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**Reader Aids**

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

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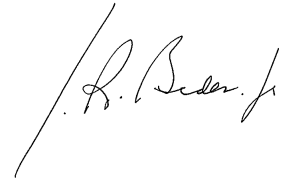
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**Title 3—****Memorandum of May 20, 2023****The President****Delegation of Authority Under Section 506(a)(1) of the Foreign Assistance Act of 1961****Memorandum for the Secretary of State**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State the authority under section 506(a)(1) of the FAA to direct the drawdown of up to \$375 million in defense articles and services of the Department of Defense, and military education and training, to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,  
Washington, May 20, 2023



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## Presidential Documents

Memorandum of May 25, 2023

### Delegation of Authority Under Section 7070 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2023

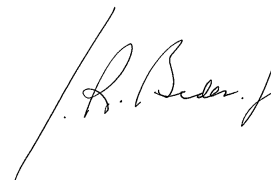
#### Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of State the functions and authorities vested in the President by section 7070 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2023 (Division K of Public Law 117–328).

Any reference in this memorandum to the Act shall be deemed to be a reference to such Act as amended from time to time.

The delegation in this memorandum shall apply to any provision of any future public law that is the same or substantially the same as the provision referenced in this memorandum.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,  
Washington, May 25, 2023

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## Presidential Documents

Memorandum of May 26, 2023

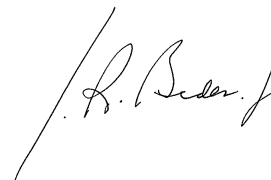
### Delegation of Authority Under Section 5583 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023

#### Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of State the authority to develop and submit to the Congress the strategy required by section 5583 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Public Law 117–263).

The delegation in this memorandum shall apply to any provision of any future public law that is the same or substantially the same as the provision referenced in this memorandum.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,  
Washington, May 26, 2023

# Rules and Regulations

Federal Register

Vol. 88, No. 106

Friday, June 2, 2023

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

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## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Part 1735

[Docket No. RUS–20–TELECOM–0044]

RIN 0572–AA48

#### Implementation of Telecommunications Provisions of the Agricultural Improvement Act of 2018; Correction

**AGENCY:** Rural Utilities Service, Department of Agriculture (USDA).

**ACTION:** Correcting amendment.

**SUMMARY:** On September 10, 2021, Rural Development's Rural Utilities Service (hereinafter referred to as "the Agency") published a document that completed modifications to existing program regulations to implement statutory provisions of the Agriculture Improvement Act of 2018 (2018 Farm Bill). Following the final implementation of the final rule, the Agency found that an amendment was necessary to clarify the meaning of a sentence. This document clarifies the final rule.

**DATES:** Effective June 2, 2023.

**FOR FURTHER INFORMATION CONTACT:** For information specific to this document contact Laurel Leverrier, Assistant Administrator Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture (USDA), email: [laurel.leverrier@usda.gov](mailto:laurel.leverrier@usda.gov), telephone: (202) 720–9556.

**SUPPLEMENTARY INFORMATION:** The Rural Utilities Service is issuing a correcting amendment to provide clarification to the final rule that published September 10, 2021, at 86 FR 50604. In that rule, the wording of § 1735.23(a) was not clear. This clarifying amendment provides for clear information for readers.

#### List of Subjects in 7 CFR Part 1735

Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons stated in the preamble, the Rural Utilities Service corrects 7 CFR part 1735 by making the following correcting amendment:

#### PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELECOMMUNICATIONS PROGRAM

■ 1. The authority citation for part 1735 continues to read as follows:

*Authority:* 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, and 6941 *et seq.*

■ 2. Amend § 1735.23 by revising the introductory text of paragraph (a) to read as follows:

##### § 1735.23 Public notice.

(a) For applications which request funding in which the applicant will provide retail broadband service, the Agency's mapping tool will include the following information from each application, and be displayed for the public:

\* \* \* \* \*

**Andrew Berke,**

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

[FR Doc. 2023–11724 Filed 6–1–23; 8:45 am]

**BILLING CODE 3410–15–P**

## DEPARTMENT OF ENERGY

### 10 CFR Part 431

[EERE–2019–BT–TP–0041]

RIN 1904–AE57

#### Energy Conservation Program: Test Procedure for Commercial Warm Air Furnaces

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

**ACTION:** Final rule.

**SUMMARY:** The U.S. Department of Energy (DOE) is amending the Federal test procedures for commercial warm air furnaces (CWAFs) to incorporate the latest versions of the industry test standards that are currently incorporated by reference. DOE is also

establishing a new metric, Thermal Efficiency Two (TE2), and corresponding test procedure. Use of the newly established test procedure would become mandatory at such time as compliance with amended energy conservation standards based on TE2 is required, should DOE adopt such standards. DOE also is adopting additional specifications for CWAFs with multiple flue outlets or small flue outlets.

**DATES:** The effective date of this rule is July 3, 2023. These amendments will be mandatory for CWAF equipment testing starting May 28, 2024. The incorporation by reference of certain material listed in this rule is approved by the Director of the Federal Register on July 3, 2023.

**ADDRESSES:** The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at [www.regulations.gov](http://www.regulations.gov) under docket number EERE–2019–BT–TP–0041. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. However, not all documents listed in the index may be publicly available, such as those containing information that is exempt from public disclosure.

A link to the docket web page can be found at: [www.regulations.gov/docket/EERE-2019-BT-TP-0041](http://www.regulations.gov/docket/EERE-2019-BT-TP-0041). The docket web page contains instructions on how to access all documents, including public comments, in the docket.

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

**FOR FURTHER INFORMATION CONTACT:** Ms. Julia Hegarty, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 597–6737. Email: [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–5827. Email: [Eric.Stas@hq.doe.gov](mailto:Eric.Stas@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:**

DOE incorporates by reference the following industry standards into part 431:

ANSI/AHRI 1500–2015 *Performance Rating of Commercial Space Heating Boilers* (“AHRI 1500–2015”);

Copies of AHRI 1500–2015 can be obtained from the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), 2311 Wilson Blvd., Suite 400, Arlington, VA 22201, (703) 524–8800, or online at: [www.ahrinet.org](http://www.ahrinet.org).

CSA/ANSI Z21.47:21, *Gas-fired central furnaces* (“ANSI Z21.47–2021”);

ANSI/ASME PTC 19.3–1974 (R2004), *Supplement to ASME Performance Test Codes: Part 3: Temperature Measurement, Instruments and Apparatus*;

ANSI/ASHRAE 103–2022, *Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers* (“ASHRAE 103–2022”);

Copies of ANSI Z21.47–2021, ANSI/ASME PTC 19.3–1974 (R2004) and ANSI/ASHRAE 103–2022, can be obtained from the American National Standards Institute (ANSI), 25 W 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or online at: [www.webstore.ansi.org](http://www.webstore.ansi.org).

ASTM D240–09, *Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter*;

ASTM D396–14a, *Standard Specification for Fuel Oils*;

ASTM D4809–09a, *Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method)*;

ASTM D5291–10, *Standard Test Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Petroleum Products and Lubricants*;

ASTM E230/E230M–17, *Standard Specification for Temperature-Electromotive Force (emf) Tables for Standardized Thermocouples* (“ASTM E230/E230M–17”);

Copies of ASTM D240–09, ASTM D396–14a, ASTM D4809–09a, ASTM D5291–10, and ASTM E230/E230M–17 can be obtained from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428, (877) 909–2786 or online at: [www.astm.org](http://www.astm.org).

NFPA 97–2003, *Standard Glossary of Terms Relating to Chimneys, Vents, and Heat-Producing Appliances*.

Copies of NFPA 97–2003 can be obtained from the National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169–7471, (1–800–344–3555) or online at: [www.nfpa.org](http://www.nfpa.org).

UL 727, *Standard for Safety Oil-Fired Central Furnaces* (“UL 727–2018”);

Copies of UL 727–2018 can be obtained from Underwriters Laboratories, Inc. (UL), 333 Pfingsten Road, Northbrook, IL 60062, (847) 272–8800 or online at: [www.standardscatalog.ul.com](http://www.standardscatalog.ul.com).

For a further discussion of these standards, see section IV.N of this document.

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## I. Authority and Background

CWAFs are included in the list of “covered equipment” for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(J)) DOE’s energy conservation standards and test procedures for CWAFs are currently prescribed at subpart D of part 431 of title 10 of the Code of Federal

Regulations (CFR). The following sections discuss DOE’s authority to establish and amend test procedures for CWAFs and relevant background information regarding DOE’s consideration of test procedures for this equipment.

### A. Authority

The Energy Policy and Conservation Act, as amended (EPCA),<sup>1</sup> among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C<sup>2</sup> of EPCA, Public Law 94–163 (42 U.S.C. 6311–6317, as codified) added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This covered equipment includes CWAFs, the subject of this final rule. (42 U.S.C. 6311(1)(J))

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

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making other representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA.

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and 42 U.S.C. 6316(b); 42 U.S.C. 6297) DOE may, however, grant waivers

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

<sup>2</sup> For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

of Federal preemption in limited circumstances for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D))

Under 42 U.S.C. 6314, EPCA also sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. Specifically, EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use or estimated annual operating cost of a given type of covered equipment (or class thereof) during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

EPCA requires that the test procedure for CWAFFs be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), as referenced in ASHRAE Standard 90.1, “Energy Standard for Buildings Except Low-Rise Residential Buildings” (ASHRAE Standard 90.1). (42 U.S.C. 6314(a)(4)(A)) Further, if such industry test procedure is amended, DOE must amend its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that such amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden, in which case DOE may establish an amended test procedure that does satisfy those statutory provisions. (42 U.S.C. 6314(a)(4)(B) and (C))

EPCA also requires that, at least once every seven years, DOE evaluate test procedures for each type of covered equipment, including CWAFFs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency,

energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1)–(3))

In addition, if DOE determines that a test procedure amendment is warranted, the Department must publish proposed test procedures in the **Federal Register** and afford interested persons an opportunity (of not less than 45 days duration) to present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C. 6314(b)) If DOE determines that test procedure revisions are not appropriate, DOE must publish in the **Federal Register** its determination not to amend the test procedures. (42 U.S.C. 6314(a)(1)(A)(ii)) As discussed further in section I.B of this document, in January 2023, ASHRAE released the latest version of ASHRAE Standard 90.1 (ASHRAE Standard 90.1–2022), which updated the referenced industry standards for testing CWAFFs to reflect the most recent versions of those standards that are currently available, thereby triggering DOE’s rulemaking obligations under EPCA. DOE is publishing this final rule amending the test procedure for CWAFFs in satisfaction of both the “ASHRAE trigger” requirement under 42 U.S.C. 6314(a)(4)(B) and the 7-year-lookback review requirement specified in EPCA under 42 U.S.C. 6314(a)(1).

### B. Background

DOE’s current test procedure for CWAFFs is codified at 10 CFR 431.76, “Uniform test method for the measurement of energy efficiency of commercial warm air furnaces.” The currently applicable test procedure incorporates by reference two industry standards for testing gas-fired CWAFFs: American National Standards Institute (ANSI) Z21.47–2012, “Standard for Gas-fired Central Furnaces” (ANSI Z21.47–2012), which is used for all types of gas-fired CWAFFs; and ANSI/American Society of Heating, Refrigeration, and Air-conditioning Engineers (ASHRAE) Standard 103–2007, “Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers” (ANSI/ASHRAE 103–2007), which is specifically used for testing condensing gas-fired CWAFFs. 10 CFR 431.76 (c)(1), (d)(2), (e)(1), and (f)(1); 10 CFR 431.75(b)(1) and (c)(1). The current test procedure also incorporates by

reference two industry standards for testing oil-fired CWAFFs: Hydronics Institute Division of AHRI (HI) BTS–2000 Rev 06.07, “Method to Determine Efficiency of Commercial Space Heating Boilers” (HI BTS–2000)<sup>3</sup> and Underwriters Laboratories (UL) standard UL 727–2006, “Standard for Safety Oil-Fired Central Furnaces” (UL 727–2006).<sup>4</sup> 10 CFR 431.76(c)(2), (d)(1), and (e)(2); 10 CFR 471.75(d)(1) and (e)(2).

DOE most recently amended the test procedure for CWAFFs in a final rule published in the **Federal Register** on July 17, 2015, which updated the test procedure for gas-fired CWAFFs to incorporate by reference the latest versions of the industry standards available at the time (*i.e.*, ANSI Z21.47–2012 and ANSI/ASHRAE 103–2007). 80 FR 42614 (July 2015 final rule). At the time of the July 2015 final rule, UL 727–2006 and HI BTS–2000 were still the most recent versions of those industry standards.

Under EPCA’s seven-year-lookback provision, DOE initiated a test procedure rulemaking for CWAFFs by publishing a request for information (RFI) in the **Federal Register** on May 5, 2020 (May 2020 RFI). 85 FR 26626. The May 2020 RFI solicited public comments, data, and information on aspects of the existing DOE test procedure for CWAFFs, including whether there are any issues with the current test procedure and whether it is in need of updates or revisions. *Id.*

DOE published a notice of proposed rulemaking (NPR) for the CWAFFs test procedure in the **Federal Register** on February 25, 2022 that presented DOE’s proposals to amend that test procedure. 87 FR 10726 (February 2022 NPR). DOE held a webinar public meeting related to this NPR on March 29, 2022. DOE received comments in response to the February 2022 NPR from the interested parties listed in Table I.1.

<sup>3</sup> DOE determined that UL 727–1994 did not provide a procedure for calculating the percent flue loss of the furnace, which is necessary in calculating the TE, and, therefore, incorporated by reference provisions from HI BTS–2000 to calculate the flue loss for oil-fired CWAFFs. 69 FR 61916, 61917, 61940 (Oct. 21, 2004).

<sup>4</sup> UL 727–1994 is also incorporated by reference in 10 CFR 431.75 but is no longer referenced in the test method specified in 10 CFR 431.76, which references only UL 727–2006.

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS OR ORAL COMMENTS IN RESPONSE TO THE FEBRUARY 2022 NOPR

Commenter(s)	Abbreviation used in this Final Rule	Commenter type
AAON Inc	AAON	Manufacturer.
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	Manufacturer Trade Association.
American Gas Association and American Public Gas Association	AGA and APGA	Utility Trade Association.
Appliance Standards Awareness Project, and Natural Resources Defense Council.	Joint Advocates	Efficiency Advocacy Organization.
California Energy Commission	CEC	Efficiency Advocacy Organization.
Carrier Corporation	Carrier	Manufacturer.
Daikin Comfort Technologies Manufacturing	Daikin	Manufacturer.
Lennox International Inc	Lennox	Manufacturer.
New York State Energy Research and Development Authority	NYSERDA	State Agency.
Northwest Energy Efficiency Alliance	NEEA	Efficiency Advocacy Organization.
Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison (collectively, the “California Investor-Owned Utilities”).	CA IOUs	Utilities.
Rheem Manufacturing	Rheem	Manufacturer.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.<sup>5</sup> To the extent that interested parties have provided written comments that are substantively similar to any oral comments provided during the March 29, 2022 NOPR webinar public meeting, DOE cites the written comments throughout this final rule. For the party that provided substantive oral comments at the March 29, 2022 NOPR webinar public meeting but did not submit written comments, DOE cites the public meeting transcript.

Since publication of the February 2022 NOPR, DOE would note the following additional developments which are relevant to this rulemaking proceeding. As discussed, EPCA requires DOE to use industry test procedures developed or recognized by AHRI or ASHRAE as referenced in ASHRAE Standard 90.1. (42 U.S.C. 6314(a)(4)(A)–(B)) The latest update to ASHRAE Standard 90.1 was released in January 2023 (ASHRAE Standard 90.1–2022). ASHRAE Standard 90.1–2022 references ANSI Z21.47–2021 as the test method for gas-fired CWFAs and UL 727–2018 as the test method for oil-fired CWFAs. This action by ASHRAE triggered DOE’s rulemaking obligations under EPCA. As noted previously, in such cases, EPCA requires DOE to amend the Federal test procedure to be consistent with these amended industry test procedures, unless DOE determines, by rule published in the **Federal Register** and supported by clear and

convincing evidence, that to do so would not meeting the statutory requirements related to representativeness and not being unduly burdensome. (42 U.S.C. 6314(a)(4)(B)) Furthermore, EPCA also requires that, at least once every seven years, DOE evaluate test procedures for each class of covered equipment, including those for CWFAs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1)) This rulemaking satisfies both of these statutory obligations.

**II. Synopsis of the Final Rule**

In this final rule, DOE is amending its test procedures for CWFAs as follows:

(1) Reorganize the setup and testing provisions in 10 CFR 431.76 related to the determination of thermal efficiency (TE) into the newly established 10 CFR part 431, subpart D, appendix A (appendix A);

(2) Incorporate by reference the most recent versions of the currently referenced industry standards:

- UL 727–2018 (previously UL 727–2006) for testing oil-fired CWFAs;
- AHRI 1500–2015 (previously HI BTS–2000) for performing fuel oil analysis and for calculating flue loss of oil-fired CWFAs;

- ANSI Z21.47–2021 (previously ANSI Z21.47–2012) for testing gas-fired CWFAs; and

- ANSI/ASHRAE 103–2022 (previously ANSI/ASHRAE 103–2007) for testing condensing gas-fired CWFAs;

(3) Incorporate by reference the standards referenced in UL 727–2018 (*i.e.*, NFPA 97–2003 and ANSI/ASTM E230/230M–17), AHRI 1500–2015 (*i.e.*, ASTM D396–14a, ASTM D240–09, ASTM D4809–09a, and ASTM D5291–10), and ANSI Z21.47–2021 (*i.e.*, ANSI/ASME PTC 19.3–1974 (R2004)) that are necessary for performing the DOE test procedure;

(4) Clarify how to test units with multiple flue outlets, and units with flue outlets having a cross-sectional area of 3.14 square inches or less; and

(5) Establish a new test procedure at 10 CFR part 431, subpart D, appendix B (appendix B), which generally requires testing as in appendix A, but which establishes a new metric, “TE2.” The new TE2 metric accounts for jacket losses and part-load operation in addition to accounting for flue losses. Manufacturers can use appendix B to make voluntary representations of TE2; representations using this test procedure are not mandatory until such time as compliance is required with amended energy conservation standards based on TE2, should DOE adopt such standards.

The amendments adopted in this final rule are summarized in Table II.1 compared to the test procedure prior to amendment, as well as the reason for the change.

<sup>5</sup> The parenthetical reference provides a reference for information located in the docket of DOE’s rulemaking to develop test procedures for CWFAs.

(Docket No. EERE–2019–BT–TP–0041, which is maintained at [www.regulations.gov](http://www.regulations.gov)). The references are arranged as follows: (commenter name,

comment docket ID number, page of that document).

TABLE II.1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE

DOE test procedure prior to amendment	Amended test procedures	Applicable test procedure	Attribution
Referenced UL 727–2006 for testing oil-fired CWFAs.	Incorporate by reference UL 727–2018 for testing oil-fired CWFAs, and the standards referenced in UL 727–2018 that are necessary in performing the DOE test procedure ( <i>i.e.</i> , NFPA 97–2003 and ANSI/ASTM E230/E230M–17).	appendix A and appendix B.	Align with industry standard update.
Referenced HI BTS–2000 for performing fuel oil analysis and for calculating flue loss of oil-fired CWFAs.	Incorporate by reference AHRI 1500–2015 for performing fuel oil analysis and for calculating flue loss of oil-fired CWFAs and the standards referenced in AHRI 1500–2015 that are necessary in performing the DOE test procedure ( <i>i.e.</i> , ASTM D396–14a, ASTM D240–09, ASTM D4809–09a, and ASTM D5291–10).	appendix A and appendix B.	Align with industry standard update.
Referenced ANSI Z21.47–2012 for testing gas-fired CWFAs.	Incorporate by reference ANSI Z21.47–2021 for testing gas-fired CWFAs, and the standards referenced in ANSI Z21.47–2021 that are necessary in performing the DOE test procedure ( <i>i.e.</i> , ANSI/ASME PTC 19.3–1974 (R2004)).	appendix A and appendix B.	Align with industry standard update.
Referenced ANSI/ASHRAE 103–2007 for testing condensing gas-fired CWFAs.	Incorporate by reference ANSI/ASHRAE 103–2022 for testing condensing gas-fired CWFAs.	appendix A and appendix B.	Align with industry standard update.
Did not specify how to test units with multiple flue outlets.	Adds specifications for units with multiple flue outlets. Measurements made in each flue outlet shall be averaged or adjusted using a weighted average, depending on the input capacity of the furnace module associated with each flue outlet.	appendix A and appendix B.	Additional specification to improve consistency and repeatability in testing.
Did not specify how to test units with flue outlets that are too small to fit nine thermocouples.	Adds specifications to address units with small flue outlets. Units with flue outlets that are 3.14 inches or smaller in cross-sectional area may optionally use 5 thermocouples.	appendix A and appendix B.	Additional specification to improve consistency and repeatability in testing.
Efficiency metric (TE) only accounted for flue losses and does not account for jacket losses or part-load operation.	Establishes a new metric (TE2) that accounts for flue losses, jacket losses, and part-load operation.	appendix B .....	Improve representativeness.

DOE has determined that the adopted amendments for the test procedure at appendix A described in section III of this document will not alter the measured TE of CWFAs, that the test procedures are not unduly burdensome to conduct, and that the test procedures more accurately produce test results that reflect energy efficiency, energy use, and estimated operating costs of CWFAs during a representative average use cycle.

DOE has determined that the additional amendments for appendix B, which adopt TE2 as a new efficiency metric for CWFAs, do alter the reported efficiency of CWFAs. However, testing in accordance with the TE2 test procedure is not required until such time as compliance is required with any amended energy conservation standards based on appendix B. Prior to such date, voluntary representations of TE2 may be made, but they must be based upon use of the test procedure in appendix B.

The amendments adopted in this final rule are discussed in detail in section III of this document.

The effective date for the amended test procedures adopted in this final rule is 30 days after publication of this

document in the **Federal Register**. Representations of energy use or energy efficiency must be based on testing in accordance with the amended test procedures beginning 360 days after the date of publication of this final rule in the **Federal Register**.

**III. Discussion**

In the following sections, DOE describes the adopted amendments to the test procedures for CWFAs. DOE also discusses issues raised by commenters on the February 2022 NOPR, along with DOE’s responses.

*A. Scope of Applicability*

This rulemaking applies to CWFAs. EPCA defines “warm air furnace” as a self-contained oil-fired or gas-fired furnace designed to supply heated air through ducts to spaces that require it and includes combination warm air furnace/electric air conditioning units, but does not include unit heaters and duct furnaces. (42 U.S.C. 6311(11)(A)) DOE codified the statutory definition of “warm air furnace” at 10 CFR 431.72. DOE defines a CWFAs as a warm air furnace that is industrial equipment, and that has a capacity (rated maximum

input) of 225,000 British thermal units (Btu) per hour or more. 10 CFR 431.72.

