6	1.4	10.5

TABLE V.32 SUMMARY OF ANALYTICAL RESULTS FOR REFRIGERATED BOTTLED OR CANNED BEVERAGE VENDING MACHINE TSLS: MANUFACTURER AND CONSUMER IMPACTS—Continued

Category	TSL 1*	TSL 2*	TSL 3*	TSL 4*	TSL 5*
Combo A	0.4	0.5	3.8	1.4	19.5
Combo B	0.4	0.9	5.1	2.2	10.9
Shipment-Weighted-Average *	0.5	0.7	4.0	3.8	18.5
Percent of Consumers that Experience a Net Cost					
Class A	0%	0%	28%	59%	94%
Class B	0	0	24	4	88
Combo A	0	0	41	3	99
Combo B	0	0	53	0	85
Shipment-Weighted-Average *	0	0	30	33	92

* Weighted by shares of each product class in total projected shipments in 2028.

DOE first considered TSL 5, which represents the max-tech efficiency levels. At this level DOE expects that all equipment classes would represent EL7, which would require VIPs, variable-speed compressors, permanent magnet synchronous evaporator and condenser fan motors, microchannel condensers, refrigeration low power modes (tested in accordance to the DOE test procedure), and evaporator fan controls for all equipment classes. Further, DOE expects that Class A and Combination A machines would require automatic lighting controls (tested in accordance to the DOE test procedure) and vacuum insulated glass doors. TSL 5 would save an estimated 0.14 quads of energy, an amount DOE considers significant. Under TSL 5, the NPV of consumer benefit would be -$0.23 billion using a discount rate of 7 percent, and -$0.31 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 5 are 4.5 Mt of CO_2, 2.0 thousand tons of SO_2, 7.1 thousand tons of NO_X, 0.013 tons of Hg, 31 thousand tons of CH_4, and 0.05 thousand tons of N_2O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 5 is $0.21 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 5 is $0.15 billion using a 7-percent discount rate and $0.41 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO_2 and NO_X emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 5 is $0.14 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 5 is $0.31 billion. The estimated total NPV is provided for additional information; however, DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At TSL 5, the shipment weighted average LCC impact for an affected consumer is a cost of $532. The average LCC impact for Class A is a cost of $695, a cost of $199 for Class B, a cost of $851 for Combo A, and a cost of $239 for Combo B. The average simple payback period is 18.3 years for Class A, 9.2 years for Class B, 19.5 years for Combo A, and 10.9 years for Combo B. The shipment-weighted average simple payback period for all equipment classes is 15.2 years. The fraction of consumers experiencing a net LCC cost is 93 percent for Class A, 84 percent for Class B, 99 percent for Combo A, 85 percent for Combo B. The shipment weighted average fraction of consumers experiencing a net cost is 90 percent across all BVM equipment classes.

At TSL 5, the projected change in INPV ranges from a decrease of $29.2 million to a decrease of $17.5 million, which corresponds to decreases of 34.1 percent and 20.4 percent, respectively. DOE estimates that industry must invest $36.5 million to comply with standards set at TSL 5. There are five BVM manufacturers that manufacture equipment covered by this rulemaking. None of the five BVM manufacturers offers models that meet the efficiency level required at TSL 5 for BVMs in any product class. DOE expects manufacturers to adopt vacuum insulated panels at TSL 5. The use of vacuum insulated panels would require manufacturers to redesign their equipment offerings and invest heavily in new cabinet fixtures, significantly increasing conversion costs.

The Secretary tentatively concludes that at TSL 5 for BVMs, the benefits of energy savings, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the negative NPV of consumer benefits and the economic burden on many consumers, as well as the impacts on manufacturers, including the large conversion costs, profit margin impacts that could result in a large reduction in INPV, and the lack of manufacturers currently offering products meeting the efficiency levels required at this TSL, including most small businesses. A majority of BVM consumers (90 percent) would experience a net cost and the average LCC savings would be negative (-$532). The potential reduction in INPV could be as high as 34.1 percent. Additionally, no BVM manufacturer offers models that meet the efficiency level required at TSL 5 for BVMs covered by this rulemaking. Consequently, the Secretary has tentatively concluded that TSL 5 is not economically justified.

DOE then considered TSL 4, which represents EL6 for Class A, EL4 for Class B, EL4 for Combo A, and EL5 for Combo B. At these efficiency levels, DOE expects that all equipment classes would require improved-efficiency evaporator and condenser fan motors (in many cases ECMs or permanent magnet synchronous motors), refrigeration low power modes (tested in accordance to the DOE test procedure), and evaporator fan controls. Further, DOE expects that Class A machines would require automatic lighting controls (tested in accordance to the DOE test procedure), variable-speed compressors, and microchannel condensers; Combination A machines would require automatic lighting controls (tested in accordance to the DOE test procedure); and Combination B machines would require microchannel condensers. TSL 4 would save an estimated 0.09 quads of energy, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit would be $0.09 billion using a discount rate of 7 percent, and $0.25

billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 3.0 Mt of CO_2, 1.4 thousand tons of SO_2, 4.7 thousand tons of NO_X, 0.009 tons of Hg, 21 thousand tons of CH_4, and 0.03 thousand tons of N_2O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 4 is $0.14 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 4 is $0.10 billion using a 7-percent discount rate and $0.27 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO_2 and NO_X emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 4 is $0.33 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 4 is $0.66 billion. The estimated total NPV is provided for additional information; however, DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At TSL 4, the shipment weighted average LCC impact is a savings of $97. The average LCC impact for Class A is a cost of $5.52, a savings of $206 for Class B, savings of $190 for Combo A, and savings of $287 for Combo B. The simple payback period is 5.7 years for Class A, 1.2 years for Class B, 1.4 years for Combo A and 2.2 years for combo B. The shipment weighted average simple payback period for all BVMs is 3.7 years. The fraction of consumers experiencing a net LCC cost is 59 percent for Class A, 2 percent for Class B, 12 percent for Combo A and 0 percent for Combo B. The shipment weighted average fraction of consumers experiencing a net LCC cost is 34 percent.

At TSL 4, the projected change in INPV ranges from a decrease of $1.9 million to an increase of $0.5 million, which correspond to a decrease of 2.2 percent and an increase of 0.6 percent, respectively. DOE estimates that industry must invest $1.5 million to comply with standards set at TSL 4. None of the 5 BVM manufacturers currently offer models that meet the efficiency level required at TSL 4 for BVMs in any product class. At TSL 5, the primary driver of high conversion costs is the industry's investment to redesign both products and production lines for the introduction of vacuum insulated panels. TSL 4 does not require the incorporation of vacuum insulated panels, which in turn reduces the need for redesigned models and new cabinet fixtures. This reduces both the level of potential capital investment and the engineering effort required to redesign equipment. At TSL 4, the primary driver of conversion costs is the industry's investment to redesign products for the incorporation of variable speed compressors, more efficient evaporators and fan motors, and, for PC 1, triple pane glass packs.

After considering the analysis and weighing the benefits and burdens, the Secretary has tentatively concluded that at a standard set at TSL 4 for BVMs is economically justified. At this TSL, the average LCC savings for BVM consumers across all equipment classes is positive with 34 percent of consumers negatively impacted. The NPV of consumer benefits is positive at each equipment class at both 3-percent and 7-percent discount rates. Further, TSL 4 represents the maximum NPV of consumer benefits out of all TSLs at a 3-percent discount rate. The shipment weighted average LCC impact is a positive savings of $97 at TSL 4, including a cost of $6 for Class A BVMs. This $6 cost represents 0.06 percent of the average LCC for the equipment ($9,551). Further, the LCC calculations are based on equipment to be installed on the compliance year of the proposed rule. However, the costs for higher efficiency PMS fan motors as well as for variable speed compressors which may be incorporated in the manufacture of Class A BVMs at TSL 4 is projected to drop quickly in subsequent years, shifting the small negative LCC for Class A to a positive value quickly and resulting in both consumer LCC benefits and overall net consumer NPV benefits (see discussion of equipment price trends in Chapter 8 of the NOPR TSD). Approximately 7% of the installed cost to the customer for Class A equipment at TSL 4 ($4,228 shown in Table V.4) are expected to be in components which DOE anticipates to experience experiential learning price drops of approximately 5.9% year over year. Thus by year 2 of the rule the expected cost reduction in Class A is approximately $17 at TSL 4. The anticipated market in the no new standards case has approximately 95 percent of the market at EL3 and below and these basecase efficiency equipment would not experience similar component-level experiential learning. Thus DOE predicts an average reduction in the incremental installed cost for Class A equipment by year 2 of the rule of approximately $16.40 over the no-new standards case. Assuming equipment installed in year 2 will have similar energy benefits to equipment installed in year 1 over the no new standards case, the reduction in first cost for equipment installed in year 2 will more than offset the small negative $6 LCC savings shown for year 1 of the rule. DOE recognizes that the fraction of consumers of Class A equipment in the compliance year is negative is more than one-half of the affected customers, but similarly believes that this will change within a short few years into the analysis period for the reasons previously illustrated. Given that Class A NPVs are strongly positive at both 3-percent and 7-percent discount rates, DOE has determined that the small LCC cost for Class A in TSL 4 in year one of the analysis period did not outweigh the NPV benefits that would accrue to consumers over the analysis period. Thus, DOE has determined that TSL 4 would be economically justified.

The FFC national energy savings are significant and the NPV of consumer benefits is positive using both a 3-percent and 7-percent discount rate. Notably, the benefits to consumers vastly outweigh the cost to manufacturers. At TSL 4, the NPV of consumer benefits, even measured at the more conservative discount rate of 7 percent is over 40 times higher than the maximum estimated manufacturers' loss in INPV. The standard levels at TSL 4 are economically justified even without weighing the estimated monetary value of emissions reductions. When those emissions reductions are included—representing $0.14 billion in climate benefits (associated with the average SC–GHG at a 3-percent discount rate), and $0.27 billion (using a 3-percent discount rate) or $0.10 billion (using a 7-percent discount rate) in health benefits—the rationale becomes stronger still.

As stated, DOE conducts the walk-down analysis to determine the TSL that represents the maximum improvement in energy efficiency that is technologically feasible and economically justified as required under EPCA. The walk-down is not a comparative analysis, as a comparative analysis would result in the maximization of net benefits instead of energy savings that are technologically feasible and economically justified, which would be contrary to the statute. 86 FR 70892, 70908. Although DOE has not conducted a comparative analysis to select the proposed energy conservation standards, DOE notes that while TSL 5 would provide for over 50% higher energy savings and significantly greater climate and health benefits from

emission reductions than TSL 4, the consumer net benefits at TSL 5 are negative whereas those at TSL 4 are positive. Further both the consumer net benefits and the total net benefits, including the monetized benefits from emission reductions, at TSL 4 exceed those at TSL 5 as well as those of the other TSLs examined by DOE. When comparing TSL 4 to TSL 3, DOE notes that the shipment weighted average LCC savings for TSL 4 is less than at TSL 3 by $10, but the shipment weighted average PBP at TSL 4 of 3.7 years, is lower than TSL 3, at 3.8 years. At TSL 4, the shipment weighted average fraction of customers experiencing a net LCC cost is 34 percent, only slightly greater than the 28 percent estimated for TSL 3. Taken as a whole for the BVM market, the LCC and payback impact on consumers at TSL 3 and TSL 4 are very similar. The consumer net benefits at TSL 4 exceed those of TSL 3 due to the energy savings and the total net benefits including monetized benefits of emission reductions. These additional savings and benefits at TSL 4 are significant. Thus, DOE considers the impacts to be, as a whole, economically justified at TSL 4.

Although DOE considered proposed amended standard levels for BVMs by grouping the efficiency levels for each equipment class into TSLs, DOE evaluates all analyzed efficiency levels in its analysis. For all equipment classes except Class A, TSL 4 represents the maximum TSL that results in LCC savings and for these classes less than 5 percent of the consumers experience an LCC cost. For Class A, the average LCC savings was -$6 over the life of the equipment and 59% of consumers experience negative LCC savings. As noted previously however, the average LCC cost is small relative to the life-cycle cost of Class A equipment and the expected reduction in cost of specific components used for Class A at TSL 4 including variable speed compressors and permanent magnet synchronous fan motors is anticipated to change the incremental equipment costs such that the small LCC cost experienced by Class A purchasers in the compliance year will not be experienced in subsequent years. Although DOE acknowledges the negative LCC impacts seen in Class A, given that the weighted average LCC benefits across all classes are positive at TSL 4, DOE has tentatively determined that TSL 4 is economically justified.

Therefore, based on the previous considerations, DOE proposes to adopt the energy conservation standards for BVMs at TSL 4. The proposed amended energy conservation standards for BVMs, which are expressed as kWh/day, are shown in Table V.33.

TABLE V.33—PROPOSED AMENDED ENERGY CONSERVATION STANDARDS FOR REFRIGERATED BOTTLED OR CANNED BEVERAGE VENDING MACHINES

Equipment class	Maximum daily energy consumption kilowatt hours per day
Class A	$0.029 \times V^* + 1.34$
Class B	$0.029 \times V^* + 1.21$
Combination A	$0.048 \times V^* + 1.50$
Combination B	$0.052 \times V^* + 0.96$

* V is the representative value of refrigerated volume (ft^3) of the BVM model, as calculated pursuant to 10 CFR 429.52(a)(3).

2. Annualized Benefits and Costs of the Proposed Standards

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The annualized net benefit is (1) the annualized national economic value (expressed in 2021$) of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in product purchase costs), and (2) the annualized monetary value of the climate and health benefits from emission reductions.

Table V.34 shows the annualized values for BVMs under TSL 4, expressed in 2021$. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and NO_X and SO_2 reduction benefits, and a 3-percent discount rate case for GHG social costs, the estimated cost of the proposed standards for BVMs is $5.8 million per year in increased equipment costs, while the estimated annual benefits are $16 million from reduced equipment operating costs, $8.5 million from GHG reductions, and $12 million from reduced NO_X and SO_2 emissions. In this case, the net benefit amounts to $30 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards for BVMs is $4.9 million per year in increased equipment costs, while the estimated annual benefits are $20 million in reduced operating costs, $8.5 million from GHG reductions, and $16 million from reduced NO_X and SO_2 emissions. In this case, the net benefit amounts to $39 million per year.

TABLE V.34—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR REFRIGERATED BOTTLED OR CANNED BEVERAGE VENDING MACHINES (TSL 4)

	Million 2021$/year		
	Primary estimate	Low net benefits estimate	High net benefits estimate
3% discount rate			
Consumer Operating Cost Savings	20	19	20
Climate Benefits *	8.5	8.5	8.5
Health Benefits **	16	16	17
Total Benefits †	44	44	45
Consumer Incremental Product Costs ‡	4.9	5.2	4.9
Net Benefits	39	38	40
7% discount rate			
Consumer Operating Cost Savings	16	15	16
Climate Benefits * (3% discount rate)	8.5	8.5	8.5
Health Benefits **	12	12	12
Total Benefits †	36	35	36
Consumer Incremental Product Costs ‡	5.8	6.0	5.7

TABLE V.34—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR REFRIGERATED BOTTLED OR CANNED BEVERAGE VENDING MACHINES (TSL 4)—Continued

	Million 2021$/year		
	Primary estimate	Low net benefits estimate	High net benefits estimate
Net Benefits	30	29	31

Note: This table presents the costs and benefits associated with BVMs shipped in 2028 – 2057. These results include benefits to consumers which accrue after 2057 from the products shipped in 2028 – 2057. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the *AEO2022* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in sections IV.F.1 and IV.H.3 of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* Climate benefits are calculated using four different estimates of the global SC–GHG (see section IV.L of this document). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are shown, but DOE does not have a single central SC–GHG point estimate, and it emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the Federal government's emergency motion for stay pending appeal of the February 11, 2022 preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the Federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and presents monetized benefits where appropriate and permissible under law.

** Health benefits are calculated using benefit per ton values for NO_X and SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. See section IV.L of this document for more details.

† Total benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but DOE does not have a single central SC–GHG point estimate.

‡ Costs include incremental equipment costs as well as installation costs.

D. Reporting, Certification, and Sampling Plan

Manufacturers, including importers, must use product-specific certification templates to certify compliance to DOE. For BVM equipment, the certification template reflects the general certification requirements specified at 10 CFR 429.12 and the product-specific requirements specified at 10 CFR 429.52. DOE is not proposing to amend the product-specific certification requirements for this equipment.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866, 13563, and 14094

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011) and E.O. 14094, ''Modernizing Regulatory Review,'' 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (OIRA) in the OMB has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this proposed regulatory action is consistent with these principles.

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

B. Review Under the Regulatory Flexibility Act

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

For manufacturers of BVMs, the SBA has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be

subject to the requirements of the rule; see 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *www.sba.gov/document/support--table-size-standards.* Manufacturing of BVMs is classified under NAICS 333310, ''Commercial and Service Industry Machinery Manufacturing.'' The SBA sets a threshold of 1,000 employees or fewer for an entity to be considered as a small business for this category.

1. Description of Reasons Why Action Is Being Considered

DOE is proposing amended energy conservation standards for BVMs. EPCA directed DOE to prescribe energy conservation standards for BVMs not later than 4 years after August 8, 2005. (42 U.S.C. 6295(v)(1)) DOE has completed this proposed rulemaking. EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) This proposed rulemaking is in accordance with DOE's obligations under EPCA.

2. Objectives of, and Legal Basis for, Rule

DOE is conducting this proposed rulemaking to fulfill its statutory obligation under EPCA to publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards not later than 6 years after the issuance of any final rule establishing or amending a standard. (42 U.S.C. 6295(m)(1)) DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including BVMs. Specifically, any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6295(o)(3)(B)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

3. Description on Estimated Number of Small Entities Regulated

To estimate the number of companies that could be small business manufacturers of products covered by this proposed rulemaking, DOE conducted a market survey using public information and subscription-based company reports to identify potential small manufacturers. DOE's research involved DOE's Compliance Certification Database (CCD),[74] California Energy Commission's Modernized Appliance Efficiency Database System directory,[75] individual company websites, and market research tools (*e.g.,* reports from Dun & Bradstreet[76]) to create a list of companies that manufacture, produce, import, or assemble the products covered by this rulemaking. DOE also asked stakeholders and industry representatives if they were aware of any other small manufacturers during manufacturer interviews and at DOE public meetings. DOE screened out companies that do not offer products covered by this rulemaking, do not meet the SBA's definition of a ''small business,'' or are foreign-owned and operated.

DOE identified five OEMs of BVMs sold in the United States. Of the five OEMs, DOE identified two small, domestic manufacturers affected by proposed amended standards for BVM equipment. The first small business is an OEM of Class A, Class B, and Combo A equipment. The second small business is an OEM of Class B, Combo A, and Combo B equipment.

DOE reached out to these small businesses and invited them to participate in voluntary interviews. DOE also requested information about small businesses and potential impacts on small businesses while interviewing large manufacturers.

DOE requests comment on the number of small, domestic OEMs in the industry.

4. Description and Estimate of Compliance Requirements Including Differences in Cost, if Any, for Different Groups of Small Entities

The first small business is an OEM that certifies ten basic models of Class A BVMs, two basic models of Class B BVMs, and eight basic models of Combo A BVMs. One of the 20 basic models would meet the proposed amended standards. In total, the company would need to redesign 19 basic models.

DOE estimated the first small business would need to invest $800,000 in product conversion costs to redesign all 19 basic models. DOE's engineering analysis indicates manufacturers would be able to produce compliant products on existing production lines with minimal capital investments. DOE's estimate of the product conversion costs is based on feedback from manufacturers, which indicated they would need to invest in redesigning Class A, Class B, and Combo A products to incorporate design options such as variable speed compressors, more efficient motors, larger heat exchangers, variable speed compressors, and triple pane glass packs. DOE estimated the cost of this redesign per model, and multiplied that cost by the number of models that would need to be redesigned by the first small business. DOE's analysis focused on the investments associated with amended standards; investments associated with changes in regulations by other Federal agencies (*i.e.,* refrigerant regulations) are not attributed to amended standards. Based on market research tools, DOE estimated the company's annual revenue to be $27 million. Taking into account the three-year conversion period, DOE expects conversion costs to be 1.0% of conversion period revenue.

The second small business is an OEM that certifies one basic model of Class B BVMs, five basic models of Combo A BVMs, and one basic model of Combo B BVMs. None of the company's BVM models would meet the proposed amended standards. In total, the company would need to redesign seven basic models.

DOE estimated the company would need to invest $100,000 in product conversion costs to redesign all seven basic models. DOE's estimate of the product conversion costs is based on feedback from manufacturers, which indicated they would need to invest in redesigning Class B, Combo A, and Combo B products to incorporate design options such as variable speed compressors, more efficient motors, larger heat exchangers, and variable speed compressors. DOE estimated the cost of this redesign per model, and multiplied that cost by the number of models that would need to be redesigned by the second small business. DOE's engineering analysis design options suggest manufacturers would be able to produce compliant products on existing production lines with minimal capital investments.

[74] See *www.regulations.doe.gov/certification-data/CCMS–4-Refrigerated_Bottled_or_Canned_Beverage_Vending_Machines.html#q=Product_Group_s%3A%22Refrigerated%20Bottled%20or%20Canned%20Beverage%20Vending%20Machines%22.* (Accessed February 9, 2023).

[75] *California Energy Commission, Modernized Appliance Efficiency Database System.* (Last accessed September 30, 2022.) *cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx.*

[76] The Dun & Bradstreet Hoovers login is available at *app.dnbhoovers.com.*

DOE's analysis focused on the investments associated with amended standards; investments associated with changes in regulations by other Federal agencies (*i.e.,* refrigerant regulations) are not attributed to amended standards. Based on market research tools, DOE estimated the company's annual revenue to be $72 million. Taking into account the three-year conversion period, DOE expects conversion costs to be 0.1% of conversion period revenue.

DOE requests comment on the potential impacts of the proposed standard on small business manufacturing of BVMs, including the extent of model redesign and manufacturing lines changes necessitated by standards.

5. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with this proposed rule.

6. Significant Alternatives to the Rule

The discussion in the previous section analyzes impacts on small businesses that would result from DOE's proposed rule, represented by TSL 4. In reviewing alternatives to the proposed rule, DOE examined energy conservation standards set at lower efficiency levels. While TSL 1, TSL 2, and TSL 3 would reduce the impacts on small business manufacturers, they would come at the expense of a reduction in energy savings. TSL 1 achieves 56 percent lower energy savings compared to the energy savings at TSL 4. TSL 2 achieves 39 percent lower energy savings compared to the energy savings at TSL 4. TSL 3 achieves 6 percent lower energy savings compared to the energy savings at TSL 4.

Based on the presented discussion, establishing standards at TSL 4 balances the benefits of the energy savings at TSL 4 with the potential burdens placed on BVM manufacturers, including small business manufacturers. Accordingly, DOE does not propose one of the other TSLs considered in the analysis, or the other policy alternatives examined as part of the regulatory impact analysis and included in chapter 17 of the NOPR TSD.

Additional compliance flexibilities may be available through other means. EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8 million may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. (42 U.S.C. 6295(t)) Additionally, manufacturers subject to DOE's energy efficiency standards may apply to DOE's Office of Hearings and Appeals for exception relief under certain circumstances. Manufacturers should refer to 10 CFR part 430, subpart E, and 10 CFR part 1003 for additional details.

C. Review Under the Paperwork Reduction Act

Manufacturers of BVM equipment must certify to DOE that their equipment comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for BVM equipment, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including BVM equipment. (See generally 10 CFR part 429.) The collection of information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. The public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act of 1969 (NEPA) and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings that establish energy conservation standards for consumer products or industrial equipment. 10 CFR part 1021, subpart D, appendix B5.1 DOE anticipates that this proposed rulemaking qualifies for categorical exclusion B5.1 because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, none of the exceptions identified in categorical exclusion B5.1(b) apply, no extraordinary circumstances exist that require further environmental analysis, and it otherwise meets the requirements for application of a categorical exclusion; *see* 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final rule.

E. Review Under Executive Order 13132

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

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive

agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

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

This rule does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by the private sector. As a result, the analytical requirements of UMRA do not apply.

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

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

I. Review Under Executive Order 12630

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

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

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

K. Review Under Executive Order 13211

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

DOE has tentatively concluded that this regulatory action, which proposes amended energy conservation standards for BVM equipment, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this proposed rule.

L. Information Quality

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

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared a report describing that peer review.[77] Generation of this report involved a

[77] The 2007 Energy Conservation Standards Rulemaking Peer Review Report is available at the following website: *www.energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0.* Last accessed Feb. 13, 2023.

rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences to review DOE's analytical methodologies to ascertain whether modifications are needed to improve DOE's analyses. DOE is in the process of evaluating the resulting report.[78]

VII. Public Participation

A. Participation in the Webinar

The time and date of the webinar meeting are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *www.energy.gov/eere/buildings/public-meetings-and-comment-deadlines.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this proposed rule, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit a request to *ApplianceStandardsQuestions@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this proposed rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. antitrust laws. After the webinar and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the proposed rulemaking.