In response to the February 2022 NOPR, NEEA recommended that DOE expand the scope of CWFAs coverage to include 3-phase units with a capacity less than 225,000 Btu/h. NEEA asserted that failing to do so would leave a significant portion of the CWFAs market unregulated, and the commenter noted that DOE has recently proposed closing a similar regulatory gap for 3-phase small commercial air conditioners and heat pumps and variable refrigerant flow air conditioners and heat pumps with cooling capacities less than 65,000 btu/h. (NEEA, No. 24 at p. 8)

In response, DOE notes that NEEA made the same recommendation in a comment submitted in response to a notice of proposed determination (“NOPD”) for CWFAs energy conservation standards that was published in the **Federal Register** on April 26, 2022 (April 2022 NOPD). 87 FR 24455 (See Docket No. EERE–2019–BT–STD–0042, comment 34 at p. 6) Subsequently, in a final determination published in the **Federal Register** on December 23, 2022 (December 2022 Final Determination), DOE declined to

amend the CWF definition to include three-phase furnaces with capacities less than 225,000 Btu/h due to the limited potential to achieve energy savings from doing so. 87 FR 78821, 78826. DOE maintains its position from the December 2022 Final Determination that such equipment represents a small portion of the overall CWF market, which at present does not provide an opportunity for significant energy savings.

### B. Updates to Industry Standards

As discussed, prior to the amendments adopted in this final rule, DOE incorporated by reference in 10 CFR part 431, subpart D, the following industry test procedures: UL 727–2006, HI–BTS 2000, ANSI Z21.47–2012, and ANSI/ASHRAE Standard 103–2007. Updated versions of each of these test standards have been published since they were incorporated into the DOE test procedure. These updated test standards are UL 727–2018 (update to UL 727–2006), AHRI 1500–2015 (update to HI–BTS 2000), ANSI Z21.47–2021 (update to ANSI Z21.47–2016), and ANSI/ASHRAE Standard 103–2022<sup>6</sup> (update to ANSI/ASHRAE Standard 103–2007).

In the February 2022 NOPR, DOE noted several differences between versions of the industry standards incorporated by reference at that time and the more recent versions of the industry standards and sought comment on these changes. 87 FR 10726, 10730–10735 (Feb. 25, 2022). Stakeholder comments in response to these proposals in the February 2022 NOPR are discussed in the following sections. In response to the updates to the relevant industry standards, DOE is amending the Federal test procedure for CWFs to incorporate by reference in 10 CFR part 431, subpart D, the following updated industry standards: UL 727–2018, AHRI 1500–2015, ANSI Z21.47–2021, and ANSI/ASHRAE 103–2022.

As discussed, prior to the effective date of the amendments adopted in this final rule, the DOE test procedure for CWFs was specified in 10 CFR 431.76. In this final rule, DOE is reorganizing the CWF test procedures into two appendixes to subpart D of 10 CFR part 431: appendix A (using the current TE metric) and appendix B (using the new TE2 metric). DOE is reorganizing the test procedures in this way because, as discussed in section III.C of this document, DOE is establishing

appendix B for determining the TE2. In contrast, the establishment of appendix A is editorial and for reorganization purposes. DOE has determined that creating separate appendixes for the determination of the two different metrics would help clarify which appendix corresponds to which metric. Relevant to both appendixes, DOE is incorporating by reference the industry standards, as discussed in the following sections.

#### 1. UL 727

The CWF test procedure, prior to the amendments adopted in this final rule, required use of those procedures contained in UL 727–2006 that are relevant to the steady-state efficiency measurement (*i.e.*, UL 727–2006 sections 1 through 3; 37 through 42 (except for sections 40.4 and 40.6.2 through 40.6.7); 43.2; and 44 through 46).

In the February 2022 NOPR, DOE proposed to amend the test procedure to reference UL 727–2018. 87 FR 10726, 10731 (Feb. 25, 2022). Additionally, DOE proposed to explicitly identify the provisions of UL 727–2018 that are applicable to the DOE test procedure for CWFs, because DOE tentatively determined that the scope section of UL 727–2018 is not applicable since the scope of the DOE test procedure is defined separately in 10 CFR 431.76(a). *Id.*

The February 2022 NOPR also discussed that UL 727–2018 has different language pertaining to temperature measurements and using potentiometers and thermocouples, and it also incorporates different ANSI references regarding these topics as compared to UL 727–2006. DOE tentatively determined that there was not sufficient evidence to indicate that the updates in UL 727–2018 would not meet the requirements of EPCA at 42 U.S.C. 6314(a)(2) and (3); therefore, DOE proposed to also incorporate by reference the updated ANSI standard (*i.e.*, ANSI/ASTM E230/E230M–17) referenced by UL 727–2018. 87 FR 10726, 10732 (Feb. 25, 2022).

Finally, in the February 2022 NOPR, DOE discussed that UL 727–2018 references NFPA 97M, “Standard Glossary of Terms Relating to Chimneys, Gas Vents and Heat Producing Appliances” (NFPA 97M) for definitions of the terms “combustible” and “noncombustible” but does not specify which version of NFPA 97M. DOE tentatively concluded that NFPA 97M is an outdated standard and that NFPA 97–2003, “Standard Glossary of Terms Relating to Chimneys, Vents, and Heat-Producing Appliances” (NFPA 97–2003)

should be referenced for these definitions instead. Therefore, DOE proposed to replace references to NFPA 97M in UL 727–2018 with references to NFPA 97–2003. *Id.*

DOE received comments from Daikin, Carrier, and AHRI supporting the proposal to reference NFPA 97–2003 rather than NFPA 97M. (Daikin, No. 25 at p. 1; Carrier, No. 22 at p. 2; AHRI, No. 17 at p. 2) DOE did not receive any comments in response to the proposals related to incorporating by reference UL 727–2018.

For the reasons summarized in this document and discussed in the February 2022 NOPR, DOE is amending the DOE test procedure to incorporate by reference UL 727–2018, as well as incorporating the additional industry standards related to UL 727–2018.

#### 2. HI BTS and AHRI 1500

Prior to the amendments adopted in this final rule, DOE’s test procedure for oil-fired CWFs referenced sections of HI BTS–2000 that are relevant to fuel oil analysis and calculating percent flue loss (*i.e.*, HI BTS–2000 sections 8.2.2, 11.1.4, 11.1.5, and 11.1.6.2). (*See* 10 CFR 431.76(c)(2) and (e)(2) in effect as of January 1, 2022.) DOE’s test procedure included these provisions because DOE previously determined that UL 727 does not provide a procedure for calculating the percent flue loss of the furnace, which is necessary in calculating the TE. Therefore, DOE incorporated by reference provisions from HI BTS–2000 to calculate the flue loss for oil-fired CWFs. 69 FR 61916, 61917, 61940 (Oct. 21, 2004).

In the February 2022 NOPR, DOE explained that in 2015, HI BTS–2000 was replaced with AHRI 1500–2015. 87 FR 10726, 10732 (Feb. 25, 2022). The February 2022 NOPR also discussed that the DOE test procedure references fuel oil analysis requirements in HI BTS–2000 and that the fuel oil analysis requirements are different in AHRI 1500–2015. DOE tentatively determined that the differences would not impact the performance of a CWF under test because the fuel oil analysis requirements in AHRI 1500–2015 are essentially equivalent to those in HI BTS–2000. As a result, DOE proposed to incorporate by reference AHRI 1500–2015, including its fuel oil analysis specifications. 87 FR 10726, 10733 (Feb. 25, 2022).

In addition, in the February 2022 NOPR DOE noted that section 11.1.4 of HI BTS–2000 requires that the carbon dioxide (CO<sub>2</sub>) value used in the calculation of the dry flue gas loss for

<sup>6</sup> The February 2022 TP NOPR proposed to incorporate by reference ANSI/ASHRAE 103–2017; however, in 2022, ASHRAE published a more recent version of the standard, ANSI/ASHRAE 103–2022.



oil must be the measured CO<sub>2</sub>,<sup>7</sup> while section C7.2.4 of AHRI 1500–2015 (previously section 11.1.4 in HI BTS–2000) includes the option to calculate CO<sub>2</sub> using the measured oxygen (O<sub>2</sub>) value instead of directly measuring the CO<sub>2</sub> value. 87 FR 10726, 10733 (Feb. 25, 2022). DOE tentatively determined that calculating CO<sub>2</sub> using a measured O<sub>2</sub> value, as specified in AHRI 1500–2015, would provide results equivalent to the CO<sub>2</sub> measurement currently required by the DOE test method, and that allowing a calculated value of CO<sub>2</sub> would harmonize with the latest industry standard without increasing test burden. As such, DOE proposed to adopt the optional method specified in AHRI 1500–2015 that allows for calculation CO<sub>2</sub> using a measured O<sub>2</sub> value and requested comment on this proposal. *Id.*

AHRI supported the proposal to adopt the optional method specified in AHRI 1500–2015 that allows for calculation CO<sub>2</sub> using a measured O<sub>2</sub> value. (AHRI, No. 17 at p. 2) DOE did not receive any other comments related to its proposal to incorporate by reference AHRI 1500–2015. Therefore, for the reasons discussed here and in the February 2022 NOPR, DOE is adopting the proposals related to this topic made in the February 2022 NOPR.

### 3. ANSI Z21.47

Prior to the amendments adopted in this final rule, the CWF test procedure required the use of procedures contained in ANSI Z21.47–2012 that are relevant to the steady-state efficiency measurement (*i.e.*, sections 1.1, 2.1 through 2.6, 2.39, and 4.2.1 of ANSI Z21.47–2012).

In the February 2022 NOPR, DOE proposed to replace the incorporation by reference of ANSI Z21.47–2012 with ANSI Z21.47–2021. 87 FR 10726, 10734 (Feb. 25, 2022). DOE explained in the February 2022 NOPR that all of the differences it had identified between the two versions of the standard were non-substantive and would not impact the test method or result. *Id.* However, DOE also noted that ANSI Z21.47–2012 requires burner operating characteristics tests to be conducted with test gas G (*i.e.*, butane-air), while ANSI Z21.47–2021 allows testing for premix burners to be done with test gas H (*i.e.*, propane-air) instead of test gas G at the manufacturer's option. In the February 2022 NOPR, DOE stated that the burner operating characteristics tests (including which test gas is used for them) do not affect the TE measurement of a CWF and requested comment on whether the

option provided in section 5.4a of ANSI Z21.47–2021 to use test gas H when performing the three burner characteristics tests would impact the representativeness or burden of the thermal efficiency test. *Id.*

Lennox, Daikin, Carrier, and AHRI stated that section 5.4a of ANSI Z21.47–2021 is used for safety certification testing, and is unrelated to TE, and, therefore, recommended DOE should not reference this section. (Lennox, No. 19 at p. 3; Daikin, No. 25 at p. 2; Carrier, No. 22 at p. 2; AHRI, No. 17 at p. 2) Rheem also stated that the thermal efficiency test is not affected by the burner operating characteristics test. (Rheem, Public Meeting Transcript, No. 15 at p. 11) DOE received no other comments related to its proposal to incorporate by reference ANSI Z21.47–2021.

For the reasons discussed here and in the February 2022 NOPR, DOE is amending the test procedure for CWFs to replace the incorporation by reference of ANSI Z21.47–2012 with ANSI Z21.47–2021. In addition, DOE agrees with stakeholders that section 5.4a of ANSI Z21.47–2021 does not impact TE, and, therefore, does not need to be referenced in the DOE test procedure for CWFs. As such, DOE is not including reference to this section in the DOE test procedure.

### 4. ANSI/ASHRAE 103

Prior to adoption of the amendments in this final rule, DOE's test procedure for gas-fired condensing CWFs referenced ANSI/ASHRAE 103–2007. In the February 2022 NOPR, DOE proposed to amend the test procedure by removing the reference to ANSI/ASHRAE 103–2007 and to instead reference ANSI/ASHRAE 103–2017, having determined that the only differences between the standards in the sections utilized by the CWF test method were editorial in nature. 87 FR 10726, 10735. An updated version of ANSI/ASHRAE 103, ANSI/ASHRAE 103–2022, has since been released. DOE reviewed ANSI/ASHRAE 103–2022 and determined that, for the sections utilized in the test methods for CWFs, there is no difference between the two versions of the standard.

DOE did not receive any comments in response to its proposal to reference ANSI/ASHRAE 103–2017.

Accordingly, for the reasons explained previously and because DOE has found there is no difference between ANSI/ASHRAE 103–2017 and ANSI/ASHRAE 103–2022 in the sections utilized for the CWFs test procedure, DOE is amending the test procedures for

CWFs to incorporate by reference ANSI/ASHRAE 103–2022.

### C. Thermal Efficiency Two Metric

As previously discussed, EPCA requires that the test procedures for CWFs be those generally accepted industry testing procedures or rating procedures developed or recognized by AHRI or ASHRAE, as referenced in ASHRAE Standard 90.1. (42 U.S.C. 6314(a)(4)(A)) If such an industry test procedure or rating procedure is amended, the Secretary shall amend the test procedure for the product as necessary to be consistent with the amended industry test procedure or rating procedure unless the Secretary determines, by rule, published in the **Federal Register** and supported by clear and convincing evidence, that to do so would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden.<sup>8</sup> (42 U.S.C. 6314(a)(4)(B))

In the February 2022 NOPR, DOE tentatively determined that a test procedure that includes jacket loss and accounts for part-load operation would better produce test results that reflect energy efficiency, energy use, and estimated operating costs of CWFs during a representative average use cycle. 87 FR 10726, 10735 (Feb. 25, 2022). Therefore, DOE proposed to account for these factors by establishing a new test procedure and metric for CWFs, termed TE2. DOE proposed to establish appendix A to subpart D of 10 CFR part 431 as the test method for calculating TE and to establish a new appendix B to subpart D of 10 CFR part 431, which would contain the new test method for TE2. The proposed test procedure at appendix B would generally adopt the same changes proposed for the current test procedure at appendix A but would additionally account for jacket losses and part load operation. 87 FR 10726, 10735–10737 (Feb. 25, 2022). Additionally, DOE proposed that manufacturers would be permitted to make voluntary representations using TE2, and that mandatory use of the TE2 test procedure

<sup>8</sup> 42 U.S.C. 6314(a)(2) requires that test procedures be reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs of a type of industrial equipment (or class thereof) during a representative average use cycle (as determined by the Secretary), and shall not be unduly burdensome to conduct. 42 U.S.C. 6314(a)(3) requires that if the test procedure is a procedure for determining estimated annual operating costs, such procedure shall provide that such costs shall be calculated from measurements of energy use in a representative average-use cycle (as determined by the Secretary), and from representative average unit costs of the energy needed to operate such equipment during such cycle.

<sup>7</sup> The DOE test procedure at 10 CFR 431.76(d) also states that CO<sub>2</sub> must be measured.

would be required at such time as compliance is required with amended energy conservation standards based on TE2, should DOE adopt such standards. 87 FR 10726, 10737.

DOE received several comments supporting DOE's proposed test procedure for TE2 in the February 2022 NOPR. NYSERDA generally supported DOE's efforts to establish the TE2 metric because it will improve representativeness of CWF field performance. (NYSERDA, No. 16 at p. 2) The Joint Advocates supported DOE's proposal to establish the TE2 metric, noting that the current TE metric only accounts for flue losses, which provides little incentive to manufacturers to adopt technologies that impact efficiency in the field, and not just TE. The Joint Advocates, therefore, stated that the TE2 metric would better reflect a representative average use cycle and would encourage design changes that would reduce energy consumption. (Joint Advocates, No. 21 at p. 1)

DOE also received several comments opposing the proposed test procedure for TE2. Lennox stated that the proposed new TE2 efficiency metric and methodology is a significant change that would significantly increase the test burden, with the commenter asserting that DOE has not provided supporting data that would justify these changes. Lennox argued that introducing such changes at the NOPR stage did not allow stakeholders sufficient time to fully evaluate their impacts and provide comment. Lennox noted that in standards rulemakings, DOE has declined to adopt or propose more-stringent standards due to lack of clear and convincing evidence that standards would be economically justified, and the commenter asserted that in their review of current CWF test procedure and standards rulemakings, DOE has not provided clear and convincing evidence to establish the TE2 metric. Therefore, Lennox recommended that DOE should limit its test procedure amendments to those related to TE; otherwise, if DOE continues to pursue TE2, the commenter argued that DOE should revert back to the RFI stage so as to allow for more stakeholder engagement regarding the proposals in the TE2 metric. Lennox also argued against adoption of the TE2 metric because of the associated cumulative regulatory burden. (Lennox, No. 19 at pp. 1–2) AHRI opposed adoption of the TE2 test procedure and metric because there was no reference to such a proposal for a new metric or any form of part-load testing in the May 2020 RFI and because DOE failed to include key stakeholders in the development of TE2. In addition, the

commenter stated that there is not sufficient data or justification indicating that such a change to the metric would result in any additional energy savings. AHRI stated that the proposal to adopt the TE2 metric is premature, and that if DOE wishes to do so, DOE should go back to the RFI stage, conduct tests, and release data showing the new test procedure is significantly more representative than the current test procedure. AHRI also argued that the proposed TE2 metric is not economically justified, and that if DOE were to adopt energy conservation standards based on such a metric, a crosswalk would run the risk of inadvertently pushing compliant units out of the market to produce a standard that can only be met through use of condensing technology. Therefore, AHRI urged DOE to continue using the current TE metric. (AHRI, No. 17 at pp. 2–3) Daikin agreed with AHRI on this issue. (Daikin, No. 25 at p. 2) AGA and APGA stated that while they are supportive of AHRI's comments overall, they wish to reiterate that they do not support DOE adopting the TE2 metric because it is not clear that it is more representative than the existing DOE test procedure, and because there is no evidence to support that the proposed TE2 test procedure would result in a significant change in energy savings. AGA and APGA also expressed concern that adopting energy conservation standards based on the TE2 metric would result in a standard that could only be met through use of condensing technology. (AGA and APGA, No. 23 at p. 2) Carrier acknowledged that including jacket loss and part load operation in the thermal efficiency metric would create a more representative metric but asserted that more investigation and analysis needs to be completed before doing so. (Carrier, No. 22 at p. 2)

In response, DOE notes that the TE metric only accounts for flue losses as measured while the CWF is operating at its maximum input rate. Through testing of other similar appliances (e.g., consumer furnaces), DOE has found that the efficiency can vary when the unit operates at different fuel input rates; hence, test methods for such appliances require testing at multiple fuel input rates. Therefore, DOE concludes that including more than one fuel input rate will improve representativeness of CWF energy efficiency as compared to only testing at the maximum input rate, since it will capture performance at additional operating points. Regarding jacket losses, DOE has found that CWFs are often installed outside, and

as a result, jacket losses can contribute significantly to overall equipment energy use. Thus, DOE concludes that accounting for jacket losses results in a metric that is more representative of CWF performance than a metric that ignores such losses. Further, DOE notes that the methods proposed for determining TE2, which require testing to determine jacket loss and TE, are already in use in either industry standards (e.g., ANSI Z21.47) or DOE's own test method for CWFs. Therefore, manufacturers should be familiar with the methods of testing such that reverting to an RFI would not be necessary to provide time for additional input. While DOE recognizes that additional testing at the minimum input rate and for jacket loss would increase test burden, which is discussed in more detail in section III.G, of this document, DOE has concluded that the benefit of the increased representativeness offsets the additional test burden. Additionally, DOE would make clear that representations using the TE2 metric are not mandatory until such time as compliance with a standard denominated in terms of the TE2 metric is required, should DOE adopt such a standard. In this rulemaking, DOE is not amending standards to be based on TE2; rather, DOE is making available an optional test method, should manufacturers wish to make representations of efficiency using a more comprehensive metric. If, in a future energy conservation standards rulemaking, DOE considers whether to adopt an energy conservation standard based on the TE2 metric, DOE would further weigh the benefits and burdens of doing so at that time, including the potential additional energy savings that could be achieved through use of TE2 as the regulatory metric as compared to TE and whether there is economic justification for doing so. Based on these considerations, DOE has determined to adopt the proposals in the February 2022 NOPR regarding establishing TE2 and appendix B. The following sections discuss the different components of TE2 (i.e., jacket loss and part-load operation) and specific comments from interested parties on those topics in more detail.

#### 1. Jacket Loss

In the February 2022 NOPR, DOE proposed to adopt section 5.40 of ANSI Z21.47–2021 for the purpose of measuring jacket loss for the TE2 metric. 87 FR 10726, 10737 (Feb. 25, 2022). DOE also proposed to incorporate the jacket loss into the TE2 metric by subtracting it (along with flue losses) from 100 percent after applying a jacket loss factor to account for installation

location. DOE proposed to apply a jacket loss factor of 1.7 for CWFAs designed for indoor installation in an unheated space (*i.e.*, isolated combustion system), 3.3 for CWFAs designed for outdoor installation (including, but not limited to, CWFAs that are weatherized, or approved for resistance to wind, rain, or snow), or 0 for CWFAs designed for installation indoors within a heated space, which is consistent with the values found in ANSI/ASHRAE 103–2017. *Id.* DOE received multiple comments regarding the proposed jacket loss test procedure to be used in determining TE2.

NEEA, the CA IOUs, and the CEC generally supported DOE's proposals to include jacket loss in the TE2 metric. (NEEA, No. 24, at p. 1; CA IOUs, No. 20, at p. 1; CEC, No. 18, at p. 2) The CA IOUs and the CEC also specifically noted that the jacket loss factors are appropriate. (CA IOUs, No. 20, at p. 1; CEC, No. 18, at p. 2)

Daikin, Carrier, and AHRI generally opposed DOE's proposal to include jacket loss in the TE2 metric. (Daikin, No. 25 at p. 2; Carrier No. 22 at pp. 2–3; AHRI No. 17 at p. 3) More specifically, Daikin stated that the burden for conducting a jacket loss test is excessive and is duplicative given that ASHRAE Standard 90.1 already requires a maximum jacket loss of 0.75 percent. (Daikin, No. 25 at p. 2) Carrier also stated that the jacket loss test, in particular the setup and data acquisition, creates additional burden on manufacturers, and that this increases with the size of the unit being tested. (Carrier No. 22 at pp. 2–3) Additionally, Carrier stated that more clarity is needed on how to properly run the test, as the industry has several methods to conduct it. (*Id.*) Carrier stated that while other equipment includes jacket loss in their calculation of efficiency (*e.g.*, residential furnaces and AFUE), it is hard to scale this to CWFAs. Carrier also noted that with ASHRAE Standard 90.1 limiting jacket loss to 0.75 percent, many large CWFAs may be very close to this value. Additionally, Carrier stated that including the 3.3 factor for weatherized equipment creates a sizeable impact to the thermal efficiency, and that if a future energy conservation standard for TE2 is not set correctly, it would require products to operate in a range that condensing may occur. (*Id.*) AHRI stated that jacket losses are measured on the furnace jacket, not on the rooftop unit (RTU) jacket,<sup>9</sup> and that furnace jackets

are typically embedded far inside the RTU, which requires the CUAC/HP to be taken apart in order to reach the CFAF jacket. AHRI stated that this is an extremely burdensome task, and that manufacturers are already required to comply with ASHRAE Standard 90.1, which requires jacket loss to be less than 0.75 percent (although AHRI also noted that only the worst-case models are tested). AHRI also stated that the additional granularity of a thermal efficiency rating that incorporates jacket loss would be negligible. (AHRI No. 17 at p. 3 and 5) Rheem stated that jacket losses have to be below 1.5 percent for equipment sold in Canada and below 0.75 percent for equipment to comply with ASHRAE Standard 90.1. (Rheem, Public Meeting Transcript, No. 15 at p. 24)

In response, DOE recognizes that performing an additional test to determine the jacket loss of a CFAF is more burdensome than not testing for jacket loss; however, as previously discussed, DOE has concluded that including jacket loss in the TE2 metric will provide a more representative measure of energy efficiency. DOE disagrees with AHRI that jacket losses would be negligible, as the percentage loss is included directly in the TE2 calculation. As noted by Carrier, many CWFAs may be close to the 0.75 percent requirement. Because the jacket loss percentage is multiplied by the jacket loss factor, for weatherized CWFAs designed to be installed outdoors (which represent the majority of CWFAs on the market and which have a jacket loss factor of 3.3) a jacket loss of 0.75 percent could result in a difference in TE2 of nearly 2.5 percent as compared to a unit with negligible jacket losses, which DOE considers significant.