The webinar will be conducted in an informal, conference style. DOE will conduct a general overview of the topics addressed in this proposed rulemaking, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this proposed rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this proposed rulemaking. The official conducting the webinar will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar.

A transcript of the webinar will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this document. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via *www.regulations.gov.* The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your

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

contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No telefacsimiles (''faxes'') will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email to *BVM2020STD0014@ee.doe.gov* two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE requests comment on its proposal to revise the definition of Combination A.

(2) DOE requests comments on its proposal to use baseline levels for BVM equipment based upon the design changes made by manufacturers in response to the December 2022 EPA NOPR.

(3) DOE further requests comment on its estimates of energy use reduction associated with the design changes made by manufacturers in response to the December 2022 EPA NOPR.

(4) DOE request comments on the frequency and nature of compressor and motor repairs or replacements in BVMs.

(5) DOE seeks comment on the method for estimating manufacturing production costs.

(6) DOE requests comment on how to address the climate benefits and other non-monetized effects of the proposal.

(7) DOE requests information regarding the impact of cumulative regulatory burden on manufacturers of BVMs associated with multiple DOE standards or product-specific regulatory actions of other Federal agencies.

(8) DOE requests comment on the number of small, domestic OEMs in the industry.

(9) DOE requests comment on the potential impacts of the proposed standard on small business manufacturing of BVMs, including the extent of model redesign and manufacturing lines changes necessitated by standards.

Additionally, DOE welcomes comments on other issues relevant to the conduct of this proposed rulemaking that may not specifically be identified in this document.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking and announcement of public meeting.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on May 1, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 5, 2023.

Treena V. Garrett,

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

For the reasons set forth in the preamble, DOE proposes to amend part 431 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Amend § 431.292 by revising the definition of ''Combination A'' to read as follows:

§ 431.292 Definitions concerning refrigerated bottled or canned beverage vending machines.

* * * * *

Combination A means a combination vending machine where 25 percent or more of the surface area on the front side of the beverage vending machine that surrounds the refrigerated compartment(s) is transparent.

* * * * *

■ 3. Revise § 431.296 to read as follows:

§ 431.296 Energy conservation standards and their effective dates.

(a) Each refrigerated bottled or canned beverage vending machine manufactured on or after January 8, 2019 and before [*date 3 years after date of publication of final rule in the* ***Federal Register***], shall have a daily energy consumption (in kilowatt hours per day), when measured in accordance with the DOE test procedure at § 431.294, that does not exceed the following:

Equipment class	Maximum daily energy consumption (kilowatt hours per day)
Class A	0.052 × V † + 2.43.
Class B	0.052 × V † + 2.20.
Combination A	0.086 × V † + 2.66.
Combination B	0.111 × V † + 2.04.

† "V" is the representative value of refrigerated volume (ft^3) of the BVM model, as calculated pursuant to 10 CFR 429.52(a)(3).

(b) Each refrigerated bottled or canned beverage vending machine manufactured on or after [*date 3 years after date of publication of final rule in the **Federal Register***], shall have a daily energy consumption (in kilowatt hours per day), when measured in accordance with the DOE test procedure at § 431.294, that does not exceed the following:

Equipment class	Maximum daily energy consumption (kilowatt hours per day)
Class A	0.029 × V † + 1.34.
Class B	0.029 × V † + 1.21.
Combination A	0.048 × V † + 1.50.
Combination B	0.052 × V † + 0.96.

† "V" is the representative value of refrigerated volume (ft^3) of the BVM model, as calculated pursuant to 10 CFR 429.52(a)(3).

[FR Doc. 2023–09968 Filed 5–24–23; 8:45 am]

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Part III

Department of Justice

Antitrust Division

United States v. Cargill Meat Solutions Corp., et al.; Proposed Final Judgment and Competitive Impact Statement; Notice

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Cargill Meat Solutions Corp., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Maryland in *United States of America* v. *Cargill Meat Solutions Corp., et al.,* Civil Action No. 1:22–cv–01821. On July 25, 2022, the United States filed a Complaint against three poultry processors as well as a data consultant and its president to end a long-running conspiracy in the poultry processing industry. The Complaint alleged that poultry processors collectively employing more than 90 percent of all poultry processing plant workers in the United States conspired to collaborate with and assist their competitors in making decisions about worker compensation, including wages and benefits, and to exchange information about current and future compensation plans for their processing plant workers, in violation of section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint also alleged that data consultants facilitated the processors' collaboration and compensation information exchanges in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

On May 17, 2023, the United States filed an Amended Complaint, which added settling defendants George's, Inc. and George's Foods, LLC (collectively ''George's''), alleging that George's and the conspirators participated in the conspiracy to exchange information about wages and benefits for poultry processing plant workers and collaborated with their competitors on compensation decisions.

The proposed Final Judgment, filed at the same time as the Amended Complaint, requires George's to cease its information-sharing and facilitation of such conduct. In addition, George's is prohibited from sharing or facilitating the sharing of competitively sensitive information among competitors and is required to cooperate with the United States' ongoing investigation. Additionally, under the terms of the proposed settlement with George's, the court will appoint an external monitor to ensure compliance with the terms of the settlement and the antitrust laws. George's will also pay restitution to affected poultry processing workers.

Copies of the Amended Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Maryland. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be submitted in English and directed to Chief, Civil Conduct Task Force, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8600, Washington, DC 20530 (email address: *ATRJudgmentCompliance@usdoj.gov*).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

United States District Court for the District of Maryland

United States of America, 450 Fifth Street NW, Washington, DC 20530, Plaintiff; v. *Cargill Meat Solutions Corporation, 825 East Douglas Avenue, 9th Floor, Wichita, KS 67202, Cargill, Inc., 15407 McGinty Road West, Wayzata, MN 55391, G. Jonathan Meng, 734 Wild Rose Road, Silverthorne, CO 80498, George's, Inc., 402 West Robinson Avenue, Springdale, AR 72764, George's Foods, LLC, 19992 Senedo Road, Edinburg, VA 22824, Sanderson-Wayne Farms, LLC, 4110 Continental Drive, Oakwood, GA 30566, Webber, Meng, Sahl and Company, Inc., d/b/a/WMS & Company, Inc., 1200 E High Street, Suite 104, Pottstown, PA 19464,* Defendants.

Civil Action No.: 22–cv–1821
(Gallagher, J.)

Amended Complaint

Americans consume more poultry than any other animal protein. Before poultry is prepared for consumption, it passes through a complex supply chain that includes hatcheries that hatch chicks from eggs; growers that raise poultry until the birds are ready for slaughter; and poultry processing plants where workers perform dangerous tasks under difficult conditions to slaughter and pack chickens and turkeys for distribution to consumers.

Poultry processing plant workers deserve the benefits of free market competition for their labor. For at least two decades, however, poultry processors that employ more than 90 percent of all poultry processing plant workers in the United States conspired to (i) collaborate with and assist their competitors in making decisions about worker compensation, including wages and benefits; (ii) exchange information about current and future compensation plans; and (iii) facilitate their collaboration and information exchanges through data consultants. This conspiracy distorted the normal bargaining and compensation-setting processes that would have existed in the relevant labor markets, and it harmed a generation of poultry processing plant workers by artificially suppressing their compensation.

Poultry processors have also engaged in deceptive practices associated with the ''tournament system.'' Under this system, growers are penalized if they underperform other growers, but poultry processors control the key inputs (like chicks and seed) that often determine a grower's success. Poultry processors often fail to disclose the information that growers would need to evaluate and manage their financial risk or compare offers from competing processors.

To enjoin this unlawful conduct and seek other appropriate relief, the United States of America brings this civil action under Section 1 of the Sherman Act, 15 U.S.C. 1, and Section 202(a) of the Packers and Stockyards Act, 7 U.S.C. 192(a).

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I. Nature of the Action

1. From chicken noodle soup to golden-roasted Thanksgiving turkey, Americans consume more poultry than any other animal protein, including beef and pork.

2. By the time poultry is served in a home kitchen, restaurant, or school cafeteria, it has passed through a complex supply chain that includes hatcheries, growers (*i.e.,* farmers who raise live poultry for meat or eggs), and poultry processors, which employ hundreds of thousands of workers who process chicken or turkey for distribution to customers or secondary processing plants.

3. Poultry processing plant workers play a vital role in the poultry meat supply chain. These workers catch, slaughter, gut, clean, debone, section, and pack chickens and turkeys into saleable meat. Many of them withstand physically demanding and often dangerous working conditions. For example, a ''live hanger'' in a poultry processing plant grabs, lifts, and hangs for slaughter about 30 living birds per minute, as each bird claws, bites, and flaps its wings. These workers risk injuries ranging from exhaustion to mutilation to provide for themselves and their families. In doing so, they help make food available to families nationwide.

4. Like all workers, poultry processing plant workers deserve the benefits of free market competition for their labor, including wages and benefits that are set through a competitive process that is free from anticompetitive coordination between employers. Instead, for at least the past 20 years, poultry processors that dominate local employment markets for poultry processing plant workers and employ more than 90 percent of all such workers in the United States collaborated on and assisted each other with compensation decisions. Their conspiracy included sharing data and other information—directly and through consultants—about their current and future compensation plans. Rather than make compensation decisions independently, these processors chose to help each other at the expense of their workers. As a result, they artificially suppressed compensation in the labor markets in which they compete for poultry processing plant workers, and deprived a generation of poultry processing plant workers of fair pay set in a free and competitive labor market.

5. Through communications over decades, which occurred in large groups, small groups, and one-to-one, these poultry processors agreed that they would assist each other by discussing and sharing information about how to compensate their poultry processing plant workers. As one poultry processor wrote to another about sharing wage rates, ''I am interested in sharing this information with you. . . . I am hoping we can develop a collaborative working relationship.'' The poultry processors' collaboration on compensation decisions, including their exchange of compensation information, took many forms over the years of the conspiracy. For example:

a. An employee of one poultry processor emailed eight competitors that ''It's that time of year already'' and requested ''your companies projected salary budget increase recommendation.'' Her coworker added, ''Seriously -any info you can give us will be helpful.'' [1]

b. A group of competing poultry processors exchanged ''disaggregated raw [identifiable] data regarding the compensation of hourly-paid workers . . . broken down by plant and location''; base pay and bonuses ''for each specific salaried position'' included in their survey; any ''planned increase in the salary range for the current budget year''; any ''planned increase in the salary range for the next budget year''; the dates of planned future increases; and ''disaggregated, raw data for some benefits.'' Employees of these poultry processors then met in person and discussed specific compensation, including attendance bonuses and overtime work payments.

c. When one poultry processor's human resources employee emailed two competitors to ask ''what your starting rate is for these kids hired right out of college,'' she noted in the same correspondence that her employer was ''in the midst of completely revamping our Plant Management Trainee program.'' Without further prompting, her competitor shared detailed wage information for its Beginner and Advanced Trainee program.

d. One poultry processor emailed others, ''I had a question for the group also. We are trying to determine what is reasonable for salaried employee to be compensated for working 6 and/or 7 days in a work week when the plant is running . . . Do you pay extra for these extra days worked for salaried (exempt) employees?'' and ''If so, how is that calculated?''

e. Nearly the entire poultry industry has subscribed to exchanges of information through a data consultant that includes compensation information that is so disaggregated that industry participants could determine the wages and benefits their competitors pay for specific positions at specific plants across the country.

6. These collaborations demonstrate a clear agreement between competitors to ask for help with compensation decisions and to provide such help to others upon request. As part of this agreement to collaborate, the poultry processors shared information about *current* and *future* compensation decisions. They also shared *disaggregated* and *identifiable* information, which could readily be traced to a particular competitor or even a particular plant.

7. Even apart from their collaboration on compensation decisions, the poultry processors' information exchanges—standing alone—also violated the Sherman Act. The poultry processors, both directly and through data consultants, shared compensation information so detailed and granular that the poultry processors could determine the wages and benefits their competitors were paying—and planning to pay—for specific job categories at

[1] In quotes throughout the Amended Complaint, all spelling and grammatical errors are transcribed as they were found in the primary source text, without [*sic*] notions.

specific plants. The compensation information the poultry processors exchanged allowed them to make compensation decisions that benefited themselves as employers and suppressed competition among them for workers.

8. Defendants Cargill Meat Solutions Corporation and Cargill, Inc. (together, ''Cargill''); George's Inc. and George's Foods, LLC (''George's''); Sanderson-Wayne Farms, LLC, a merged entity made up of formerly separate firms Sanderson Farms, Inc. (''Sanderson'') and Wayne Farms, LLC (''Wayne'') [2] (collectively, the ''Processor Defendants''), as well as Webber, Meng, Sahl & Co., Inc. (''WMS'') and WMS President G. Jonathan Meng (''Meng'') (the ''Consultant Defendants''), participated in this unlawful conspiracy, together with other poultry processors and another consulting firm.[3]

9. The poultry processors kept much of their collaboration and information exchanges secret in an attempt to hide their anticompetitive conduct. As a condition for membership in the survey exchange facilitated by one data consultant, the poultry processors promised that they would keep the compensation information exchanged confidential. When the survey group members met to collaborate on compensation decisions, they asked and expected the data consultant to leave the room when they discussed current and future compensation decisions. Even when one processor left the survey due to legal concerns in 2012, the poultry processors did not end their anticompetitive conduct; the other survey participants continued collaborating and exchanging information.

10. When antitrust authorities and private class-actions began to surface anticompetitive conduct in other parts of the poultry industry, the poultry processors grew alarmed about the risk that their conspiracy would be found out. One of them warned the others about ''a private investigator'' who was asking ''questions about the types of information we shared at our meeting, the survey and other questions that I will simply call 'general anti-trust fishing' questions. . . . So just a little reminder that the bad-guys are still out there, and why we hold strict confidences about discussing wages.''

11. For at least two decades, poultry processors that dominated local markets for poultry processing plant work and controlled more than 90 percent of poultry processing plant jobs nationwide agreed to help each other make decisions about current and future compensation for their hourly and salaried plant workers, to exchange information about current and future compensation decisions, and to facilitate such exchanges through data consultants. The processors used the information they received through their collaboration and exchanges to make decisions on compensation for their workers. Indeed, they found it so useful that when fear of antitrust liability finally motivated several poultry processors to remove disaggregated compensation information from their exchanges, one processor complained that the new survey ''has suffered significant obscuring of results . . . and I would ask—is it still useful information any longer?''

12. The agreement to collaborate on compensation decisions and exchange information had the tendency and effect of suppressing competition for poultry processing workers and thereby suppressing these workers' compensation. The poultry processors' conspiracy is a scheme among competing buyers of labor (employers) that collectively possess market power over the purchase of poultry processing plant labor. By conspiring on decisions about compensation, these firms, with the assistance of consultants, collaborated to control the terms of employment of poultry processing plant jobs. Ultimately, the conspiracy gave the poultry processors the ability to suppress competition and lower compensation below the levels that would have prevailed in a free market.

13. The agreement to collaborate with and assist competing poultry processors in making compensation decisions, to exchange compensation information, and to facilitate this conduct through consultants is an unlawful restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. It should be enjoined.

14. Defendants Sanderson and Wayne have further acted deceptively to their growers, the farmers responsible for raising the poultry for slaughter. These Defendants compensate their growers through the ''tournament system,'' under which growers' base compensation is adjusted up or down depending on how each grower performs relative to others on defined metrics. But Sanderson and Wayne supply growers with the major inputs that contribute to growers' performance, such as chicks and feed, and these Defendants' contracts with growers omit material information about the variability of the inputs provided to growers. Because Sanderson and Wayne do not adequately disclose the risk inherent in their tournament systems to growers, growers cannot reasonably evaluate the range of potential financial outcomes, manage their risks, or compare competing poultry processors. This failure to disclose is deceptive and violates the Section 202(a) of the Packers and Stockyards Act, 1921, as amended and supplemented, 7 U.S.C. 192(a). These deceptions should be enjoined.

II. Jurisdiction and Venue

15. Defendants Cargill, George's, Meng, Sanderson, Wayne, and WMS have consented to personal jurisdiction and venue in the District of Maryland.

16. Defendant Cargill, Inc. owns and operates facilities, and employs workers, in Maryland.

17. The Consultant Defendants sell services to clients throughout the United States, including in Maryland. The Consultant Defendants' services included collecting, compiling, and providing data on poultry processing worker compensation across the United States, including information about poultry processing workers in Maryland.

18. Each Processor Defendant sells poultry meat throughout the United States. As of 2022, poultry processing in the U.S. was a $30 billion industry. Each Defendant is engaged in interstate commerce and activities that substantially affect interstate commerce. The collaboration between these Defendants in making compensation decisions, including through exchanges of processing plant compensation information that involved all Defendants, also substantially affects interstate commerce.

19. The United States brings this action pursuant to Section 4 of the Sherman Act, 15 U.S.C. 4, to prevent and restraint Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. 1.

20. The Court has subject matter jurisdiction under 28 U.S.C. 1331, 28 U.S.C. 1337, and Section 4 of the Sherman Act, 15 U.S.C. 4, to prevent and restrain Defendants from violating

[2] On July 22, 2022, Cargill and Wayne's parent company, Continental Grain Co., announced that a joint venture of Cargill and Wayne had acquired Sanderson and would call the merged entity Wayne-Sanderson Farms. *Cargill and Continental Grain Complete Acquisition of Sanderson Farms, Cargill, Inc.* (July 22, 2022), *https://www.cargill.com/2022/cargill-continental-grain-complete-acquisition-sanderson-farms* (last accessed May 15, 2023). For the sake of clarity and convenience, hereafter, this Amended Complaint will address Cargill, Sanderson, and Wayne separately due to their status as separate companies during the conduct described.

[3] The Amended Complaint labels conspirators other than the Defendants with pseudonyms because the United States has an ongoing investigation into this conduct.

Section 1 of the Sherman Act, 15 U.S.C. 1.

21. Venue is proper in this judicial district under Section 12 of the Clayton Act, 15 U.S.C. 22 and 28 U.S.C. 1391(b), and (c) because one or more of the Defendants and co-conspirators transacted business, was found, and/or resided in this District; a substantial part of the events giving rise to the United States's claims arose in this District; and a substantial portion of the affected interstate trade and commerce described herein has been carried out in this District. The Court has personal jurisdiction over each Defendant under 15 U.S.C. 22, 5.

22. Regarding violations by Defendants Sanderson and Wayne of the Packers and Stockyards Act, 1921, as amended and supplemented, 7 U.S.C. 181 *et seq.,* the Court has jurisdiction under 28 U.S.C. 1345 and 7 U.S.C. 224.

III. Terms of Reference

23. This Amended Complaint refers to the consultants and poultry processors involved in the conspiracy as follows:

24. The consultant conspirators include Defendants WMS and G. Jonathan Meng (together, the ''Consultant Defendants'') and Consultant Co-Conspirator 1.[4]

25. The poultry processor conspirators include Cargill, George's, Sanderson, and Wayne (together, the ''Processor Defendants''), and Processor Co-Conspirators 1 through 7 and 9 through 18, inclusive, which are distinct poultry processing companies.

26. The Processor Defendants, together with Processor Co-Conspirators 1 through 7 and 9 through 18, inclusive, are the ''Processor Conspirators.''

27. Acts in furtherance of the conspiracy to collaborate with and assist competitors, to exchange information, and to facilitate such collaboration and exchanges can be summarized as detailed on the following page:

CONDUCT INVOLVED IN CONSPIRACY

Descriptor	Anticompetitive conduct
Collaboration on Compensation Decisions (''Collaboration Conduct'').	Poultry processors attended in-person meetings and engaged in direct communications with their competitors to collaborate with and assist each other in making compensation decisions, including through the direct exchange of compensation information and the indirect exchange of such information facilitated by consultants WMS and Consultant Co-Conspirator 1. Such compensation decisions and compensation information exchanges included current and future, disaggregated, and identifiable confidential compensation information related to poultry processing plant workers. This collaboration was anticompetitive, and it suppressed poultry processing plant worker compensation. *Period:* 2000 or earlier to present.
Exchange of Compensation Information Facilitated by WMS (''WMS Exchange'').	As part of the Processor Conspirators' conspiracy to collaborate on compensation decisions, they paid Defendants WMS and Jonathan Meng to facilitate a poultry processing plant worker compensation survey, designed and with rules set by the Processor Conspirators, which included the exchange of current and future, disaggregated, and identifiable confidential compensation information related to poultry processing plant workers. This exchange was anticompetitive, and it suppressed poultry processing plant worker compensation. *Period:* 2000 or earlier to 2020.
Exchange of Compensation Information Facilitated by Consultant Co-Conspirator 1 (''Consultant Co-Conspirator 1 Exchange'').	As part of the Processor Conspirators' conspiracy to collaborate on compensation decisions, they submitted to and purchased from Consultant Co-Conspirator 1 current, disaggregated, and identifiable confidential compensation information related to poultry processing plant workers. This exchange was anticompetitive, and it suppressed poultry processing plant worker compensation. *Period:* 2010 or earlier to present.

IV. Defendants

A. Cargill

28. Cargill Meat Solutions Corporation is a Delaware company headquartered in Wichita, Kansas. Cargill Meat Solutions Corporation owns poultry processing plants, employs and compensates the workers in these plants, and employs executives and other representatives that set compensation for its plant workers throughout the United States. Cargill Meat Solutions Corporation participated in the anticompetitive compensation information exchanges with representatives of its competitors for poultry processing plant workers.

29. Cargill, Inc. is a privately-held company headquartered in Wayzata, Minnesota. Cargill, Inc. is the parent company of Cargill Meat Solutions Corporation. Cargill, Inc. participated in the anticompetitive compensation information exchanges with representatives of its competitors for poultry processing plant workers.

30. Defendants Cargill, Inc. and Cargill Meat Solutions Corporation are referred to collectively as ''Cargill,'' unless otherwise noted for specificity.

31. From at least 2000 until the present, Cargill participated in the anticompetitive agreement to collaborate with and assist its competitors in making decisions about compensation for poultry processing plant workers, including through the exchange of current and future, disaggregated, and identifiable wage and benefit information, by engaging in the following conduct in the following years:

a. *Collaboration Conduct:* at least 2000 to present;

b. *WMS Exchange:* 2000–2019; and

c. *Consultant Co-Conspirator 1 Exchange:* 2010 to present.

32. As a result of its anticompetitive conduct, Cargill set and paid artificially suppressed wages and benefits for its hourly and salaried poultry processing plant workers.

B. Sanderson

33. Sanderson is a Mississippi company headquartered in Oakwood, Georgia. Continental Grain Company is the controlling shareholder of Sanderson. Sanderson owns poultry processing plants, employs and compensates the workers in these plants, and employs executives and other representatives that set compensation for its plant workers throughout the United States.

34. From at least 2000 until the present, Sanderson participated in the anticompetitive agreement to collaborate with and assist its competitors in making decisions about compensation for poultry processing plant workers, including through the exchange of current and future, disaggregated, and identifiable wage and benefit information, by engaging in the

[4] As noted above, co-conspirators have been designated with pseudonyms because the United States has an ongoing investigation into this conduct.

following conduct in the following years:

a. *Collaboration Conduct:* at least 2000 to present;

b. *WMS Exchange:* 2000–2011; and

c. *Consultant Co-Conspirator 1 Exchange:* 2010 to present.

35. As a result of its anticompetitive conduct, Sanderson set and paid artificially suppressed wages and benefits for its hourly and salaried poultry processing plant workers.

C. Wayne

36. Wayne is a Delaware company headquartered in Oakwood, Georgia. Continental Grain Company is the controlling shareholder of Wayne. Wayne owns poultry processing plants, employs and compensates the workers in these plants, and employs executives and other representatives that set compensation for its plant workers throughout the United States.

37. From at least 2000 until the present, Wayne participated in the anticompetitive agreement to collaborate with and assist its competitors in making decisions about compensation for poultry processing plant workers, including through the exchange of current and future, disaggregated, and identifiable wage and benefit information, by engaging in the following conduct in the following years:

a. *Collaboration Conduct:* at least 2000 to present;

b. *WMS Exchange:* 2000–2019; and

c. *Consultant Co-Conspirator 1 Exchange:* 2010 to present.

38. As a result of its anticompetitive conduct, Wayne set and paid artificially suppressed wages and benefits for its hourly and salaried poultry processing plant workers.

D. George's

39. George's, Inc. is a privately-held Arkansas corporation headquartered in Springdale, Arkansas. George's, Inc. owns poultry processing plants, employs and compensates the workers in these plants, and employs executives and other representatives that set compensation for its plant workers throughout the United States. George's, Inc. participated in the anticompetitive compensation information exchanges with representatives of its competitors for poultry processing plant workers.