Regarding Carrier's concerns that burden increases with the size of the unit, DOE acknowledges that additional testing burden would be incurred if manufacturers decide to test according to TE2, and may increase more significantly for larger units. However, DOE has concluded that this burden would be outweighed by the anticipated improvement in representativeness. DOE also notes that CWFAs are eligible to use alternative efficiency determination methods (AEDMs), which are typically used by manufacturers to mitigate burden, especially for testing larger commercial equipment. Further discussion of the testing burden posed by TE2 is included in section III.G. of this document.

Although DOE recognizes that TE2 testing would be more burdensome as compared to TE, DOE has concluded that the TE2 test method is not unduly burdensome. Further discussion of the cost of testing is included in section III.G of this document. Additionally, DOE notes that the use of TE2 is optional at this time, and this final rule does not amend or otherwise impact the energy conservation standards for CWFAs. If DOE should propose amended standards in the future denominated in terms of the TE2 metric, DOE would consider concerns regarding condensing operation at that time. Lastly, DOE agrees with Carrier that additional clarity regarding how to conduct the test is warranted. In particular, DOE notes that section 5.40 of ANSI Z21.47–2021 is not specific as to what constitutes the "jacket." Therefore, DOE clarifies that it applies the term as defined by the CSA Group standard CSA P.8–2022, "Thermal Efficiencies of Industrial and Commercial Gas-Fired Package Furnaces." CSA P.8–2022 defines the jacket as the surfaces surrounding the heating section of the furnace. The jacket includes all surfaces separating the heating section from the supply air, outside air, or condenser section, including the bottom surface separating the heating section from the basepan. DOE has included a description of the jacket in accordance with this definition in section 1.2 of appendix B.

## 2. Part-Load Performance

In the February 2022 NOPR, DOE proposed to require that, for CWFAs with two-stage or modulating burners, the flue loss be determined at both the maximum and minimum input rates on the nameplate of the unit and that the jacket loss be determined at the maximum input rate and optionally at the minimum input rate. If the jacket loss were determined only at the maximum input rate, DOE proposed to assign an equivalent value at the minimum input rate. DOE proposed that TE2 would then be calculated as the average of the efficiencies determined at both the maximum and minimum input rates using the flue loss and jacket loss determined at each input rate, which reflects an average use case of 50 percent of the time operating at full load and 50 percent of the time operating at part-load. 87 FR 10726, 10738 (Feb. 25, 2022).

In response to the February 2022 NOPR, AHRI stated that unlike for air-conditioning equipment, the range in variability in performance between part-load and full-load is small and that adding part-load performance into the

<sup>9</sup> RTUs are packaged units that can include both a commercial unitary air conditioner (CUAC) and

a CFAF and are designed for installation on the rooftop of commercial buildings.

measurement of CWF performance would not add to market clarity, especially given the burden of retesting all CWFs on the market to assess performance according to such a test procedure. (AHRI, No. 17 at pp. 3–4)

DOE also received comments from several stakeholders supporting the inclusion of part-load performance in TE2. Specifically, NEEA supported the inclusion of part-load operation in the proposed TE2 metric and noted that they have observed cases where CWFs have had reduced efficiency at part-load when compared to full-load. Therefore, NEEA concluded that including part-load efficiency in TE2 will create a more representative efficiency metric. (NEEA, No. 24 at p. 6) The CA IOUs supported DOE's efforts to incorporate part-load operation within the TE2 metric and agreed with DOE's assertion in the February 2022 NOPR that most CWFs have two or more stages of heating, that CWFs spend a substantial time operating in part-load, and that including part-load performance in a TE2 metric would increase representativeness. (CA IOUs, No. 20 at pp. 1–2) The CEC supported including part-load performance in the TE2 metric and noted that CWFs spend a large percentage of time in part-load operation. (CEC, No. 18 at p. 2) Carrier stated that part-load performance should be part of the CWF test procedure. (Carrier, No. 22 at pp. 3–4)

As discussed previously, DOE has observed during testing of similar products that efficiency can differ at full load as compared to part load and has concluded that adding testing during part-load operation would improve representativeness as compared to a test method that only requires operation at the maximum input. Therefore, DOE is adopting part-load testing in the TE2 metric, as initially proposed in the February 2022 NOPR. Regarding the need to re-test CWFs currently rated to the TE metric, DOE notes that testing to determine TE2 would not be required until the compliance date of any energy conservation standards based on that metric. However, DOE concludes that the improved representativeness of the TE2 metric would outweigh the additional test burden.

DOE also received several comments regarding the proposal to weight both full-load and part-load operation at 50 percent when calculating TE2.

The CA IOUs encouraged DOE to continue to evaluate what full-load and part-load weighting factors would improve representativeness of an average use cycle; however, the CA IOUs stated that they do not oppose DOE's proposal to use 50 percent

weighting factors, given the lack of national data on such full-load and part-load performance. (CA IOUs, No. 20 at p. 2) The CEC supported the DOE's proposal to equally weight full-load and part-load operation, but also stated that DOE should continue to evaluate the average use cycle of CWFs. (CEC, No. 18 at p. 2)

NEEA recommended DOE reconsider the proposed weighting of low and high fire in the TE2 metric. NEEA presented a figure showing the modeled proportion of time at high fire and low fire for three locations in Canada (Winnipeg, Montreal, and Toronto) and two building types (retail and warehouse). The commenter stated that modeling has shown that, in colder North American climate zones (5A, 6A, and 7), the ratio of high fire to low fire is only close to 50/50 for warehouses in these cold climates, but for other use types, the ratio was closer to 30 percent at low fire and 70 percent at high fire. NEEA stated that because the U.S. generally has warmer climate zones than Canada, NEEA would expect increased part-load operation in the U.S., and, therefore, it argued that a 50/50 weighting would not be representative of CWFs in the U.S. (NEEA, No. 24 at pp. 6–7)

The Joint Advocates encouraged DOE to further consider alternative weighting factors for full-load and part-load operation that they argue may be more representative of average use. The Joint Advocates also noted that the February 2022 NOPR refers to an estimate from NEEA that CWFs spend about 10 to 20 percent of their time operating at full load, but that DOE did not use that estimate because the Department tentatively determined that the climate regions from which the estimate was derived were not representative of the U.S. The Joint Advocates urged DOE to reconsider the NEEA estimate because they understand that while total operating hours will vary significantly based on climate region, the percentage of time spent at full load is relatively constant across climate regions. (Joint Advocates, No. 21 at p. 2)

Rheem stated that it is not appropriate to average the maximum and minimum thermal efficiencies and noted that in ANSI/ASHRAE 103 (*i.e.*, the ASHRAE test method for consumer furnaces) there is a method for determining the weightings, and the unit does not run at the maximum input very often. Rheem suggested that the minimum input rate should be weighted more than the maximum input rate. (Rheem, Public Meeting Transcript, No. 15 at pp. 27–28) Daikin also stated that 50 percent weighting factors for full-load and part-

load performance are not appropriate. Further, Daikin stated that the approach to weighting full-load and part-load operation in ANSI/ASHRAE 103 cannot be used for CWFs because it was generated for residential products and the operational profile of commercial products is radically different. (Daikin, No. 25 at p. 2) Carrier commented that time spent at part-load is much longer than full-load, and, therefore, DOE's proposed 50 percent weighting factor is not appropriate. Carrier recommended that more investigation and analysis should be performed to determine appropriate weighting factors that account for all types of furnaces (*i.e.*, two-stage, multi-stage, and modulating). (Carrier, No. 22 at pp. 3–4) AHRI also stated that the 50 percent weighting factors proposed by DOE in the February 2022 NOPR are not representative. (AHRI, No. 17 at p. 4)

In response, DOE notes that the modeling presented by NEEA shows that in the three regions in Canada, the percentage of time a CWF could operate at high fire versus low fire varied greatly, with CWFs in some applications operating as little as approximately 25 percent of time in high fire (and 75 percent in low fire), while CWFs in other applications were modeled to operate more than 70 percent of time in high fire (and 30 percent in low fire). Warehouses in all three locations were modeled to operate in high fire over 50 percent of the time, while retail buildings in all three locations were modeled to operate in high fire less than 50 percent of the time. Although NEEA claimed that the warmer climate in the U.S. would result in less time operating at full load, that is not necessarily the case as CWFs in the U.S. would likely be sized differently from those in Canada due to the reduced heating loads. As noted by the Joint Advocates, while total operating hours will vary significantly based on climate region, the percentage of time spent at full load could remain relatively constant across climate regions. Although several commenters asserted that weighting equally at 50 percent in full-load and in part-load is not representative, no other commenters presented alternative data, nor is DOE aware of any data that would be useful to better characterize the appropriate weighting factors. Therefore, in this final rule, DOE is adopting a calculation method that weights full-load and part-load operation equally. Should DOE become aware of any new data regarding time spent operating at each input rate or data specific to different furnace types in the future, DOE could consider

revising the calculation accordingly in a subsequent rulemaking.

#### D. Electrical Energy Consumption

In the February 2022 NOPR, DOE tentatively determined not to account for electrical energy consumption of CWFAs auxiliary power components (e.g., controls and/or combustion blowers/fans) or the supply air fan in the CWFAs test procedure. 87 FR 10726, 10739 (Feb. 25, 2022). Specifically, regarding supply fan energy consumption, DOE noted that CWFAs are typically installed within the same cabinet as a CUAC and that this energy is generally accounted for in the current CUAC test procedure, although furnace-only operation hours are not included. As such, DOE tentatively determined that energy consumption during furnace-only operation hours would be better addressed in a future amendment to the CUAC test procedure. *Id.* Regarding auxiliary power consumption, DOE tentatively determined that including such power consumption into a CWFAs performance metric would have a negligible impact on the measured energy efficiency of a CWFAs. *Id.*

In response to the February 2022 NOPR, NYSERDA encouraged DOE to measure fan energy consumption during furnace-only operation in the CWFAs test procedure. (NYSERDA, No. 16 at p. 2) NEEA also recommended that DOE account for electricity consumption used in a CUAC, including fan and auxiliary energy use, that relates to CWFAs energy consumption. In relation to DOE's tentative determination in the February 2022 NOPR that such energy consumption would be better addressed in a future amendment to the CUAC test procedure, NEEA stated such an approach would likely leave out the portion of the hours during the year where fan energy is consumed when only the CWFAs is operating. NEEA stated that it understands DOE's desire for fan energy to "be captured in a single test procedure," but the commenter argued that this goal is not achievable when cooling and heating efficiencies are regulated separately and also not achievable in a market as diverse as that for commercial HVAC. Additionally, NEEA mentioned that because fan and other auxiliary electrical end uses are integral to the function of any CWFAs, it is critical than any CWFAs TP and performance metric account for them. (NEEA, No. 24 at p. 4)

After carefully considering these comments, DOE maintains its position presented in February 2022 NOPR that, at present, integrating the auxiliary

electrical energy consumption into the efficiency metric for CWFAs would result in negligible impact. Further, DOE also maintains that the fan efficiency is better accounted for in a single test method that addresses all fan energy consumption. Accordingly, DOE is proposing to address the supply air fan energy use for CWFAs, including during operation in heating-only mode, in the ongoing CUACs test procedure rulemaking. Therefore, DOE is not adopting measures of auxiliary electrical energy use or the electrical energy use of the supply air fan in this final rule.

#### E. Other Test Procedure Updates and Clarifications

In the February 2022 NOPR, DOE used the terms "vent hoods," "vent pipes," and "flue outlets" to describe the section of a CWFAs that carries the flue gas away from the unit. DOE received a comment from AAON recommending DOE use the term "flue outlets," because it is the most accurate way to describe those components. (AAON, No. 14 at p. 1) In response, DOE has determined it appropriate to use only the term "flue outlet(s)" in order to prevent confusion associated with using multiple terms to refer to the same outlet. As such, DOE will use the term "flue outlet(s)" in this final rule, as well as in appendix A and appendix B.

##### 1. Flue Temperature Measurement in Models With Multiple Flue Outlets

In the February 2022 NOPR, DOE proposed to add instructions to clarify the test method for models with multiple flue outlets. 87 FR 10726, 10740 (Feb. 25, 2022). DOE proposed that measurements used to calculate TE (e.g., flue gas temperature, CO<sub>2</sub> in flue gasses), be made separately for each flue outlet, and that they are weighted proportionally to the size of each flue outlet when calculating flue loss. Further, DOE proposed that test requirements, such as determining when equilibrium conditions occur based on the flue gas temperature, are determined based these weighted measurements. DOE noted that this proposal is predicated on the assumption that the amount (i.e., mass flow) of flue exhaust exiting each flue outlet is proportional to the outlet size. DOE recognized that "size" of the flue outlet may be measured in various ways, and, therefore, the Department proposed to specify that flue outlet size would be determined by calculating the outlet face area. DOE sought comments on these proposals. *Id.*

Lennox stated that the size of the flue outlet may not be representative of the amount of flue exhaust passing through

the flue outlet, and that DOE should consider relying on the supplemental testing instructions or review the input capacity for each heating section as the weighted average instead of the cross-sectional area of the flue outlet. (Lennox, No. 19 at p. 3) AHRI and Carrier supported clarifying how to test units with multiple flue outlets but recommended that the measurement and performance rating for each flue outlet should be based on input rating of each furnace module instead of the size of the flue outlet. (AHRI, No. 17 at p. 4; Carrier, No. 22 at p. 4)

Based on these comments DOE understands that the flue outlet size may not directly correspond to the mass flow of flue gases exiting from that outlet. Consequently, DOE agrees that the fuel input rating for each furnace module would be a better indicator of the flue gases exiting the outlet for that specific module. Therefore, DOE amends the test procedure to clarify that for units with multiple flue gas outlets, the measurements used to calculate TE (e.g., flue gas temperature, CO<sub>2</sub> in flue gasses) are to be made separately for each flue outlet, and are to be weighted proportionally to the input capacity associated with the furnace module.

##### 2. Flue Temperature Measurement in Models With Vent Space Limitations

In the February 2022 NOPR, DOE noted that section 5.16 of ANSI Z21.47–2021 specifies measuring the flue gas temperature using nine individual thermocouples placed in specific locations; however, these sections do not provide guidance on how to measure the flue gas temperature if the vent size constrains the space where the thermocouples are to be placed to the point that normal operation of the unit is inhibited when nine thermocouples are installed. 87 FR 10726, 10740 (Feb. 25, 2022). DOE proposed to specify in the DOE test procedure that when testing gas-fired and oil-fired CWFAs, the flue gas temperatures shall be measured using nine individual thermocouples when the flue outlet is larger than 2 inches in diameter and may optionally be measured using five individual thermocouples when the flue outlet is 2 inches or smaller in diameter, which DOE noted aligns with the approach in ANSI/ASHRAE 103–2017. *Id.* at 87 FR 10741.

AAON stated that flue outlet geometry in CWFAs can vary in shape and that the diagram referenced in ANSI/ASHRAE 103 only accounts for a circular geometry. Consequently, AAON recommended that the number thermocouples needed for testing should be determined by the cross-

sectional area of the flue outlet. (AAON, No. 14 at p. 1) Similarly, Lennox noted that not all flue outlets are round, and, therefore, the commenter suggested that the number of thermocouples used during the test should be determined using the face area of the flue outlet. (Lennox, No. 19 at p. 3) Carrier agreed that fewer thermocouples should be used for units with smaller flue outlets, but also recommended the determination be based on cross-sectional face area, not diameter, since flue outlets are not always circular. (Carrier, No. 22 at p. 4) AHRI supported DOE's proposal that the number of thermocouples used be dependent on the flue outlet size; however, similar to other commenters, AHRI recommend that DOE base the determination of how many thermocouples to use on the cross-sectional area of the outlet, rather than the diameter. AHRI also further recommended DOE review and align its provisions with the requirement outlined in Figure 10 of AHRI 103. (AHRI, No. 17 at p. 4)

DOE agrees that the determination of the number of thermocouples used in the flue outlet should be based on the area of the flue outlet, rather than diameter, because some flue outlets may not be circular. Therefore, DOE is adopting a modification to its February 2022 proposal so that the optional allowance to use 5 thermocouples rather than 9 in models with flue outlets that are 2 inches or less in diameter applies based on the cross-sectional area of the flue outlet. For a circular flue with a diameter of 2 inches, the area would be 3.14 square inches; thus, DOE is amending the test procedure to allow optional use of 5 thermocouples when testing models with a flue outlet that has a cross sectional area of 3.14 square inches or less.

### 3. Flue Loss Determination

Section 2.39 of ANSI Z21.47–2012 and section 5.40 of ANSI Z21.47–2021 reference Annex I for the determination of flue loss that is used in the TE calculation. Annex I includes two methods for determining flue loss—one method that uses a calculation, and one method that uses nomographs shown in Figures I.1 and I.2 of ANSI Z21.47–2021. The nomograph method may only be used when the heating value, specific gravity, and flue gas CO<sub>2</sub> of a CWF fall within a specified range.<sup>10</sup> If these

<sup>10</sup> Heating value for natural gas or propane must be 970–1100 Btu/ft<sup>3</sup> or 2466–2542 Btu/ft<sup>3</sup>, respectively. Specific gravity for natural gas or propane must be 0.57–0.70 or 1.522–15.74, respectively. Ultimate carbon dioxide for natural gas or propane must be 11.7–12.2% or 13.73–13.82%, respectively.

conditions are met, either calculation method may be used. In the February 2022 NOPR, DOE proposed to require that the calculation method must be used when determining flue loss because the nomograph method is not applicable for all tests, and the calculation method is likely to provide better repeatability by eliminating subjective differences in interpreting the nomograph. 87 FR 10726, 10741 (Feb. 25, 2022).

DOE received comments from Daikin, Carrier, Lennox, Rheem, and AHRI that supported this proposal, and received no other comments on this topic. (Daikin, No. 25 at p. 3; Lennox, No. 19 at p. 3; Carrier, No. 22 at p. 5; Rheem, Public Meeting Transcript, No. 15 at p. 21; AHRI, No. 17 at p. 4) Based on the previously discussed rationale, DOE has determined that requiring the calculation method will help improve test repeatability. As such, DOE is requiring that the calculation method, not the nomograph method, from Annex I in ANSI Z21.47–2021 be used for the determination of flue loss.

### 4. General Approach

In response to the February 2022 NOPR, DOE received several comments regarding its general approach to the test method for CWFs.

AGA and APGA recommend DOE consider implementing the recommendations for the recent National Academies of Sciences Engineering and Medicine (NASEM) on appliance standards rulemakings, whether for test procedures or energy conservation standards. (AGA and APGA, No. 23 at pp. 2–3)

Given that this is a test procedure rulemaking for which DOE must meet specific statutory criteria as outlined in 42 U.S.C. 6314, the recommendations in the NASEM report, which pertain specifically to the processes by which DOE analyzes energy conservation standards, are not applicable. DOE will consider this comment in a separate rulemaking considering all covered product and covered equipment categories.

DOE also received comments from the Joint Advocates and NEEA recommending that DOE consider a “whole box” approach for measuring the performance of CWFs, similar to the approach found in CSA P.8–2022, “Thermal Efficiencies of Industrial and Commercial Gas-fired Package Furnaces.”<sup>11</sup> (Joint Advocates, No. 21 at pp. 1–2, NEEA, No. 24 at pp. 1–5) More

<sup>11</sup> CSA P.8–2022 is available for purchase at: [www.csagroup.org/store/product/CSA%20P.8:22/](http://www.csagroup.org/store/product/CSA%20P.8:22/). (Last accessed Jan. 31, 2023).

specifically, the Joint Advocates and NEEA stated that while they supported DOE's efforts to establish TE2, they encouraged DOE to evaluate the potential use of CSA P.8–2022. They asserted that CSA P.8 would more accurately represent overall efficiency of a CWF because the new heating metric in that standard (*i.e.*, “total heating season coefficient of performance”) calculates the efficiency of a CWF using a more holistic approach, by incorporating factors such as burner efficiency, total enclosure heat losses, fan energy consumption, and heat gains from heat recovery. *Id.* Similarly, NYSERDA also encouraged DOE to consider any forthcoming updates that may better measure the holistic energy use of CWFs. (NYSERDA, No. 16 at p. 2)

As discussed in section I.A of this document, EPCA requires that the test procedures for CWFs be those generally accepted industry testing procedures or rating procedures developed or recognized by AHRI or ASHRAE, as referenced in ASHRAE Standard 90.1. (42 U.S.C. 6314(a)(4)(A)) If such an industry test procedure or rating procedure is amended, the Secretary shall amend the test procedure for the product as necessary to be consistent with the amended industry test procedure or rating procedure unless the Secretary determines, by rule, published in the **Federal Register** and supported by clear and convincing evidence, that to do so would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B)) In this case, the industry test standards referenced by ASHRAE Standard 90.1 are ANSI Z21.47 for gas-fired CWFs and UL 727 for oil-fired CWFs. The test methods adopted in this final rule incorporate by reference those industry standards, and are generally consistent with and build upon those industry standards by providing clarifications or other modifications, as necessary, to meet the requirements of EPCA. DOE has determined that the test procedures for CWFs adopted in this final rule will produce test results which reflect energy efficiency of CWFs during a representative average use cycle, are not unduly burdensome to conduct, as required by EPCA. Further, DOE notes that the scope of CSA P.8–2022 indicates that the standard is intended to provide “cold climate” performance criteria that is representative of use in colder climates found in Canada and other northern locations, which may not be representative of the U.S. as a whole.

Therefore, DOE did not find it necessary to move to a test method that uses the approach taken by CSA P.8–2022. In response to NYSERDA, DOE will continue to monitor future applicable industry test standard updates related to CWAFFs.

#### F. Effective and Compliance Dates

The effective date for the adopted CWAFFs test procedure amendments is 30 days after the date of publication of this final rule in the **Federal Register**.

Regarding the compliance date, EPCA prescribes that all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure for CWAFFs, beginning 360 days after the date of publication of this final rule in the **Federal Register**. (42 U.S.C. 6314(d)(1))

To the extent the modified test procedure adopted in this final rule is required only for the evaluation under updated CWAFF energy conservation standards (*i.e.*, standards denominated in terms of the new TE2 metric), compliance with the amended test procedure does not require use of such modified test procedure provisions until the compliance date of such updated standards, if adopted.

#### G. Test Procedure Costs

EPCA requires that the test procedures for CWAFFs be those generally accepted industry testing procedures or rating procedures developed or recognized by either AHRI or ASHRAE, as referenced in ASHRAE Standard 90.1. (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE must amend its test procedure to be consistent with the amended industry test procedure unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that such an amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2)–(3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B))

In this final rule, DOE is amending the test procedure for CWAFFs for determining TE by incorporating by reference the most up-to-date versions of the industry test standards referenced in the DOE test procedure, and by providing additional detail for the test setup for models with multiple flue outlets and models with flue outlets having space limitations. DOE has determined that these amendments to the test procedure for determining TE would not be unduly burdensome for

manufacturers to conduct, and that the test procedures for this equipment are consistent with the industry test procedure updates. DOE has also determined that the amendments to the test procedure for determining TE would improve the representativeness, accuracy, and reproducibility of the test results and would not be unduly burdensome to conduct. DOE expects that the test procedure in appendix A for determining TE will not increase testing costs.

DOE is also establishing a new metric for CWAFFs, TE2, and a new appendix B, which includes the test procedure for determining TE2. In the February 2022 NOPR, DOE estimated that the additional test cost due to the additional part-load test and jacket loss test required for the TE2 metric would be \$2,200, compared to the DOE test procedure using the TE metric, which DOE estimated to be \$4,200 at a third-party laboratory (*i.e.*, a total estimated cost of \$6,400 per tested unit for the amended TE2 test procedure). Therefore, assuming two units are tested per basic model,<sup>12</sup> DOE estimated the testing cost associated with the newly proposed appendix B test procedure to be \$12,800 per basic model. 87 FR 10726, 10741–10742 (Feb. 25, 2022). DOE also noted that in accordance with 10 CFR 429.41, CWAFF manufacturers may elect to use an AEDM to rate models for the TE2 metric, which significantly reduces testing costs to industry. DOE estimated the per-manufacturer cost to develop and validate an AEDM to determine TE2 for CWAFF equipment to be \$17,300. DOE estimated a cost of \$46 per basic model for determining energy efficiency using a validated AEDM.<sup>13</sup> 87 FR 10726, 10742 (Feb. 25, 2022). Additionally, DOE has determined that the appendix B test procedure and TE2 calculation would alter the measured energy efficiency of a CWAFF.

DOE received multiple comments on the test cost and burden associated with performing the TE2 test procedure.

<sup>12</sup> Per the sampling requirements specified at 10 CFR 429.11(b), manufacturers are required to test at least two units to determine the rating for a basic model, except if only one unit of the basic model is produced.

<sup>13</sup> DOE's estimated initial cost to develop and validate an AEDM includes (1) 80 hours to develop the AEDM based on existing simulation tools; (2) an additional 16 hours to validate the AEDM for two basic models at the cost of an engineering calibration technician wage of \$46 per hour; and (3) the cost of third-party testing of two units per validation class (as required in 10 CFR 429.70(c)(2)(iv)). DOE estimated the additional per basic model cost to determine efficiency using an AEDM assuming 1 hour per basic model at the cost of an engineering calibration technician wage of \$46 per hour.

Rheem generally stated that measuring jacket loss is very labor-intensive due to the need to take apart the unit and presents a burden to manufacturers. (Rheem, Public Meeting Transcript, No. 15 at pp. 23–24) AHRI asserted that there are external costs associated with this proposed test procedure change that DOE has not accounted for, including bandwidth limitations at laboratory facilities that would cause manufacturers to test internally and which could delay testing of new units while existing models are retested. (AHRI, No. 17 at p. 5) AHRI also asserted that DOE did not accurately account for the cost of performing a jacket loss test at full-load and part-load because determining compliance with ASHRAE Standard 90.1 requires that only the worst-case unit in a product line needs to be tested, but TE2 would require manufacturers to run the jacket loss test twice every time a unit is tested. AHRI also stated that there are no AEDMs currently available for TE2 and developing an AEDM is extremely costly due to the number of variables that need to be accounted for and modeled accurately (*e.g.*, fan capacity, cabinet geometry, variation in size of the heater, and the inclusion of dampers, energy recovery ventilators (ERVs), and heat recovery ventilators (HRVs) in the airflow path). AHRI also disagreed with the Department's estimate that the associated rerating costs would be approximately \$17,400, because manufacturers will need to validate any new AEDM by testing at least two (2) basic models, which will have associated manufacturing and test costs. Instead, AHRI estimated that the cost of the test samples alone will reach upwards of \$30,000 (without accounting for the AEDM development cost or test time), and that the test time must include a minimum of several days to set up for each sample, with laboratory time being very expensive. (*Id.*) Daikin supported AHRI's comments on this topic and added that testing cost and burden will increase substantially if manufacturers must assess part-load conditions and jacket loss. Daikin noted that if ambient conditions must be controlled in psychometric rooms to conduct jacket loss testing, it could impact availability of those test rooms for other equipment such as commercial unitary air conditioners and heat pumps. (Daikin, No. 25 at p. 3) Carrier stated that DOE underestimated the cost to validate an AEDM, because CWAFF sizes vary between 225,000 Btu/h and 2,000,000 Btu/h (which can lead to an extremely large variation in cost). Carrier stated that to create an accurate



AEDM, a manufacturer would need to consider a “worst case” model, and that this can cost upwards of \$50,000. (Carrier, No. 22 at p. 5)

In response, DOE notes that the estimated cost of testing for TE2 presented in the February 2022 NOPR is based on actual price quotations from third-party laboratories. Additionally, the estimated cost to develop an AEDM reflects 80 hours to develop the AEDM based on existing simulation tools, plus an additional 16 hours to validate the AEDM at a rate of \$46 per hour, plus the cost to conduct the test on two units as required by 10 CFR 429.70(c)(2)(iv). DOE recognizes that depending on each individual manufacturer’s approach to testing and rating their models (whether based on actual testing, AEDMs, or a combination of approaches) and the number of models they would need to rate with TE2, test costs could vary significantly. DOE’s estimates are intended to represent the typical or most likely costs given the various pathways available for rating TE2. However, DOE recognizes that the costs could be higher. Although TE2 testing will be cost more than the current TE test method due to the need to perform jacket loss testing and testing at the minimum input capacity, DOE has concluded that the additional costs are not unduly burdensome and are justified due to the improved representativeness of TE2 as compared to TE. Further, because there is no requirement to make representations with TE2 at this time, DOE does not view laboratory bandwidth limitations as a significant issue. However, if DOE were to transition to standards based on the TE2 metric in the future, which would require manufacturers to make representations of TE2, DOE notes that it would provide a lead time before compliance is required, consistent with the requirements of EPCA,<sup>14</sup> which should alleviate any laboratory bandwidth issues.

#### IV. Procedural Issues and Regulatory Review

##### A. Review Under Executive Orders 12866, 13563, and 14094

Executive Order (E.O.) 12866, “Regulatory Planning and Review,” 58

<sup>14</sup> Under 42 U.S.C. 6313(a)(6)(C)(iv), if DOE amends standards pursuant to a six-year-lookback review initiated under 42 U.S.C. 6313(a)(6)(C)(i), amended standards apply a minimum of three years after publication of the amended standards. Under 42 U.S.C. 6313(a)(6)(D)(i), if DOE amends standards pursuant to an amendment to ASHRAE Standard 90.1 levels, amended standards apply a minimum of 2 years after the effective date of the minimum energy efficiency requirement in the amended ASHRAE Standard 90.1.

FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, “Improving Regulation and Regulatory Review,” 76 FR 3821 (Jan. 21, 2011) and amended by E.O. 14094, “Modernizing Regulatory Review,” 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this final regulatory action is consistent with these principles.

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

##### B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (FRFA) for any final rule where the agency was first required by law to

publish a proposed rule for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel’s website: [www.energy.gov/gc/office-general-counsel](http://www.energy.gov/gc/office-general-counsel). DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

On February 25, 2022, DOE published in the **Federal Register** a notice of proposed rulemaking (February 2022 NOPR) proposing to update the references in the Federal test procedure to the most recent version of the relevant industry test procedures as they relate to CWAFFs, as well as to adopt a new TE2 metric. Specifically, DOE proposed to adopt two appendices to 10 CFR 431.76—appendix A for determining TE and appendix B for determining TE2. The TE test method in appendix A is similar to the current method for TE, with several clarifications and updates to incorporate by reference the most recent versions of applicable industry test standards. The TE2 test method in appendix B builds upon the TE test method in appendix A, but also accounts for jacket losses and operation at the minimum input rating.

As part of the February 2022 NOPR, DOE conducted its initial regulatory flexibility analysis (IRFA). 87 FR 10726, 10742–10744 (Feb. 25, 2022). DOE used the Small Business Administration (SBA) small business size standards to determine whether manufacturers qualify as small businesses, which are listed by North American Industry Classification System (NAICS).<sup>15</sup> The SBA considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. CWAFF manufacturers are classified under NAICS code 333415, “Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.” In 13 CFR

<sup>15</sup> The size standards are listed by NAICS code and industry description and are available at: [www.sba.gov/document/support-table-size-standards](http://www.sba.gov/document/support-table-size-standards) (Last accessed Feb. 8, 2022).



121.201, the SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category.

DOE relied on publicly-available databases to identify potential small businesses that manufacture equipment covered by this rulemaking. DOE utilized the California Energy Commission's Modernized Appliance Efficiency Database System (MAEDbS)<sup>16</sup> and DOE's Certification Compliance Database (CCD)<sup>17</sup> to identify potential small businesses that manufacture CWAFs covered by this rulemaking. DOE identified eight original equipment manufacturers (OEMs) of CWAFs affected by this rulemaking. DOE screened out companies that do not meet the definition of a "small business" or are foreign-owned and operated. DOE identified one small, domestic OEM for consideration. DOE used subscription-based business information tools (e.g., Dun & Bradstreet reports<sup>18</sup>) to determine headcount and revenue of the small business.

In the February 2022 NOPR, DOE determined the one small manufacturer had average annual revenues of approximately \$3.3 million. Additionally, DOE identified four basic models from the small manufacturer. DOE estimated the re-rating costs for the manufacturer to be approximately \$17,400 when making use of AEDMs. The cost for this small manufacturer to re-rate all basic models was estimated to be less than 1 percent of annual revenue. DOE also estimated the re-rating cost for the small manufacturer based on physical testing of all four models based on third-party laboratory testing. Relying on pricing quotes from third-party laboratories, DOE estimated costs of approximately \$51,200 for the small business. The cost for this small manufacturer to re-rate all basic models with physical testing was estimated to be less than 1.6 percent of annual revenue. 87 FR 10726, 10744 (Feb. 25, 2022).

DOE did not receive any comments on the number of small entities in response to the February 2022 NOPR. As discussed in section III.G of this document, DOE received several comments that suggested that the

February 2022 NOPR underestimated the cost of testing for TE2 generally. However, as discussed previously, the estimated cost of testing for TE2 presented in the February 2022 NOPR is based on actual price quotations from third-party laboratories. Additionally, the estimated cost to develop an AEDM reflects 80 hours to develop the AEDM based on existing simulation tools, plus an additional 16 hours to validate the AEDM at a rate of \$46 per hour, plus the cost to conduct the test on two units as required by 10 CFR 429.70(c)(2)(iv). Although DOE recognizes that each individual manufacturer's approach to testing and rating their models (whether based on actual testing, AEDMs, or a combination of approaches) could cause test costs to vary significantly, DOE's estimates are intended to represent the typical or most likely costs given the various pathways available for rating TE2, and, therefore, DOE maintained its estimates from the February 2022 NOPR for this final rule.

On the basis of the *de minimis* compliance burden, DOE concludes and certifies that the cost effects accruing from this test procedure final rule would not have a "significant economic impact on a substantial number of small entities," and that the preparation of a FRFA is not warranted. DOE will transmit a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

#### C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of CWAFs must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, 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 CWAFs. (See generally 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910-1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and

completing and reviewing the collection of information.

DOE is not amending the certification or reporting requirements for CWAFs in this final rule. Instead, DOE may consider proposals to amend the certification requirements and reporting for CWAFs under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910-1400 at that time, as necessary.

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 has analyzed this regulation in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*; NEPA) and DOE's NEPA implementing regulations (10 CFR part 1021). In this final rule, DOE establishes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for CWAFs. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under NEPA and DOE's implementing regulations, because it is a rulemaking that interprets or amends an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, subpart D, appendix A, sections A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

#### E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State

<sup>16</sup> MAEDbS can be accessed at [caecertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx](https://caecertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx) (Last accessed Feb. 8, 2022).

<sup>17</sup> Certified equipment in the CCD is listed by product class and can be accessed at [www.regulations.doe.gov/certification-data/#q=Product\\_Group\\_s%3A](https://www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A) (Last accessed July 15, 2021).

<sup>18</sup> The Dun & Bradstreet Hoovers subscription login is accessible online at [app.dnbhoovers.com/](https://app.dnbhoovers.com/) (Last accessed Feb. 8, 2023).

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 examined this final rule and has determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

#### F. Review Under Executive Order 12988

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

#### G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104-4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at [www.energy.gov/gc/office-general-counsel](http://www.energy.gov/gc/office-general-counsel). DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of \$100 million or more in any year, so these requirements do not apply.

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

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

#### I. Review Under Executive Order 12630

DOE has determined under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this regulation

will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

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

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

#### K. Review Under Executive Order 13211

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

This regulatory action to amend the test procedure for measuring the energy efficiency of CWFAs is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy

action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

#### *L. Review Under Section 32 of the Federal Energy Administration Act of 1974*

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The amendments to the Federal test procedure for CWFAs contained in this final rule adopt testing methods contained in certain sections of the following commercial standards: AHRI 1500–2015 (which in turn references ASTM D240–09, ASTM D396–14a, ASTM D4809–09a, and ASTM D5291–10), ANSI Z21.47–2021 (which in turn references ANSI/ASME PTC 19.3–1974 (R2004)), ANSI/ASHRAE 103–2022, and UL 727–2018 (which in turn references ASTM E230/E230M–17 and NFPA 97–2003). DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.*, whether they were developed in a manner that fully provides for public participation, comment, and review). DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

#### *M. Congressional Notification*

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

#### *N. Description of Materials Incorporated by Reference*

In this final rule, DOE incorporates by reference the following test standards:

AHRI 1500–2015 provides instruction for how to perform fuel oil analysis and

for how to calculate flue loss of oil-fired CWFAs.

Copies of AHRI 1500–2015 can be obtained from the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), 2311 Wilson Blvd., Suite 400, Arlington, VA 22201, (703) 524–8800, or online at: [www.ahrinet.org](http://www.ahrinet.org).

ANSI Z21.47–2021 provides instruction for how to test gas-fired CWFAs.

ANSI/ASHRAE 103–2022 provides instruction for how to test residential furnaces and boilers, which DOE is referencing for the purpose of providing instruction for testing condensing gas-fired CWFAs.

ANSI/ASME PTC 19.3–1974 (R2004) is referenced by ANSI Z21.47–2021 and specifies thermocouple requirements for when testing gas-fired CWFAs.

Copies of ANSI Z21.47–2021, ANSI/ASHRAE 103–2022, and ANSI/ASME PTC 19.3–1974 (R2004), can be obtained from the American National Standards Institute (ANSI), 25 W 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or online at: [www.webstore.ansi.org](http://www.webstore.ansi.org).

ASTM D240–09 is referenced in AHRI 1500–2015, and it contains fuel oil heating value requirements.

ASTM D396–14a is referenced in AHRI 1500–2015, and it contains general fuel oil requirements.

ASTM D4809–09a is referenced in AHRI 1500–2015, and it contains fuel oil hydrogen and carbon content requirements.

ASTM D5291–10 is referenced in AHRI 1500–2015, and it contains fuel oil density requirements.

ASTM E230/E230M–17 is referenced in UL 727–2018, and it specifies thermocouple requirements for when testing oil-fired CWFAs.

Copies of ASTM D240–09, ASTM D396–14a, ASTM D4809–09a, ASTM D5291–10, and ASTM E230/E230M–17 can be obtained from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428, (877) 909–2786 or online at: [www.astm.org](http://www.astm.org).

NFPA 97–2003 is referenced in UL 727–2018 and provides definitions for the terms “combustible” and “noncombustible.”

Copies of NFPA 97–2003 can be obtained from the National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169–7471, 1–800–344–3555 or online at: [www.nfpa.org](http://www.nfpa.org).

UL 727–2018 provides instruction for how to test oil-fired CWFAs.

Copies of UL 727–2018 can be obtained from Underwriters Laboratories, Inc. (UL), 333 Pfingsten

Road, Northbrook, IL 60062, (847) 272–8800, or online at: [www.standardscatalog.ul.com](http://www.standardscatalog.ul.com).

#### **V. Approval of the Office of the Secretary**

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

#### **List of Subjects in 10 CFR Part 431**

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, and Reporting and recordkeeping requirements.

#### **Signing Authority**

This document of the Department of Energy was signed on May 22, 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 23, 2023.

**Treena V. Garrett,**

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

For the reasons stated in the preamble, DOE amends part 431 of chapter II of title 10, Code of Federal Regulations as set forth below:

#### **PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT**

■ 1. The authority citation for part 431 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Amend § 431.72 by adding in alphabetical order a definition for “Thermal efficiency two” to read as follows:

#### **§ 431.72 Definitions concerning commercial warm air furnaces.**

\* \* \* \* \*

*Thermal efficiency two* for a commercial warm air furnace equals 100

percent minus percent flue loss and jacket loss.

\* \* \* \* \*

■ 3. Revise § 431.75 to read as follows:

**§ 431.75 Materials incorporated by reference.**

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, DOE must publish a document in the **Federal Register** and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at DOE, and at the National Archives and Records Administration (NARA). Contact DOE at: the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 1000 Independence Ave. SW, EE-5B, Washington, DC 20585, (202) 586-9127, [Buildings@ee.doe.gov](mailto:Buildings@ee.doe.gov), [www.energy.gov/eere/buildings/building-technologies-office](http://www.energy.gov/eere/buildings/building-technologies-office). For information on the availability of this material at NARA, visit: [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html) or email: [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov). The material may be obtained from the sources in the following paragraphs of this section.

(b) **AHRI**. Air-Conditioning, Heating, and Refrigeration Institute, 2311 Wilson Blvd., Suite 400, Arlington, VA 22201, (703) 524-8800, or online at: [www.ahrinet.org](http://www.ahrinet.org).

(1) ANSI/AHRI 1500-2015 (“AHRI 1500-2015”), *Performance Rating of Commercial Space Heating Boilers*, ANSI-approved November 28, 2014; IBR approved for appendix A to this subpart.

(2) [Reserved]

(c) **ANSI**. American National Standards Institute. 25 W 43rd Street, 4th Floor, New York, NY 10036. (212) 642-4900 or online at: [www.ansi.org](http://www.ansi.org).

(1) CSA/ANSI Z21.47:21, (“ANSI Z21.47-2021”), *Gas-fired central furnaces*, ANSI-approved April 21, 2021; IBR approved for appendices A and B to this subpart.

(2) [Reserved]

(d) **ASHRAE**. American Society of Heating, Refrigerating and Air-Conditioning Engineers Inc., 180 Technology Parkway NW, Peachtree Corners, Georgia 30092, (404) 636-8400, or online at: [www.ashrae.org](http://www.ashrae.org).

(1) ANSI/ASHRAE 103-2022 (“ASHRAE 103-2022”), *Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers*, approved January

10, 2022; IBR approved for appendix A to this subpart.

(2) [Reserved]

(e) **ASME**. American Society of Mechanical Engineers, Service Center, 22 Law Drive, P.O. Box 2900, Fairfield, NJ 07007, (973) 882-1170, or online at: [www.asme.org](http://www.asme.org).

(1) ANSI/ASME PTC 19.3-1974 (R2004), *Supplement to ASME Performance Test Codes: Part 3: Temperature Measurement, Instruments and Apparatus*, reaffirmed 2004; IBR approved for appendix A to this subpart.

(2) [Reserved]

(f) **ASTM**. ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428, (877) 909-2786, or online at: [www.astm.org/](http://www.astm.org/).

(1) ASTM D240-09, *Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter*, approved July 1, 2009; IBR approved for appendix A to this subpart.

(2) ASTM D396-14a, *Standard Specification for Fuel Oils*, approved October 1, 2014; IBR approved for appendix A to this subpart.

(3) ASTM D4809-09a, *Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method)*; approved September 1, 2009; IBR approved for appendix A to this subpart.

(4) ASTM D5291-10, *Standard Test Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Petroleum Products and Lubricants*, approved May 1, 2010; IBR approved for appendix A to this subpart.

(5) ASTM E230/E230M-17 (“ASTM E230/E230M-17”), *Standard Specification for Temperature-Electromotive Force (emf) Tables for Standardized Thermocouples*, approved November 1, 2017; IBR approved for appendix A to this subpart.

(g) **NFPA**. National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471, 1-800-344-3555, or online at: [www.nfpa.org](http://www.nfpa.org).

(1) NFPA 97 (“NFPA 97-2003”), *Standard Glossary of Terms Relating to Chimneys, Vents, and Heat-Producing Appliances*; copyright 2023; IBR approved for appendix A to this subpart.

(2) [Reserved]

(h) **UL**. Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062, (847) 272-8800, or online at: [www.ul.com](http://www.ul.com).

(1) UL 727 (“UL 727-2018”), *Standard for Safety Oil-Fired Central Furnaces*, Tenth Edition, published

January 31, 2018; IBR approved for appendix A to this subpart.

(2) [Reserved]

■ 4. Revise § 431.76 to read as follows:

**§ 431.76 Uniform test method for the measurement of energy efficiency of commercial warm air furnaces.**

(a) *Scope*. This section prescribes the test requirements used to measure the energy efficiency of commercial warm air furnaces with a rated maximum input of 225,000 Btu per hour or more.

(b) *Testing and calculations*—(1) *Thermal efficiency*. Test in accordance with appendix A to subpart D of this part when making representations of thermal efficiency.

(2) *Thermal efficiency two*. Test in accordance with appendix B to subpart D of this part when making representations of thermal efficiency two.