40. George's Foods, LLC is a Virginia corporation headquartered in Edinburg, Virginia. George's, Inc. and George's Foods, LLC are affiliates. George's Foods, LLC operates a poultry complex in Harrisonburg, Virginia, and employs and compensates the complex's poultry workers. George's Foods, LLC participated in the anticompetitive compensation information exchanges with representatives of its competitors for poultry processing plant workers.

41. Defendants George's, Inc. and George's Foods, LLC are referred to collectively as ''George's,'' unless otherwise noted for specificity.

42. From at least 2005 until the present, George's participated in the anticompetitive agreement to collaborate with and assist its competitors in making decisions about compensation for poultry processing plant workers, including through the exchange of current and future, disaggregated, and identifiable wage and benefit information, by engaging in the following conduct in the following years:

d. *Collaboration Conduct:* at least 2005 to present;

e. *WMS Exchange:* 2005–2018; and

f. *Consultant Co-Conspirator 1 Exchange:* 2010 to present.

43. As a result of its anticompetitive conduct, George's set and paid artificially suppressed wages and benefits for its hourly and salaried poultry processing plant workers.

E. WMS

44. WMS is a Pennsylvania corporation located in Pottstown, Pennsylvania. WMS provides compensation consulting services, including through the use of compensation surveys, for clients in a broad range of industries.

45. From 2000 to 2020, WMS administered surveys that facilitated the Processor Conspirators' conspiracy by gathering, sorting, and disseminating disaggregated and identifiable information about current and future compensation for poultry processing plant workers.

46. From 2000 to 2002 and 2004 to 2019, WMS also facilitated, supervised, and participated in in-person meetings at which the Processor Conspirators assembled to discuss current and future, disaggregated, and identifiable poultry processing plant worker compensation decisions and information.

47. Through its administration of surveys and participation at annual in-person meetings of the Processor Conspirators, WMS facilitated the Processor Conspirators' sharing of their confidential, competitively sensitive information about compensation for poultry processing plant workers.

48. WMS's involvement in this conspiracy artificially suppressed compensation for poultry processing plant workers.

F. Jonathan Meng

49. G. Jonathan Meng is an individual residing in the State of Colorado. Since 2000, Meng has been the President of WMS.

50. From 2000 to the present, Meng has had primary responsibility at WMS for designing and presenting compensation surveys, collecting survey data, developing new clients, maintaining client relationships, and obtaining payment for services rendered.

51. Meng personally administered and supervised WMS's surveys, which disseminated the Processor Conspirators' current and future, disaggregated, and identifiable information about compensation for poultry processing plant workers.

52. From 2000 until 2019, Meng, representing WMS, also facilitated, supervised, and participated in in-person meetings at which the Processor Conspirators assembled to discuss current and future, disaggregated, and identifiable poultry processing plant worker compensation information.

53. By administering and supervising the surveys and meetings of the poultry processing defendants, Meng facilitated the Processor Conspirators' sharing of confidential, competitively sensitive information about compensation for poultry processing plant workers.

54. Meng's facilitation of this conspiracy artificially suppressed compensation for poultry processing plant workers.

G. Co-Conspirators

55. Several entities conspired with the Defendants during the following years to collaborate with and assist competing poultry processors in making compensation decisions, to exchange compensation information, and to facilitate this conduct: Consultant Co-Conspirator 1 (at least 2010 to the present); Processor Co-Conspirator 1 (at least 2002 to the present); Processor Co-Conspirator 2 (at least 2015 to the present); Processor Co-Conspirator 3 (at least 2010 to the present); Processor Co-Conspirator 4 (at least 2004 to the present); Processor Co-Conspirator 5 (at least 2014 to the present); Processor Co-Conspirator 6 (at least 2000 to the present); Processor Co-Conspirator 7 (at least 2000 to the present); Processor Co-Conspirator 9 (at least 2014–2015); Processor Co-Conspirator 10 (at least 2009 to the present); Processor Co-Conspirator 11 (at least 2005 to the present); Processor Co-Conspirator 12 (at least 2010 to the present); Processor Co-Conspirator 13 (at least 2009 to the present); Processor Co-Conspirator 14

(at least 2000 to the present); Processor Co-Conspirator 15 (at least 2000 to the present); Processor Co-Conspirator 16 (at least 2014 to the present); Processor Co-Conspirator 17 (at least 2019 to the present); and Processor Co-Conspirator 18 (at least 2000 to the present).

V. Factual Allegations

A. Poultry Industry Background

1. Hatcheries and Growers

56. Poultry are domesticated fowl, including chicken and turkey, bred for their meat and eggs.

57. Poultry processors own hatcheries, in which they hatch chicks or poults (baby turkeys) from eggs. Poultry processors supply these young birds to growers. Growers are farmers who raise the birds to specifications set by, and with feed and supplies provided by, the poultry processors with which they contract. When the growers have finished raising the birds and the birds are ready for slaughter, the processors pay the growers for their services per pound of poultry.

58. This arrangement allocates substantial risk from the poultry processors to growers. Many poultry processors historically compensate growers through a tournament system. Processors control the chicks or poults, feed, and other inputs that are supplied to growers. The grower, in addition to raising the chicks, often must make substantial financial investments to build or improve chicken barns to meet the processor's specifications. Growers are compensated through a base payment set in a contract between the processor and the grower. But the processor can adjust the base payment up or down based on how a grower compares to other growers (which the processor selects) on production and efficiency metrics. In practice, these ''performance'' adjustments make it very difficult for growers to project and manage the risk they face when entering a contract with a processor—particularly since processors control the key inputs to poultry growing.

59. Growers' contracts often do not disclose the true financial risk that the grower faces, including basic information like the number and size of flocks they are guaranteed. Similarly, growers often do not receive disclosures that would allow them to assess the tournament system. Growers often have little or no choice in which processor they contract with because there are limits to how far live poultry can be transported, and therefore only processors with nearby facilities are reasonable options.

2. Poultry Processing Plants

60. Once grown, the birds are packed into trucks and driven to primary poultry processing plants. Primary poultry processing plants tend to be built near hatcheries and growing facilities, which are usually in rural areas.

61. Once the birds arrive at primary processing plants, poultry processing plant workers take the birds from the trucks and hang, slaughter, clean, segment, and pack the meat. This work is generally performed on a poultry processing line, where workers perform the same task repeatedly. Poultry processing plants are kept at cold temperatures to preserve the meat processed inside. The machinery necessary to process poultry carcasses and meat products is very loud, making it difficult for workers on the poultry processing line to hear and communicate. Slaughtering and packing poultry often results in blood and gore covering work surfaces and workers' protective gear. Moreover, the meat and byproducts of the slaughter process create a foul-smelling atmosphere that is slippery from fat, blood, and other byproducts and waste from the slaughter process.

62. Processing plants employ salaried workers to manage this slaughter process and ensure that the processing plants comply with relevant health and safety laws, among other things.

63. Meat from the birds slaughtered in primary processing plants is either sold to customers (*e.g.,* grocery stores, restaurants, and other retailers) or sent to secondary processing plants at which the meat is further prepared for consumption, such as being sliced for deli packs or breaded.

3. Poultry Processing Plant Workers and Compensation

a. Poultry Processing Plant Work and Workers

64. According to the U.S. Bureau of Labor Statistics, over 240,000 people worked in the U.S. poultry processing industry as of June 2020. Some of these workers worked in Maryland.

65. Many poultry processing plant jobs require physical stamina because they are performed standing on the poultry processing line. These jobs also demand tolerance of unpleasant conditions including low temperatures, bad odors, blood and viscera, loud machinery noise, and, in some cases, dim lighting. Poultry processing plant work also can be dangerous, including because of the risk of injury from cutting instruments and repetitive-motion tasks. Many workers must stand on the processing line repeating the same rapid motions continuously. These motions can involve handling live, clawed birds, heavy lifting, and the use of sharp cutting instruments, all of which are physically demanding and involve a high risk of injury.

66. In a competitive labor market, employers compete to attract and retain workers—much like manufacturers compete to attract potential customers in a downstream product market. Poultry processing plants compete with each other to attract workers who can perform this difficult work, and potential and current poultry processing plant workers seek out employers that will provide the best compensation for their labor.

67. Many jobs in poultry processing plants present unique characteristics that make it difficult for workers to switch to a different kind of job. The difficulty of switching to other jobs is enhanced by the specific skills developed and circumstances faced by workers in poultry processing firms. Workers in poultry processing plants often face constraints that reduce the number of jobs and employers available to them, limiting the number of competitors for their labor. Poultry processing plant workers also share common attributes that they bring with them to their jobs and develop common skills when performing these jobs. As a result of these poultry processing plant workers' common constraints, attributes, and skills, poultry processors are distinguishable from other kinds of employers from the perspective of poultry processing plant workers.

68. *Common constraints facing poultry processing plant workers:* Many poultry processing plant workers face constraints in finding employment that greatly restrict their job options. For these workers, poultry processing plants offer opportunities that are not available in other industries. Workers who cannot speak, read, or write English or Spanish, for example, can still perform poultry processing plant line work, which is primarily physical labor and done under conditions so loud as to make speaking and hearing difficult. Similarly, workers with criminal records, probation status, or lack of high school or college education are often able to work at poultry processing plants even when other jobs are not available to them. These workers distinguish poultry processors, whose doors remain open to them, from employers in other industries, in which jobs are not available to them.

69. In addition, many poultry processing plants are located in rural areas, in which workers often have

fewer job alternatives—especially for full-time, year-round work—as compared to workers in other areas.

70. Poultry processing workers' inability to access jobs in many, and sometimes any, other industries that would provide them with steady and year-round work is evidenced by the conditions these workers tolerate.

71. *Common attributes of poultry processing plant jobs:* As discussed above, poultry processing plant workers must be able to tolerate particularly challenging working conditions. An employer that requires a particular trait in its employees will generally recruit and retain workers with that trait by offering compensation or other inducements that are more attractive than those offered to these workers by employers that do not value that trait. This makes such an employer distinguishable and more appealing to such employees, who have that trait. The physical stamina and other attributes required for poultry processing plant work mean that poultry processors will compensate or otherwise reward workers who possess those attributes more highly than employers in other industries. From the perspective of the prospective poultry processing plant worker, poultry processing plant jobs are distinguishable from and likely more valuable than other lower-paid work that does not value and reward such attributes. In other words, other jobs are not reasonable substitutes for poultry processing plant jobs.

72. *Common skills of poultry processing plant workers:* Poultry processing plant workers develop special skills on the job. Workers learn these skills through the repetitive and, at times, difficult or dangerous tasks they perform on the poultry processing line. Poultry processing plant workers learn how to handle and slaughter live birds, wield knives and blades, section poultry carcasses, clean meat in a manner consistent with health and safety standards, manage other workers performing these tasks, examine and repair the necessary machinery, maintain health and safety standards, and, crucially, perform these tasks efficiently so as not to slow down the plant line. Workers in management or other less physically demanding jobs also build industry-specific skills, including expertise in effective plant management and retention of employees. Just as with the common attributes of poultry processing plant workers who take plant jobs, the common skills of workers who stay and learn plant jobs help to define the relevant labor market. Not all potential workers can develop these important skills, and many fail out of poultry processing plant jobs within weeks. A worker with the skills to succeed on the line is most valuable to other poultry processing plants—and thus will receive the most compensation from poultry processors. Thus, from the workers' perspective, poultry processing plants are not reasonable substitutes for other employers.

b. Competition for Poultry Processing Plant Workers

73. The Processor Conspirators, which compete to hire and retain poultry processing plant workers, control more than 90 percent of poultry processing plant jobs nationwide. In some local areas, they control more than 80 percent of these jobs.

74. These poultry processors use similar facilities, materials, tools, methods, and vertically-integrated processes to produce processed poultry and downstream products in which they compete for sales to similar sets of customers. They also compete with each other for processing plant workers.

75. Poultry processors recruit workers in many different ways. They advertise for workers, use recruitment agencies, and rely on word of mouth or personal connections, sometimes offering referral bonuses, to attract friends or family of existing workers to come to their plants. The processors recruit workers in their plants' local areas but also more broadly. For example, poultry processors sometimes target workers in other states and even internationally.

c. Setting and Adjusting Plant Worker Compensation

76. Poultry processors compensate hourly and salaried plant workers through wages and benefits.

77. Hourly poultry processing plant workers' wages typically consist of a base pay rate set according to their role, with upward adjustments or bonuses offered based on factors including seniority, skill, productivity, and shift time. Salaried poultry processing plant workers' wages typically consist of annual salaries and may include annual or performance bonuses.

78. Processing plants also typically offer benefits to their hourly and salaried workers. These benefits can include personal leave, sick leave, health and medical insurance, other types of insurance, and retirement plans or pensions, among others.

79. Poultry processors also control working conditions within their plants, which can affect a poultry processing plant worker's job experience. These conditions include the quality of mechanical and safety equipment at the plant, temperature, and the speed at which the plant line moves, which determines the speed at which the workers have to perform their work.

80. Poultry processors typically make certain compensation-related decisions at the corporate level, which affect their workers nationwide. For example, poultry processors generally set overall labor compensation budgets, some plant worker wages, and some plant worker benefits in a centralized manner and at the national level. To illustrate, an executive at a poultry processor who manages compensation for the entire company may determine the health benefits for all of the line workers at all of the company's plants.

81. Poultry processors also typically adjust some wages and benefits at the corporate level, but for a regional or local area, on the basis of local factors. For example, an executive managing compensation for an entire poultry processing company may consider a particular plant's needs and the pay at other nearby plants when deciding the base rate per hour for shoulder cutters on the plant line. As a result, shoulder cutters across all of the processor's plants may receive different base rates.

B. Defendants' Conspiracy To Collaborate on Compensation Decisions, Share Compensation Information, and Use Consultants To Facilitate Their Conspiracy

82. The Processor Conspirators, facilitated by the Consultant Defendants and Consultant Co-Conspirator 1, collaborated on compensation decisions, including by exchanging competitively sensitive information about plant worker compensation. The exchange of such compensation information, much of it current or future, disaggregated, or identifiable in nature, allowed the poultry processors to discuss the wages and benefits they paid their poultry processing plant workers. This section of the Amended Complaint first describes the nature of their conspiracy in broad terms and then details some specific examples of the conspirators' collaboration and exchanges of information.

83. The Processor Conspirators collaborated with and sought assistance from each other when making decisions about wages and benefits for their poultry processing plant workers. These decisions should have been made independently. As a result, rather than competing for workers through better wages or benefits, the Processor Conspirators helped each other make compensation decisions.

84. The compensation information that poultry processors exchanged included information for both hourly and salaried plant jobs. Through the exchanges, a poultry processor could learn its competitors' base wage rates for a host of different poultry processing plant jobs, from live hangers to shoulder cutters to plant mechanics.

85. Through emails, surveys, data compilations, and meetings, the Processor Conspirators assembled a ''map'' of poultry processing plant worker compensation across the country. This ''map'' was broad enough to show nationwide budgets and granular enough to show compensation at individual poultry processing plants. The exchanges allowed the poultry processors to learn not only the current state of compensation in their industry but also, in some cases, plans for the next year's compensation. The poultry processors exchanged information about nationwide, regional, and local wages and benefits.

86. As one example, in December 2009, Processor Co-Conspirator 18's Director of HR emailed Processor Co-Conspirator 14's Compensation Manager seeking a chart of information about Processor Co-Conspirator 14's current start rates and base rates for certain workers at specific Processor Co-Conspirator 14 plants in Maryland, Delaware, Virginia, North Carolina, South Carolina, Tennessee, Kentucky, and Alabama. Processor Co-Conspirator 18's Director of HR also asked Processor Co-Conspirator 14's Compensation Manager, ''if you have negotiated, scheduled increases please list, or if it is a non-union facility and they have an annual increase just tell me that and what month.'' In the Processor Co-Conspirator 18 employee's own words, the purpose of this request, and the survey Processor Co-Conspirator 18 was building at the time (the Chicken Industry Wage Index, discussed below), was ''to use the data to set wage rates and use when negotiating with the Union. . . . I am interested in sharing this information with you. . . . *I am hoping we can develop a collaborative working relationship.* I appreciate you taking the time to speak to me today and supplying this information to me'' (emphasis added). Processor Co-Conspirator 14 responded, ''See completed information below,'' filling out the chart as its competitor and collaborator Processor Co-Conspirator 18 requested.

87. The conspiracy reduced incentives for the Processor Conspirators to bid up salaries to attract experienced workers or retain workers that might have left for other processing plants. The detailed knowledge of their competitors' current and future compensation gave each Processor Conspirator a path to paying its own poultry processing plant workers less than it would have absent the on-demand access they possessed to current and future, disaggregated, and identifiable information about its competitors.

88. The Processor Conspirators took pains to keep their collaboration secret, and they controlled which processors could participate in their information exchanges.

89. The conspiracy brought together rival poultry processors that competed with each other for workers. In a functioning labor market, the Processor Conspirators would have *avoided* sharing such confidential, competitively-sensitive compensation information. Their agreement distorted the mechanism of competition between poultry processors for poultry processing plant workers. This competitive distortion resulted in compensation that was not determined competitively but rather was suppressed—less than what workers would have been paid but for the anticompetitive conduct.

90. Unlike the Processor Conspirators, many of which are large, sophisticated corporate entities, the poultry processing plant workers lacked access to a comparable ''map'' of poultry processing plant compensation. To understand the wages they could earn, whether at plants in their local region or far across the country, workers had to rely on word-of-mouth or their own time- and labor-intensive research. These workers suffered from deep information asymmetries as a result of the Processor Conspirators' and Consultant Defendants' anticompetitive conduct.

1. WMS Poultry Industry Survey Group

91. From at least 2000 to 2020, a group of poultry processors, including all Processor Conspirators, agreed to participate in an exchange of compensation information facilitated by Defendant WMS (the ''WMS Survey Group'').

92. Through the WMS Survey Group, all of the Processor Conspirators exchanged current and future, disaggregated, and identifiable information about their plant workers' wages and benefits. They also met annually in person to discuss these exchanges. At these meetings, the Processor Defendants shared additional compensation information and collaborated on compensation decisions.

a. WMS Survey Group History, Rules, and Control by Processor Conspirators

93. Before 2000 and potentially as early as the 1980s, many of the Processor Conspirators, including Defendants Cargill, Sanderson, and Wayne, as well as Processor Co-Conspirators 6, 7, 14, 15, 17, and 18, participated in a group similar to the WMS Survey Group, but in which they directly exchanged compensation data with each other without the participation of WMS.

94. Beginning in 2000, the Processor Conspirators hired WMS and Defendant Jonathan Meng to provide a veneer of legitimacy for their collaboration and information exchange.

95. Meng believed that in hiring him and WMS, the Processor Conspirators were not trying to comply with the antitrust laws, but instead were trying ''to establish the *appearance* of compliance with the Safe Harbor guidelines and antitrust law and obtain compensation data in a matter that sometimes *seemed* permissible.'' By ''Safe Harbor,'' Meng was referring to guidance antitrust authorities have provided about how companies can reduce the likelihood that an exchange of information between competitors is unlawful. Although this guidance does not immunize any competitor information exchange from the antitrust laws (and has never done so), the Defendants and Co-Conspirators were sharing the type of information that the guidance specifically identified as likely to violate the antitrust laws.

96. While Defendant WMS began administering the survey in 2000—issuing the survey forms, receiving responses from the participants, distributing the results, and presenting them in person every year at their annual meeting—the Processor Conspirators together controlled the categories of compensation information included in the survey and the requirements for group membership. The processors made these decisions through the WMS Survey Group's Steering Committee, on which Processor Co-Conspirators 6, 7, 14, 15, and 18 sat on a rotating basis from 2000 through 2020. The Steering Committee, along with the other WMS Survey Group participants, including Defendants Cargill, George's, Sanderson, and Wayne and Processor Co-Conspirators 3 and 17, voted on potential new members in the WMS Survey Group. Thus, while WMS facilitated this scheme, including by collecting the information and tabulating the results, the Processor Conspirators themselves decided to collaborate on compensation decisions

and exchange anticompetitive compensation information.

97. Processor Co-Conspirator 5's successful attempt to join the WMS Survey Group in October 2014 highlights the group's membership standards and what motivated poultry processors from across the country to join. Processor Co-Conspirator 5's representative emailed Defendant WMS and Processor Co-Conspirators 6, 7, and 18, explaining, ''I was recently told of a committee/group that had gotten together in the past to talk about compensation in the poultry industry. I know we deal with a slightly different bird here at [Processor Co-Conspirator 5] than [Processor Co-Conspirator 6] and probably the majority in your group, but I would be interested in participating in that group if you think it would be appropriate. . . . If you're open to Midwestern Turkey company participating in this . . . I'd love to be considered.'' An executive from Processor Co-Conspirator 6 responded, volunteering to send the request to the Steering Committee and noting that participants in the survey ''need[ ] to meet certain requirements that indicate you fit into the data study (ex. Number of plants, etc. . .).'' After some discussion among Defendant WMS and Processor Co-Conspirators 6, 7, 14, and 18, an executive from Processor Co-Conspirator 7 noted, ''Traditionally, if they meet the size criteria and there are no 'naysayers' from the existing party, they get the welcome handshake, no?''

98. In contrast, Meng detailed what occurred when, in 2014, some of the WMS participants considered including ''red meat processing complexes'' in the survey: the ''processors ultimately rejected that possibility.'' Meng stated in a sworn declaration to this Court, ''The reason why those processors declined to include the red meat processors in the [WMS Survey Group] is because the poultry processing labor market is distinct from the red meat processing labor market. Several of those processors told me this, and it is also evident to me from my own review of the markets.'' [5]

99. Members of the WMS Survey Group were required to attend each annual in-person meeting as a condition of participating in the compensation collaboration and information-exchange group. If a poultry processor did not attend regularly, it could be kicked out. As an executive for Processor Co-Conspirator 7 explained, ''Normally, any company that doesn't participate in the survey *and* attend for 2 consecutive years is removed from participation.'' This policy demonstrates that the opportunity to collaborate in person was an important feature of the WMS Survey Group.

b. Compensation Data Exchanged Through WMS Survey Group

100. Attendees at the annual WMS Survey Group in-person meeting brought their current and future, disaggregated, and identifiable compensation data with them. The attendees then discussed that information confidentially. As one 2009 communication from Processor Co-Conspirator 6 to Defendants Cargill, George's, Sanderson, and Wayne, Processor Co-Conspirators 1, 4, 7, 15, and 18, and Former Processor Co-Conspirator 2 put it: ''Hope all are planning to be there for the meeting. Just a reminder to bring you Data manual in case others have questions for you concerning your data. Please be prepared to discuss survey issues, questions, and details with WMS. We will also be sharing information in a round table discussion. *These discussions are expected to be kept confidential*'' (emphasis added).

101. As Meng explained, ''In earlier years, the attendees typically brought this data to the roundtable sessions in hard-copy form using large binders. In later years, the attendees brought their laptop computers, which contained all the compensation data in electronic form.''

102. Through the WMS Survey Group, the Processor Defendants, facilitated by Defendant WMS, exchanged current and future, disaggregated, and identifiable data about their poultry processing plant worker compensation on an annual basis. The Processor Defendants gave each other accurate, detailed, and confidential information: as Defendant George's put it, ''The information obtained through participation can't be overstated.''

103. Through a single annual WMS survey or potentially a single in-person meeting, a processor could understand trends in poultry processing plant worker compensation nationwide. This information was especially important to processors competing for workers willing to move, even internationally, for plant work. But the Processor Conspirators also could compare notes on plant compensation in a particular local area to understand, for example, how one processor's base wage rate for line workers in a particular county compared to a nearby competitor's.

104. As detailed below, over many years, the poultry processors in the WMS Survey Group used the surveys and in-person meetings to compare planned future raises or changes in plant worker compensation. WMS's Meng explained that ''members of the [WMS Survey Group] said they wanted to know how much and when their competitors were planning to increase salaries and salary ranges.'' Comparing processors' compensation projections from the past year against their actual compensation levels in the current year revealed whether the Processor Conspirators had held to the prior year's projections, making any deviations from prior exchanged information easily detectible. This ability to check the information shared across time encouraged the participants to submit accurate information, because deviations between projected and actual compensation levels would be apparent. The Processor Conspirators' sharing of future compensation plans could also have disincentivized them from making real-time compensation changes to better compete against each other, maintaining wages at their projected levels and suppressing wages that might otherwise have risen through natural, dynamic competition.

105. From 2005 through 2017, the WMS survey showed future data, such as the median and average future salary merit increase for each company involved in the survey. From 2006 through 2019, the surveys included an additional column that allowed for easy comparison between the actual current year's percentage changes and the changes that had been projected in the previous year's survey. This enabled the survey participants to monitor whether their competitors adhered to the previous year's forecasts.

106. The Processor Conspirators discussed other compensation information during their face-to-face meetings. A 2015 email from Processor Co-Conspirator 18 to fellow WMS Steering Committee members and Processor Co-Conspirators 6, 7, and 14, stated, ''As you know the survey results do not provide hourly production projected budgets''—*i.e.,* future compensation information for hourly production line workers—''and this is typically a discussion during the roundtable sessions.'' Even more explicit is an internal Processor Co-Conspirator 18 email from 2005, in which one executive explained to another, ''The survey results will be shared at the meeting and we can get the 10th percentile and the other company's avg minimum of the range. I believe there are other poultry companies paying below our lowest salary. Although it won't be published in the

[5] Meng filed his declaration before this Court on February 4, 2022 as ECF No. 580–4 in *Jien* v. *Perdue Farms, Inc.,* 19–cv–2521 (D. Md.).

survey results [the Processor Co-Conspirator 18 meeting participant] can also informally ask what minimum starting rates are.'' Again, this email exchange demonstrates that the opportunity to collaborate with their competitors in person was a key feature of the WMS Survey Group.

107. Meng's presentations at the WMS in-person meetings also featured current compensation information. For example, he explained in his sworn declaration, ''Specifically, those PowerPoint presentations focused on how the compensation data reported in the current year for both salaried and hourly-paid workers compared to the prior year or two years.''

108. Further, Meng stated that at the in-person WMS meetings, ''the private roundtable sessions that excluded me involved discussions between members of the [Processor Conspirators] regarding their compensation practices. Those discussions addressed, among other issues, the results of the [WMS surveys], the compensation data that particular individual processors had reported to the Survey, and plans for future compensation rates for salaried and hourly-paid workers.''

109. The Group's 2009 ''Operating Standards'' provided that each participating poultry processor must ''[a]gree and ensure that shared survey data or other information from discussions will be used and treated in a 'confidential' manner and definitely should not be shared with companies not participating in the survey. Failure to meet these requirements will result in immediate removal from the survey group.'' This condition for joining the WMS Survey Group shows that the participants considered the information exchanged to be nonpublic and restricted to survey participants.

110. Meng willingly participated in the processors' violation of antitrust law. To help create a false veneer of compliance with the antitrust laws, Meng would occasionally make statements that WMS's product ''complied with legal requirements.'' In August 2012, when the Steering Committee decided to make a change to the survey to distribute disaggregated and identifiable data regarding hourly workers, Meng raised a concern that this would not comply with antitrust agency guidance on information exchanges. Rather than forego exchanging this information, the Processor Conspirators on the Steering Committee asked that Meng not mention his concern to the other processors: ''what about just letting them respond as to any concerns as opposed to calling it out?''

c. WMS Survey Group Exchanges by Year, Defendant, and Type of Information Exchanged in Surveys and In-Person Meetings

111. The following chart lists the Processor Defendants that participated in the WMS Survey Group by year.

PROCESSOR DEFENDANTS' WMS SURVEY GROUP PARTICIPATION BY YEAR

2000–2005	Cargill, Sanderson, and Wayne
2006–2011	Cargill, George's, Sanderson, and Wayne
2012–2018	Cargill, George's, and Wayne
2019	Cargill and Wayne

112. In the remainder of this section, allegations about events or conduct in each year of the WMS Survey Group apply to all of the Processor Defendants participating in the WMS Survey Group for that year, except where otherwise noted.

113. From at least 2000 through 2019, the members of the WMS Survey Group submitted their confidential compensation data to the WMS-run survey and received survey results containing their competitors' confidential compensation data. The types of data gathered and shared changed during the WMS Survey Group's over-20-year existence. In the following years, the WMS survey solicited, and the WMS survey results included:

a. *2000:* Confidential information about wages, salaries, benefits, and bonuses related to ''dozens of positions at poultry complexes,'' including plants, hatcheries, and feed mills;

b. *2001–2004:* Current and future, disaggregated, and identifiable salary and benefits information, as well as current, disaggregated, and identifiable hourly wage information, including ''what each member of the [WMS Survey Group] paid, on average, in hourly wages to poultry processing workers at each of their processing plants.'' The information was identifiable because the WMS survey included what was ''in effect, a key for identifying the identity of each poultry processor'';

c. *2005–2012:* Future salary information, including the dates and ranges of planned raises in salary by position, confidential information about hourly wages, and current and disaggregated benefits information;

d. *2013–2016:* Future salary information, including the dates and ranges of planned raises in salary by position; current, disaggregated, and identifiable hourly wage information, which enabled participants to determine specific competitors' current hourly compensation by plant; and current and disaggregated benefits information;

e. *2017:* Future salary information, including the dates and ranges of planned raises in salary by position, confidential information about hourly wages, and current and disaggregated benefits information; and

f. *2018–2019:* Confidential compensation information.

114. As discussed above, from 2001 through 2019, the members of the WMS Survey Group met in person annually to discuss poultry processing plant compensation. All participants were instructed by the Steering Committee to bring their individual compensation data with them to these meetings. From 2001 through 2017, the members of the WMS Survey Group held roundtable discussions about compensation practices from which they excluded any third parties, including Meng. In 2018 and 2019, Meng attended all sessions of the in-person meeting.

115. At these in-person WMS Survey Group meetings, the members of the WMS Survey Group collaborated on, assisted each other with, and exchanged current and future, disaggregated, and identifiable information about compensation for poultry processing workers, as described below:

a. *2007:* An ''agenda and group discussion topics'' list for the 2007 WMS Survey Group meeting states ''Are Smoking Cessation Programs included in your Health benefits? If not, do you have plans to implement? If currently included, please share your schedule of benefits.''

b. *2008:* Later correspondence between WMS Survey Group Members states that at the 2008 WMS Survey Group meeting, ''we discussed companies that are now charging higher insurance premiums for smokers.''

c. *2011:* In 2012, Meng emailed the WMS Survey Group members about notes they had taken at the prior year's in-person meeting, warning them that the notes disclosed details that put the processors at risk of having violated the antitrust laws. Meng wrote to the processors, ''you reference certain positions not included in the survey where 'we will all agree to contact each other for general position.' That comment and action goes against the Safe Harbor Guidelines.'' Thus, it appears that during the 2011 meeting, the Defendants present directly shared information that violated the antitrust laws.

d. *2015:* At the 2015 WMS Survey Group meeting, the participants discussed ''whether to distribute disaggregated, raw, plant-level data concerning hourly-paid workers''

through the WMS survey and that ''all members of the [WMS Survey Group] in attendance at the Meeting agreed to the continued distribution of such data.'' Notes taken at the 2015 WMS Survey Group roundtable meeting by Processor Co-Conspirator 18 record what each participant shared with the group in columns next to each processor's name. These notes suggest the processors openly and directly shared with each other a wide range of detailed, non-anonymous, and current- or future compensation information, with a special focus on their rates of overtime pay (*i.e.,* pay for the 6th and 7th days of the week):[6]

i. Processor Co-Conspirator 3's column notes, ''6th and 7th day pay $150 flat rate''; ''Compress scales over 1 yr rate to start rate. Startign in Feb 2015'';

ii. Processor Co-Conspirator 6's column notes, ''Added seniority pay instead of doing an hourly increase. . . . Rolls w/vacation, up to 6% increase. It is a seniority premium'';

iii. Defendant George's column notes, ''Staffing plants is a big issue down 290 positions at springdale locations. $500 signing bonus $300 first 30 days $200 30 days'';

iv. Processor Co-Conspirator 14's column notes, ''NO 6th and 7th incentive'';

v. Processor Co-Conspirator 15's column notes, ''HOurly bonus program 17K employees'';

vi. Processor Co-Conspirator 17's column notes, ''6th and 7th day pay for weekly paid freguency $150 or comp day'';

vii. Defendant Wayne's column notes, ''$200 6th/$300 7th; some facilities if you work in 6 hours you get the full day based base pay'';

viii. Processor Co-Conspirator 2's column notes, ''$1.00 Attendnance bonus up from $0.25 . . . . Shoulder can earn up to $150 week . . . Benefits—Taking a harder look at their package''

ix. Processor Co-Conspirator 9's column—in its sole year of participation in the WMS Survey Group—notes, ''6th/7th day up to 6 hours, get ½ for 4 hours half day'';

x. The column for Processor Co-Conspirator 18b (now owned by Processor Co-Conspirator 18) notes, ''200 6th 275 7th day.''

xi. Processor Co-Conspirator 10's column notes, ''$1.00 Attendance bonus up from $0.25/Negotiated contract $55. 30. .30 3 Yr./. . . . Supervisor offering 5000–8000'';

xii. The column for Former Processor Co-Conspirator 3, now owned by Processor Co-Conspirator 16, notes, ''Line Team Members want more money; based on survey we are in the middle'' and ''No Weekend Pay. But will be looking''; and

xiii. Processor Co-Conspirator 13's column notes, ''Currently does not have Weekend Pay for Supervisors.''

e. *2017:* The 2017 WMS Survey Group meeting marked a turning point for the WMS Survey Group. That year, after the filing of a private antitrust class-action suit in the Northern District of Illinois alleging price-fixing by many participants in the downstream sale of chicken products, the processors and Meng became more concerned about antitrust risk. At least one executive from Processor Co-Conspirator 7—a Steering Committee member—traveled all the way to the 2017 meeting only to learn that his employer's legal counsel had directed him not to attend the sessions. At the 2017 meeting, the Defendants and Processor Conspirators in attendance ''all agreed,'' in the words of WMS's Jonathan Meng, ''that moving forward all questions about future increases would be removed from the survey.''

2. Direct Processor-to-Processor Collaboration and Information Exchanges

116. In addition to collaborating on setting compensation for plant workers through the WMS Survey Group, including through in-person meetings that involved direct exchanges of identifiable compensation information, the Processor Conspirators collaborated on and directly exchanged current and future, disaggregated, and identifiable information about plant workers' wages and benefits. These interactions occurred ad hoc and involved information about both local and nationwide compensation decisions.

117. That the conspirators repeatedly contacted each other to seek non-public competitive information shows the mutual understanding among these Processor Conspirators that they would collaborate with and assist each other on compensation decisions.

118. The relationships poultry processors established with their labor market competitors through groups like the WMS Survey Group created the opportunity to engage in ad hoc direct exchanges of compensation information. By exchanging large amounts of current and future, disaggregated, and identifiable data, the processors collaborated to accumulate a set of industry compensation information they could use to set their workers' wages and benefits at a nationwide level (for example, to set budgets on plant worker spending across the country) or locally (for example, to determine pay for shoulder cutters in a specific plant).

a. Chicken Industry Wage Index (''CHIWI'') Exchange

119. The collaboration and direct exchanges among processors included a survey that was designed and run by Processor Co-Conspirator 18, the Chicken Industry Wage Index or ''CHIWI.'' Through this survey, Defendants George's and Wayne, along with Co-Conspirators 6, 7, 14, 15, 17 and others, exchanged current and future, disaggregated, and identifiable compensation data from 2010 to 2013. The survey results were so disaggregated that they showed wages for each participant's specific processing plants. Processor Co-Conspirator 18 disclosed wages by region of the country, as defined by Consultant Co-Conspirator 1, making it easy for the processors to compare the CHIWI results with the current, disaggregated, and identifiable Consultant Co-Conspirator 1 compensation information discussed below.

120. A Processor Co-Conspirator 18 employee described CHIWI to others inside the company in 2013, noting that it was a ''survey with competing poultry companies. With this information, we feel that we are in a better position to strategically evaluate wages on a location by location level.''

121. In 2013, Processor Co-Conspirator 18 transferred the running of CHIWI, which it continued funding, to Defendant WMS. In a February 2013 letter from WMS to Processor Co-Conspirator 18 describing its planned administration of CHIWI, Meng noted ''WMS will develop the survey document for your approval based upon the templates provided earlier by [Processor Co-Conspirator 18].''

122. WMS administered the ''Hourly Survey'' (the renamed CHIWI) to the WMS Survey Group participants from 2013 to 2015, with all participants in the WMS Survey Group for those years submitting and receiving CHIWI-format compensation data. In 2016, WMS distributed a substantially similar survey of plant-level data for hourly workers along with its 2016 annual survey to Defendants Cargill, George's, and Wayne and Processor Co-Conspirators 1, 2, 3, 4, 5, 6, 7, 10, 13, 14, 15, 17, and 18.

123. During Defendant WMS's administration of the Hourly Survey, WMS assisted Processor Co-Conspirator 18 in identifying some of the Processor

[6] As described above, all spelling and grammatical errors in documents quoted in this Amended Complaint are *sic.*

Conspirators' exchanged compensation information presented in WMS surveys. In October 2014, a Processor Co-Conspirator 18 employee emailed WMS's Jonathan Meng, asking ''We need to know the number of [Processor Co-Conspirator 15] locations that participated in our last Hrly Prod Maint survey. Can you provide this as soon as you get a chance?'' Another WMS employee responded to this email that same day, writing ''29 locations were reported by [Processor Co-Conspirator 15].'' Telling Processor Co-Conspirator 18 the number of locations of another processor's plants reported in a survey would assist Processor Co-Conspirator 18 in identifying the disaggregated survey results, which were broken out by plant. If Processor Co-Conspirator 18 knew how many plants a given processor had reported, Processor Co-Conspirator 18 could match the number of plants reported for a specific (anonymized) competing processor to crack the code and identify the processor.

124. Processor Co-Conspirator 18 and Defendants WMS and Meng were cognizant of, and worried about, the antitrust risk posed by CHIWI. After WMS took over the administration of CHIWI, a Processor Co-Conspirator 18 employee requested that Meng remove the note ''Sponsored by: [Processor Co-Conspirator 18]'' in the circulated report and replace it with the title ''WMS Poultry Hourly Wage Survey.'' Meng did not comply with this request, stating that ''I did not want the Poultry Industry Survey Group to conclude that WMS approved of the format of the [Processor Co-Conspirator 18] sponsored survey.'' On another occasion, Meng explained to Processor Co-Conspirator 18 executives that CHIWI included clear risk factors for a potentially anticompetitive exchange of information, noting that participating poultry processing firms were likely to be able to identify which processor operated which plant based on the details about the plants disclosed in the survey. Despite his warning, the Processor Co-Conspirator 18 executives requested that WMS proceed, and WMS willingly complied.

b. U.S. Poultry & Egg Association Member Processors' Exchanges

125. Some Processor Conspirators used their involvement with the U.S. Poultry & Egg Association, a nonprofit trade association for the poultry industry, to collaborate with other poultry processors on compensation decisions.

126. In November 2016, Processor Co-Conspirator 12's Director of Human Resources emailed, among others, Defendants George's, Sanderson, and Wayne and co-conspirators including Processor Co-Conspirators 1, 3, 5, 6, 10, 11, 14, and 18, noting ''I understand Paul is out of the country''—likely a reference to the Director of the Association's HR and Safety Program—''so I hope you do not mind me reaching out to you directly. With the news on the new OT rule injunction, I am curious on how you plan to proceed? Wait and see or stay the course for any 12/1/16 plans you have already made?'' This question was a reference to a court order staying a federal rule mandating a change to overtime pay. Defendant Sanderson's Human Resource Manager replied, copying all recipients, ''We are in the process of implementing the new wages and I don't see that we will stop or change it,'' thus sharing Sanderson's future wage plans with its competitors directly.

127. In June 2017, the Director of the Association's HR and Safety Program emailed to Defendants Cargill, George's, Sanderson, and Wayne; Processor Co-Conspirators 3, 6, 7, 9, 10, 12, 14, 15, 17, and 18; Consultant Co-Conspirator 1; as well as others, the results of a survey ''on pay ranges of Live Hang employees versus General Production employees,'' noting that ''sixteen sites'' participated. The survey questions sought the ''average per hour rate that you pay,'' meaning the current pay rate, of both Live Hang employees and General Production employees.

128. The U.S. Poultry & Egg Association also conducted in-person meetings between the processor competitors, similar to the WMS Survey Group. In fact, enough participants attended both in-person meetings that in September 2012, Processor Co-Conspirator 18 and Processor Co-Conspirator 7 discussed scheduling the WMS Survey Group meeting at the same location and around the same dates as the U.S. Poultry & Egg Association in-person meeting due to ''the people that attend both.'' In December 2016, Defendant Sanderson attended the U.S. Poultry & Egg Association meeting, four years after Sanderson's departure from the WMS Survey Group.

c. Processor Conspirators' Ad Hoc Direct Exchanges

129. The Processor Defendants also collaborated to exchange and discuss confidential compensation information directly in an ad hoc fashion. These direct exchanges were often between two or three competitors. Some processor-to-processor communications were between senior employees in processors' corporate offices and concerned nationwide compensation. Others were between processor employees at the local plant level, such as exchanges between competing plant managers that were then reported to processor executives at the national level.

130. In January 2009, an employee of Processor Co-Conspirator 14 emailed Defendants Cargill, George's, Sanderson, and Wayne and Processor Co-Conspirators 6, 7, 15, and 18, asking, ''I am curious to find out if anyone has (or is in discussions) about postponing plant or merit increases.'' In addition, in the same email, she noted, ''I know there has been some previous dialogue about plant and merit increases.''

131. In September 2013, an employee of Defendant Cargill sent Processor Co-Conspirator 18 her company's internal medical leave policy, which included a detailed description of benefits.

132. In January 2015, an employee of Defendant George's emailed his supervisors to tell them he had spoken with the HR Manager of a particular Processor Co-Conspirator 18 plant, who told him that ''[t]he $13.90 starting pay is for Breast Debone at their Green Forrest facility. The $13.90 is available once they qualify and then they are eligible for incentive pay on top of that. So in fact an experienced Shoulder Cutter could go there and get a $13.90 starting pay rate. He said that the normal starting rate was $10.50 per hour with $0.40 extra of 2nd shift and $0.45 extra for 3rd shift.'' This George's employee then mentioned he would contact HR managers at another Processor Co-Conspirator 18 plant, as well as a plant owned by Processor Co-Conspirator 17.

3. Exchange of Compensation Information Through Consultant Co-Conspirator 1

133. From at least 2010 to the present, the Processor Defendants also used another data consultant, Consultant Co-Conspirator 1, to collaborate with each other on compensation decisions through the exchange of current, disaggregated, and identifiable information about their poultry processing plant workers' wages and benefits, artificially and anticompetitively suppressing this compensation.

134. Consultant Co-Conspirator 1 gathers data from companies and distributes it to paying customers. Consultant Co-Conspirator 1 does not sell this data to the public; its reports are only available to its subscribers.

135. Publicly available information dating from both 2011 and 2020 shows Consultant Co-Conspirator 1 gathered data from over 95 percent of U.S.

poultry processors, including all of the Processor Conspirators. Consultant Co-Conspirator 1 also admitted in *Jien* (19–cv–2521) that its subscribers have included all of the Processor Conspirators. Thus, it is likely that all Processor Defendants exchanged compensation information through Consultant Co-Conspirator 1 from at least 2010 to present.

136. The data Consultant Co-Conspirator 1 gathers and sells is current, disaggregated, and identifiable. Consultant Co-Conspirator 1 claims that it can minimize those risks to make this data ''safer'' to distribute by anonymizing the companies and processing plants for which it reports specific wages and salaries per job role. Although the plants reported in Consultant Co-Conspirator 1's data reports are not identified by name, they are grouped by region, and the list of all participants in the region is provided. Accordingly, the number of employees and other data provided per plant makes this data identifiable to other processors.

137. Processors are thus likely able to use Consultant Co-Conspirator 1's data reports to identify the wage and salary rates, as well as benefits, that each of their competitors is currently setting for each of its plants.

138. In addition to permitting competing poultry processors to collaborate on their wages and benefits at the individual plant level, Consultant Co-Conspirator 1's data reports also provide a means for processors to monitor whether their collaborators are following through on the compensation decisions they reported through the WMS Survey Group and the ad hoc compensation exchanges.

4. Processors' Collaboration and Assistance on Compensation

139. In a patchwork of different combinations, through different methods, and with respect to different types of compensation information, the Processor Defendants built a pervasive conspiracy across the poultry processing industry to collaborate on, and not merely exchange, poultry processing plant worker wages and benefits information.

140. As described above, many of the Processor Conspirators, including Defendants Cargill, Sanderson, and Wayne, as well as Processor Co-Conspirators 6, 7, 14, 15, 17, and 18, began exchanging compensation information directly, without involvement from WMS, as long ago as the 1980s. One employee of Processor Co-Conspirator 6 told WMS's Jonathan Meng that ''executives from each of those poultry processors would meet in a private room and bring enough copies of their salary and wage data to distribute to all the other attendees,'' and ''the attendees would then exchange and discuss their compensation schedules.'' According to one participant, these pre-2000 exchanges included an understanding between participants that they would not use the information they exchanged about each other's salaried compensation to attempt to hire away each other's salaried employees. This early conspiracy to collaborate helped foster the mutual understanding in which processors agreed to collaborate on, rather than compete over, poultry processing plant worker compensation.

141. In December 2008, for example, an executive at Processor Co-Conspirator 4 emailed Defendants Cargill, George's, Sanderson, and Wayne and Processor Co-Conspirators 6, 7, 8, and 14, seeking details of each competitor's dental plan benefits, which her company was ''currently reviewing.'' The Processor Co-Conspirator 4 executive made clear that her company would use the information provided by its competitors to shape its own compensation decisions, explaining that ''[y]our responses to the questions below would greatly help us ensure we stay competitive within the industry.'' The questions she included related to eligibility for coverage, services included in the plan, ''annual deductible,'' and ''annual max per person.''

142. In September 2009, an executive at Defendant Wayne emailed Defendants Cargill, George's, and Sanderson and Processor Co-Conspirators 6, 7, 14, 15, and 18 informing them that ''[i]t's that time of year already'' because Wayne was ''working on 2010 budget increase recommendations.'' The executive then asked Wayne's competitors to send future, disaggregated, directly-exchanged (and thus identifiable) compensation information: ''What is your companies projected salary budget increase recommendation for 2010?'' Later in this email chain to the same group, the Wayne executive noted that her colleague's ''sanity is depending on your response. Seriously—any info you can give us will be helpful, we appreciate your help.'' Defendant George's and Processor Co-Conspirator 14 both responded to this email chain with their competitors and directly disclosed a projected (future) recommendation to increase their budgets for salaries by three percent.

143. In July 2015, an executive for Processor Co-Conspirator 14 emailed her peers at Defendant Sanderson and Processor Co-Conspirator 18, explaining that Processor Co-Conspirator 14 was ''in the midst of completely revamping our Plant Management Trainee program.'' Her email continued, ''and I was wondering if you would be willing to share with me . . . what your starting rate is for these kids hired right out of college?'' The Processor Co-Conspirator 14 employee sought current, disaggregated, and identifiable wage information from her competitors for the explicit purpose of assisting Processor Co-Conspirator 14 to make its own wage decisions for this cohort. Her peer at Sanderson responded the very next day to both Processor Co-Conspirator 14 and Processor Co-Conspirator 18, disclosing, among other information, that Sanderson's Beginning Trainee Program paid ''from 36,000 to 38,000, no signing bonuses'' and that Sanderson's Advance Trainee program paid ''from $48,000 to $87,000, no signing bonuses.''

144. In February 2016, the Director of Compensation at Processor Co-Conspirator 4 emailed Defendants Cargill, George's, and Wayne, as well as Processor Co-Conspirators 3, 6, 7, 14, 15, 17, and 18. She thanked a Wayne employee and noted, ''that reminded me that I had a question for the group also. We are trying to determine what is reasonable for salaried employee to be compensated for working 6 and/or 7 days in a work week when the plant is running.'' The questions she asked included ''Do you pay extra for these extra days worked for salaried (exempt) employees?'' and ''If so, how is that calculated?'' The statement that Processor Co-Conspirator 4 was in the midst of ''trying to determine'' overtime pay decisions, and wanted to know what its competitors did in the same circumstances, likely made clear to the recipients that Processor Co-Conspirator 4 planned to use the information it gathered in its own decision-making. An employee from Processor Co-Conspirator 10 responded to all recipients, noting, ''We pay 1⁄5 of the weekly salary for the sixth and seventh days if working due to production. This includes supervisors and managers below the plant manager level and all are paid the same. If the day off is compensated by a paid benefit, other than sick time, we pay the sixth and seventh days. Sanitation and maintenance only get paid for the seventh day worked.''