■ 5. Appendix A to subpart D of part 431 is added to read as follows:

**Appendix A to Subpart D of Part 431—Uniform Test Method for Measurement of the Energy Efficiency of Commercial Warm Air Furnaces (Thermal Efficiency)**

**Note:** On and after May 28, 2024, any representations made with respect to the energy use or efficiency of commercial warm air furnaces must be made in accordance with the results of testing pursuant to this section. At that time, manufacturers must use the relevant procedures specified in this appendix, which reference ANSI Z21.47-2021, ASHRAE 103-2022, UL 727-2018, or AHRI 1500-2015. On and after July 3, 2023 and prior to May 28, 2024, manufacturers must test commercial warm air furnaces in accordance with this appendix or 10 CFR 431.76 as it appeared on January 1, 2023. DOE notes that, because testing under this section is required as of May 28, 2024, manufacturers may wish to begin using this amended test procedure as soon as possible. Any representations made with respect to the energy use or efficiency of such commercial warm air furnaces must be made in accordance with whichever version is selected.

Manufacturers must use the results of testing under appendix B to this subpart to determine compliance with any standards for commercial warm air furnaces that use the thermal efficiency 2 (TE2) metric.

*0. Incorporation by reference.*

In § 431.75, DOE incorporated by reference the entire standard for AHRI 1500-2015, ANSI Z21.47-2021, ASHRAE 103-2022, ASME PTC 19.3-1974 (R2004), ASTM D240-09, ASTM D396-14a, ASTM D4809-09a, ASTM D5291-10, ASTM E230/E230M-17, NFPA 97-2003, and UL 727-2018. However, for standards AHRI 1500-2015, ANSI Z21.47-2021, ASHRAE 103-2022, and UL 727-2018, only the enumerated provisions of those documents apply to this appendix, as follows:

## 0.1 ANSI Z21.47–2021

(a) Sections 5.1, 5.1.4, 5.2, 5.3, 5.4, 5.5, 5.5.1, 5.6, and 7.2.1 as specified in section 1.1 of this appendix;

(b) Section 5.40 as specified in sections 1.1 and 3.1 of this appendix;

(c) Section 5.2.8 as specified in section 4.1 of this appendix;

(d) Annex I as specified in section 3.1 of this appendix.

## 0.2 ASHRAE 103–2022

(a) Sections 7.2.2.4, 7.8, and 9.2 as specified in section 2.2 of this appendix;

(b) Sections 11.3.7.1 and 11.3.7.2 as specified in section 4.1 of this appendix.

## 0.3 UL 727–2018

(a) Sections 2, 3, 37, 38 and 39, 40, 40.6, 41, 42, 43.2, 44, 45, and 46 as specified in section 1.2 of this appendix;

(b) Figure 40.3 as specified in section 2.1 of this appendix.

## 0.4 AHRI 1500–2015

(a) Section C3.2.1.1 as specified in section 1.2 of this appendix;

(b) Sections C7.2.4, C7.2.5, and C7.2.6.2 as specified in section 3.2 of this appendix.

1. *Test setup and Testing.* Where this section prescribes use of ANSI Z21.47–2021 or UL 727–2018, perform only the procedures pertinent to the measurement of the steady-state efficiency, as specified in this section.

1.1 *Gas-fired commercial warm air furnaces.* The test setup, including flue requirement, instrumentation, test conditions, and measurements for determining thermal efficiency are as specified in section 1.3 of this appendix, and the following sections of ANSI Z21.47–2021: 5.1 (General, including ASME PTC 19.3–1974 (R2004) as referenced in Section 5.1.4), 5.2 (Basic test arrangements), 5.3 (Test ducts and plenums), 5.4 (Test gases), 5.5 (Test pressures and burner adjustments), 5.6 (Static pressure and air flow adjustments), 5.40 (Thermal efficiency), and 7.2.1 (Basic test arrangements for direct vent central furnaces). If section 1.3 of this appendix and ANSI Z21.47–2021 have conflicting provisions (e.g., the number of thermocouples that should be used when testing units with flue outlets that have a cross-sectional area of 3.14 square inches or less), follow the provisions in section 1.3 of this appendix. The thermal efficiency test must be conducted only at the normal inlet test pressure, as specified in section 5.5.1 of ANSI Z21.47–2021, and at the maximum hourly Btu input rating specified by the manufacturer for the product being tested.

1.2 *Oil-fired commercial warm air furnaces.* The test setup, including flue requirement, instrumentation, test conditions, and measurement for measuring thermal efficiency is as specified in section 1.3 of this appendix and the following sections of UL 727–2018: 2 (Units of Measurement), 3 (Glossary, except that the definitions for “combustible” and “non-combustible” in sections 3.11 and 3.27 shall be as referenced in NFPA 97–2003), 37 (General), 38 and 39 (Test Installation), 40 (Instrumentation, except 40.4 and 40.6.2 through 40.6.7 which are not required for the thermal efficiency test, and including ASTM E230/E230M–17 as referenced in Sections 40.6), 41 (Initial Test Conditions), 42 (Combustion Test—Burner and Furnace),

43.2 (Operation Tests), 44 (Limit Control Cutout Test), 45 (Continuity of Operation Test), and 46 (Air Flow, Downflow or Horizontal Furnace Test). If section 1.3 of this appendix and UL 727–2018 have conflicting provisions (e.g., the number of thermocouples that should be used when testing units with flue outlets that have a cross-sectional area of 3.14 inches or less), follow the provisions in section 1.3 of this appendix. Conduct a fuel oil analysis for heating value, hydrogen content, carbon content, pounds per gallon, and American Petroleum Institute (API) gravity as specified in section C3.2.1.1 of AHRI 1500–2015, including the applicable provisions of ASTM D240–09, ASTM D4809–09a, ASTM D5291–10, and ASTM D396–14a, as referenced. The steady-state combustion conditions, specified in section 42.1 of UL 727–2018, are attained when variations of not more than 5 °F in the measured flue gas temperature occur for three consecutive readings taken 15 minutes apart.

1.3 *Additional test setup requirements for gas-fired and oil-fired commercial warm air furnaces*

1.3.1 *Thermocouple setup for gas-fired and oil-fired commercial warm air furnaces with flue outlets that have a cross-sectional area of 3.14 square inches or less.* For units with flue outlets having a cross-sectional area of 3.14 square inches or less, the flue gas temperatures may optionally be measured using five individual thermocouples, instead of nine thermocouples.

1.3.2 *Procedure for flue gas measurements when testing units with multiple flue outlets.* For units that have multiple flue outlets, record flue gas measurements (e.g., flue gas temperature, CO<sub>2</sub> in the flue gases) separately for each individual flue outlet and calculate a weighted-average value based on the readings of all flue outlets. To determine the weighted average for each measurement, first determine the input rating of the furnace module associated with each flue outlet. Then multiply the ratio of the input rating for the furnace module associated with each individual flue outlet to the total nameplate input rating of the furnace (i.e., the input rating associated with each individual flue outlet divided by the total nameplate input rating) by that flue outlet’s respective component measurement and the sum of all of the products of the calculations for all of the flue outlets to determine the weighted-average values. Use the weighted-average values to determine flue loss, and whether equilibrium conditions are met before the official test period.

2. *Additional test measurements*

2.1 *Determination of flue CO<sub>2</sub> (carbon dioxide) or O<sub>2</sub> (oxygen) for oil-fired commercial warm air furnaces.* In addition to the flue temperature measurement specified in section 40.6.8 of UL 727–2018, locate one or two sampling tubes within six inches downstream from the flue temperature probe (as indicated on Figure 40.3 of UL 727–2018). If an open end tube is used, it must project into the flue one-third of the chimney connector diameter. If other methods of sampling the flue gas are used, place the sampling tube so as to obtain an average

sample. There must be no air leak between the temperature probe and the sampling tube location. Collect the flue gas sample at the same time the flue gas temperature is recorded. The CO<sub>2</sub> or O<sub>2</sub> concentration of the flue gas must be as specified by the manufacturer for the product being tested, with a tolerance of ±0.1 percent. Determine the flue CO<sub>2</sub> or O<sub>2</sub> using an instrument with a reading error no greater than ±0.1 percent.

2.2 *Procedure for the measurement of condensate for a gas-fired condensing commercial warm air furnace.* The test procedure for the measurement of the condensate from the flue gas under steady-state operation must be conducted as specified in sections 7.2.2.4, 7.8, and 9.2 of ASHRAE 103–2022 under the maximum rated input conditions. This condensate measurement must be conducted for an additional 30 minutes of steady-state operation after completion of the steady-state thermal efficiency test specified in section 1.1 of this appendix.

3. *Calculation of thermal efficiency*

3.1 *Gas-fired commercial warm air furnaces.* Use the calculation procedure specified in Section 5.40, Thermal efficiency, of ANSI Z21.47–2021. When determining the flue loss that is used in the calculation of thermal efficiency, the calculation method specified in Annex I of ANSI Z21.47–2021 shall be used.

3.2 *Oil-fired commercial warm air furnaces.* Calculate the percent flue loss (in percent of heat input rate) by following the procedure specified in sections C7.2.4, C7.2.5, and C7.2.6.2 of the AHRI 1500–2015. The thermal efficiency must be calculated as: Thermal Efficiency (percent) = 100 percent – flue loss (in percent).

4. *Procedure for the calculation of the additional heat gain and heat loss, and adjustment to the thermal efficiency, for a condensing commercial warm air furnace.*

4.1 Calculate the latent heat gain from the condensation of the water vapor in the flue gas, and calculate heat loss due to the flue condensate down the drain, as specified in sections 11.3.7.1 and 11.3.7.2 of ASHRAE 103–2022, with the exception that in the equation for the heat loss due to hot condensate flowing down the drain in section 11.3.7.2, the assumed indoor temperature of 70 °F and the temperature term T<sub>OA</sub> must be replaced by the measured room temperature as specified in section 5.2.8 of ANSI Z21.47.

4.2 *Adjustment to the thermal efficiency for condensing commercial warm air furnaces.* Adjust the thermal efficiency as calculated in section 3.1 of this appendix by adding the latent gain, expressed in percent, from the condensation of the water vapor in the flue gas, and subtracting the heat loss (due to the flue condensate down the drain), also expressed in percent, both as calculated in section 4.1 of this appendix, to obtain the thermal efficiency of a condensing furnace.

■ 6. Appendix B to subpart D of part 431 is added to read as follows:

## Appendix B to Subpart D of Part 431—Uniform Test Method for Measurement of the Energy Efficiency of Commercial Warm Air Furnaces (Thermal Efficiency Two)

**Note:** Manufacturers must use the results of testing under this appendix B to determine compliance with any standards for commercial warm air furnaces that use the thermal efficiency 2 (TE2) metric. In addition, manufacturers may optionally make representations of energy use or efficiency of this equipment using TE2 as determined using this appendix starting on July 3, 2023.

### *0. Incorporation by Reference.*

In § 431.75, DOE incorporates by reference the entire standard ANSI Z21.47–2021. However, only section 5.40 and Appendix J of ANSI Z21.47–2021 apply, as specified in sections 1.2 and 1.6 of this appendix.

### *1. Testing*

**1.1** Set up and test the unit according to sections 0 through 4 of appendix A to this subpart, while operating the unit at the maximum nameplate input rate (*i.e.*, full load). Calculate thermal efficiency (TE) using the procedure specified in sections 3 and 4 of appendix A to this subpart.

**1.2** For commercial warm air furnaces that are designed for outdoor installation (including but not limited to CWAFFs that are weatherized, or approved for resistance to wind, rain, or snow), or indoor installation within an unheated space (*i.e.*, isolated combustion systems), determine the jacket loss using Section 5.40 and Annex J of ANSI Z21.47–2021 while the unit is operating at the maximum nameplate input. The jacket shall consist of the surfaces surrounding the heating section of the furnace. The jacket includes all surfaces separating the heating section from the supply air, outside air, or condenser section, including the bottom surface separating the heating section from the basepan.

**1.3** For commercial warm air furnaces that are designed only for indoor installation within a heated space, jacket loss shall be zero. For commercial warm air furnaces that are designed for indoor installation within a heated or unheated space, multiply the jacket loss determined in section 1.2 of this appendix by 1.7. For all other commercial warm air furnaces, including commercial warm air furnaces that are designed for outdoor installation (including but not limited to CWAFFs that are weatherized, or approved for resistance to wind, rain, or snow), multiply the jacket loss determined in section 1.2 of this appendix by 3.3.

**1.4** Subtract the jacket loss determined in section 1.3 of this appendix from the TE determined in section 1.1 of this appendix to determine the full-load efficiency.

**1.5** Set up and test the unit according to sections 0 through 4 of appendix A to this subpart, while operating the unit at the nameplate minimum input rate (*i.e.*, part load). Calculate TE using the procedure specified in sections 3 and 4 of appendix A to this subpart.

**1.6** For commercial warm air furnaces that are designed for outdoor installation (including but not limited to CWAFFs that are

weatherized, or approved for resistance to wind, rain, or snow), or indoor installation within an unheated space (*i.e.*, isolated combustion systems), determine the jacket loss using Section 5.40 and Annex J of ANSI Z21.47–2021 while the unit is operating at the minimum nameplate input. Alternatively, the jacket loss determined in section 1.2 of this appendix at the maximum nameplate input may be used.

**1.7** For commercial warm air furnaces that are designed only for indoor installation within a heated space, jacket loss shall be zero. For commercial warm air furnaces that are designed for indoor installation within a heated or unheated space, multiply the jacket loss determined in section 1.6 of this appendix by 1.7. For all other commercial warm air furnaces, including commercial warm air furnaces that are designed for outdoor installation (including but not limited to CWAFFs that are weatherized, or approved for resistance to wind, rain, or snow), multiply the jacket loss determined in section 1.6 of this appendix by 3.3.

**1.8** Subtract the jacket loss determined in section 1.7 of this appendix from the TE determined in section 1.5 of this appendix to determine the part-load efficiency.

**1.9** Calculate TE2 by taking the average of the full-load and part-load efficiencies as determined in sections 1.4 and 1.8 of this appendix, respectively.

[FR Doc. 2023–11341 Filed 6–1–23; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. FAA–2023–0434; Product Identifier 91–NM–255–AD; Amendment 39–22450; AD 92–02–14 R1]**

**RIN 2120–AA64**

### Airworthiness Directives; Airbus SAS Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; removal.

**SUMMARY:** The FAA is removing Airworthiness Directive (AD) 92–02–14, which applied to certain Airbus SAS Model A320 series airplanes. AD 92–02–14 required inspection for correct installation of the flexible control cables on the overwing emergency escape slides. The FAA issued AD 92–02–14 to prevent failure of the overwing emergency escape slides to deploy, which would compromise use of the exit during an emergency. Since the FAA issued AD 92–02–14, no new occurrences of incorrect cable installations have been reported, and existing maintenance activities are adequate to prevent new occurrences.

Therefore, the FAA has determined that AD 92–02–14 is no longer necessary. Accordingly, AD 92–02–14 is removed.

**DATES:** This AD becomes effective June 2, 2023.

### ADDRESSES:

**AD Docket:** You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–0434; 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, mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone 206–231–3225; email [Dan.Rodina@faa.gov](mailto:Dan.Rodina@faa.gov).

### SUPPLEMENTARY INFORMATION:

#### Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by removing AD 92–02–14, Amendment 39–8150 (57 FR 5375, February 14, 1992) (AD 92–02–14). AD 92–02–14 applied to certain Airbus SAS Model A320 series airplanes. The NPRM was published in the **Federal Register** on March 24, 2023 (88 FR 17751). The NPRM was prompted by the determination that AD 92–02–14 is no longer necessary. AD 92–02–14 required inspection for correct installation of the flexible control cables on the overwing emergency escape slides. The FAA issued AD 92–02–14 to prevent failure of the overwing emergency escape slides to deploy, which would compromise use of the exit during an emergency. Since the FAA issued AD 92–02–14, no new occurrences of incorrect cable installations have been reported, and existing maintenance activities are adequate to prevent new occurrences. The NPRM proposed to remove AD 92–02–14. The FAA is issuing this AD to remove AD 92–02–14.

#### Discussion of Final Airworthiness Directive

#### Comments

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

### Justification for Determination of the Effective Date

Section 553(d) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to make rules effective in less than thirty days, upon a finding of “good cause.” Since the FAA issued AD 92–02–14, no new occurrences of incorrect cable installations have been reported, and existing maintenance activities are adequate to prevent new occurrences. Therefore, the FAA is issuing this AD to remove AD 92–02–14, and the FAA did not receive any adverse comments or useful information about this AD from U.S. operators that necessitates waiting 30 days for relief from this requirement. Accordingly, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

### Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. 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.

This AD removes all actions of AD 92–02–14. Therefore, the requirements of AD 92–02–14 are terminated.

### Related Costs of Compliance

This AD adds no costs. This AD removes AD 92–02–14 from 14 CFR part 39; therefore, operators are no longer required to show compliance with that 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.

### Regulatory Findings

The FAA 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 (AD) 92–02–14, Amendment 39–8150 (57 FR 5375, February 14, 1992), and
  - b. Adding the following new AD:

**92–02–14 R1 Airbus SAS:** Amendment 39–22450; Docket No. FAA–2023–0434; Product Identifier 92–NM–155–AD.

#### (a) Effective Date

This AD is effective June 2, 2023.

#### (b) Affected AD

This AD replaces AD 92–02–14, Amendment 39–8150 (57 FR 5375, February 14, 1992).

#### (c) Applicability

This action applies to Airbus Model A320–211, A320–212, and A320–231 airplanes, certificated in any category, manufacturer serial numbers 002 through 162 inclusive, 167, and 171 through 174 inclusive.

#### (d) Subject

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

#### (e) Terminating Action

This AD terminates all requirements of AD 92–02–14.

#### (f) Related Information

For more information about this AD, contact Dan Rodina, Aerospace Engineer,

International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone 206–231–3225; email [Dan.Rodina@faa.gov](mailto:Dan.Rodina@faa.gov).

#### (g) Material Incorporated by Reference

None.

Issued on May 26, 2023.

#### Ross Landes,

*Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2023–11705 Filed 6–1–23; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[Docket No. USCG–2023–0403]

### Special Local Regulations Northern California and Lake Tahoe Area Annual Marine Events; Escape From Alcatraz Swim, San Francisco, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notification of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the special local regulations for the annual Escape From Alcatraz Swim on June 11, 2023 to provide for the safety of life on navigable waterways in the San Francisco Bay during this event. Our regulation for marine events in Northern California identifies the regulated area for this event in San Francisco, CA. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or loitering or anchoring in the regulated area, unless authorized by the designated Patrol Commander (PATCOM) or other Federal, State, or local law enforcement agencies on scene to assist the Coast Guard in enforcing the regulated area.

**DATES:** The regulations in 33 CFR 100.1103 will be enforced for the location in table 1 to § 100.1103, item number 6, from 7 a.m. to 8:30 a.m. on June 11, 2023.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notification of enforcement, call, or email MST1 Shannon Curtaz-Milian, Sector San Francisco Waterways Management, U.S. Coast Guard; telephone (415) 399–7440, email [SFWaterways@uscg.mil](mailto:SFWaterways@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the special local regulations in 33 CFR 100.1103, table 1



to § 100.1103, item number 6, for the Escape From Alcatraz Swim regulated area from 7 a.m. to 8:30 a.m. on June 11, 2023. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within Northern California, § 100.1103, specifies the location of the regulated area for the Escape From Alcatraz Swim which encompasses portions of the San Francisco Bay. During the enforcement period, the regulated area will be in effect in the navigable waters, from surface to bottom, defined by a line drawn from Alcatraz Island to Saint Francis Yacht Club.

During the enforcement period, under the provisions of 33 CFR 100.1103(b), if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander (PATCOM) or any other Official Patrol, defined as a Federal, State, or local law enforcement agency on scene to assist the Coast Guard in enforcing the regulated area. The PATCOM or Official Patrol may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners. If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners or other marine broadcast may be used to grant general permission to enter the regulated area.

Dated: May 26, 2023.

**Taylor Q. Lam,**

*Captain, U.S. Coast Guard, Captain of the Port San Francisco.*

[FR Doc. 2023-11797 Filed 6-1-23; 8:45 am]

BILLING CODE 9110-04-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[Docket Number USCG-2023-0418]

RIN 1625-AA08

### Special Local Regulation; St. Mary's River, St. George's Creek, Piney Point, MD

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary special local regulation for certain waters of the St. Mary's River. This action is necessary to provide for the safety of life on these navigable waters located at Piney Point, MD, during a high-speed power boat demonstration event on June 10, 2023, and June 11, 2023. This regulation prohibits persons and vessels from being in the regulated area unless authorized by the Captain of the Port, Maryland-National Capital Region, or the Coast Guard Event Patrol Commander.

**DATES:** This rule is effective from 7:30 a.m. on June 10, 2023, through 5 p.m. on June 11, 2023. This rule will be enforced from 7:30 a.m. to 5 p.m. on June 10, 2023, and from 7:30 a.m. to 5 p.m. on June 11, 2023.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0418 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Marine Science Technician Petty Officer 2nd Class Hollie Givens, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410-576-2596, email [Hollie.A.Givens@uscg.mil](mailto:Hollie.A.Givens@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

CFR Code of Federal Regulations  
COTP Captain of the Port  
DHS Department of Homeland Security  
FR Federal Register  
TFR Temporary Final Rule  
PATCOM Coast Guard Patrol Commander  
§ Section  
U.S.C. United States Code

##### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to respond to the potential safety hazards

associated with the high-speed power boat race scheduled to take place on June 10, 2023, and June 11, 2023.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Immediate action is needed to respond to the potential safety hazards associated with the "Southern Maryland Boat Club Piney Point Rumble on the River Regatta" event.

##### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port, Sector Maryland-National Capital Region (COTP) has determined that potential hazards associated with the vintage and historic racing powerboat demonstration will be a safety concern for anyone intending to participate in this event and for vessels that operate within specified waters of the St. Mary's River. These hazards include risks of injury or death resulting from near or actual contact among participant vessels and spectator vessels or waterway users if normal vessel traffic were to interfere with the event. The purpose of this rule is to protect event participants, non-participants, and transiting vessels before, during, and after the scheduled event.

##### IV. Discussion of the Rule

This rule establishes special local regulations from 7:30 a.m. on June 10, 2023, through 5 p.m. on June 11, 2023. The regulations will be enforced from 7:30 a.m. to 5 p.m. on June 10, 2023, and from 7:30 a.m. to 5 p.m. on June 11, 2023. The regulated area will cover all navigable waters of St. George Creek within an area bounded by a line connecting the following points: from the shoreline at Cedar Point at position latitude 38°09'03.4" N, longitude 076°29'55.7" W; thence south along the shoreline to Coade Bar at latitude 38°08'22.5" N, longitude 076°29'19.9" W; thence southeast across St. George Creek to Dodson Point at latitude 38°08'03.8" N, longitude 076°29'44.6" W; thence north along the shoreline and the eastern extent of the St. George Island (SR-249) Bridge to Long bar (at the entrance to St. George Harbor) at latitude 38°08'50.6" N, longitude 076°30'13.0" W; thence northeast across St. George Creek to and terminating at the point of origin. The regulated area is approximately 1,750 yards in length and 940 yards in width.

This regulation provides additional information about areas within the regulated area, and their definitions and the restrictions that will apply to mariners. These areas include "Race



Area,” “Buffer Area,” and “Spectator Area.”