145. In September 2016, an executive from Processor Co-Conspirator 7 sought future compensation information from Defendants Cargill, George's, and Wayne and Processor Co-Conspirators 3, 6, 14, 15, 17, and 18 related to a new Fair Labor Standards Act salary threshold for

exempt status, a federal requirement determining to which workers the processors would have to pay overtime wages based on salary. The Processor Co-Conspirator 7 executive asked his competitors to fill out a directly-exchanged survey form to indicate how they would change compensation plans for all employees and, more specifically, for first-line supervisor roles. Within a week, Defendants Cargill and George's and Processor Co-Conspirators 6, 15, and 17 responded by sharing their future compensation plans, which the Processor Co-Conspirator 7 executive passed on (labeled by processor) to the entire group, reflecting, ''If more respond, I'll republish, but the target grouping pattern already appears pretty tight.''

146. The chart attached to the executive's email showed that eight of the ten processors selected ''most employees are receiving base salary increases to bring them to the threshold salary,'' thus ending the processors' obligation to provide these workers with overtime pay, and ''a smaller number will not receive a base increase but will receive overtime.'' Similarly, eight of the ten respondents selected, as to the first-line supervisors, ''are either above the salary threshold or will receive a base salary increase to the threshold.''

147. The Processor Defendants' collaboration also involved forms of compensation other than wages. In January 2010, an executive for Processor Co-Conspirator 18 wrote to Defendants Cargill, George's, Sanderson, Wayne, and WMS and Processor Co-Conspirators 6, 7, 15, and 17 for help because Processor Co-Conspirator 18 was ''considering a change to convert'' some of its plant worker jobs to a category that would provide them with fewer benefits: ''Production workers on the line do not get quite the same as our technical support jobs, nurses and clerical. The difference is 5 days daily sick pay, better vacation schedule, higher short-term disability pay and the ability to use our flexible (pre-tax) benefits saving plan.'' Processor Co-Conspirator 18 noted that a ''prompt response would be much appreciated'' from its competitors about whether ''any of you have a difference in benefits between'' these two job categories, to assist it in making this decision. Processor Co-Conspirator 7 responded to Processor Co-Conspirator 18's question, stating it did not.

148. A 2015 email exchange between Defendant George's and Processor Co-Conspirator 18 provides detail on how the competitors may have viewed their relationships with each other as collaborators. On October 6, 2015, Processor Co-Conspirator 18 received an email from a George's executive asking, ''Would you mind sending me your current Health Insurance Rates? Also do you plan on raising them in 2016? Thanks you so much for your help.'' Processor Co-Conspirator 18 then discussed this request internally, noting, ''We don't count on them [George's] for much so we don't owe them anything from our side.'' This view of the request for future and directly exchanged compensation information as part of a quid pro quo calculation—that to get the helpful information, you have to give the helpful information—helps explain why the competing processors were so willing to share compensation information when their competitors asked for it.

149. In designing the WMS survey, the WMS Survey Group participants collaborated to ensure the exchanged data included the type of disaggregated compensation information that antitrust agencies warned against as a risk factor for identifying information exchanges not designed in accordance with the antitrust laws. For example, in 2012, the Steering Committee, which then included Processor Co-Conspirators 6, 7, 14, 15, and 18, decided to distribute disaggregated and identifiable data regarding hourly plant workers. WMS's Jonathan Meng warned the Steering Committee that distributing this data would violate the guidance and proposed ways of presenting the data that would make it less identifiable. Processor Co-Conspirator 18, however, instructed Meng to let the WMS survey group know of the change to the survey design but not to ''call out'' Meng's concerns. Meng followed Processor Co-Conspirator 18's instructions and simply advised the Survey Group of the changes, stating that ''The Steering Committee has requested that the hourly wage information included in the report be expanded to include the raw data for each state. . . . The steering committee needs to know if you are in agreement with the proposed changes.'' Meng noted that under this plan, which he asked each WMS Group Participant to agree to explicitly, he would include disaggregated, identifiable wage data from Alabama, Arkansas, Georgia, Missouri, Mississippi, North Carolina, Tennessee, and Virginia. Later, Meng stated that ''everyone is in agreement with the change except [Processor Co-Conspirator 4] and [Processor Co-Conspirator 13], who have not responded yet.''

150. The WMS Survey Group participants, competitors in the market for poultry processing plant labor, also collaborated to standardize the job categories for which they each reported compensation data, ensuring they could match each other's compensation decisions. The Processor Defendants also may have worked, with assistance from Defendant WMS, to standardize job types and categories across their different enterprises. This made a comparison between each participant's jobs easier, and thus made the information swapped about each job category's compensation more accessible for use. With respect to salaried positions, the annual survey questionnaire was intended to permit participants to match all jobs to defined job categories while indicating when the matched job was, in the view of the participant, ''larger'' or ''smaller'' than the job as described in the questionnaire. Survey results reported the percentages of respondents indicating inexact job matches. In 2012, an employee for Processor Co-Conspirator 14 employee described in an email to a Processor Co-Conspirator 18 employee the prior year's WMS Survey Group in-person meeting, at which ''the discussion around the room was that some companies call this single incumbent job a Plant Safety Manager and some a Complex Safety Manager.'' This standardization for purposes of collaboration, enabled by WMS, made it easier for the Processor Defendants to determine and monitor consensus among themselves for compensation, enabling their conspiracy, which suppressed compensation.

5. Processors Recognize Their Agreement Likely Violated the Antitrust Laws and Attempt To Cover It Up

151. The Defendants at times expressed concern that their agreement was unlawful. Sometimes, fear of discovery or other outside events prompted them to change their views of the risk they were each engaged in. Nonetheless, they maintained secrecy throughout the conspiracy.

152. On February 14, 2012, Defendant Sanderson's HR Manager emailed Defendants Cargill, George's, and Wayne and Processor Co-Conspirators 7, 15, and 17 along with Defendant WMS, notifying them that Sanderson would be ending its relationship with the WMS Survey Group. The HR Manager stated, ''On the advice of legal counsel, our Executives have decided that we can no longer participate in this type of survey.'' If the Defendants had not been previously aware of the legal risk involved in the WMS Survey Group exchange, this email put them on notice.

153. Private class actions related to this conduct and other allegedly anticompetitive behavior in the poultry

industry caused the members of the WMS Survey Group to change some of their behavior. As noted above, at their 2017 in-person meeting, the participating Processor Conspirators, in the words of WMS's Jonathan Meng, ''all agreed that moving forward all questions about future increases would be removed from the survey. . . . It was also recommended by counsel for [Processor Co-Conspirator 7] to have an Antitrust Attorney present for the general group discussions (post survey results).''

154. As Processor Co-Conspirator 7 described in October 2017, the Processor Conspirators would thereafter treat Meng as an ''Antitrust Guidon.'' In military terminology, a guidon is a flag flown at the head of a unit to signify that the commander is present. An executive at Defendant George's put it more bluntly, commenting that ''One thing that has changed is that the group will now have an attorney present for the full meeting to make sure no collusion and that the Safe Harbor provisions are all met and followed.'' Meng acknowledged in January 2018 to an executive for Processor Co-Conspirator 17 that ''I will be present at all sessions this year (which did satisfy [Processor Co-Conspirator 7's] counsel).''

155. But Meng's presence at meetings did not ultimately quell the Processor Conspirators' fears that their conduct was unlawful. From 2017 to 2020, spooked processors began dropping out of the WMS Survey Group due to, as an employee of Processor Co-Conspirator 14 put it, ''the 'big scare' ''—*i.e.,* a private class action alleging a broiler chickens price-fixing conspiracy.

156. In response to the elimination of disaggregated data from the survey, an executive for Processor Co-Conspirator 7 complained, ''how useful is the 'average rate report' now anyway? It has suffered significant obscuring of results due to aggregating, and I would ask—Is it still useful information any longer?''

157. Processor Co-Conspirator 13 left in 2018; that year, Defendant Wayne also considered leaving, but decided to remain in the group after heavy lobbying by Meng. Defendant George's and Processor Co-Conspirators 1 and 17 left in 2019.

158. In a 2019 email, an executive for Processor Co-Conspirator 7 noted that Defendant ''Georges was skittish very early on in the anti-trust concerns, including their attorneys contacting other companies to warn about attending our conference.''

159. In July 2019, an executive from Processor Co-Conspirator 7 sent an alert to Processor Co-Conspirator 14 and WMS describing a call his colleague received ''from someone representing themselves as a private investigator from New York. The caller had questions about the types of information we shared at our meeting, the survey and other questions that I will simply call 'general anti-trust fishing' questions. . . . So just a little reminder that the bad-guys are still out there, and why we hold strict confidences about discussing wages—and have Jon [Meng] at our entire meeting.'' Notably, the Processor Co-Conspirator 7 executive did not say the competing processors should take care not to discuss wages, but rather take care to keep such discussions in ''strict confidence.''

160. And if there were any question whom the WMS participants considered the ''bad-guys,'' Defendant WMS's presentation for the 2019 WMS Survey Group meeting features, at the top of the presentation's first slide, a quote from Shakespeare: ''The first thing we do, let's kill all the lawyers.''

161. The WMS Survey Group did not meet again after this 2019 meeting.

C. Defendants Sanderson's and Wayne's Deceptive Practices Toward Growers

162. Growers sign contracts with Sanderson and Wayne, respectively, to raise chickens. Growers often make substantial financial investments including building or upgrading their facilities. The success of those investments depends on the compensation system they receive.

163. Under the compensation system known as the tournament system, each contract provides an average or base price that the grower receives. But the average or base price is not necessarily what the grower actually receives. The growers' compensation depends on how each grower performs relative to other growers—in particular, on their performance relative to other growers at converting the inputs to bird weight. Growers who overperform the average are paid a bonus, while those that underperform the average are penalized. Sanderson and Wayne, however, control the major inputs the grower receives, including the chicks and feed. As a result, growers cannot reasonably assess the range of expected financial outcomes, effectively manage their risks, and properly compare contracts from competing processors.

164. Sanderson and Wayne do not adequately disclose the risk inherent in this system to the growers. Their contracts with growers omit or inadequately describe material key terms and risks that mislead, camouflage, conceal, or otherwise inhibit growers' ability to assess the financial risks and expected return on investment. For example, the grower contracts disclose neither the minimum number of placements nor the minimum stocking density that the grower is guaranteed. The contracts also lack material financial disclosures regarding poultry grower performance, including the range of that performance, and other terms relevant to the financial impact of the grower's investment.

165. Similarly, the contracts omit material information relating to the variability of inputs that can influence grower performance, including breed, sex, breeder flock age, and health impairments, on an ongoing basis, including at input delivery and at settlement (including information to determine the fairness of the tournament). Without this information, growers are impaired in their ability to manage any differences in inputs, or evaluate whether to invest in new infrastructure, that may arise from the Sanderson's and Wayne's operation of the tournament system. This failure to disclose is deceptive and violates the Section 202(a) of the Packers and Stockyards Act, 1921, as amended and supplemented, 7 U.S.C. 192(a). These deceptions should be enjoined.

VI. Elements of the Sherman Act Claim

A. The Agreement To Collaborate on Compensation Decisions, Exchange Compensation Information, and Facilitate Such Collaboration and Exchanges

166. As detailed above, the Processor Defendants collaborated on what should have been independent decisions about poultry processing plant worker compensation. As reflected by in-person meetings, correspondence, and the regular exchange of compensation information, the Processor Defendants and their co-conspirators had a mutual understanding that they would contact each other for advice, discussion, and competitively-sensitive compensation information to help each other make decisions about worker compensation at the nationwide and local level. This agreement undermined the competitive process, distorted the ordinary, free-market bargaining and compensation-setting mechanisms, and suppressed competition and compensation for poultry processing plant workers.

167. The Processor Defendants' exchanges of current and future, disaggregated, and identifiable information about poultry processing plant worker wages and benefits, through the facilitation provided by the Consultant Defendants and through direct exchanges with each other, supported this conspiracy to

collaborate. However, even standing alone, these exchanges allowed each participant to more closely align its wage and benefit offerings with its competitors, harmed the competitive process, distorted the competitive mechanism, and suppressed competition and compensation for their poultry processing plant workers.

B. Primary Poultry Processing Plant Employment Is a Relevant Labor Market

168. The market for primary poultry processing plant labor is a relevant antitrust labor market. If a single employer controlled all the primary poultry processing plant jobs in a geographic market, it could profitably suppress compensation (either in wages or benefits) by a small but significant and non-transitory amount. In other words, if a poultry processing employer with buyer market power (monopsony power) chose to reduce or forgo raising its workers' wages and benefits, or otherwise worsen the compensation offered to workers, too few poultry processing workers would switch to other jobs to make the employer's choice unprofitable.

169. Labor markets are inextricably connected to the most personal choices workers make: how and where to live, work, and raise a family. In labor markets, employers compete to purchase labor from a pool of potential and actual workers by setting wages, benefits, and working conditions.

170. In choosing among potential employers, workers who may be different from each other—for example, who fill different types of jobs—may be similarly positioned with respect to potential employers. While hourly and salaried poultry processing jobs may attract different job applicants, poultry processing plants may constitute potential employers for those workers because of commonalities shared among hourly and salaried workers (and among workers filling different roles within those categories).

171. To poultry processing plant workers, all of the Processor Conspirators are close competitors for their labor. From the perspective of workers, poultry processing jobs are distinguishable from, and not reasonable substitutes for, jobs in other industries. Many processing plant workers share common constraints that make poultry processing plant jobs accessible to them while other year-round, full-time jobs are not. Poultry processing plant workers also share common attributes and learn job-specific skills, which the poultry industry compensates more than other industries would. Thus, these particular employers compete to offer jobs to this pool of labor that these workers both have access to and that offer value for their common attributes in a way that other industries might not. Many of these workers are able to find work in the poultry industry but not in other industries that seek workers with different skills, experience, and attributes.

172. Although poultry processing plants employ varied types of workers, they occupy a common labor market. All the workers were the target of a single overarching information-sharing conspiracy. All the workers have thus had their compensation information distributed without their consent by their employer to other employers who might hire them. All the workers have developed experience, familiarity, and expertise in poultry processing plants, and all or nearly all the workers have located their households near poultry processing plants, acquired friends or colleagues in poultry plants, and have or have developed the types of personal characteristics that enable them to tolerate the harsh conditions of poultry processing plants. As a result, workers who are unsatisfied with their current employer would normally seek, or at least consider, alternative employment in the poultry processing plants owned by their employer's co-conspirators.

173. Each of the Processor Conspirators sees poultry processing workers as sufficiently alike to find it worthwhile to place them in a common worksite, creating a cluster of jobs associated with particular market activity (poultry processing), just as grocery stores sell multiple products to customers who prefer the convenience of one-stop shopping. The common characteristics of the employees as required by the logistics of processing poultry explain why Defendants treat the employees together in the conspiracy. For these reasons, it is appropriate to consider all the poultry processing workers as a common group of harmed parties for the purpose of this action, even though the jobs in poultry processing plants differ.

174. Both chicken processing plants and turkey processing plants compete to purchase labor in this market because the jobs they seek to fill are similar. These industries use similar facilities, materials, tools, methods, job categories, and vertically-integrated processes to produce downstream products. These industries also exhibit similar difficult working conditions.

175. In addition, the poultry industry itself recognizes that poultry processing workers are a distinct market. The Processor Defendants' and Processor Conspirators' agreement to collaborate on compensation decisions included the exchange of information about both hourly and salaried plant jobs. The WMS Survey Group set criteria for membership that permitted both chicken and turkey processors to participate, but not other meat processors or other employers. When one member of the WMS Survey Group proposed including processors of red meat, this idea was rejected by the group because, according to Defendant Jonathan Meng, as he was informed by members of the WMS Survey Group, ''the poultry processing labor market is distinct from the red meat processing labor market.'' Informed by their knowledge and experience, the Processor Conspirators chose to include poultry processors in the WMS Survey Group and exclude other industries.

C. The Geographic Markets for Poultry Processing Plant Labor

176. The relevant geographic markets for poultry processing plant labor include both local submarkets and a nationwide market.

177. Local markets for poultry processing plant labor are relevant geographic markets. Many poultry processors adjust wages and benefits at a local level and based on local factors, meaning that a particular processor's compensation for job categories between different plants in different locations may differ. The Processor Conspirators made decisions affecting competition and competed on a local basis. Poultry processing workers reside within commuting distance from their plants.

178. The Processor Conspirators' anticompetitive agreement to collaborate on compensation decisions included the exchange of local data through the Consultant Defendants and Consultant Co-Conspirator 1 and the direct exchange of such data with the other Defendants and co-conspirators. For example, as Processor Co-Conspirator 18 noted in describing the CHIWI survey, ''With this information, we feel that we are in a better position to strategically evaluate wages on a location by location level.''

179. Employed poultry processing plant workers reside within commuting distance from the plant at which they work. In addition, many applicants to these jobs reside within commuting distance from the plant to which they have applied, at the time they have applied. Thus, if multiple processing plants are located within a worker's commuting boundary, those plants are potential competitors for that worker's labor.

180. The relevant local submarkets can be identified according to workers' willingness and ability to commute. The local submarkets here are those in which, according to data from the United States Department of Agriculture, at least two Processor Conspirators compete with each other for primary poultry processing plant workers. In these relevant local submarkets, it is likely that the Processor Conspirators together hold market power, because they control over 80 percent, and in many local submarkets, control 100 percent, of primary poultry processing plant jobs. A hypothetical monopsonist of poultry processing plant labor jobs in each local labor submarket would likely be able to suppress compensation for poultry processing plant workers by a small, but significant, amount.

181. The local labor submarkets in which the Processor Defendants and Processor Conspirators have suppressed competition, which suppressed poultry processing plant workers' compensation, include:

a. the ''Eastern Shore Poultry Region'': containing eleven primary poultry processing facilities [7] in Hurlock, MD; Salisbury, MD; Princess Anne, MD; Harbeson, DE; Millsboro, DE; Selbyville, DE; Georgetown, DE; Milford, DE; Norma, NJ; Accomac, VA; and Temperanceville, VA, four of which are owned by Processor Co-Conspirator 14, five of which are owned by other Processor Conspirators, and two of which are owned by other poultry processors;

b. the ''Central Valley Poultry Region'': containing three primary poultry processing facilities in Fresno, CA and Sanger, CA, two of which are owned by Processor Co-Conspirator 7, and one of which is owned by another Processor Conspirator;

c. the ''West-Central Missouri Poultry Region'': containing two primary poultry processing facilities in California, MO and Sedalia, MO, one of which is owned by Defendant Cargill, and one of which is owned by another Processor Conspirator;

d. the ''Ozark Poultry Region'': containing nineteen primary poultry processing facilities in Huntsville, AR; Ozark, AR; Springdale, AR; Fort Smith, AR; Clarksville, AR; Dardanelle, AR; Green Forest, AR; Waldron, AR; Danville, AR; Carthage, MO; Cassville, MO; Southwest City, MO; Monett, MO; Noel, MO; Heavener, OK; and Jay, OK, two of which are owned by Defendant George's, one of which is owned by Processor Co-Conspirator 17, one of which is owned by Defendant Wayne, one of which is owned by Defendant Cargill, thirteen of which are owned by other Processor Conspirators, and one of which is owned by another poultry processor;

e. the ''Ouachita Poultry Region'': containing five primary poultry processing facilities in De Queen, AR; Grannis, AR; Hope, AR; Nashville, AR; and Broken Bow, OK, one of which is owned by Processor Co-Conspirator 15, and four of which are owned by another Processor Conspirator;

f. the ''East Texas Poultry Region'': containing four primary poultry processing facilities in Lufkin, TX; Nacogdoches, TX; Carthage, TX; and Center, TX, two of which are owned by Processor Co-Conspirator 15, and two of which are owned by another Processor Conspirator;

g. the ''River Valley Poultry Region'': containing three primary poultry processing facilities in Union City, TN; Humboldt, TN; and Hickory, KY, one of which is owned by Processor Co-Conspirator 15, and two of which are owned by another Processor Conspirator;

h. the ''Western Coal Fields Poultry Region'': containing two primary poultry processing facilities in Cromwell, KY and Robards, KY, one of which is owned by Processor Co-Conspirator 14, and one of which is owned by another Processor Conspirator;

i. the ''North/South Carolina Poultry Region'': containing seven primary poultry processing facilities in Lumber Bridge, NC; Rockingham, NC; Marshville, NC; St. Pauls, NC; Monroe, NC; and Dillon, SC, two of which are owned by Processor Co-Conspirator 14, two of which are owned by Processor Co-Conspirator 15, one of which is owned by Defendant Sanderson, two of which are owned by other Processor Conspirators, and one of which is owned by another poultry processor;

j. the ''Northern Georgia Poultry Region'': containing eleven primary poultry processing facilities in Cornelia, GA; Murrayville, GA; Gainesville, GA; Athens, GA; Canton, GA; Ellijay, GA; Cumming, GA; Bethlehem, GA; Marietta, GA; and Pendergrass, GA, two of which are owned by Processor Co-Conspirator 7, four of which are owned by Processor Co-Conspirator 15, one of which is owned by Defendant Wayne, two of which are owned by other Processor Conspirators, and two of which are owned by other poultry processors;

k. the ''Central Georgia Poultry Region'': containing two primary poultry processing facilities in Perry, GA and Vienna, GA, one of which is owned by Processor Co-Conspirator 14, and one of which is owned by another Processor Conspirator;

l. the ''Chattanooga Poultry Region'': containing two primary poultry processing facilities in Chattanooga, TN, one of which is owned by Processor Co-Conspirator 15, and one of which is owned by another Processor Conspirator;

m. the ''Central North Carolina Poultry Region'': containing two primary poultry processing facilities in Sanford, NC; and Siler City, NC, one of which is owned by Processor Co-Conspirator 15, and one of which is owned by another Processor Conspirator;

n. the ''Southern Alabama/Georgia Poultry Region'': containing seven primary poultry processing facilities in Enterprise, AL; Dothan AL; Jack AL; Union Springs AL; Bakerhill, AL; Montgomery AL; and Bluffton, GA, one of which is owned by Processor Co-Conspirator 15, three of which are owned by Defendant Wayne, two of which are owned by other Processor Conspirators, and one of which is owned by another poultry processor;

o. the ''Northern Alabama Poultry Region'': containing eleven primary poultry processing facilities in Guntersville, AL; Russellville, AL; Albertville, AL; Decatur, AL; Blountsville, AL; Collinsville, AL; Gadsden, AL; Jasper, AL; Cullman, AL; and Tuscaloosa AL, two of which are owned by Processor Co-Conspirator 15, two of which are owned by Defendant Wayne, five of which are owned by other Processor Conspirators, and two of are owned by other poultry processors;

p. the ''Western North Carolina Poultry Region'': containing four primary poultry processing facilities in Dobson, NC; Wilkesboro, NC; Morganton, NC; and Winston-Salem, NC, one of which is owned by Defendant Wayne, two of which are owned by other Processor Conspirators, and one of which is owned by another poultry processor;

q. the ''Virginia/West Virginia Poultry Region'': containing eight primary poultry processing facilities in Timberville, VA; Moorefield, WV; Dayton, VA; Edinburg, VA; Harrisonburg, VA; New Market, VA; and Hinton, VA, one of which is owned by Defendant Cargill, two of which are owned by Defendant George's, two of which are owned by Processor Co-

[7] The number of primary poultry processing facilities in the Amended Complaint is based on data from the United States Department of Agriculture on chicken and turkey slaughtering from 2022 and excludes facilities designated as ''Very Small.''

Conspirator 15, two of which are owned by other Processor Conspirators, and one of which is owned by other poultry processors;

r. the ''Laurel Poultry Region'': containing six primary poultry processing facilities in Collins, MS; Laurel, MS; Hattiesburg, MS; Bay Springs, MS: and Moselle MS, two of which are owned by Defendant Sanderson, one of which was owned by Defendant Wayne until 2021 and is now owned by another Processor Conspirator, one of which is owned by another Processor Conspirator, and at least two of which are owned by other poultry processors; and

s. the ''Southern Georgia Poultry Region'': containing three primary poultry processing facilities in Moultrie, GA; Camilla, GA; and Bluffton, GA, one of is was owned by Defendant Sanderson, one of which is owned by another Processor Conspirator, and one of which is owned by another poultry processor.

182. The United States is also a relevant geographic market for primary poultry processing plant labor. Poultry processing plant jobs outside the United States are not reasonable substitutes for workers seeking employment in the United States.

183. Many poultry processors make significant compensation decisions at a nationwide level. The executives in charge of such decisions often set nationwide policies or budgets for processors' wages and benefits. These nationwide decisions then influence local decisions, such as setting different wage base rates between particular local plants. At least one Processor Conspirator, Defendant Sanderson, sets its processing plant workers' wages at a nationwide level, meaning workers in the same position at different plants in different local areas receive the same base compensation.

184. Poultry processors also sometimes recruit workers from beyond the local regions where particular plants are located. For example, they may make use of their current workers' personal connections to recruit their friends or family members internationally, such as by giving referral bonuses to current workers. And some workers move between states or internationally to take processing plant jobs.

185. The Processor Defendants also viewed themselves as part of a nationwide market for poultry processing plant work. They gave significant time, expertise, and money over at least two decades to participate in the nationwide WMS Survey Group, including traveling to Florida (or another resort destination) to meet in person and swap compensation information about both hourly and salaried workers with poultry processors from across the country. The Steering Committee of the WMS Survey Group restricted the Group's membership to poultry processors with at least three plant locations nationwide.

186. Informed by their knowledge of and experience with their labor pool of potential and actual poultry processing plant workers, the Processor Conspirators chose to compose the WMS Survey Group to include poultry processors nationwide. The Processor Conspirators are not likely to have wasted their time and money on useless information exchanges. Thus, the Processor Conspirators, with the help of Defendants WMS and Meng and Consultant Co-Conspirator 1, formed their agreement to collaborate on compensation decisions, including through the anticompetitive exchange of compensation information, at a nationwide level.

187. The Processor Conspirators together control more than 90 percent of poultry processing plant jobs nationwide. A hypothetical monopsonist of poultry labor jobs nationwide would likely be able to suppress compensation for poultry workers by a small, but significant, amount.

D. Market Power

188. Together, the Processor Conspirators control over 90 percent of poultry processing plant jobs nationwide; the four largest of the Processor Conspirators control about half of that share. The Processor Conspirators also control at least 80 percent of poultry processing jobs in relevant local submarkets.

189. Further, many poultry processing plants are located in rural areas near poultry grower operations. The processors likely have even greater buyer market power in these markets, in which there are often fewer full-time, year-round jobs available than in more heavily populated areas.

190. Finally, the nature of labor markets generally means employers have market power at far lower levels of market share than the Processor Conspirators have here. Labor markets are matching markets—employees cannot simply switch jobs like a customer switches from one beverage to another. Finding a new job takes time, effort, and often, money. The new employer has to offer the job to the worker, while the employee must overcome the inertia provided by an existing job, even if it is an unfavorable one, to seek out and find, interview for, and accept the new job. Employees often have less freedom to move to take a new job due to family commitments such as their spouse's employment, their children's education, or the need to provide care to family members. Thus, workers are more likely to stay in the jobs they already have than consumers are to continue to buy the same product; labor markets come with a level of ''stickiness'' that many product markets do not.

E. Anticompetitive Effects: Processor Conspirators' Conspiracy Anticompetitively Affected Decisions About Compensation for Plant Processing Workers

191. The Processor Conspirators' pervasive and decades-long conspiracy and anticompetitive exchange of current and future, disaggregated, and identifiable information, facilitated and furthered by the Consultant Defendants, suppressed compensation for poultry processing plant workers nationwide. This anticompetitive agreement distorted the competitive mechanism for wage-setting and robbed poultry processing plant workers of the benefits of full and fair competition for their labor.

192. In labor markets, reductions to absolute compensation are unusual. Thus, the anticompetitive effects of agreements in such markets are most likely to be reflected in compensation remaining flat or increasing at a lower rate than would have occurred without the anticompetitive conduct.

193. The Processor Defendants' anticompetitive information sharing about poultry processing plant worker compensation supported their larger conspiracy to collaborate with competitors on their own compensation decisions. Both their broader conspiracy to collaborate and their information sharing suppressed competition among them and led to compensation that was lower than it would have been without either the larger conspiracy or the information sharing alone.

194. As the Processor Defendants themselves admitted to each other in emails, they used the current and future, disaggregated, and identifiable compensation data they exchanged directly and through consultants when making compensation decisions company-wide and for specific positions and plant locations. Because the shared information allowed the Processor Defendants to understand how their competitors currently compensated plant workers, or were planning to in the future, the

information they exchanged allowed the Processor Defendants to offer lower compensation than they would have had to absent their agreement. The Processor Defendants' collaboration distorted the typical competitive process in which they would have had to fully and fairly compete by making their own independent choices about what wages and benefits to offer workers.

195. Further, because of the length of time the Processor Defendants were able to engage in their conspiracy and their financial interest in keeping their labor costs below competitive levels, they are likely to continue collaborating and exchanging compensation information unless they are enjoined from doing so.

196. Conduct by multiple Defendants in 2009 illustrates the types of effects likely to have occurred as a result of the Defendants' conduct.

197. In January 2009, an executive at Processor Co-Conspirator 14 emailed Defendants Cargill, George's, Sanderson, and Wayne and Processor Co-Conspirators 6, 7, 15, and 18 seeking her competitors' help on the question of ''plant and merit increases'' for the next year. She described to her competitors that ''Our fiscal year begins 03/30/09, and, we have recently started talking about delaying.'' She asked these competitors, ''I am curious to find out if anyone has (or is in discussions) about postponing plant or merit increases.'' In addition, in the same email, she noted, ''I know there has been some previous dialogue about plant and merit increases.'' This correspondence both makes clear that Processor Co-Conspirator 14 was seeking its competitors' assistance in making its own wage decisions and suggests that the competitors had held similar discussions before. The Processor Co-Conspirator 14 executive sent her email directly in response to a question from an executive for Processor Co-Conspirator 6 about making travel and scheduling arrangements to meet in person for the annual WMS Survey Group meeting.

198. In July 2009, a strikingly similar discussion took place between Defendant George's and Processor Co-Conspirators 17 and 18. George's Vice President of Human Resources emailed at least two of George's competitors, Processor Co-Conspirator 17 and Processor Co-Conspirator 18, disclosing to Processor Co-Conspirator 17 that ''we are working on budgets for our next fiscal year. . . . We are looking at a raise in September/Oct. and have not decided on the amount yet . . . we're surveying the other poultry companies to get a feel for what they are going to do.'' As a result, he asked Processor Co-Conspirator 17, ''Do you know what [Processor Co-Conspirator 17] is planning on giving in the way of % or $ amount for your processing plants? What month will the raise go into effect?'' He concluded, ''I will be happy to let you know our decision within the next week.'' Processor Co-Conspirator 17's VP of People Services responded to the George's executive that ''We have no plans at this time to give increases.''

199. The George's executive made a similar disclosure to Processor Co-Conspirator 18—''We are budgeting for our next fiscal year''—as well as a similar request—''and was wondering what [Processor Co-Conspirator 18] is going to do as far as Plant Wages in November? Do you know the % amount or $ amount that [Processor Co-Conspirator 18] will be giving in Springdale and Monett, MO?'' The George's executive also, as he did with Processor Co-Conspirator 17, promised an exchange: ''I will be able to give you ours within the next week or so as well.'' The Processor Co-Conspirator 18 executive responded, ''Sorry, we don't know yet what we are going to do,'' to which the George's executive replied ''will you please share with me once you know?''

200. A later document from July 2010 states that the effective date of Processor Co-Conspirator 18's last plant-wide wage raise was in November 2008, suggesting that Processor Co-Conspirator 18, like Processor Co-Conspirator 17, did not raise its wages in 2009.

201. While in the years before and after 2009, George's typically raised its hourly plant worker wages, in 2009 itself, after hearing directly from its competitor Processor Co-Conspirator 17, and potentially also from its competitor Processor Co-Conspirator 18, George's chose not to raise its hourly worker wages. Thus, because George's collaborated with its competitors through the direct sharing of future compensation information, and received comfort from those competitors that they did not plan to raise their employees' wages, George's processing plant employees suffered a harmful effect.

202. Evidence of harmful effects from an information-sharing conspiracy is not restricted to denials of wage raises or choices not to grant benefits. If each participant in a labor market is suppressing its compensation levels by using information about its competitors' compensation plans to make smaller and more targeted wage increases than it would have absent such information sharing, wages will rise more slowly, and for fewer workers, than they would have without the conspiracy.

203. For example, in 2013, Processor Co-Conspirator 18's Director of Labor Compensation informed her coworkers that in preparation for internal decision-making about plant wages, Processor Co-Conspirator 18 ''completed a third-party survey with competing poultry companies. With this information, we feel that we are in a better position to strategically evaluate wages on a location by location level.'' Attached to this email are charts using data exchanged about competing processors' base wage rates through the WMS Survey Group, as well as other documents to which ''We [Processor Co-Conspirator 18] have added the [Consultant Co-Conspirator 1] wages and ranking'' and ''maintenance start and base rates by [Consultant Co-Conspirator 1] region.'' At least three of these charts marked specific plants for which Processor Co-Conspirator 18, as compared to the averages of other processors' plants in that region, was paying below median wages for the industry.

204. The information exchange informed Processor Co-Conspirator 18 exactly where and by how much it would have to increase wages to match its competitors; the exchange deprived plant workers, who lack any comparable information, of an independent effort by Processor Co-Conspirator 18 to recruit and hire workers by competing against other processors.

205. Defendant Wayne has admitted that it used its collaboration with the Processor Conspirators, and the information they exchanged with each other, in this way. Wayne's compensation strategy was to pay wages at or near the midpoint of compensation (*i.e.,* 50%) for its workers as compared to its competitors. Wayne's discussions and exchange of compensation information with the Processor Conspirators allowed it to more precisely target what the mid-point of compensation would be, suppressing the rise in compensation that might otherwise have occurred if Wayne had less ability to target that mid-point.

206. Similarly, Defendant Cargill used discussions and exchange of compensation information with the Processor Conspirators to assist in determining the ''salary bands'' it would set for salaried worker positions. Cargill sent these band amounts to local plant managers to inform the setting of local wages. Cargill admitted that on at least one occasion the WMS Survey Group compensation data influenced Cargill's decision to lower the salary band range

for plant supervisors from where it had originally set that band.

207. The Processor Conspirators' compensation information exchanges therefore distorted compensation-setting processes in the poultry processor plant worker labor market and harmed the competitive process.

VII. Violations Alleged

Count I: Sherman Act Section 1 (By the United States Against All Defendants)

208. Paragraphs 1 through 207 are repeated and realleged as if fully set forth herein.

209. The Processor Defendants violated Section 1 of the Sherman Act, 15 U.S.C. 1, by agreeing to collaborate with and assist their competitors in making poultry processing worker compensation decisions, to exchange current and future, disaggregated, and identifiable information about their compensation of poultry processing plant workers, and to facilitate this collaboration and such exchanges. This agreement suppressed compensation for poultry processing workers for decades.

210. This agreement included more than 20 years of discussions between and among these competitors about wage and benefit policies and amounts, which went well beyond the sharing of information and included consultation and advice-giving—as one processor put it, ''a collaborative working relationship''—on decisions that were competitively sensitive and should have been made independently.

211. The agreement also included exchanging (or, for the Consultant Defendants, facilitating the exchange of) competitively sensitive information about poultry processing plant workers' wages and benefits at both local levels and the national level. Such exchanges allowed these competitors to understand wages and benefits paid or planned by specific competitors, in specific places, to specific types of workers. (Standing alone, these exchanges of information would constitute a violation of Section 1 of the Sherman Act.)

212. The Processor Defendants themselves understood that their anticompetitive agreement likely raised serious legal concerns. They went to great lengths to keep their exchanges confidential. Some expressed their concerns explicitly; others abandoned some of the larger-group exchanges once antitrust investigations and private lawsuits began to uncover their behavior. The Processor Defendants and Processor Conspirators nonetheless continued exchanging information through less observable methods, for example through Consultant Co-Conspirator 1.

213. The Processor Conspirators' market power increases their agreement's likely anticompetitive effects. In relevant local labor submarkets, they control more than 80 percent of poultry processing jobs—in some areas, likely 100 percent of poultry processing jobs—and thus have market power in local markets for poultry processing plant workers. They enjoy outsize market power over the supply of poultry processing plant jobs in these local areas, in which they are often among the largest employers. In the national market, they control over 90 percent of poultry processing jobs nationwide, and thus have buyer market power in the nationwide market for poultry processing plant workers. Their choice to collaborate on compensation decisions and to exchange information, even though they had buyer market power, disrupted the competitive mechanism for negotiating and setting wages and benefits for poultry processing plant workers and harmed the competitive process.

214. As described in more detail in paragraphs 1 through 213 above, from 2000 or earlier to the present, Defendants Cargill, George's, Sanderson, Wayne, WMS, and G. Jonathan Meng agreed to collaborate with and assist their competitors in making compensation decisions and to exchange current and future, disaggregated, and identifiable compensation information, or to facilitate this anticompetitive agreement, an unlawful restraint of trade under Section 1 of the Sherman Act, 15 U.S.C. 1.

215. There is no justification, procompetitive or otherwise, for large, profitable, and sophisticated competitors collaborating with the effect of suppressing wages and benefits for their workers.

216. The Defendants' agreement to collaborate on compensation decisions, exchange current and future compensation information, and facilitate those collaborations and exchanges suppressed poultry processing plant worker compensation. It constitutes an unreasonable restraint of interstate trade and commerce in the nationwide and in local labor markets for hourly and salaried poultry processing plant workers. This offense is likely to continue and recur unless this court grants the requested relief.

Count II: Packers and Stockyards Act Section 202(a) (By the United States Against Sanderson and Wayne Only)

217. Paragraphs 1 through 216 are repeated and realleged as if fully set forth herein.

218. Defendants Sanderson and Wayne violated Section 202(a) of the Packers and Stockyards Act, 1921, as amended and supplemented, 7 U.S.C. 192(a), by engaging in deceptive practices regarding their contracts with growers. These deceptions deprived growers of material information necessary to make informed decisions about their contracting opportunities and to compare offers from different poultry processors.

219. Defendants Sanderson and Wayne are ''live poultry dealers'' under 7 U.S.C. 182(10), because each is engaged in the business of obtaining live poultry under a poultry growing arrangement for the purpose of slaughtering it.

220. Defendants Sanderson's and Wayne's grower contracts concern ''live poultry'' under 7 U.S.C. 182(6), 192, because the contracts concerned the raising of live chickens.

221. Defendants Sanderson and Wayne each engaged in deceptive practices through their grower contracts, which omitted material disclosures about how each compensates growers. Those disclosures would have provided information the grower needs to effectively compete in the tournament system and allowed growers to evaluate their likely return and risks, including, among other things the variability of inputs the grower would receive, the risks regarding downside penalties for underperforming relative to other growers in the tournament system.

222. Defendants Sanderson's and Wayne's deceptive practices are ongoing and likely to continue and recur unless the court grants the requested relief.

VIII. Requested Relief

223. The United States requests that this Court:

a. rule that Defendants' conspiracy to collaborate on processing plant compensation decisions, including through the exchange of compensation information, has unreasonably restrained trade and is unlawful under Section 1 of the Sherman Act, 15 U.S.C. 1;

b. rule that Defendants' exchange of compensation information itself, without more, has unreasonably restrained trade and is unlawful under Section 1 of the Sherman Act, 15 U.S.C. 1;

c. permanently enjoin and restrain all Defendants from collaborating on

decisions related to worker wages and benefits with any other company engaged in poultry growing or processing or the sale of poultry products;

d. permanently enjoin and restrain all Defendants from sharing, or facilitating the sharing of, information about compensation for their workers with any other company engaged in poultry growing or processing or the sale of poultry products, whether that sharing is direct or indirect;

e. require all Defendants to take such internal measures as are necessary to ensure compliance with that injunction;

f. impose on all Defendants a Monitoring Trustee to ensure compliance with the antitrust laws;

g. grant equitable monetary relief;

h. permanently enjoin and restrain Defendants Sanderson and Wayne from engaging in deceptive practices regarding their contracts with growers;

i. require Defendants Sanderson and Wayne to make appropriate disclosures to growers before entering into contracts concerning live poultry, in order to provide sufficient information for the growers to understand the scope of the contract and the potential risks;

j. require Defendants Sanderson and Wayne to modify their grower compensation systems to eliminate the harm arising from each firm's failure to disclose to growers all of the potential risks associated with that firm's compensation system;

k. grant other relief as required by the nature of this case and as is just and proper to prevent the recurrence of the alleged violation and to dissipate its anticompetitive effects, including such structural relief as may be necessary to prevent the anticompetitive effects caused by the challenged conduct and described in this Amended Complaint;

l. award the United States the costs of this action; and

m. award such other relief to the United States as the Court may deem just and proper.

Dated: May 17, 2023

Respectfully submitted,

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United States District Court for the District of Maryland

United States of America, Plaintiff, v. Cargill Meat Solutions Corporation, *et al., Defendants.*

Civil Action No.: 22–cv–1821
(Gallagher, J.)

[Proposed] Final Judgment

Whereas, Plaintiff, the United States of America, moved to amend its Complaint on May 17, 2023, alleging that Defendants George's, Inc. and George's Foods, LLC (collectively, ''Settling Defendants'') violated Section 1 of the Sherman Act, 15 U.S.C. 1;

And whereas, the United States and Settling Defendants have consented to the entry of this Final Judgment without the taking of testimony, without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party relating to any issue of fact or law;

And whereas, Settling Defendants agree to undertake certain actions and refrain from certain conduct for the purpose of remedying the anticompetitive effects alleged in the Amended Complaint;

And whereas, Settling Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now therefore, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and each of the parties named herein. The Amended Complaint states a claim upon which relief may be granted against the Settling Defendants under Section 1 of the Sherman Act, 15 U.S.C. 1.

II. Definitions

As used in this Final Judgment:

A. ''Agreement'' means any contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons.

B. ''George's, Inc.'' means Defendant George's, Inc., a privately-held company headquartered in Springdale, Arkansas, its successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''George's Foods'' means Defendant George's Foods, LLC, a company headquartered in Edinburg, Virginia that is an affiliate of George's, Inc., and its successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''Communicate'' means to discuss, disclose, transfer, disseminate, circulate, provide, request, solicit, send, receive or exchange information or opinion, formally or informally, directly or indirectly, in any manner, and regardless of the means by which it is accomplished, including orally or by written means of any kind, such as electronic communications, emails, facsimiles, telephone communications, voicemails, text messages, audio recordings, meetings, interviews, correspondence, exchange of written or recorded information, including surveys, or face-to-face meetings.

E. ''Compensation'' means all forms of payment for work, including salaried pay, hourly pay, regular or ad hoc bonuses, over-time pay, and benefits, including healthcare coverage, vacation or personal leave, sick leave, and life insurance or disability insurance policies.

F. ''Competitively Sensitive Information'' means information that is relevant to, or likely to have an impact on, at least one dimension of competition, including price, cost (including Compensation), output, quality, and innovation. Competitively Sensitive Information includes prices, strategic plans, amounts and types of Compensation, formula and algorithms used for calculating Compensation or proposed Compensation, other information related to costs or profits, markets, distribution, business relationships, customer lists, production capacity, and any confidential information the exchange of which could harm competition.

G. ''Consulting Firm'' means any organization, including Webber, Meng, Sahl & Company, Inc. and Agri Stats,

Inc., that gathers, sorts, compiles, and/or sells information about Compensation for Poultry Processing Workers, or provides advice regarding Compensation for Poultry Processing Workers; ''Consulting Firm'' does not include job boards, employment agencies or other entities that facilitate employment opportunities for employees.

H. ''Grower'' means any person engaged in the business of raising and caring for live Poultry for slaughter by another, whether the Poultry is owned by such a person or by another, but not an employee of the owner of such Poultry.

I. ''Human Resources Staff'' means any and all full-time, part-time, or contract employees of Settling Defendants, wherever located, whose job responsibilities relate in any way to hiring or retaining workers, employment, or evaluating, setting, budgeting for, administering, or otherwise affecting Compensation for Poultry Processing Workers, and any other employee or agent working at any of those employees' direction.

J. ''Including'' means including, but not limited to.

K. ''*Jien*'' means the case *Jien* v. *Perdue Farms, Inc.,* No. 1:19–cv–2521 (D. Md.).

L. ''Management'' means all directors and executive officers of Settling Defendants, or any other of Settling Defendants' employees with management or supervisory responsibilities related to hiring, employment, or Compensation of Poultry Processing plant labor, including Poultry Processing plant managers.

M. ''Person'' means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, governmental unit, or other legal entity.

N. ''Poultry'' means chicken or turkey.

O. ''Poultry Processing'' means the business of raising, slaughtering, cleaning, packing, packaging, and related activities associated with producing Poultry, including activities conducted by Poultry Processors at integrated feed mills, hatcheries, and processing plant facilities and the management of those activities.

P. ''Poultry Processing Worker'' means anyone paid any Compensation, directly or indirectly (such as through a temporary employment agency or third-party staffing agency), by a Poultry Processor related to Poultry Processing, including temporary workers, permanent workers, employees, workers paid hourly wages, workers paid salaried wages, and workers paid benefits.

Q. ''Poultry Processor'' means any person (1) who is engaged in Poultry Processing or (2) that has full or partial ownership or control of a Poultry Processing facility, or (3) that provides Compensation to Poultry Processing Workers; ''Poultry Processor'' does not include staffing agencies or other entities that are not owned, operated, or controlled by a person engaged in Poultry Processing or that owns or controls, in full or part, Poultry Processing facilities, that make individuals available to work at Poultry Processing facilities.

R. ''Restitution Amount'' means $5.8 million for Settling Defendants.

III. Applicability

This Final Judgment applies to Settling Defendants and all other persons in active concert or participation with them who receive actual notice of this Final Judgment.

IV. Prohibited Conduct

A. Management and Human Resources Staff of each Settling Defendant must not, whether directly or indirectly, including through a Consulting Firm or other person:

1. participate in any meeting or gathering (including in-person, virtual, and telephonic meetings and gatherings) related to Compensation for Poultry Processing Workers, or for any purpose related to Compensation for Poultry Processing Workers, at which any other Poultry Processor not owned or operated by Settling Defendants is present;

2. Communicate Competitively Sensitive Information about Compensation for Poultry Processing Workers with any Poultry Processor not owned or operated by one or both Settling Defendants, including about types, amounts, or methods of setting or negotiating Compensation for Poultry Processing Workers;

3. attempt to enter into, enter into, maintain, or enforce any Agreement with any Poultry Processor not owned or operated by one or both Settling Defendants about Poultry Processing Worker Compensation information, including how to set or decide Compensation or the types of Compensation for Poultry Processing Workers;

4. Communicate Competitively Sensitive Information about Compensation for Poultry Processing Workers to any Poultry Processor not owned or operated by one or both Settling Defendants, including Communicating Competitively Sensitive Information about Compensation for Poultry Processing Workers to any Consulting Firm that produces reports regarding Compensation for Poultry Processing Workers that are shared with other Poultry Processors;

5. use non-public, Competitively Sensitive Information about Compensation for Poultry Processing Workers from or about any Poultry Processor not owned or operated by one or both Settling Defendants; or

6. encourage or facilitate the communication of Competitively Sensitive Information about Compensation for Poultry Processing Workers to or from any Poultry Processor not owned or operated by one or both Settling Defendants.

B. Settling Defendants must not knowingly use from any Poultry Processor not owned or operated by one or both Settling Defendants or any of that Poultry Processor's officers, consultants, attorneys, or other representatives any Competitively Sensitive Information about Compensation for Poultry Processing Workers except as set forth in Section V or in connection with pending or threatened litigation as a party or fact witness, pursuant to court order, subpoena, or similar legal process, or for which any Settling Defendant has received specific prior approval in writing from the Division.

C. The Settling Defendants must not retaliate against any employee or third party for disclosing information to the monitor described in Section VI, a government antitrust enforcement agency, or a government legislature.

V. Conduct Not Prohibited

A. Nothing in Section IV prohibits a Settling Defendant from Communicating, using, or encouraging or facilitating the Communication of, its Competitively Sensitive Information with an actual or prospective Poultry Processing Worker, or with the Poultry Processing Worker's labor union or other bargaining agent, except that, if a prospective Poultry Processing Worker is employed by another Poultry Processor, Settling Defendants' Communicating, using, or encouraging or facilitating the Communication of, Competitively Sensitive Information is excluded from the prohibitions of Section IV only insofar as is necessary to negotiate the Compensation of a prospective Poultry Processing Worker. Settling Defendants are not prohibited from internally using Competitively Sensitive Information received from a prospective Poultry Processing Worker who is employed by a Poultry Processor in the ordinary course of a legitimate

hiring, retention, or off-boarding process, but Settling Defendants are prohibited from Communicating that Competitively Sensitive Information about Compensation for Poultry Processing Workers to another Poultry Processor.

B. Nothing in Section IV prohibits the Settling Defendants from (1) sharing information with or receiving information from a staffing agency or entity that is not owned or controlled by any Poultry Processor, that facilitates employment, if necessary to effectuate an existing or potential staffing Agreement between the staffing agency or entity and the Settling Defendants; and (2) advertising Compensation through public job postings, billboards or help wanted advertisements.