The duration of the special local regulation and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after the high-speed power boat event scheduled to take place from 8 a.m. to 4 p.m. on June 10, 2023, and from 8 a.m. to 4 p.m. on June 11, 2023. The COTP and the Coast Guard Event PATCOM will have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area will be required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for Southern Maryland Boat Club Piney Point Rumble on the River Regatta participants and vessels already at berth, a vessel or person will be required to get permission from the COTP or Event PATCOM before entering the regulated area. Vessel operators will be able to request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF-FM channel 16. Vessel traffic will be able to safely transit the regulated area must operate at safe speed that minimizes wake. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols will be considered a spectator. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign. Official Patrols enforcing this regulated area can be contacted on VHF-FM channel 16 and channel 22A.

If permission is granted by the COTP or Event PATCOM, a person or vessel will be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels will be required to operate at a safe speed that minimizes wake while within the regulated area in a manner that will not endanger event participants or any other craft. A spectator vessel must not loiter within the navigable channel while within the regulated area. Official patrol vessels will direct spectators to the designated spectator area. Only participant vessels and official patrol vessels will be allowed to enter the race area. The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a

marine information broadcast on VHF-FM marine band radio announcing specific event dates and times.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and duration of the regulated area, which will impact a small, designated area of St. George Creek for 19 total enforcement hours. This waterway supports mainly recreational vessel traffic with peak vessel traffic occurring during the summer season. Although this regulated area extends across the entire width of the waterway, the rule will allow vessels and persons to seek permission to enter the regulated area if it is safe to do so. The Event PATCOM will allow vessel traffic to transit the eastern portion of the waterway away from the event area when it is safe to do so. Vessels given permission to enter the regulated area must operate at a safe speed that minimizes wake and must not loiter within the navigable channel while within the regulated area. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the regulated area.

### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area for 19 total enforcement hours. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

#### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T05–0418 to read as follows:

#### § 100.T05–0418 Southern Maryland Boat Club Piney Point Regatta, St. Mary's River, St. George Creek, Piney Point, MD.

(a) *Locations.* All coordinates are based on North American Datum of 1983 (NAD 1983).

(1) *Regulated area.* All navigable waters of St. George Creek, within an area bounded by a line connecting the following points: from the shoreline at Cedar Point at position latitude 38°09'03.4" N, longitude 076°29'55.7" W; thence south along the shoreline to Coade Bar at latitude 38°08'22.5" N, longitude 076°29'19.9" W; thence southeast across St. George Creek to Dodson Point at latitude 38°08'03.8" N, longitude 076°29'44.6" W; thence north along the shoreline and the eastern extent of the St. George Island (SR–249) Bridge to Long Bar (at the entrance to St. George Harbor) at latitude 38°08'50.6" N, longitude 076°30'13.0" W; thence northeast across St. George Creek to and terminating at the point of origin. The race area, buffer area, and spectator area are within the regulated area.

(2) *Race area.* The race area is a polygon in shape measuring approximately 700 yards in length by 240 yards in width. The area is bounded by a line commencing near Hodgson Point at position latitude 38°08'39.80" N, longitude 076°30'3.13" W, thence southeast to latitude 38°08'21.95" N, longitude 076°29'49.31" W; thence southwest to latitude 38°08'18.20" N, longitude 076°29'56.98" W, thence northwest to latitude 38°08'36.10" N, longitude 076°30'10.84" W; thence northeast to and terminating at the point of origin.

(3) *Buffer area.* The buffer area is a polygon in shape measuring approximately 90 yards in all directions surrounding the entire race area described in the preceding paragraph of this section. The area is bounded by a line commencing near Hodgson Point at position latitude 38°08'43.58" N, longitude 076°30'02.12" W; thence southeast to latitude 38°08'21.12" N, longitude 076°29'44.81" W, thence southwest to latitude 38°08'14.68" N, longitude 076°29'58.24" W; thence northwest to latitude 38°08'35.95" N, longitude 076°30'14.33" W, thence northeast to and terminating at the point of origin.

(4) *Spectator area.* The designated spectator area is a polygon in shape with its length measuring approximately 700 yards and its width measuring approximately 300 yards at its northern portion and 150 yards at its southern portion. The area is bounded by a line commencing at position latitude 38°08'46.86" N, longitude 076°29'51.07" W; thence southeast to latitude 38°08'38.11" N, longitude 076°29'44.27" W; thence south to latitude 38°08'26.81" N, longitude 076°29'43.01" W; thence southwest to latitude 38°08'23.50" N, longitude 076°29'46.50" W, thence northwest to latitude 38°08'41.28" N, longitude 076°30'00.18" W, thence northeast to and terminating at the point of origin.

(b) *Definitions.* As used in this section—

*Buffer area* is a neutral area that surrounds the perimeter of the race area within the regulated area described by this section. The purpose of a buffer area is to minimize potential collision conflicts with marine event participants or high-speed powerboats and spectator vessels or nearby transiting vessels. This area provides separation between a race area and a specified spectator area or other vessels that are operating in the vicinity of the regulated area established by the special local regulations in this section.

*Captain of the Port (COTP) Maryland-National Capital Region* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

*Event Patrol Commander or Event PATCOM* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

*Official patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

*Participant* means all persons and vessels registered with the event sponsor as participating in the "Southern Maryland Boat Club Piney Point Rumble on the River Regatta" event, or otherwise designated by the event sponsor as having a function tied to the event.

*Race area* is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a race area within the regulated area defined by this section.

*Spectator* means a person or vessel not registered with the event sponsor as

participants or assigned as official patrols.

*Spectator area* is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a spectator area within the regulated area defined by this section.

(c) *Special local regulations.* (1) The COTP Maryland-National Capital Region or Event PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area described in paragraph (a)(1) of this section when hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or Event PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or Event PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM, and official patrol vessels enforcing the regulated area, can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz) and channels 22A (157.1 MHz). If permission is granted, the spectator must enter the designated Spectator Area or pass directly through the regulated area as instructed by Event PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulate area.

(4) Only participant vessels and official patrol vessels are allowed to enter and remain within the race area.

(5) Only participant vessels and official patrol vessels are allowed to enter and transit directly through the buffer area, in order to arrive at or depart from the race area.

(6) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or Event PATCOM before doing so. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel

16 (156.8 MHz) or the Event PATCOM on Marine Band radio, VHF-FM channel 16 (156.8 MHz).

(7) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event dates and times.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other Federal, state, and local agencies.

(e) *Enforcement periods.* This section will be enforced from 7:30 a.m. to 5 p.m. on June 10, 2023, and from 7:30 a.m. to 5 p.m. on June 11, 2023.

Dated: May 25, 2023.

**David E. O'Connell,**

*Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.*

[FR Doc. 2023-11732 Filed 6-1-23; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2022-0989]

RIN 1625-AA09

#### Drawbridge Operation Regulation; Chicago River, Chicago, IL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is temporarily modifying the operating schedule that governs the Dearborn Street Bridge, mile 1.13, over the Main Branch of the Chicago River at Chicago, Illinois. During this maintenance period, the bridge need only operate one leaf while the other leaf remains secured to masted navigation. Vessels able to pass under the bridge without an opening may do so at any time.

**DATES:** This temporary final rule is effective from noon on June 1, 2023, through noon on November 1, 2023.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type USCG-2022-0035 in the "SEARCH" box and click "SEARCH." In the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary final rule, call or email: Mr. Lee D. Soule, Bridge Management Specialist,

Ninth Coast Guard District; telephone 216-902-6085, email [Lee.D.Soule@uscg.mil](mailto:Lee.D.Soule@uscg.mil).

## SUPPLEMENTARY INFORMATION:

### I. Table of Abbreviations

CFR Code of Federal Regulations  
 DHS Department of Homeland Security  
 FR Federal Register  
 IGLD 85 International Great Lakes Datum of 1985  
 LWD Low Water Datum based on IGLD 85  
 Pub. L. Public Law  
 § Section  
 U.S.C. United States Code

### II. Background Information and Regulatory History

On April 12, 2023, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** (88 FR 21938) entitled Drawbridge Operation Regulation; Chicago River, Chicago, IL. There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this maintenance period. During the comment period that ended on May 12, 2023, we did not receive any comments. The vessels traveling the Chicago River that require two leaf operations have the option to detour through the Calumet River and arrive at the same destination.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

The Dearborn Street Bridge, mile 1.13, spans the Main Branch of the Chicago River at Chicago, Illinois. The Dearborn Street Bridge, mile 1.13, provides a horizontal clearance of 200 feet and a vertical clearance of 22 feet above LWD. The bridges of Chicago are historic and all of them are over 100 years old and require frequent maintenance and repairs that occur with little warning. Typically, these repairs must be attended to immediately to protect the health and welfare of pedestrians crossing the bridges each day. The current bridge regulations for the Chicago River are contained in 33 CFR 117.391 and allows the bridges to open on signal if a 12-hour advance notice is provided by commercial vessels and a 20-hour advance notice by recreational vessel during posted times. The Chicago River bridges operate infrequently as almost all vessels can pass through the bridges without an opening. The exceptions are recreational sailing vessels that pass the bridge in City of Chicago sponsored flotillas twice a year that can pass safely with one leaf open. Commercial vessels transits that require both bridge leaves to open are rare, occurring less than once a month on

average. All vessels have the opportunity to detour through the Calumet River.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because action is needed by June 1, 2023 so that bridge maintenance can be conducted.

#### IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published on April 12, 2023. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a temporary change to the operation of the Dearborn Street Bridge, mile 1.13, over the Main Branch of the Chicago River at Chicago, Illinois. During the period from noon on June 1, 2023, through noon on November 1, 2023, the Dearborn Street Bridge, mile 1.13, need only operate one leaf for the passage of vessels, while the other leaf is secured to masted navigation for maintenance. The effect of not performing the maintenance would be to deny the bridge to an estimated 10,000 persons commuting to work daily if repairs and required maintenance are not started in a timely manner.

#### V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

##### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the bridge through one leaf and that most vessels can pass under the bridge without an opening.

##### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the

potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

##### C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

##### D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination

with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

##### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

##### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

##### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. In § 117.391, effective June 1, 2023, through noon on November 1, 2023, temporarily add paragraph (f) to read as follows:

\* \* \* \* \*

(f) The Dearborn Street Bridge, mile 1.13, need only operate one leaf for the passage of vessels, while the other leaf is secured to masted navigation for maintenance.

Dated: May 30, 2023.

**E.J. Doucette,**

*Captain, U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.*

[FR Doc. 2023–11824 Filed 5–31–23; 4:15 pm]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2023–0458]

#### Safety Zone; Military Ocean Terminal Concord Safety Zone, Suisun Bay, Military Ocean Terminal Concord, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notification of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the safety zone in the navigable waters of Suisun Bay, off Concord, CA, in support of explosive on-loading to Military Ocean Terminal Concord (MOTCO) from June 4, 2023, through June 10, 2023. This safety zone is necessary to protect personnel, vessels, and the marine environment from potential explosion within the explosive arc. The safety zone is open to all persons and vessels for transitory use, but vessel operators desiring to anchor or otherwise loiter within the safety zone must obtain the permission of the Captain of the Port San Francisco or a designated representative. All persons and vessels operating within the safety zone must comply with all directions given to them by the Captain of the Port San Francisco or a designated representative.

**DATES:** The regulations in 33 CFR 165.1198 will be enforced from 12:01 a.m. on June 4, 2023, until 11:59 p.m. on June 10, 2023.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notification of enforcement, call, or email Lieutenant William K. Harris, U.S. Coast Guard Sector San Francisco, Waterways Management Division, at 415–399–7443, *SFWaterways@uscg.mil*.

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone in 33 CFR 165.1198 for the Military Ocean Terminal Concord, CA (MOTCO) regulated area from 12:01 a.m. on June 4, 2023, until 11:59 p.m. on June 10, 2023, or as announced via marine local broadcasts. This safety zone is necessary to protect personnel, vessels, and the marine environment from potential explosion within the explosive arc. The regulation for this safety zone, § 165.1198, specifies the location of the safety zone which encompasses the navigable waters in the area between 500 yards of MOTCO Pier 2 in position 38°03'30" N, 122°01'14" W and 3,000 yards of the pier. During the enforcement periods, as reflected in § 165.1198(d), if you are the operator of a vessel in the regulated area you must comply with the instructions of the COTP or the designated on-scene patrol personnel. Vessel operators desiring to anchor or otherwise loiter within the safety zone must contact Sector San Francisco Vessel Traffic Service at 415–556–2760 or VHF Channel 14 to obtain permission.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via marine information broadcasts.

Dated: May 26, 2023.

**Taylor Q. Lam,**

*Captain, U.S. Coast Guard, Captain of the Port San Francisco.*

[FR Doc. 2023–11792 Filed 6–1–23; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG–2023–0415]

RIN 1625–AA00

#### Safety Zone; Sausalito Fireworks Display; San Francisco Bay, Sausalito, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of the San

Francisco Bay, in Sausalito, CA in support of a fireworks display on June 10, 2023. The safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards created by pyrotechnics. Unauthorized persons or vessels are prohibited from entering, transiting through, or remaining in the safety zone without the permission of the Captain of the Port San Francisco or a designated representative.

**DATES:** This rule is effective from 8:30 p.m. until 9:35 p.m. on June 10, 2023.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2023–0415 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant William K. Harris, U.S. Coast Guard Sector San Francisco, Waterways Management Division, at 415–399–7443, *SFWaterways@uscg.mil*.

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

CFR Code of Federal Regulations  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
§ Section  
U.S.C. United States Code

##### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard did not receive final details for this even until May 2, 2023. It is impracticable to go through the full notice and comment rulemaking process because the Coast Guard must establish this safety zone by June 10, 2023, and lacks sufficient time to provide a reasonable comment period and to consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for

making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because action is necessary to protect personnel, vessels, and the marine environment from the potential safety hazards associated with the fireworks display in Sausalito, CA on June 10, 2023.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 46 U.S.C. 70034. The Captain of the Port (COTP) San Francisco has determined that potential hazards associated with the scheduled Fotsch Engagement Fireworks display on June 10, 2023, will be a safety concern for anyone within a 600-foot radius of the fireworks display on the pier starting 30 minutes before the fireworks display us scheduled to commence and ending 30 minutes after the conclusion of the fireworks display. For this reason, this temporary safety zone is needed to protect personnel, vessels, and the marine environment in the navigable waters during the fireworks display.

### IV. Discussion of the Rule

This rule establishes a temporary safety zone from 8:30 p.m. until 9:35 p.m. on June 10, 2023, from 30 minutes prior to the start of the fireworks display, and until 30 minutes after the completion of the fireworks display. At 8:30 p.m., which is 30 minutes prior to the commencement of the 5-minute fireworks display, the safety zone will encompass the navigable waters around the pier, from surface to bottom, within a circle formed by connecting all points 600 feet from the circle center at approximately 37°50'46.07" N, 122°28'37.35" W (NAD 83). The safety zone will terminate at 9:35 p.m. on June 10, 2023, or as announced via Marine Information Broadcast.

This regulation is necessary to keep persons and vessels away from the immediate vicinity of the fireworks display site. Except for persons or vessels authorized by the COTP or the COTP's designated representative, no person or vessel may enter or remain in a restricted area. A "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the Safety Zone. This regulation is necessary to ensure the safety of participants, spectators, and transiting vessels.

### V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

#### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the limited duration and narrowly tailored geographic area of the safety zone. Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterways users will be notified to ensure the safety zone will result in minimum impact. The vessels desiring to transit through or around the temporary safety zone may do so upon express permission from the COTP or the COTP's designated representative.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions

concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure,

we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone in the navigable waters surrounding a pier within San Francisco Bay off Sausalito, CA. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS

- 1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

- 2. Add § 165.T11–127 to read as follows:

#### § 165.T11–127 Safety Zone; Sausalito Fireworks Display; San Francisco Bay, Sausalito, CA.

(a) *Locations.* The following area is a safety zone: all navigable waters of the San Francisco Bay, from surface to

bottom, within a circle formed by connecting all points 600 feet out from 37°50'46.07" N, 122°28'37.35" W (NAD 83) between 8:30 p.m. and 9:35 p.m. on June 10, 2023, or as announced by Marine Information Bulletin.

(b) *Definitions.* As used in this section, designated representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, or a Federal, State, or local officer designated by or assisting the Captain of the Port (COTP) San Francisco in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorize by the COTP or the COTP’s designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP’s designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or COTP’s designated representative to obtain permission to do so. Vessel operators given permission to enter in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP’s designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

(d) *Enforcement period.* This section will be enforced from 8:30 p.m. until 9:35 p.m. on June 10, 2023.

(e) *Information broadcasts.* The COTP or the COTP’s designated representative will notify the maritime community of periods during which this zone will be enforced, in accordance with 33 CFR 165.7.

Dated: May 26, 2023.

**Taylor Q. Lam,**

*Captain, U.S. Coast Guard, Captain of the Port San Francisco.*

[FR Doc. 2023–11795 Filed 6–1–23; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG–2023–0454]

RIN 1625–AA00

#### Safety Zone; San Francisco Giants Drone Display; San Francisco Bay, San Francisco, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the navigable waters of the San Francisco Bay, outside McCovey Cove, in San Francisco, CA in support of an aerial drone display on June 8 through 9, 2023. The safety zone is necessary to protect the personnel, vessels, and the marine environment from potential hazards created by drones. Unauthorized persons or vessels are prohibited from entering, transiting through, or remaining in the safety zone without the permission of the Captain of the Port San Francisco or designated representative.

**DATES:** This rule is effective from 9 p.m. on June 8, 2023, until 10:15 p.m. on June 9, 2023. The regulations in this rule will be enforced from 9 p.m. until 10:15 p.m. on both days.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2023–0454 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant William K. Harris, U.S. Coast Guard Sector San Francisco, Waterways Management Division, at 415–399–7443, [SFWaterways@uscg.mil](mailto:SFWaterways@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

CFR Code of Federal Regulations  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
§ Section  
U.S.C. United States Code

##### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5



U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard did not receive final details for this event until May 22, 2023. It is impracticable to go through the full notice and comment rulemaking process because the Coast Guard must establish this safety zone by June 8 and 9, 2023, and lacks sufficient time to provide a reasonable comment period and to consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because action is necessary to protect personnel, vessels, and the marine environment from the potential safety hazards associated with the aerial drone show outside McCovey Cove in San Francisco, CA starting on June 8, 2023.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority 46 U.S.C. 70034. The Captain of the Port (COTP) San Francisco has determined that potential hazards associated with the scheduled practice and aerial drone display for the San Francisco Giants on June 8–9, 2023, will be a safety concern to anyone within a 200-foot radius of Pier 48 starting 30 minutes before the practice and display is scheduled to commence and ending 30 minutes after the conclusion of the display. For this reason, this temporary safety zone is needed to protect personnel, vessels, and the marine environment in the navigable waters around Pier 48 during the aerial drone display.

### IV. Discussion of the Rule

This rule establishing a temporary safety zone from 9 p.m. on June 8, 2023 until 10:15 p.m. on June 9, 2023, during the practice and performance of an aerial drone display. This rule will be enforced from 9 p.m. until 10:15 p.m. on both days. The practice period for the drone display is scheduled to commence at 9:30 p.m. and end approximately at 9:45 p.m. on June 8, 2023, outside of McCovey Cove within the San Francisco Bay in San Francisco, CA. The drone display is scheduled to

commence at the conclusion of the San Francisco Giants baseball game at approximately 9:30 p.m. and end approximately at 9:45 p.m. on June 9, 2023.

At 9 p.m. on both June 8, and June 9, 2023, which is 30 minutes prior to the commencement of the 15-minute aerial drone display, the safety zone will encompass the navigable waters around and under Pier 48, from surface to bottom, within a circle formed by connecting all points 200 feet from 37°46′34.3″ N, 122°23′11.3″ W (NAD 83), and thence along the shoreline. The safety zone enforcement will terminate at 10:15 p.m. on both June 8, and June 9, 2023, or as announced via Marine Information Broadcast.

This regulation is necessary to keep persons and vessels away from the immediate vicinity of the aerial drone display site. Except for persons or vessels authorized by the COTP or the COTP’s designated representative, no person or vessel may enter or remain in a restricted area. A “designated representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the Safety Zone. This regulation is necessary to ensure the safety of the participants, spectators, and transiting vessels.

### V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

#### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the limited duration and narrowly tailored geographic area of the safety zone. The safety zone will only be enforced in a small waterway for less than 2 hours on two days. Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant

because the local waterways users will be notified to ensure the safety zone will result in minimal impact. The vessels desiring to transit through or around the temporary safety zone may do so upon express permission from the COTP or the COTP’s designated representative.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).



### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone in the navigable waters around Pier 48 in McCovey Cove within San Francisco Bay. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions

on locating the docket, see the **ADDRESSES** section of this preamble.

### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

- 1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

- 2. Add § 165.T11–129 to read as follows:

#### § 165.T11–129 Safety Zone; San Francisco Giants Drone Display; San Francisco Bay, San Francisco, CA.

(a) *Locations.* The following area is a safety zone: all navigable waters of the San Francisco Bay, from surface to bottom, within a circle formed by connecting all points 200 feet out from Pier 48 at approximate position 37° 46'34.3" N, 122° 23'11.3" W (NAD 83).

(b) *Definitions.* As used in this section, “designated representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the Captain of the Port (COTP) San Francisco in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP’s designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP’s designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP’s designated representative to obtain

permission to do so. Vessel operators given permission to enter the safety zone must comply with all lawful orders or directions given to them by the OTP or the COTP’s designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

(d) *Enforcement period.* This section will be enforced from 9 p.m. until 10:15 p.m. on June 8, 2023, and June 9, 2023.

(e) *Information broadcasts.* The COTP or the COTP’s designated representative will notify the maritime community of periods during which this zone will be enforced, in accordance with 33 CFR 165.7.

Dated: May 26, 2023.

**Taylor Q. Lam,**

*Captain, U.S. Coast Guard, Captain of the Port San Francisco.*

[FR Doc. 2023–11800 Filed 6–1–23; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Parts 1 and 41

[Docket No. PTO–P–2023–0005]

RIN 0651–AD66

#### Reducing Patent Fees for Small Entities and Micro Entities Under the Unleashing American Innovators Act of 2022; Correction

**AGENCY:** United States Patent and Trademark Office, Department of Commerce.

**ACTION:** Final rule; correction.

**SUMMARY:** The United States Patent and Trademark Office (Office or USPTO) makes a correction to a final rule that published on March 22, 2023, amending patent fees for small and micro entities set forth in its regulations to implement the provisions of the Consolidated Appropriations Act, 2023—which included the Unleashing American Innovators Act of 2022 (UAIA). This rule fixes an error in the applicability of certain amendments to international applications under the Patent Cooperation Treaty.

**DATES:** This correction is effective June 2, 2023.

**FOR FURTHER INFORMATION CONTACT:** Brendan Hourigan, Director of the Office of Planning and Budget, by telephone at (571) 272–8966; or Dianne Buie, Director, Forecasting and Analysis Division, by telephone at (571) 272–6301.

**SUPPLEMENTARY INFORMATION:** The Office makes a correction to the final rule that published on March 22, 2023 (88 FR 17147), to clarify that the new fee amounts in 37 CFR 1.445(a)(5) and 1.482 applying to international applications under the Patent Cooperation Treaty (PCT) are implemented as of April 1, 2023, and that the new fee amounts are not limited to those international applications having a receipt date on or after April 1, 2023. This correction is consistent with the information provided in the **SUPPLEMENTARY INFORMATION** section of the March 22, 2023, final rule on page 17148, in the third column (“The changes to § 1.445(a)(5) and § 1.482 shall take effect on April 1, 2023.”) and is in accord with the PCT and the UAIA.

The applicability portion of the **DATES** section in the March 22, 2023, final rule is corrected to remove the first sentence stating the amendments to 37 CFR 1.445(a)(5) and 1.482 are limited to those international applications having a receipt date on or after April 1, 2023, and to replace it with a sentence indicating that the amendments to 37 CFR 1.445(a)(5) and 1.482 are applicable to international applications under the Patent Cooperation Treaty (PCT) as of April 1, 2023.

### Rulemaking Considerations

*A. Administrative Procedure Act (APA):* This final rule implements a correction to a final rule amending the regulations to implement section 107 of the UAIA on December 29, 2022, which amended 35 U.S.C. 41(h) and section 10(b) of the America Invents Act (AIA), Public Law 112–29, 125 Stat. 284, to require the Office to reduce patent fees for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents by 60 percent for small entities and by 80 percent for micro entities. The change in this final rule implements a correction that involves the rules of agency practice and procedure, and/or interpretive rules. See *Perez v. Mortgage Bankers Ass’n*, 135 S. Ct. 1199, 1204 (2015) (interpretive rules “advise the public of the agency’s construction of the statutes and rules which it administers”) (citations and internal quotation marks omitted); *Nat’l Org. of Veterans’ Advocates v. Sec’y of Veterans Affairs*, 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive); *Bachow Commc’ns Inc. v. FCC*, 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp. v. Shalala*, 244 F.3d 342, 350 (4th Cir. 2001) (rules

for handling appeals are procedural where they do not change the substantive standard for reviewing claims).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. See *Perez*, 135 S. Ct. at 1206 (notice-and-comment procedures are not required when an agency “issue[s] an initial interpretive rule” or when it amends or repeals that interpretive rule); *Cooper Techs. Co. v. Dudas*, 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice-and-comment rulemaking for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice” (quoting 5 U.S.C. 553(b)(A))).

In addition, the Office finds good cause pursuant to the authority at 5 U.S.C. 553(b)(B) and (d)(3) to dispense with prior notice and opportunity for public comment, and to publish this final rule with an immediate effective date, because such procedures are impracticable and contrary to the public interest. This final rule corrects an error in the March 22, 2023, final rule’s discussion under the **DATES** heading regarding the implementation of the new fees in 37 CFR 1.445(a)(5) and 1.482 that apply to international applications under the Patent Cooperation Treaty (PCT). The March 22, 2023, final rule incorrectly indicated that these new fees apply to international applications under the PCT having a receipt date on or after April 1, 2023. The final rule should have indicated that these new fees are implemented as of April 1, 2023, and that they are not limited to those international applications having a receipt date on or after April 1, 2023. If this correction were delayed to allow for prior notice and opportunity for public comment and a 30-day delay in effective date, it would cause confusion as to when and to which applications the new fees in 37 CFR 1.445(a)(5) and 1.482 apply. Thus, the USPTO finds good cause to implement this final rule without prior notice and opportunity for comment and with immediate effect.

*B. Regulatory Flexibility Act:* As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a Regulatory Flexibility Act analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. See 5 U.S.C. 603.

*C. Executive Order 12866 (Regulatory Planning and Review):* This rulemaking has been determined to be not

significant for purposes of E.O. 12866 (Sept. 30, 1993).

*D. Executive Order 13563 (Improving Regulation and Regulatory Review):* The Office has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the Office has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of this final rule; (2) tailored this final rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

*E. Executive Order 13132 (Federalism):* This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

*F. Executive Order 13175 (Tribal Consultation):* This rulemaking will not: (1) have substantial direct effects on one or more Indian tribes, (2) impose substantial direct compliance costs on Indian tribal governments, or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

*G. Executive Order 13211 (Energy Effects):* This rulemaking is not a significant energy action under Executive Order 13211 (May 18, 2001) because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211.

*H. Executive Order 12988 (Civil Justice Reform):* This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

*I. Executive Order 13045 (Protection of Children):* This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

*J. Executive Order 12630 (Taking of Private Property):* This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

*K. Congressional Review Act:* Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this rulemaking are not expected to result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not expected to result in a “major rule” as defined in 5 U.S.C. 804(2).

*L. Unfunded Mandates Reform Act of 1995:* The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, of \$100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of \$100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

*M. National Environmental Policy Act:* This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

*N. National Technology Transfer and Advancement Act:* The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

*O. Paperwork Reduction Act:* This final rule does not involve information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Notwithstanding any other provision of 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 Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

*P. E-Government Act Compliance:* The USPTO is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

#### Correction

In FR Doc. 2023–05382, appearing on page 17147 in the **Federal Register** of Wednesday, March 22, 2023, on page 17147, in the third column, the “*Applicability*” paragraph in the **DATES** section is revised to read as follows:

**DATES:** \* \* \*

*Applicability:* The new fee amounts in §§ 1.445(a)(5) and 1.482 applying to international applications under the Patent Cooperation Treaty (PCT) are implemented as of April 1, 2023. The amendments to § 1.18(b)(1) shall apply to those international design applications under the Hague Agreement having a date of international registration on or after May 1, 2023.

**Katherine K. Vidal,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2023–11759 Filed 6–1–23; 8:45 am]

**BILLING CODE 3510–16–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R09–OAR–2021–0923; FRL–9882–02–R9]

### Air Plan Approval; California; Mojave Desert Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to

approve a revision to the Mojave Desert Air Quality Management District (MDAQMD or “District”) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO<sub>x</sub>) from Portland cement kilns. We are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act). Approving this rule corrects a deficiency identified in MDAQMD’s reasonably available control technology (RACT) demonstrations for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) and the 2008 8-hour ozone NAAQS.

**DATES:** This rule is effective July 3, 2023.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2021–0923. 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:** Elijah Gordon, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3158 or by email at [gordon.elijah@epa.gov](mailto:gordon.elijah@epa.gov).

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

#### Table of Contents

- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

#### I. Proposed Action

On July 15, 2022 (87 FR 42422), the EPA proposed to approve the following rule into the California SIP.

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Amended	Submitted
MDAQMD .....	1161	Portland Cement Kilns .....	01/22/2018	05/23/2018

As mentioned in our proposed action, submitted Rule 1161 meets the requirement to correct a deficiency identified in the EPA’s February 12, 2018 (83 FR 5921) partial conditional approval of MDAQMD’s RACT demonstrations for the 1997 8-hour ozone NAAQS and the 2008 8-hour ozone NAAQS. The partial conditional approval was based, in part, on commitments from MDAQMD to revise and submit amendments to Rule 1161 that would meet current RACT requirements. Revisions to Rule 1161, submitted to the EPA on May 23, 2018, addressed this deficiency by establishing a more stringent NO<sub>x</sub> limit for Portland cement kilns. These revisions fulfill the commitment made by MDAQMD and the California Air Resources Board, with respect to Rule 1161, necessary for the EPA to fully approve the rule. Our proposed action contains more information on the rule and our evaluation.

**II. Public Comments and EPA Responses**

The EPA’s proposed action provided a 30-day public comment period. During this period, we received no comments.

**III. EPA Action**

No comments were submitted. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving this rule into the California SIP. The January 22, 2018 version of Rule 1161 will replace the previously approved version of this rule in the SIP. This action corrects the deficiency related to Rule 1161 that was previously identified in the EPA’s action on MDAQMD’s RACT demonstrations for the 1997 8-hour ozone NAAQS and the 2008 8-hour ozone NAAQS.

**IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of MDAQMD Rule 1161, “Portland Cement Kilns,” amended on January 22, 2018, which regulates NO<sub>x</sub> emissions from the operation of cement kilns. The EPA has made, and will continue to make, these documents available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region IX Office (please contact the

person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

**V. Statutory and Executive Order Reviews**

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, 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. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The 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. 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 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 August 1, 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, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: May 25, 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 paragraphs (c)(300)(i)(A)(2) and (c)(518)(i)(A)(9) to read as follows:

##### § 52.220 Identification of plan—in part.

\* \* \* \* \*

(c) \* \* \*

(300) \* \* \*

(i) \* \* \*

(A) \* \* \*

(2) Previously approved on February 27, 2003 in paragraph (c)(300)(i)(A)(1) of this section and now deleted with replacement in paragraph (c)(518)(i)(A)(9): Rule 1161, amended on March 25, 2002.

\* \* \* \* \*

(518) \* \* \*

(i) \* \* \*

(A) \* \* \*

(9) Rule 1161, “Portland Cement Kilns,” amended on January 22, 2018.

\* \* \* \* \*

#### § 52.248 [Amended]

■ 3. Section 52.248 is amended by removing and reserving paragraph (d)(1)(ix).

[FR Doc. 2023–11683 Filed 6–1–23; 8:45 am]

**BILLING CODE 6560–50–P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R07–OAR–2023–0193; FRL–10815–02–R7]

#### Air Plan Approval; State of Missouri; Restriction of Particulate Matter to the Ambient Air Beyond the Premises of Origin

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State Implementation Plan (SIP) for the State of Missouri. This final action will amend the SIP to approve revision submitted by the State of Missouri on March 7, 2019, to a State regulation for the Restriction of Particulate Matter to the Ambient Air Beyond the Premises of Origin. These revisions include adding definitions that are specific to the rule, restructures the rule into the standard rule organization format, and removes unnecessary words. The revisions are administrative in nature and do not impact the stringency of the SIP or air quality. The EPA’s approval of this rule revision is in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on July 3, 2023.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2023–0193. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, *i.e.*, 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 [www.regulations.gov](http://www.regulations.gov) or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

**FOR FURTHER INFORMATION CONTACT:** Steven Brown, Environmental

Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7718; email address: [brown.steven@epa.gov](mailto:brown.steven@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” and “our” refer to EPA.

#### Table of Contents

- I. What is being addressed in this document?
- II. Have the requirements for approval of a SIP revision been met?
- III. What action is the EPA taking?
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

#### I. What is being addressed in this document?

The EPA is approving a SIP revision submitted by the State of Missouri on March 7, 2019. Missouri requested the EPA to approve revisions to their SIP by replacing the existing rule, Title 10, Division 10 of the Code of State Regulations (CSR), (10 CSR 10–6.170) “Restriction of Particulate Matter to the Ambient Air Beyond the Premises of Origin”, with a revised and restructured version of the same rule. The State has revised the rule to add definitions specific to this rule, organize the rule into State standard rule organizational format, and remove unnecessary words. After review and analysis of the revisions, the EPA conclude that these changes do not have adverse effects on air quality. The full text of these changes can be found in the State’s submission, which is included in the docket for this action. The EPA’s analysis of the revisions can be found in the technical support document (TSD), also included in the docket.

#### II. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from 8/01/2018 to 8/30/2018 and received a total of eight comments. The comments and responses are summarized in the EPA’s Notice of Proposed Rulemaking (NPRM) published, April 14, 2023 (88 FR 22976). The EPA’s NPRM and supporting information contained in the docket were made available for public comment from April 14, 2023, to May 15, 2023 (88 FR 22976). During this period, no comments were received.

In addition, as explained above and in more detail in the technical support document, which is part of this docket, the revision meets the substantive SIP

requirements of the CAA, including section 110 and implementing regulations.

### III. What action is the EPA taking?

The EPA is taking final action to amend the Missouri SIP by approving the State's revisions to rule 10 CSR 10–6.170 “Restriction of Particulate Matter to the Ambient Air Beyond the Premises of Origin.” Approval of these revisions will ensure consistency between State and federally approved rules. As described in the NPRM (88 FR 22976), and the TSD, the EPA has determined that these changes meet the requirements of the Clean Air Act and will not adversely impact air quality or the stringency of the SIP.

### IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Missouri rule 10 CSR 10–6.170, which regulates particulate matter, as set forth below in the amendments to 40 CFR part 52. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

### V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the 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), 13563 (76 FR 3821, January 21, 2011), and 14094 (88 FR 21879, April 11, 2023);

- 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 the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this rulemaking does not involve technical standards;

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

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

disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

Missouri did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. 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 August 1, 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, Particulate matter.

Dated: May 24, 2023.

**Meghan A. McCollister,**  
Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

### 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 AA—Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising the entry for “10–6.170” to read as follows:

<sup>1</sup> 62 FR 27968, May 22, 1997.

§ 52.1320 Identification of plan.

(c) \* \* \*

\* \* \* \* \*

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
<b>Missouri Department of Natural Resources</b>				
* * * * *				
<b>Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri</b>				
* * * * *				
10–6.170 .....	Restriction of Particulate Matter to the Ambient Air Beyond the Premises of Origin.	3/30/2019	6/2/2023, [insert <b>Federal Register</b> citation].	*
* * * * *				

\* \* \* \* \*  
[FR Doc. 2023–11546 Filed 6–1–23; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R03–OAR–2021–0479; FRL–10665–02–R3]

**Air Plan Approval; Pennsylvania; Infrastructure State Implementation Plan Revision Clean Air Act Section 110 Applicable Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standard (NAAQS)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. Whenever EPA promulgates a new or revised national ambient air quality standard (NAAQS or standard), the Clean Air Act (CAA) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. The infrastructure requirements are designed to ensure that the structural components of each state’s air quality management program are adequate to meet the state’s responsibilities under the CAA. Pennsylvania has formally submitted a SIP revision addressing certain infrastructure elements for certain sections of the CAA for the 2015 8-hour ozone NAAQS. EPA is approving Pennsylvania’s submittal addressing these infrastructure requirements for the

2015 ozone NAAQS in accordance with the requirements of the CAA.

**DATES:** This final rule is effective on July 3, 2023.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2021–0479. All documents in the docket are listed on the [www.regulations.gov](http://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 [www.regulations.gov](http://www.regulations.gov), or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael O’Shea, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2064. Dr. O’Shea can also be reached via electronic mail at [OShea.Michael@epa.gov](mailto:OShea.Michael@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On February 27, 2023 (88 FR 12301), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Pennsylvania. In the NPRM, EPA proposed approval of the infrastructure requirements submitted by Pennsylvania for section 110(a) of the CAA for the 2015 ozone NAAQS, aside from visibility protection. The formal

SIP revision was submitted by Pennsylvania on April 20, 2021.

On October 26, 2015, EPA issued a final rule revising both the primary and secondary ozone NAAQS for ground-level ozone to 0.070 parts per million (ppm), based on the fourth-highest maximum daily 8-hour ozone concentration per year, averaged over three years. 80 FR 65292.

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This type of SIP submission is commonly referred to as an “infrastructure SIP.” These submissions must meet the various requirements of CAA section 110(a)(2), as applicable, within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(1) of the CAA provides the procedural and timing requirements for SIPs, while section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program framework and adequate legal authority that are designed to assure attainment and maintenance of the NAAQS.

**II. Summary of SIP Revision and EPA Analysis**

On April 20, 2021, the Commonwealth of Pennsylvania formally submitted a SIP revision to satisfy the infrastructure requirements of CAA section 110(a) for the 2015 ozone NAAQS (referred to as “Pennsylvania’s submittal”).



Pennsylvania's submittal addresses the following infrastructure elements, or portions thereof, for the 2015 ozone NAAQS: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II) (prevention of significant deterioration (PSD)), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

Pennsylvania's submittal does not address the following elements of CAA section 110(a)(2): sub-element (D)(i)(I) related to interstate transport; and element (I), which pertains to the nonattainment requirements of part D, title I of the CAA. Also, the Pennsylvania infrastructure SIP submittal addressed the PSD portion of section 110(a)(2)(D)(i)(II) but provided only narrative context regarding the history of the visibility protection portion of section 110(a)(2)(D)(i)(II). Therefore, EPA is not taking action on the visibility protection element of 110(a)(2)(D)(i)(II) at this time.

With respect to element (I), according to EPA's 2013 Infrastructure Guidance, element (I) pertains to part D of title I of the CAA, which addresses SIP requirements and submission deadlines for areas designated nonattainment for a NAAQS. This element pertains to SIP revisions that are collectively referred to as nonattainment SIPs or attainment plans. Such SIP revisions are required if an area is designated nonattainment and, if required, would be due to EPA by the dates statutorily prescribed in CAA part D, subparts 2 through 5. Because the CAA directs states to submit these plan elements on a separate schedule, EPA does not believe it is necessary for states to include these elements in the infrastructure SIP submission due three years after adoption or revision of a NAAQS.<sup>1</sup> Pennsylvania's submittal also did not address the portion of CAA section 110(a)(2)(D)(i)(I) related to interstate transport for the 2015 ozone NAAQS. Therefore, EPA is not taking any action related to Pennsylvania's obligations under section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. Based upon EPA's review of Pennsylvania's submittal, EPA proposed to determine that Pennsylvania's submittal satisfies the infrastructure elements of CAA section 110(a)(2)(A), (B), (C), (D)(i)(II) (PSD), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for the 2015 ozone NAAQS on February 27, 2023, via an NPRM.

Other specific requirements of the infrastructure SIP and the rationale for

EPA's proposed action are explained in the NPRM, and its associated technical support document (TSD), and will not be restated here. The NPRM and TSD are available in the docket for this rulemaking at [www.regulations.gov](http://www.regulations.gov), Docket ID Number EPA-R03-OAR-2021-0479.

### III. EPA's Response to Comments Received

EPA received one comment which can be found in the docket. The commenter expressed support for this action.

### IV. Final Action

EPA is approving Pennsylvania's April 20th, 2021 infrastructure submission which satisfies the following requirements of CAA section 110(a) for the 2015 ozone NAAQS: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II) (PSD), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). Pennsylvania's submittal did not address the following infrastructure elements: CAA section 110(a)(2)(D)(i)(I) related to interstate transport; and CAA section 110(a)(2)(I) pertaining to the nonattainment requirements of part D, title I of the CAA. Therefore, EPA is not taking action on these elements. Furthermore, Pennsylvania's submittal included only narrative historical information pertaining to the visibility protection element of 110(a)(2)(D)(i)(II). Therefore, EPA is not taking action on that element at this time.

### V. Statutory and Executive Order Reviews

#### A. General Requirements

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

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

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

The Pennsylvania Department of Environmental Protection (PADEP) did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable

<sup>1</sup> See the "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013, for reference, included in the docket for this rulemaking action available at [www.regulations.gov](http://www.regulations.gov), Docket ID Number EPA-R03-OAR-2021-0479.



implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

*B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it

is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 1, 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 pertaining to Pennsylvania’s section 110(a)(2) infrastructure elements for the 2015 ozone NAAQS 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, Ozone, Reporting and

recordkeeping requirements, Volatile organic compounds.

**Adam Ortiz,**  
*Regional Administrator, Region III.*

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

■ 1. The authority citation for part 52 continues to read as follows:

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

**Subpart NN—Pennsylvania**

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding the entry “Infrastructure State Implementation Plan Revision Clean Air Act Sections 110 Applicable Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standard (NAAQS)” at the end of the table to read as follows:

**§ 52.2020 Identification of plan.**

*	*	*	*	*
(e)	*	*	*	
(1)	*	*	*	

Name of non-regulatory SIP revision	Applicable geographic area	State submital date	EPA approval date	Additional explanation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Infrastructure State Implementation Plan Revision Clean Air Act Sections 110 Applicable Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standard (NAAQS).	Statewide .....	4/20/2021	6/2/2023, [insert <b>Federal Register</b> citation].	This section is amended. This action addresses the following, or portions thereof, CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II)(Prevention of Significant Deterioration), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

\* \* \* \* \*  
[FR Doc. 2023–11752 Filed 6–1–23; 8:45 am]  
**BILLING CODE 6560–50–P**

**CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD**

**40 CFR Part 1600**

**RIN 3301–AA01**

**Organization and Functions of the Chemical Safety and Hazard Investigation Board**

**AGENCY:** United States Chemical Safety and Hazard Investigation Board.

**ACTION:** Final rule.

**SUMMARY:** The revisions to the rule amend the organization, operation, quorum and voting, and office location regulations of the United States

Chemical Safety and Hazard Investigation Board (CSB). The amendments address changes to agency practices in organizational structure, quorum and voting requirements, and office location. The amendments incorporate CSB Board Orders. Board Orders allow the CSB to keep current with changes in organizational operations, like when there is a singular Board member.

**DATES:** Effective June 2, 2023.

**FOR FURTHER INFORMATION CONTACT:** Tamara Qureshi, Assistant General Counsel, at either 202.763.8240 or *tamara.qureshi@csb.gov*.

**SUPPLEMENTARY INFORMATION:** The Chemical Safety and Hazard Investigation Board’s (CSB) revisions to 40 CFR part 1600 will align with the agency’s current organizational structure, Board Orders, practices, and

office location. The changes to § 1600.2, *Organization*, mirror CSB’s current management structure. The CSB’s Board Orders memorialize a portion of the CSB’s internal policies and procedures. The addition of paragraph (e) to § 1600.4, *Operation*, incorporates the agency’s current practice of using Board Orders and other internal policies and procedures in its operation. The additional language in § 1600.5, *Quorum and voting requirements*, integrates the CSB’s Board Orders into the regulations to help ensure that the regulations remain current. Furthermore, the regulation now addresses situations in which the CSB has a single Chairperson or Board member. Additionally, the regulation establishes the CSB’s Board as the arbiter of internal disputes pertaining to calendaring of notation items. The regulation also removes the CSB’s

internal agenda requirement to discuss the agency's progress on its Action Plan at its quarterly meetings to match current agency practice. Finally, in § 1600.6, *Office location*, the CSB updated its current office location.

The Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(A), provides that when regulations involve matters of agency organization, procedure, or practice, the agency may publish regulations in final form without notice and comment. These revisions fall under this part of the APA.

*Statutory Authority:* 5 U.S.C. 301, 552(a)(1); 42 U.S.C. 7412(r)(6)(N).

### Regulatory Impact

*Administrative Procedure Act:* In promulgating this rule, the CSB finds that notice and public comment are not necessary. Section 553(b)(3)(A) of Title 5, United States Code, provides that when regulations involve matters of agency organization, procedure, or practice, the agency may publish regulations in final form. In addition, the CSB finds, in accordance with 5 U.S.C. 553(d), that a delayed effective date is unnecessary. Accordingly, these regulations are effective upon publication.

*Small Business Regulatory Enforcement Fairness Act:* This regulation is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. Because this regulation involves internal agency procedures and quarterly business meetings, this regulation: a. Does not have an annual effect on the economy of \$100 million or more. b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions. c. Does not have a significant adverse effect on competition, employment, investment, productivity, innovation or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*Regulatory Flexibility Act:* The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a rule that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on such small entities. This analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The CSB has considered the impact of this rule under the Regulatory Flexibility Act, and certifies

that a final rule will not have a significant economic impact on a substantial number of small entities.