C. Nothing in Section IV prohibits Settling Defendants from, after securing advice of counsel and in consultation with their respective antitrust compliance officers, Communicating, using, encouraging or facilitating the Communication of, or attempting to enter into, entering into, maintaining, or enforcing any Agreement to Communicate Competitively Sensitive Information relating to Compensation for Poultry Processing Workers with any Poultry Processor when such Communication or use is for the purpose of evaluating or effectuating a bona fide acquisition, disposition, or exchange of assets:

1. For all Agreements under Paragraph V(C) with any other Poultry Processor to Communicate Competitively Sensitive Information relating to Compensation for Poultry Processing Workers that a Settling Defendant enters into, renews, or affirmatively extends after the date of entry of this Final Judgment, the Settling Defendant must maintain documents sufficient to show:

i. the specific transaction or proposed transaction to which the sharing of Competitively Sensitive Information relating to Compensation for Poultry Processing Workers relates;

ii. the employees, identified with reasonable specificity, who are involved in the sharing of Competitively Sensitive Information relating to Compensation for Poultry Processing Workers;

iii. with specificity the Competitively Sensitive Information relating to Compensation for Poultry Processing Workers Communicated; and

iv. the termination date or event of the sharing of Competitively Sensitive Information relating to Compensation for Poultry Processing Workers.

2. For Communications under Paragraph V(C), Settling Defendants must maintain copies of all materials required under Paragraph V(C)(1) for the duration of the Final Judgment, following entry into any Agreement to Communicate or receive Competitively Sensitive Information relating to Compensation for Poultry Processing Workers, and must make such documents available to the United States and the monitor appointed under Section VI upon request.

D. Nothing in Section IV prohibits Settling Defendants, after securing the advice of counsel and in consultation with the antitrust compliance officer, from engaging in conduct in accordance with the doctrine established in *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.,* 365 U.S. 127 (1961), *United Mine Workers* v. *Pennington,* 381 U.S. 657 (1965), and their progeny.

E. Nothing in Paragraph IV(A)(1) prohibits Settling Defendants from participating in meetings and gatherings in which they receive (but do not provide) information relating to Compensation that does not reflect or reveal information received from or about one or more Poultry Processors.

VI. Monitor

A. Upon application of the United States, which Settling Defendants may not oppose, the Court will appoint a monitor selected by the United States and approved by the Court. Within 30 calendar days after entry of the Stipulation and Order in this case, the Settling Defendants may together propose to the United States a pool of three candidates to serve as the monitor, and the United States may consider the Settling Defendants' perspectives on the Settling Defendants' three proposed candidates or any other candidates identified by the United States. The United States retains the right, in its sole discretion, either to select the monitor from among the three candidates proposed by the Settling Defendants or to select a different candidate for the monitor.

B. The monitor will have the power and authority to monitor: (1) Settling Defendants' compliance with the terms of this Final Judgment entered by the Court, including compliance with Paragraph IV(C), and (2) Settling Defendants' compliance, regarding events occurring after entry of the Stipulation and Order in this case (even if such events began before that date), with the U.S. federal antitrust laws relating to Poultry Processing, Poultry Processing Workers, Growers, integrated Poultry feed, hatcheries, the transportation of Poultry and Poultry products, and the sale of Poultry and Poultry Processing products. The monitor may also have other powers as the Court deems appropriate. The monitor's power and authority will not extend to monitoring the processing of meat or material other than Poultry, even if such processing of meat or material other than Poultry takes place in a facility or location that also engages in Poultry Processing. The monitor will have no right, responsibility or obligation for the operation of Settling Defendants' businesses, and the Settling Defendants do not have any obligation to seek the monitor's approval or authorization before making business decisions. No attorney-client relationship will be formed between the Settling Defendants and the monitor.

C. The monitor will serve at the cost and expense of Settling Defendants pursuant to a written Agreement, on terms and conditions, including confidentiality requirements and conflict-of-interest certifications, approved by the United States in its sole discretion.

D. The monitor may hire, at the cost and expense of Settling Defendants, any agents and consultants, including attorneys and accountants, that are reasonably necessary in the monitor's judgment to assist with the monitor's duties. These agents or consultants will be solely accountable to the monitor and will serve on terms and conditions, including confidentiality requirements and conflict-of-interest certifications, approved by the United States in its sole discretion.

E. The compensation of the monitor and agents or consultants retained by the monitor must be on reasonable and customary terms commensurate with the individuals' experience and responsibilities. If the monitor and Settling Defendants are unable to reach agreement on the monitor's compensation or other terms and conditions of engagement within 14 calendar days of the appointment of the monitor, the United States, in its sole discretion, may take appropriate action, including by making a recommendation to the Court. Within three business days of hiring any agents or consultants, the monitor must provide written notice of the hiring and the rate of compensation to Settling Defendants and the United States.

F. The monitor must account for all costs and expenses incurred.

G. The monitor will have the authority to take such reasonable steps as, in the United States' view, may be necessary to accomplish the monitor's duties. The monitor may seek information from Settling Defendants' personnel, including in-house counsel, compliance personnel, and internal

auditors. If the monitor has confidence in the quality of the resources, the monitor may consider the products of Settling Defendants' processes, such as the results of studies, reviews, sampling and testing methodologies, audits, and analyses conducted by or on behalf of any Settling Defendant, as well as any of Settling Defendants' internal resources (*e.g.,* legal, compliance, and internal audit), which may assist the monitor in carrying out the monitor's duties). The monitor may take into account (a) the extent to which the Settling Defendants have dedicated internal personnel to ensure compliance with this Order, (b) the quality of the compliance work performed by such internal personnel, and (c) the availability and quality of analyses conducted by such internal personnel in determining or modifying an appropriate work plan that enables the monitor to accomplish his or her duties without unnecessary involvement in the day-to-day operation of the business. The Settling Defendants will establish a policy, annually communicated to all employees, that employees may disclose any information to the monitor, without reprisal for such disclosure.

H. Settling Defendants must use best efforts to cooperate fully with the monitor. Subject to reasonable protection for trade secrets and confidential research, development, or commercial information, or any applicable privileges or laws, Settling Defendants must (1) provide the monitor and agents or consultants retained by the monitor with full and complete access to all personnel, books, records, and facilities, and (2) use reasonable efforts to provide the monitor with access to Settling Defendants' former employees, Growers, third-party vendors, agents, and consultants. Settling Defendants may not take any action to interfere with or to impede accomplishment of the monitor's responsibilities.

I. If Settling Defendants seek to withhold from the monitor access to anything or anyone on the basis of attorney-client privilege or the attorney work-product doctrine, or because Settling Defendants reasonably believe providing the monitor with access would be inconsistent with applicable law, the Settling Defendants must work cooperatively with the monitor to resolve the issue to the satisfaction of the monitor. If Settling Defendants and the monitor do not reach a resolution of the issue to the satisfaction of the monitor within 21 calendar days, Settling Defendants must immediately provide written notice to the United States and the monitor. The written notice must include a description of what is being withheld and the Settling Defendants' legal basis for withholding access.

J. Except as specifically provided by Paragraph VI(I), Settling Defendants may not object to requests made or actions taken by the monitor in fulfillment of the monitor's responsibilities under this Final Judgment or any other Order of the Court on any ground other than malfeasance by the monitor; *provided, however,* that if Settling Defendants believe in good faith that a request or action by the monitor pursuant to the monitor's authority under Paragraph VI(B)(2) exceeds the scope of the monitor's authority or is unduly burdensome, the Settling Defendants may object to the United States. Objections by Settling Defendants under this Paragraph VI(J) regarding a request or action exceeding the monitor's scope must be conveyed in writing to the United States and the monitor within 10 calendar days of the monitor's request or action that gives rise to Settling Defendants' objection. Objections by Settling Defendants under this Paragraph VI(J) regarding a request or action being unduly burdensome must be made, with specificity, to the monitor within seven calendar days of the request or action; if the Settling Defendants and the monitor cannot resolve the objections regarding a request or action being unduly burdensome, within 21 days of the request or action the Settling Defendants must convey their objections in writing to the United States. All objections will be resolved by the United States, in its sole discretion.

K. The monitor must investigate and report on Settling Defendants' compliance with this Final Judgment, including those provisions governing Settling Defendants' communications with Poultry Processors and third parties related to Poultry Processing Worker Compensation information, and Settling Defendants' compliance, regarding events occurring after entry of the Stipulation and Order in this case (even if such events began before that date), with the U.S. federal antitrust laws relating to Poultry Processing, Poultry Processing Workers, Growers, integrated Poultry feed, hatcheries, the transportation of Poultry and Poultry products, and the sale of Poultry and Poultry Processing products.

L. The monitor must provide periodic written reports to the United States and the Settling Defendants setting forth Settling Defendants' efforts to comply with their obligations under this Final Judgment and the U.S. federal antitrust laws relating to Poultry Processing, Poultry Processing Workers, Growers, integrated Poultry feed, hatcheries, the transportation of Poultry and Poultry products, and the sale of Poultry and Poultry Processing products. The monitor must provide written reports every six months for the first two years of the term of the monitor's appointment after which the monitor must provide written reports on an annual basis. The monitor must provide the first written report within six months of the monitor's appointment by the Court. The United States, in its sole discretion, may change the frequency of the monitor's written reports at any time, communicate or meet with the monitor at any time, and make any other requests of the monitor as the United States deems appropriate.

M. Within 30 days after appointment of the monitor by the Court, and on a yearly basis thereafter, the monitor must provide to the United States and Settling Defendants a written work plan for the monitor's proposed review. Settling Defendants may provide comments on a written work plan to the United States and the monitor within 14 calendar days after receipt of the written work plan. The United States retains the right, in its sole discretion, to request changes or additions to a work plan at any time. Any disputes between Settling Defendants and the monitor with respect to any written work plan will be decided by the United States in its sole discretion.

N. The monitor will serve for the full term of this Final Judgment, unless the United States, in its sole discretion, determines a different period is appropriate. After three years from the date this Final Judgment was entered, the United States, in its sole discretion, will determine whether continuation of the monitor's full term is appropriate, or whether to suspend the remainder of the term.

O. If the United States determines that the monitor is not acting diligently or in a reasonably cost-effective manner or if the monitor becomes unable to continue in their role for any reason, the United States may recommend that the Court appoint a substitute.

VII. Required Conduct

A. Within 10 days of entry of this Final Judgment, Settling Defendants must appoint an antitrust compliance officer who is an internal employee or officer of the Settling Defendants and identify to the United States the antitrust compliance officer's name, business address, telephone number, and email address. Within 45 days of a vacancy in the antitrust compliance

officer position, Settling Defendants must appoint a replacement, and must identify to the United States the antitrust compliance officer's name, business address, telephone number, and email address. Settling Defendants' initial or replacement appointment of an antitrust compliance officer is subject to the approval of the United States, in its sole discretion.

B. Settling Defendants' antitrust compliance officer must have, or must retain outside counsel who has, the following minimum qualifications:

1. be an active member in good standing of the bar in any U.S. jurisdiction; and

2. have at least five years' experience in legal practice, including experience with antitrust matters.

C. Settling Defendants' antitrust compliance officer must, directly or through the employees or counsel working at the direction of the antitrust compliance officer:

1. within 14 days of entry of the Final Judgment, furnish to the relevant Settling Defendants' Management, all Human Resources Staff, and Settling Defendants' retained Consulting Firms and utilized temporary employment agencies a copy of this Final Judgment, the Competitive Impact Statement filed by the United States with the Court, and a cover letter in a form attached as Exhibit 1;

2. within 14 days of entry of the Final Judgment, in a manner to be devised by Settling Defendants and approved by the United States, in its sole discretion, provide Settling Defendants' Management, all Human Resources Staff, and Settling Defendant's retained Consulting Firms and utilized temporary employment agencies reasonable notice of the meaning and requirements of this Final Judgment;

3. annually brief Settling Defendants' Management, Human Resources Staff, and Settling Defendants' retained Consulting Firms and utilized temporary employment agencies on the meaning and requirements of this Final Judgment and the U.S. federal antitrust laws;

4. brief any person who succeeds a person in any position identified in Paragraph VII(C)(3) within 60 days of such succession;

5. obtain from each person designated in Paragraph VII(C)(3) or VII(C)(4), within 30 days of that person's receipt of the Final Judgment, a certification that the person (i) has read and understands and agrees to abide by the terms of this Final Judgment; (ii) is not aware of any violation of the Final Judgment or of any violation of any U.S. antitrust law that has not been reported to Settling Defendants' Management; and (iii) understands that failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court;

6. annually communicate to Settling Defendants' Management and Human Resources Staff, and Settling Defendants' retained Consulting Firms and utilized temporary employment agencies that they may disclose to the antitrust compliance officer, without reprisal for such disclosure, information concerning any violation or potential violation of this Final Judgment or the U.S. federal antitrust laws by Settling Defendants; and

7. maintain for five years or until expiration of the Final Judgment, whichever is longer, a copy of all materials required to be issued under Paragraph VII(C), and furnish them to the United States within 10 days if requested to do so, except documents protected under the attorney-client privilege or the attorney work-product doctrine.

D. Each Settling Defendant must:

1. within 30 days of the filing of the Amended Complaint, Proposed Final Judgment, or Competitive Impact Statement in this action, whichever is latest, provide notice to every Poultry Processor and to every Consulting Firm with which that Settling Defendant has a contract or Agreement in place relating to Compensation for Poultry Processing Workers, of the Amended Complaint, Proposed Final Judgment, and Competitive Impact Statement in a form and manner to be proposed by Settling Defendants and approved by the United States, in its sole discretion. Settling Defendants must provide the United States with their proposals, including their lists of recipients, within 10 days of the filing of the Amended Complaint;

2. for all materials required to be furnished under Paragraph VII(C) that Settling Defendants claim are protected under the attorney-client privilege or the attorney work-product doctrine, Settling Defendants must furnish to the United States a privilege log;

3. upon Management or the antitrust compliance officer learning of any violation or potential violation of any of the terms and conditions contained in this Final Judgment, promptly take appropriate action to terminate or modify the activity so as to comply with this Final Judgment and maintain, and produce to the United States upon request, all documents related to any violation or potential violation of this Final Judgment;

4. file with the United States a statement describing any violation or potential violation within 30 days of a violation or potential violation becoming known to Management or the antitrust compliance officer. Descriptions of violations or potential violations of this Final Judgment must include, to the extent practicable, a description of any communications constituting the violation or potential violation, including the date and place of the communication, the persons involved, and the subject matter of the communication;

5. have their Chief Executive Officers or President certify to the United States annually on the anniversary date of the entry of this Final Judgment that the Settling Defendants have complied with all of the provisions of this Final Judgment, and list all Agreements subject to Paragraph V(C) from the prior year; and

6. maintain and produce to the United States upon request: (i) a list identifying all employees having received the antitrust briefings required under Paragraphs VII(C)(3) and VII(C)(4); and (ii) copies of all materials distributed as part of the antitrust briefings required under Paragraph VII(C)(3) and VII(C)(4). For all materials requested to be produced under this Paragraph VII(D)(6) that a Settling Defendant claims is protected under the attorney-client privilege or the attorney work-product doctrine, Settling Defendant must furnish to the United States a privilege log.

G. The term ''potential violation'' as used in this Section VII does not include the discussion with counsel, the antitrust compliance officer, or anyone working at counsel's or the antitrust compliance officer's direction, regarding future conduct.

VIII. Required Cooperation

A. Settling Defendants must cooperate fully and truthfully with the United States in any investigation or litigation relating to the sharing of Poultry Processing Worker Compensation information among Poultry Processors, in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. 1. Settling Defendants must use their best efforts to ensure that all current officers, directors, employees, and agents also fully and promptly cooperate with the United States and use reasonable efforts to ensure that all former officers, directors, employees, and agents also fully and promptly cooperate with the United States. The full, truthful, and continuing cooperation of Settling Defendants must include:

1. as requested on reasonable notice by the United States, being available for interviews, depositions, and providing

sworn testimony to the United States orally and in writing as the United States so chooses;

2. producing, upon request of the United States, all documents, data, information, and other materials, wherever located, not protected under the attorney-client privilege or attorney work product doctrine, in the possession, custody, or control of that Settling Defendant, and a privilege log of any materials the Settling Defendant claims are protected under the attorney-client privilege or the attorney work-product doctrine; and

3. testifying at trial and other judicial proceedings fully, truthfully, and under oath, when called upon to do so by the United States.

B. The obligations of Settling Defendants to cooperate fully and truthfully with the United States as required in this Section VIII will cease upon the conclusion of all investigations and litigation related to the sharing of Poultry Processing Worker Compensation information in violation of Section 1 of the Sherman Act, including exhaustion of all appeals or expiration of time for all appeals of any Court ruling in this matter, or the expiration of the Final Judgment, whichever is later.

C. Settling Defendants must take all necessary steps to preserve all documents and information relevant to the United States' investigations and litigation alleging that Settling Defendants and other Poultry Processors shared Poultry Processing Worker Compensation information in violation of Section 1 of the Sherman Act until the United States provides written notice to the Settling Defendants that their obligations under this Section VIII have expired.

D. Subject to the full, truthful, and continuing cooperation of each Settling Defendant, as required under this Section VIII, Settling Defendants are fully and finally discharged and released from any civil or criminal claim by the United States arising from the sharing of Poultry Processing Worker Compensation information among Poultry Processors prior to the date of filing of the Amended Complaint in this action; *provided, however,* that this discharge and release does not include any criminal claim arising from any subsequently-discovered evidence of an Agreement to fix prices or wages or to divide or allocate markets, including to allocate Poultry Processing Workers.

E. Paragraph VIII(D) does not apply to any acts of perjury or subornation of perjury (18 U.S.C. 1621–22), making a false statement or declaration (18 U.S.C. 1001, 1623), contempt (18 U.S.C. 401–402), or obstruction of justice (18 U.S.C. 1503, *et seq.*) by any Settling Defendant.

IX. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment or of determining whether this Final Judgment should be modified or vacated, upon written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, and reasonable notice to Settling Defendants, Settling Defendants must permit, from time to time and subject to legally recognized privileges, authorized representatives, including agents retained by the United States:

1. to have access during Settling Defendants' office hours to inspect and copy, or at the option of the United States, to require Settling Defendants to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Settling Defendants relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Settling Defendants' officers, employees, or agents, who may have their individual counsel present, relating to any matters contained in this Final Judgment. The interviews must be subject to the reasonable convenience of the interviewee and without restraint or interference by Settling Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, Settling Defendants must submit written reports or respond to written interrogatories, under oath if requested, relating to any matters contained in this Final Judgment.

X. Restitution

A. Within 60 days of entry of this Final Judgment, Settling Defendants must place funds equal to 10% of their Restitution Amount into an escrow account selected by the United States, in its sole discretion.

B. If the *Jien* Court grants a motion for final approval of a settlement and certification of a settlement class with respect to Settling Defendants' settlement with the *Jien* plaintiffs, the entire balance of Settling Defendants' escrow account, including any accrued interest and less any administrative costs, must be returned to Settling Defendants.

C. If Settling Defendants have not entered into a settlement agreement with the plaintiffs in *Jien* before entry of this Final Judgment, or if preliminary or final approval of a settlement is denied, or if certification of a settlement class is denied, or if a settlement is terminated or rescinded for any reason, Settling Defendants, within 21 days after (1) entry of this Final Judgment in the case of Settling Defendants having not reached a settlement agreement with the plaintiffs in *Jien,* or (2) any order denying settlement approval or certification of the settlement class or any termination or rescinding of a settlement, must deposit into their escrow account an amount equal to their Restitution Amount. This amount must be in addition to the initial 10% payment made pursuant to Paragraph X(A) and any accrued interest already present in the Settling Defendants' escrow account. Upon full funding of the escrow account, the entire balance of the escrow account, including any accrued interest, must be released to the United States for distribution to affected Poultry Processing Workers in the form of restitution and payment for expenses related to distribution. In the event that preliminary or final approval of a settlement or class certification is denied, or the settlement agreement is rescinded or terminated, for reasons that the United States in its sole discretion believes to be curable, the United States, in its sole discretion, may agree to one or more extensions of the 21-day period in this Paragraph X(C).

D. The claims and disbursement process will be established in the sole discretion of the United States. Settling Defendants must reimburse the United States for any costs associated with claims administration or remittance of restitution, including fees payable to a third-party claims administrator hired at the United States' sole discretion, that extend beyond the sum of the initial 10% payments made by Settling Defendants under Paragraph X(A). Contributions beyond the initial 10% payments will be made on a pro rata basis based on Settling Defendants' Restitution Amount.

E. Upon completion of the restitution payments, the United States must return any funds remaining in the escrow account to the Settling Defendants, on a pro rata basis based on Settling Defendants' Restitution Amount.

XI. Public Disclosure

A. No information or documents obtained pursuant to any provision in this Final Judgment, including reports the monitor provides to the United States pursuant to Paragraphs VI(K) and VI(L), may be divulged by the United States or the monitor to any person other than an authorized representative of the executive branch of the United States, except in the course of legal

proceedings to which the United States is a party, including grand-jury proceedings, for the purpose of securing compliance with this Final Judgment, or as otherwise required by law. In the event that the monitor should receive a subpoena, court order or other court process seeking production of information or documents obtained pursuant to any provision in this Final Judgment, including reports the monitor provides to the United States pursuant to Paragraphs VI(K) and VI(L), the applicable disclosing party shall notify Settling Defendants immediately and prior to any disclosure, so that Settling Defendants may address such potential disclosure and, if necessary, pursue alternative legal remedies, including if deemed appropriate by Settling Defendants, intervention in the relevant proceedings.

B. In the event of a request by a third party, pursuant to the Freedom of Information Act, 5 U.S.C. 552, for disclosure of information obtained pursuant to any provision of this Final Judgment, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 CFR part 16, including the provision on confidential commercial information, at 28 CFR 16.7. Settling Defendants submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 CFR 16.7. Designations of confidentiality expire 10 years after submission, ''unless the submitter requests and provides justification for a longer designation period.'' *See* 28 CFR 16.7(b).

C. If at the time that Settling Defendants furnish information or documents to the United States pursuant to any provision of this Final Judgment, Settling Defendants represent and identify in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Settling Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' the United States must give Settling Defendants 10 calendar days' notice before divulging the material in any legal proceeding (other than a grand jury proceeding).

XII. Retention of Jurisdiction

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Enforcement of Final Judgment

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Settling Defendants agree that in a civil contempt action, a motion to show cause, or a similar action brought by the United States relating to an alleged violation of this Final Judgment, the United States may establish a violation of this Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence, and Settling Defendants waive any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore the competition the United States alleges was harmed by the challenged conduct. Settling Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that any Settling Defendant has violated this Final Judgment, the United States may apply to the Court for an extension of this Final Judgment, together with other relief that may be appropriate. In connection with a successful effort by the United States to enforce this Final Judgment against a Settling Defendant, whether litigated or resolved before litigation, that Settling Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as all other costs including experts' fees, incurred in connection with that effort to enforce this Final Judgment, including in the investigation of the potential violation.

D. For a period of four years following the expiration of this Final Judgment, if the United States has evidence that a Settling Defendant violated this Final Judgment before it expired, the United States may file an action against that Settling Defendant in this Court requesting that the Court order: (1) Settling Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action; (2) all appropriate contempt remedies; (3) additional relief needed to ensure the Settling Defendant complies with the terms of this Final Judgment; and (4) fees or expenses as called for by this Section XIII.

XIV. Expiration of Final Judgment

Unless the Court grants an extension, this Final Judgment will expire seven years from the date of its entry, except that after three years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Settling Defendants that continuation of this Final Judgment is no longer necessary or in the public interest. *Provided, however,* that the obligations under Section X will continue as long as one or more of the escrow accounts created under Section X remain open.

XV. Reservation of Rights

The Final Judgment terminates only the claims expressly stated in the Amended Complaint. The Final Judgment does not in any way affect any other charges or claims filed by the United States subsequent to the commencement of this action, including any charges or claims relating to Growers, integrated Poultry feed, hatcheries, Poultry products, the transportation of Poultry and Poultry products, and the sale of Poultry and Poultry products.

XVI. Notice

For purposes of this Final Judgment, any notice or other communication required to be filed with or provided to the United States must be sent to the address set forth below (or such other address as the United States may specify in writing to any Settling Defendant): Chief, Civil Conduct Task Force, U.S. Department of Justice, Antitrust Division, 450 Fifth Street, Washington, DC 20530, *ATRJudgmentCompliance@usdoj.gov.*

XVII. Public Interest Determination

Entry of this Final Judgment is in the public interest. The Settling Defendants have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including by making available to the public copies of this Final Judgment and the Competitive Impact Statement, public comments thereon, and any response to comments by the United States. Based upon the record before the Court, which includes the Competitive Impact Statement and, if applicable, any comments and response to comments filed with the

Court, entry of this Final Judgment is in the public interest.

Date: ______

[Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16]

United States District Judge ______

Exhibit 1

[Version for Management and Human Resources Staff]

[Letterhead of Settling Defendant]

[Name and Address of Antitrust Compliance Officer]

Dear [XX]:

I am providing you this letter to make sure you know about a court order recently entered by a federal judge in [jurisdiction]. This order applies to [Settling Defendant's] Human Resources Staff and Management as defined in Section II (Definitions) of the attached Final Judgment, including you, so it is important that you understand the obligations it imposes on us. [CEO or President Name] has asked me to let each of you know that s/he expects you to take these obligations seriously and abide by them.

Under the order, we are largely prohibited from communicating with other poultry processors, whether directly or indirectly (such as through a consulting agency) about poultry processing plant worker compensation—pay or benefits. This means you may not discuss with any poultry processor or employee of a poultry processor any non-public information about our plant workers' wages, salaries, and benefits, and you may not ask any poultry processor or employee of a poultry processor for any non-public information about their plant workers' wages, salaries, and benefits. In addition, we are largely prohibited from sending any non-public information about our processing plant workers' wages and benefits to any third party, such as a consulting agency. There are only limited exceptions to these prohibitions, which are outlined in Section V (Conduct Not Prohibited) of the Final Judgment.

A copy of the court order is attached. Please read it carefully and familiarize yourself with its terms. The order, rather than the above description, is controlling. If you have any questions about the order or how it affects your activities, please contact me.

Thank you for your cooperation.

Sincerely,

[Settling Defendant's Antitrust Compliance Officer]

* * * * *

[Version for Consulting Firms and temporary employment agencies]

[Letterhead of Settling Defendant]

[Name and Address of Antitrust Compliance Officer]

Dear [XX]:

I am providing you this letter to make sure you know about a court order recently entered by a federal judge in [jurisdiction]. This order applies to [Settling Defendant's] Consulting Firms as defined in Section II (Definitions) of the attached Final Judgment and temporary employment agencies, including your agency, so it is important that you understand the obligations it imposes on us. [CEO or President Name] has asked me to let each of you know that s/he expects you to take these obligations seriously and abide by them.

Under the order, we are largely prohibited from communicating with other poultry processors, whether directly or indirectly (such as through a Consulting Firm or temporary employment agency, including your agency) about poultry processing plant worker compensation—pay or benefits. This means you may not disclose to us any non-public information about another poultry processor's plant workers' wages, salaries, and benefits, and you may not provide any non-public information about our poultry plant workers' wages, salaries, and benefits to another poultry processor. In addition, we are largely prohibited from sending any non-public information about our processing plant workers' wages and benefits to any third party, such as a Consulting Firm or temporary employment agency, including your agency. There are only limited exceptions to these prohibitions, which are outlined in Section V (Conduct Not Prohibited) of the Final Judgment.

A copy of the court order is attached. Please read it carefully and familiarize yourself with its terms. The order, rather than the above description, is controlling. If you have any questions about the order or how it affects your activities, please contact me.

Thank you for your cooperation.

Sincerely,

[Settling Defendant's Antitrust Compliance Officer]

United States District Court for the District of Maryland

United States Of America, Plaintiff, v. Cargill Meat Solutions Corporation, *et al.,* Defendants.
Civil Action No.: 22–cv–1821
(Gallagher, J.)

Competitive Impact Statement

In accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the ''Tunney Act''), the United States of America files this Competitive Impact Statement related to the proposed Final Judgment as to Defendants George's, Inc. and George's Foods, LLC (collectively, ''Settling Defendants'').

I. Nature and Purpose of the Proceeding

On July 25, 2022, the United States filed a civil Complaint against Cargill Meat Solutions Corp. and Cargill, Inc. (''Cargill''), Wayne Farms, LLC (''Wayne''), Sanderson Farms, Inc. (''Sanderson''), Webber, Meng, Sahl and Company, Inc., d/b/a WMS & Company, Inc. (''WMS'') and G. Jonathan Meng (''Meng''). The Complaint alleged that those defendants, together with another data consultant and other poultry processors that combined controlled over 90% of poultry processing jobs nationwide, conspired from 2000 or before to the present to assist their competitors in making compensation decisions, to exchange current and future, disaggregated, and identifiable compensation information, and to facilitate this anticompetitive agreement. These conspirators collaborated on decisions about poultry plant worker compensation, including through the direct exchange of compensation information. This conspiracy suppressed competition in the nationwide and local labor markets for poultry processing. Their agreement distorted the competitive process, disrupted the competitive mechanism for setting wages and benefits, and harmed a generation of poultry processing plant workers by unfairly suppressing their compensation.

With the Complaint, the United States also filed two proposed Final Judgments, one with respect to Cargill, Wayne, and Sanderson and one with respect to WMS and Meng (Dkt. Nos. 2 & 3), to settle this lawsuit as to those five defendants. The Tunney Act review process for those settlements is ongoing.

On May 17, 2023, the United States filed an Amended Complaint alleging that beginning in 2005 or before, Settling Defendants also participated in the conspiracy to exchange information about wages and benefits for poultry processing plant workers and collaborate with their competitors on compensation decisions. The Amended Complaint does not contain additional causes of action or requests for relief.

The Amended Complaint alleges that, from 2005 or before to the present, the Settling Defendants and their poultry processing and consultant co-conspirators exchanged compensation information through the dissemination of survey reports in which they shared current and future, detailed, and

identifiable plant-level and job-level compensation information for poultry processing plant workers. The shared information allowed poultry processors to determine the wages and benefits their competitors were paying—and planning to pay—for specific job categories at specific plants.

The Amended Complaint further alleges that the Settling Defendants and their co-conspirators met in person at annual meetings. From at least 2005 to 2018, Settling Defendants attended meetings with other poultry processors during which they and the consultant co-conspirators facilitated, supervised, and participated in the exchange of confidential, competitively sensitive information about poultry plant workers.

The Settling Defendants' and their co-conspirators' collaboration on compensation decisions and exchange of competitively sensitive compensation information extended beyond the shared survey reports and in-person annual meetings. As alleged in the Amended Complaint, from 2005 or before to the present, the Settling Defendants and their co-conspirators repeatedly contacted each other to seek and provide advice and assistance on compensation decisions, including by sharing further non-public information regarding each other's wages and benefits. This demonstrates a clear agreement between competitors to ask for help with compensation decisions and to provide such help to others upon request.

In sum, this conspiracy, from at least 2005 to the present, permitted the Settling Defendants and their co-conspirators to collaborate with and assist their competitors in making decisions about worker compensation, including wages and benefits, and to exchange information about current and future compensation plans. Through this conspiracy, the Settling Defendants artificially suppressed compensation for poultry processing workers.

The Complaint and the Amended Complaint also include a claim alleging that Defendants Sanderson and Wayne acted deceptively in the manner in which they compensated poultry growers in violation of Section 202(a) of the Packers and Stockyards Act, 1921, as amended and supplemented, 7 U.S.C. 192(a). The Settling Defendants are not defendants as to this claim.

At the time the Amended Complaint was filed, the United States also filed a proposed Final Judgment and Stipulation and Order with respect to the Settling Defendants, which is designed to remedy the anticompetitive effects resulting from the harm alleged in the Amended Complaint.

The proposed Final Judgment for the Settling Defendants, explained more fully below, requires the Settling Defendants to:

a. end their agreement to collaborate with and assist in making compensation decisions for poultry processing workers and their anticompetitive exchange of compensation information with other poultry processors;

b. submit to a monitor (determined by the United States in its sole discretion) for a term of seven years, who will examine the Settling Defendants' compliance with both the terms of the proposed Final Judgment and U.S. federal antitrust law generally, across their entire poultry businesses; and

c. provide significant and meaningful restitution to the poultry processing workers harmed by their anticompetitive conduct, who should have received competitive compensation for their valuable, difficult, and dangerous labor.

The proposed Final Judgment for the Settling Defendants also prohibits them from retaliating against any employee or third party for disclosing information to the monitor, an antitrust enforcement agency, or a legislature, and includes other terms discussed below.

The term of the proposed Final Judgment reflects the significant and voluntary cooperation that Settling Defendants provided in the United States' investigation into the conduct described in the Complaint, for which the United States is grateful.

The Stipulation and Order for the Settling Defendants requires them to abide by and comply with the provisions of the proposed Final Judgment until it is entered by the Court or until the time for all appeals of any Court ruling declining entry of the proposed Final Judgment has expired.

The United States has stipulated with the Settling Defendants that the proposed Final Judgment may be entered after compliance with the Tunney Act. Entry of the proposed Final Judgment will terminate this action as to the Settling Defendants, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of Events Giving Rise to the Alleged Violation

A. The Settling Defendants' Anticompetitive Agreement To Collaborate on Compensation, Including Through Their Anticompetitive Exchange of Compensation Information

The Amended Complaint alleges that the Settling Defendants agreed to collaborate with and assist each other and their co-conspirators in making decisions about wages and benefits for their poultry processing plant workers, exchanged competitively sensitive information, and facilitated the exchange of each other's competitively sensitive information. This agreement includes over a decade of discussions about current and future compensation plans and exchanges of compensation information between and among the Settling Defendants and their co-conspirators, who collectively held market power over local and the nationwide markets for poultry plant workers. This conspiracy, while including detailed exchanges of information about current and future wage and benefit policies and amounts, went well beyond the sharing of information and included individual processor-to-processor consultation and advice-giving on decisions that were competitively sensitive and should have been made independently.

From 2005 or earlier to the present, the Settling Defendants and their co-conspirators collaborated on compensation decisions, including by discussing, giving advice, and sharing with each other their competitively sensitive compensation information—rather than each individual firm making its own decisions regarding poultry processing plant worker compensation. This collaboration related to compensation topics such as current wages and benefits, planned and contemplated future wage raises, and changes to benefits, at a nationwide level, at a regional level, and at the individual plant or individual job category level. The Settling Defendants and their co-conspirators engaged in such collaborations via correspondence and at annual in-person meetings, at which they explicitly discussed poultry processing plant worker compensation, and to which they brought competitively sensitive compensation information.

As part of their collaboration, the Settling Defendants and their co-conspirators exchanged confidential, current and future, disaggregated, and identifiable compensation information related to poultry processing workers with each other, both directly and

through facilitation by data consultant co-conspirators, from at least 2005 to the present. Their exchange of information through these consultants included an annual survey designed and controlled by the Settling Defendants and their co-conspirators. The survey compiled and disseminated information to competitors about current compensation and planned or contemplated changes in plant worker wages and salaries. The survey reported compensation and benefits data for standardized job categories at the Settling Defendants' and their co-conspirators' individual processing plants.

From their information exchanges, the Settling Defendants knew how, and how much, their competitors were compensating their poultry processing plant workers at both a nationwide and a local level.

B. The Competitive Effects of the Conduct

The Amended Complaint alleges that the Settling Defendants' and their co-conspirators' agreement to collaborate on compensation decisions, including through the anticompetitive exchange of compensation information, distorted the competitive mechanism of local and nationwide markets for poultry processing plant labor. By doing so, this conspiracy harmed a generation of poultry processing plant workers by artificially suppressing their wages and benefits for decades.

Poultry processors are distinguishable from other kinds of employers from the perspective of poultry processing plant workers. Many poultry processing plant jobs are dangerous and require physical stamina and tolerance of unpleasant conditions. Poultry processing workers also develop common skills or industry-specific knowledge in poultry processing work, making such workers most valuable to other poultry processing plants. Additionally, many poultry processing plant workers face constraints that reduce the number of jobs and employers available to them, limiting the number of competitors for their labor. For example, workers who cannot speak, read, or write English or Spanish can still perform poultry processing plant line work. Similarly, workers with criminal records, probation status, or lack of high school or college education are often able to work at poultry processing plants even when other jobs are not available to them. Finally, many poultry processing plants are located in rural areas, in which workers often have fewer job alternatives—especially for full-time, year-round work—as compared to workers in other areas. Thus, other jobs are not reasonable substitutes for poultry processing plant jobs.

In local poultry processing labor markets, defined by the commuting distance between workers' homes and poultry processing plants, the Settling Defendants and their co-conspirators control more than 80% of poultry processing jobs—and in some areas, likely 100%—and thus collectively have market power in those local markets. The Settling Defendants and their co-conspirators also together control over 90% of poultry processing jobs nationwide, giving them market power in the nationwide labor market for poultry processing plant work.

The Settling Defendants' agreement to collaborate on compensation decisions and accompanying exchange of information related to compensation, which was anticompetitive even standing alone, distorted the normal wage-setting and benefits-setting mechanisms in the processor plant worker labor market, thereby harming the competitive process. Because the collaboration and the shared compensation information facilitated by the consultant co-conspirators allowed the Settling Defendants and their co-conspirators to understand more precisely what their competitors were paying, or were planning to pay, for processing plant worker compensation, they were able to pay less compensation than they otherwise would have in a competitive labor market. In contrast, the Settling Defendants' workers lacked any comparable information, a clear asymmetry in the market.

In sum, the Settling Defendants' anticompetitive agreement to collaborate on compensation decisions, exchange of compensation information, and facilitation of such (alongside the facilitation of this conduct by the consultant co-conspirators) suppressed compensation in the local submarkets and the nationwide market for poultry processing plant workers to the detriment of hundreds of thousands of processing plant workers, who were financially harmed by such conduct.

III. Explanation of the Proposed Final Judgment

The relief required by the proposed Final Judgments will remedy the harm to competition alleged in the Amended Complaint.

A. Prohibited Conduct

Section IV of the Final Judgment prevents the Settling Defendants from continuing their collaboration and information-sharing with competing poultry processors about poultry processing worker compensation. Paragraphs IV.A and B prohibit Settling Defendants' employees in management positions or any positions related to compensation from directly or indirectly participating in meetings or gatherings related to compensation for poultry processing workers, communicating with any poultry processor about competitively sensitive information related to poultry processing compensation, or facilitating or encouraging such communications; entering into, attempting to enter into, maintaining, or enforcing any agreement with any poultry processor about compensation for poultry processing workers; or using any such information about another poultry processor's compensation for poultry processing workers. Accordingly, under the proposed Final Judgment, the Settling Defendants may not collaborate on wages and benefits for their workers or share confidential wage and benefit information with any poultry processor not owned or operated by Settling Defendants, and may not provide confidential wage and benefit information to any consultants that produce reports regarding compensation for poultry processing workers, among other prohibited activities.

To ensure that poultry plant workers and third parties are not punished by the Settling Defendants for raising antitrust or other concerns, Paragraph IV.D. of the proposed Final Judgment prohibits the Settling Defendants from retaliating against any employee or third party for disclosing information to the monitor, a government antitrust agency, or a government legislature.

B. Monitor

Section VI of the proposed Final Judgment provides that the Court will appoint a monitor, selected by the United States in its sole discretion, who will have the power and authority to investigate and report on the Settling Defendants' compliance with the terms of the Final Judgment and the Stipulation and Order. In addition, the monitor will have the power and authority to investigate and report on the Settling Defendants' compliance with the U.S. federal antitrust laws. When investigating and reporting on the Settling Defendants' compliance with the U.S. federal antitrust laws, the monitor may examine all aspects of the Settling Defendants' poultry businesses, including poultry processing, poultry processing workers, growers, integrated poultry feed, hatcheries, transportation of poultry and poultry products, and the sale of poultry and poultry processing products.

The monitor will not have any responsibility or obligation for the operation of the Settling Defendants' businesses. The monitor will serve at the Settling Defendants' expense, on such terms and conditions as the United States approves in its sole discretion. The monitor will have the authority to take reasonable steps as, in the United States' view, may be necessary to accomplish the monitor's duties and the Settling Defendants must assist the monitor. The monitor will provide periodic reports to the United States and will serve for a term of up to seven years.

C. Restitution

The Settling Defendants have inflicted financial harm on the hundreds of thousands of poultry plant workers who have labored for them and their co-conspirators during the term of the conspiracy alleged in the Amended Complaint. These workers perform jobs that are physically demanding, involve high risk of injury, and require tolerance of unpleasant working conditions, in exchange for wages and benefits from the Settling Defendants and their co-conspirators. Because of the conspiracy, those wages and benefits were likely less than they would have been in a free and competitive labor market. For this reason, Section X of the proposed Final Judgment includes a requirement that the Settling Defendants pay restitution to workers harmed by the Settling Defendants' conduct.

The Settling Defendants may satisfy the restitution requirement in the proposed Final Judgment in one of two ways. In an ongoing private antitrust suit brought by a class of nationwide poultry processing workers in this Court, *Jien* v. *Perdue Farms, Inc.,* No. 1:19-cv-2521 (D. Md.), which involves allegations and claims similar to those in the United States' Amended Complaint, the Settling Defendants negotiated a settlement with the plaintiff class for $5.8 million. If the *Jien* Court grants final approval to the Settling Defendants' *Jien* settlement, the disbursement process approved by the *Jien* Court of the *Jien* settlements satisfies the Settling Defendants' restitution obligation under Section X of the proposed Final Judgment.

Section X of the proposed Final Judgment also sets forth an alternative method by which the Settling Defendants may satisfy their restitution obligations. Under Paragraph X.A. of the proposed Final Judgment, the Settling Defendants must create an escrow account and contribute to that account 10% of the amount of their *Jien* settlement. Under Paragraphs X.C. and X.D. of the proposed Final Judgment, should the *Jien* Court not grant final approval of the Settling Defendants' *Jien* settlement, the Settling Defendants must transfer to that escrow account the entire amount of their *Jien* settlement, so that the account would contain the full *Jien* settlement amount plus the 10% initially required. The United States would then disburse this fund, minus the cost of administration, to the poultry processing plant workers.

D. Required Conduct, Compliance, and Inspection

The proposed Final Judgment sets forth various provisions to ensure the Settling Defendants' compliance with the proposed Final Judgment.

Paragraph VII.A. of the proposed Final Judgment requires the Settling Defendants to appoint an Antitrust Compliance Officer within 10 days of the Final Judgment's entry. Under Paragraph VII.C. of the proposed Final Judgment, the Antitrust Compliance Officer must furnish copies of this Competitive Impact Statement, the Final Judgment, and a notice approved by the United States explaining the obligations of the Final Judgment to the Settling Defendants' management and all employees responsible for evaluating or setting compensation for poultry processing workers, among others. The Antitrust Compliance Officer must also obtain from each recipient a certification that he or she has read and agreed to abide by the terms of the Final Judgment, and must maintain a record of all certifications received. Recipients must also certify that they are not aware of any violation of the Final Judgment or any violation of federal antitrust law. Additionally, the Antitrust Compliance Officer must annually brief each person required to receive a copy of the Amended Complaint, Final Judgment and this Competitive Impact Statement on the meaning and requirements of the Final Judgment and the antitrust laws. The Antitrust Compliance Officer must also annually communicate to all employees that any employee may disclose, without reprisal, information concerning any potential violation of the Final Judgment or the antitrust laws.

Paragraph VII.D. of the proposed Final Judgment imposes similar notice provisions on the Settling Defendants to ensure that any poultry processor or consulting firm they contract with related to poultry processing compensation also has notice of the Amended Complaint, Final Judgment, and Competitive Impact Statement.

E. Other Provisions

For a period of seven years following the date of entry of the Final Judgment, the Settling Defendants must certify annually to the United States that they have complied with the provisions of the Final Judgment. Additionally, upon learning of any violation or potential violation of the terms and conditions of the Final Judgment, the Settling Defendants, within 30 days, must file with the United States a statement describing the violation or potential violation, and must promptly terminate or modify the activity.

The proposed Final Judgment requires the Settling Defendants to provide full, truthful, and continuing cooperation to the United States in any investigation or litigation relating to the sharing of compensation information among poultry processors in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. 1. This cooperation provision requires the Settling Defendants to use their best efforts to effectuate interviews, depositions, and sworn testimony with their current and former employees, officers, directors, and agents and to produce documents, data, and information upon request. The Settling Defendants' obligation to cooperate lasts for the full term of the proposed Final Judgment or until the conclusion of all investigations and litigations, including appeals, related to sharing poultry processing worker compensation information. Subject to this full, truthful, and continuing cooperation, the Settling Defendants are discharged from any civil or criminal claim by the United States arising from the sharing of compensation information among poultry processors, provided that the information-sharing occurred before the date of the filing of the Amended Complaint and does not include an agreement to fix prices or wages or to divide or allocate markets.

To ensure compliance with the Final Judgment, the proposed Final Judgment requires the Settling Defendants to grant the United States access, upon reasonable notice, to the Settling Defendants' records and documents relating to matters contained in the Final Judgment. Upon request, the Settling Defendants must also make their employees available for interviews or depositions, answer interrogatories, and prepare written reports relating to matters contained in the Final Judgment.

The proposed Final Judgment also contains provisions designed to make enforcement of the Final Judgment as effective as possible. The proposed Final Judgment provides that the United

States retains and reserves all rights to enforce the Final Judgment, including the right to seek an order of contempt from the Court. Under the terms of these provisions, the Settling Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that the Settling Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance with the Final Judgment with the standard of proof that applies to the underlying offense that the Final Judgment addresses.

The proposed Final Judgment contains provisions that clarify its interpretation. The proposed Final Judgment is intended to remedy the loss of competition the United States alleges occurred because of the Settling Defendants' conduct. The Settling Defendants agree that they will abide by the proposed Final Judgment and that they may be held in contempt of the Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

The proposed Final Judgment provides that if the Court finds in an enforcement proceeding that a Settling Defendant has violated the Final Judgment, the United States may apply to the Court for an extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the Final Judgment, in any successful effort by the United States to enforce the Final Judgment against a Settling Defendant, whether litigated or resolved before litigation, the Settling Defendant must reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with that effort to enforce this Final Judgment, including the investigation of the potential violation.

The proposed Final Judgment states that the United States may file an action against a Settling Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, the proposed Final Judgment provides that it will expire seven years from the date of its entry, except that after three years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and the Settling Defendants that continuation of the Final Judgment is no longer necessary or in the public interest.

This length of term reflects important cooperation by the Settling Defendants with the United States' investigation and litigation. Settling Defendants provided significant documents and information to the United States over a lengthy period and on a voluntary basis, which advanced the investigation in meaningful ways. The United States is grateful for this cooperation.

IV. Remedies Available to Potential Private Plaintiffs

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against the Settling Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Settling Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Tunney Act, provided that the United States has not withdrawn its consent. The Tunney Act conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Tunney Act provides a period of at least 60 days preceding the effective date of a proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment on the proposed Final Judgment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, the comments and the United States' responses will be published in the **Federal Register** unless the Court agrees that the United States instead may publish them on the U.S. Department of Justice, Antitrust Division's internet website.

Written comments should be submitted in English to: Chief, Civil Conduct Task Force, Antitrust Division, United States Department of Justice, 450 Fifth St. NW, Suite 8600, Washington, DC 20530, *ATRJudgmentCompliance@usdoj.gov*.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against the Settling Defendants. The United States could have commenced contested litigation and brought the case to trial, seeking relief including an injunction against the collaboration on compensation decisions, sharing of compensation information, and facilitation of this conduct, as well as the imposition of a monitor. The United States is satisfied, however, that the relief required by the proposed Final Judgment will remedy the anticompetitive effects alleged in the Amended Complaint against the Settling Defendants, preserving competition in the poultry processing plant labor markets and in the poultry processing industry at large, given the relief secured, including the poultry-business-wide monitor. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would

have obtained through litigation against the Settling Defendants but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. Standard of Review Under The Tunney Act for the Proposed Final Judgment

Under the Clayton Act and Tunney Act, proposed Final Judgments, or ''consent decrees,'' in antitrust cases brought by the United States are subject to a 60-day comment period, after which the Court must determine whether entry of a proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States* v. *U.S. Airways Grp., Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a proposed Final Judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable'').

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the Tunney Act, a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether a proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by a proposed Final Judgment, a court may not ''make de novo determination of facts and issues.'' *United States* v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead, ''[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General.'' *W. Elec. Co.,* 993 F.2d at 1577 (quotation marks omitted). ''The court should also bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is the one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *Microsoft,* 56 F.3d at 1460 (quotation marks omitted); *see also United States* v. *Deutsche Telekom AG,* No. 19–2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional intent. *Microsoft,* 56 F.3d at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft,* 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States* v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' (internal citations omitted)); *United States* v. *Republic Servs., Inc.,* 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.''). The ultimate question is whether ''the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft,* 56 F.3d at 1461 (*quoting W. Elec. Co.,* 900 F.2d at 309).

Moreover, the Court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Amended Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60.

In its 2004 amendments to the Tunney Act, Congress made clear its intent to preserve the practical benefits of using judgments proposed by the United States in antitrust enforcement, Public Law 108–237 § 221, and added the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to

engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways,* 38 F. Supp. 3d at 76 (citing *Enova Corp.,* 107 F. Supp. 2d at 17).

Dated: May 17, 2023.

Respectfully submitted,

For Plaintiff United States of America

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