*Congressional Review Act:* The CSB reviewed the rule to determine it would be a major rule under 5 U.S.C.

801(a)(1)(A). This rule is not a major rule and not subject to reporting to Congress.

*Paperwork Reduction Act:* The CSB reviewed this rule to determine whether it involves issues that would subject it to the Paperwork Reduction Act (PRA). The CSB has determined that that the rule does not require a "collection of information" under the PRA.

*Unfunded Mandates Reform Act of 1995:* The rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. This rule does not include a Federal mandate that may result in the annual expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of more than the annual threshold established by the Act (\$128 million in 2006, adjusted annually for inflation).

### List of Subjects in 40 CFR Part 1600

Administrative practice and procedure, Organization and functions (Government agencies).

Dated: May 30, 2023.

**Stephen Owens,**  
*Chairperson.*

Accordingly, for the reasons set forth in the preamble, the Chemical Safety and Hazard Investigation Board amends 40 CFR part 1600 as follows:

### PART 1600—ORGANIZATION AND FUNCTIONS OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

■ 1. The authority citation for part 1600 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552(a)(1); 42 U.S.C. 7412(r)(6)(N).

■ 2. Amend § 1600.2 by revising paragraph (b) to read as follows.

#### § 1600.2 Organization.

\* \* \* \* \*

(b) The CSB's staff is comprised of the following administrative units and such other units as established by the CSB Board:

- (1) The Office of Administration;
- (2) The Office of Investigations and Recommendations;
- (3) The Office of the General Counsel;
- (4) The Office of Financial Operations; and

(5) The Office of Equal Employment Opportunity.

\* \* \* \* \*

■ 3. Amend § 1600.4 by adding paragraph (e) to read as follows.

#### § 1600.4 Operation.

\* \* \* \* \*

(e) Board Orders and other policies and procedures adopted by the Board.

■ 4. Amend § 1600.5 by:

■ a. Revising paragraphs (a), (b), and (c)(1)(i) and (ii); and

■ b. Removing paragraph (c)(1)(iii).

The revisions read as follows:

#### § 1600.5 Quorum and voting requirements.

(a) *Quorum requirements.* A quorum of the Board for the transaction of business shall consist of three Members; provided, however, that if the number of Board Members in office is fewer than three, a quorum shall consist of the number of Members in Office, subject to the limitations on the authority of a single-Member Board set forth in this section and in Board Orders adopted by the Board; and provided further that on any matter of business as to which the number of Members in office, minus the number of Members who have disqualified themselves from consideration of such matter is two, two Members shall constitute a quorum for purposes of such matter. Once a quorum is constituted, a simple majority of voting Members is required to approve an item of the Board's business. A tie vote results in no action. If the Board consists of only a single Member (whether the Chairperson or another Member), that single Member may not transact Board business or take any action that requires approval by the Board, except as provided in Board Orders adopted by the Board.

(b) *Voting.* The Board votes on items of business in meetings conducted pursuant to the Government in the Sunshine Act. Alternatively, whenever a Member of the Board is of the opinion that joint deliberation among the members of the Board upon any matter at a meeting is unnecessary in light of the nature of the matter, impracticable, or would impede the orderly disposition of agency business, such matter may be disposed of by employing notation voting procedures. A written notation of the vote of each participating Board member shall be recorded by the General Counsel who shall retain it in the records of the Board. If a Board member votes to calendar a notation item in accordance with applicable Board Orders, the Board must consider the calendared notation item at a public meeting of the Board within 90 days of

the date on which the item is calendared. This section does not permit a notation item to be calendared other than as provided in applicable Board Orders. A notation vote to schedule a public meeting or a special meeting may not be calendared. The Chairperson shall add any calendared notation item to the agenda for the next CSB public meeting if one is to occur within 90 days or schedule a special meeting to consider any calendared notation item no later than 90 days from

the calendar action. Any disagreement about whether a notation item has been calendared effectively in accordance with applicable Board Orders shall be decided by the Board.

(c) \* \* \*

(1) \* \* \*

(i) Consideration and vote on any notation items calendared since the date of the last public meeting; and

(ii) A review by the Board of the schedule for completion of all open

investigations, studies, and other important work of the Board.

\* \* \* \* \*

■ 5. Revise § 1600.6 to read as follows.

**§ 1600.6 Office location.**

The principal offices of the Chemical Safety and Hazard Investigation Board are located at 1750 Pennsylvania Avenue NW, Suite 910, Washington, DC 20006.

[FR Doc. 2023-11802 Filed 6-1-23; 8:45 am]

**BILLING CODE P**

# Proposed Rules

Federal Register

Vol. 88, No. 106

Friday, June 2, 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 TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2022-1159; Project Identifier AD-2022-00692-E]

RIN 2120-AA64

#### Airworthiness Directives; Continental Aerospace Technologies, Inc. Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Supplemental notice of proposed rulemaking (SNPRM).

**SUMMARY:** The FAA is revising a notice of proposed rulemaking (NPRM) that applied to certain Continental Aerospace Technologies, Inc. (Continental) Model C-125, C145, GO-300, IO-360, IO-470, IO-520, IO-550, O-300, O-470, TSIO-360, and TSIO-520 series engines with a certain oil filter adapter installed. The NPRM proposed to supersede AD 2022-04-04. This action revises the NPRM by updating the applicability to include Continental model engines with certain oil filter adapters installed and updating the service information references. The FAA is proposing this airworthiness directive (AD) to address the unsafe condition on these products. Since these actions would impose an additional burden by expanding the applicability, the agency is requesting comments on this SNPRM.

**DATES:** The FAA must receive comments on this SNPRM by July 17, 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* by searching for and locating Docket No. FAA-2022-1159; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, this SNPRM, 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 SNPRM, contact Stratus Tool Technologies, LLC, 2208 Air Park Drive, Burlington, NC 27215; phone: (800) 822-3200; website: *tempestplus.com*.

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222-5110.

#### FOR FURTHER INFORMATION CONTACT:

George Hanlin, Aviation Safety Engineer, East Certification Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474-5584; email: *9-ASO-ATLACO-ADs@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 the **ADDRESSES** section. Include “Docket No. FAA-2022-1159; Project Identifier AD-2022-00692-E” 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 again revise 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 proposed AD.

#### 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 SNPRM 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 SNPRM, 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 SNPRM. Submissions containing CBI should be sent to George Hanlin, Aviation Safety Engineer, East Certification Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

#### Background

The FAA issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to certain Continental Model C-125-1, C-125-2, C145-2, C145-2H, GO-300-A, GO-300-B, GO-300-C, GO-300-D, GO-300-E, GO-300-F, IO-360-C, IO-360-D, IO-360-DB, IO-360-H, IO-360-HB, IO-360-K, IO-360-KB, IO-470-C, IO-470-D, IO-470-H, IO-470-J, IO-470-K, IO-470-L, IO-470-M, IO-470-N, IO-470-S, IO-470-U, IO-470-V, IO-520-A, IO-520-D, IO-520-F, IO-520-J, IO-520-K, IO-520-L, IO-550-D, IO-550-E, IO-550-F, O-300-A, O-300-B, O-300-C, O-300-D, O-300-E, O-470-A, O-470-B, O-470-G, O-470-J, O-470-K, O-470-L, O-470-M, O-470-N, O-470-R, O-470-S, O-470-U, O-470-11, O-470-15, TSIO-360-E, TSIO-360-EB, TSIO-360-F, TSIO-360-FB, TSIO-360-GB, TSIO-360-LB, TSIO-360-MB, TSIO-360-SB, TSIO-470-C, TSIO-520-C, TSIO-520-G, and TSIO-520-H engines with a certain oil filter adapter installed. The NPRM published in the **Federal Register** on September 14, 2022 (87 FR 56286). The NPRM was prompted by

reports of two accidents that were the result of power loss due to oil starvation. In the NPRM, the FAA proposed to supersede and retain certain requirements of AD 2022-04-04, Amendment 39-21945 (87 FR 9435, February 22, 2022). In the NPRM, the FAA also proposed to require replacing the oil filter adapter fiber gasket (fiber gasket) with an oil filter adapter copper gasket (copper gasket) or a stainless steel embedded within polytetrafluoroethylene gasket (stainless steel PTFE gasket). In the NPRM, the FAA also proposed to revise the applicability by adding and removing certain model engines and revise the special flight permit paragraph by expanding the limitations. In the NPRM, the FAA also proposed to update the required actions by adding an additional part-numbered stainless steel PTFE gasket as a replacement part.

**Actions Since the NPRM Was Issued**

Since the FAA issued the NPRM, the FAA received a comment from an individual commenter noting that certain engine models were missing from the NPRM’s applicability. The commenter also specified that the referenced service information in the NPRM has been revised by the manufacturer. In response to this comment, the FAA determined that additional model engines are affected by the unsafe condition and, as a result, should be added to the applicability paragraph of the NPRM. The FAA also discovered that certain model engines, with permold type crankcases, were inadvertently included in the applicability paragraph of the NPRM. Therefore, the FAA revised the applicability of this proposed AD to include Continental model engines equipped with an F&M Enterprises, Inc. (F&M) or a Stratus Tool Technologies, LLC (Stratus) oil filter adapter installed per Supplemental Type Certificate (STC) SE8409SW, SE09356SC, or SE10348SC. In addition, the manufacturer has published revised service information, which includes the alternative use of a stainless steel PTFE

gasket, part number (P/N) ST07, as a replacement part.

**Comments**

The following discussion presents the comments received on the NPRM and the FAA’s response.

**Revision to the Applicability**

An individual commenter noted that paragraph (c), Applicability, of the NPRM, excluded Continental Model IO-360-G, IO-360-J, IO-360-JB, IO-360-LB, IO-470-E, and IO-470-F engines. The commenter also noted that a review of Continental’s online Illustrated Parts Catalog shows that these model engines use the same accessory housing as other IO-360 model engines, which can accommodate a Stratus oil filter adapter that is included in the NPRM.

The FAA agrees and has revised paragraph (c), Applicability, of this proposed AD to include any Continental model engine equipped with an F&M or a Stratus oil filter adapter installed per STC SE8409SW, SE09356SC, or SE10348SC.

**Request To Reference Revised Service Information**

An individual commenter stated that the Stratus Tool Technologies Mandatory Service Bulletin SB-001 Rev B has been updated to Rev C, which allows the use of a stainless steel PTFE gasket, P/N ST07. The FAA infers that the commenter is requesting that this proposed AD be revised to reference Stratus Tool Technologies Mandatory Service Bulletin SB-001 Rev C, dated June 16, 2022 (the NPRM refers to Stratus Tool Technologies Mandatory Service Bulletin SB-001 Rev B, dated June 17, 2021).

The FAA agrees and has revised this proposed AD to include reference to Stratus Tool Technologies Mandatory Service Bulletin SB-001 Rev C, dated June 16, 2022, and added paragraph (i), Credit for Previous Actions, which would provide credit for the replacement of a fiber gasket with a copper gasket in accordance with Stratus Tool Technologies Mandatory

Service Bulletin SB-001 Rev B, dated June 17, 2021.

**FAA’s Determination**

The FAA is proposing this AD after determining the unsafe condition described previously is likely to exist or develop in other products of the same type design. Certain changes described above expand the scope of the NPRM. As a result, it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

**Related Service Information Under 1 CFR Part 51**

The FAA reviewed Stratus Tool Technologies Mandatory Service Bulletin SB-001 Rev C, dated June 16, 2022. This service information specifies procedures for removing a fiber gasket and replacing it with a copper gasket, P/N AN900-28 or P/N AN900-29, or a stainless steel PTFE gasket, P/N ST07, as an improved alternative to the copper gasket.

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.

**Proposed AD Requirements in This SNPRM**

This proposed AD would retain certain requirements of AD 2022-04-04. This proposed AD would require replacing the fiber gasket with a copper or stainless steel PTFE gasket. This proposed AD would also revise the applicability to include Continental model engines equipped with an F&M or a Stratus oil filter adapter installed per STC SE8409SW, SE09356SC, or SE10348SC in accordance with the service information previously described.

**Costs of Compliance**

The FAA estimates that this AD, if adopted as proposed, would affect 6,300 engines installed on 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
Replace fiber gasket with copper gasket or stainless steel PTFE gasket.	2.5 work-hours × \$85 per hour = \$212.50 .....	\$34	\$246.50	\$1,552,950

### 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) Will not affect intrastate aviation in, 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 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 2022–04–04, Amendment 39–21945 (87 FR 9435, February 22, 2022); and
- b. Adding the following new airworthiness directive:

#### Continental Aerospace Technologies, Inc.:

Docket No. FAA–2022–1159; Project Identifier AD–2022–00692–E.

#### (a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 17, 2023.

#### (b) Affected ADs

This AD replaces AD 2022–04–04, Amendment 39–21945 (87 FR 9435, February 22, 2022).

#### (c) Applicability

This AD applies to Continental Aerospace Technologies, Inc. (Continental) model engines equipped with an F&M Enterprises, Inc. (F&M) or a Stratus Tool Technologies, LLC (Stratus) oil filter adapter installed per Supplemental Type Certificate SE8409SW, SE09356SC, or SE10348SC.

**Note 1 to paragraph (c):** These F&M and Stratus oil filter adapters are known to be installed on Continental Model C–125, C–145, GO–300, IO–360, IO–470, IO–520, IO–550, O–300, O–470, TSIO–360, and TSIO–520 series engines.

#### (d) Subject

Joint Aircraft System Component (JASC) Code 8550, Reciprocating Engine Oil System.

#### (e) Unsafe Condition

This AD was prompted by reports of two accidents that were the result of power loss due to oil starvation. The FAA is issuing this AD to prevent loss of engine power. The unsafe condition, if not addressed, could result in failure of the engine, in-flight shutdown, and loss of control of the airplane.

#### (f) Compliance

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

#### (g) Required Actions

Before accumulating 50 flight hours after the effective date of this AD or at the next scheduled oil change after the effective date of this AD, whichever occurs first, remove any F&M or Stratus oil filter adapter fiber gasket from service and replace it with an oil filter adapter copper gasket, part number (P/N) AN900–28 or P/N AN900–29, or a stainless steel polytetrafluoroethylene gasket, P/N ST07, as applicable, in accordance with the Compliance Instructions, paragraph 6., pages 6 through 10 (including all detailed instructions for Figure 5 through Figure 16), of Stratus Tool Technologies Mandatory Service Bulletin SB–001 Rev C, dated June 16, 2022.

#### (h) Installation Prohibition

After the effective date of this AD, do not install an F&M or a Stratus oil filter adapter fiber gasket on any affected engine.

#### (i) Credit for Previous Actions

You may take credit for the actions required by paragraph (g) of this AD if you

performed those actions before the effective date of this AD using Stratus Tool Technologies Mandatory Service Bulletin SB–001 Rev B, dated June 17, 2021, which was previously approved for IBR on March 29, 2022 (87 FR 9435, February 22, 2022), but is not incorporated by reference in this AD.

#### (j) Special Flight Permit

A special flight permit may be issued in accordance with 14 CFR 21.197 and 21.199 to permit a one-time non-revenue ferry flight to operate the airplane to the nearest location where the maintenance action can be performed provided that the engine oil pressure and engine oil temperatures are in their allowable ranges and there is no noticeable increase in engine noise. This flight must be performed with no passengers on board.

#### (k) Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved for AD 2022–04–04 (87 FR 9435, February 22, 2022) are approved as AMOCs for the corresponding provisions of this AD.

#### (l) Related Information

(1) For more information about this AD, contact George Hanlin, Aviation Safety Engineer, East Certification Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5584; email: [9-ASO-ATLACO-ADs@faa.gov](mailto:9-ASO-ATLACO-ADs@faa.gov).

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(4) and (5) of this AD.

#### (m) 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) Stratus Tool Technologies Mandatory Service Bulletin SB–001 Rev C, dated June 16, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact Stratus Tool Technologies, LLC, 2208 Air Park Drive, Burlington, NC 27215; phone: (800) 822–3200; website: [tempestplus.com](http://tempestplus.com).

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District

Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222-5110.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov), or go to: [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html).

Issued on May 25, 2023.

**Ross Landes,**

*Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2023-11630 Filed 6-1-23; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Parts 1, 3, 13, 19, and 20**

**RIN 2900-AR77**

**Update VA Adjudication Regulations To Authorize the Use of Electronic Notification for VA Benefit Claims and Appeals**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its regulations relating to notification of a claims decision in accordance with section 807 of the Sergeant First Class Heath Robinson Honoring Our Promise to Address Comprehensive Toxins Act of 2022 (PACT Act), specifically to permit electronic decision notification between claimants or beneficiaries and VA.

**DATES:** Comments must be received on or before August 1, 2023.

**ADDRESSES:** Comments must be submitted through [www.regulations.gov](http://www.regulations.gov). Except as provided below, comments received before the close of the comment period will be available at [www.regulations.gov](http://www.regulations.gov) for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: <https://www.regulations.gov>. VA will not post on [Regulations.gov](http://www.regulations.gov) public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from

multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking.

**FOR FURTHER INFORMATION CONTACT:**

Veterans Benefits Administration information: Korrie N. Shivers, Senior Management and Program Analyst; Office of Administrative Review, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461-9700. (This is not a toll-free telephone number.) Board of Veterans' Appeals information: Anthony C. Sciré, Jr., Chief Counsel, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632-5277 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** With the transition to electronic claims filing and claims processing, VA modernized how it adjudicates claims for benefits. Section 807 of the PACT Act removed certain legal impediments to electronic notice. Public Law 117-168, 136 Stat 1759, 1805-06. This proposed rule would amend 38 CFR parts 1, 3, 13, 19, and 20 to implement these changes and modernize how an individual receives legally required notice from VA.

Section 807 of the PACT Act defined "notice" as "a communication issued through means (including electronic means) prescribed by the Secretary." Public Law 117-168, 136 Stat 1759, 1806 (codified at 38 U.S.C. 5100(2)). In addition, Congress provided that VA "may provide notice [of a decision affecting the provision of VA benefits] electronically if a claimant (or the claimant's representative) elects to receive such notice electronically." Public Law 117-168, 136 Stat 1759, 1806 (codified at 38 U.S.C. 5104). Therefore, with respect to VA authority to provide notice electronically, Congress created two general categories of notice—decisional notice and nondecisional notice.

**I. Decisional Notice**

Until recently, Congress had framed the time for appealing a VA benefits decision and the associated finality of that decision in terms of when VA "mailed" the decision. 38 U.S.C. 7105(b)(1)(A), 7105A(a), 7266(a) (2022). Further, decisions on an appeal by the Board of Veterans' Appeals (Board) were required to be mailed to appellants at their last known address. 38 U.S.C. 7104(e)(1) (2022). Thus, to comply with statute, the Secretary and the Board had

to provide decision notice by mail. However, section 807 of the PACT Act removed these references to mailing and added provisions expressly authorizing electronic decision notification if the claimant or representative has elected electronic notice. This proposed rule will outline how VA would implement the electronic notice provisions authorized by section 807 of the PACT Act.

38 U.S.C. 5104(a) requires the Secretary to, "on a timely basis, provide to the claimant (and to the claimant's representative) notice of" benefits decisions. A provision added by section 807 of the PACT Act, 38 U.S.C. 5104(c), allows VA to provide such notice electronically if the claimant or the claimant's representative elects electronic notice. Section 5104 is not specific to one benefit or program. Rather, it generally applies to any decision by an agency of original jurisdiction (AOJ) affecting any benefit furnished by VA to veterans or the dependents or survivors of veterans.

Because section 5104 applies to multiple benefit lines, in implementing the election provision, VA must consider the needs of different benefit lines.

The statute does not indicate the scope of an election to receive electronic notice—that is, whether—an election applies to a recipient of notice (*i.e.*, a claimant or representative) generally or if an election is benefit- or claim-specific. Yet, if recipients were permitted to limit their elections, VA would be required to review each election to see if there were any limitations. This would inevitably lead to the sort of time-intensive clarifications and interpretations that VA has sought to reduce or eliminate through other modernization efforts. *See* Standard Claims and Appeals Forms, 79 FR 57660, 57683 (Sept. 25, 2014). In addition, permitting recipients to limit their elections to either AOJ decisions or Board decisions would essentially double the administrative burden upon VA by requiring VA to track two elections for every recipient. To avoid these results, in implementing the statutory election provisions, VA proposes not to permit recipients to limit their elections of electronic notice. If an individual has elected electronic notice, unless and until that election is revoked, VA may provide any decision notice of an AOJ or Board decision pertaining to any VA benefit via electronic means.

At the same time, different benefit lines utilize different claims-processing systems with different capabilities. Were VA precluded from providing

notice by mail to claimants who had elected electronic notice, VA would be unable to accept elections and implement electronic decision notice under section 807 of the PACT Act until every program office had the means to provide notice electronically. Moreover, if there was a question as to whether an individual had in fact elected electronic notice, VA may be unable to provide any notice until that question was resolved, thereby delaying resolution of the claim.

Therefore, VA proposes a single rule that can function flexibly VA-wide. The rule would establish postal mail as the default means of transmitting decision notice. VA would also retain its statutory discretion to provide electronic decision notice in lieu of mailed notice where the recipient has elected electronic notice. Once electronic notice is elected, claimants and representatives will be able to update and/or revoke electronic notice as published in the notice section of the **Federal Register**.

## II. Nondecisional Notice

Sections 5104 and 7104, which were amended by the PACT Act, deal only with notices of a “decision.” VA proposes to define the terms “decisional notice” and “nondecisional notice.” VA intends the term “decisional notice” to refer to notice under 38 U.S.C. 5104(a) and 7104(e). VA proposes to define the term “nondecisional notice” as “legally required notice other than decisional notice.”

Thus, where Congress has been silent, VA has discretion to determine the appropriate means of nondecisional notice. Unlike decisional notice, in addressing nondecisional notice, Congress has not placed overarching limitations on VA’s ability to provide nondecisional notice electronically. *Paralyzed Veterans of Am. (“PVA”) v. Sec’y of Veterans Affairs*, 345 F.3d 1334, 1348 (Fed. Cir. 2003). In furtherance of its modernization efforts, where Congress has not prescribed a specific means of notice, VA proposes to eliminate barriers to electronic notice.

## III. Mechanics of Notice

Federal agencies that have implemented electronic notice as an alternative to mailed notice have generally done so using one of three models. Under the “access equals delivery” model, posting the notice on a website accessible to the individual entitled to notice satisfies the notice obligation. *Securities Offering Reform*, 70 FR 44722, 44783 (Aug. 3, 2005) (The Securities and Exchange Commission (SEC) adopted an “access equals

delivery” model for providing final prospectuses). Under the “notice and access model,” posting the notice on a website accessible to the individual entitled to notice and sending that individual a communication stating that the notice has been posted satisfies the notice obligation. Amendments to Rules Requiring internet Availability of Proxy Materials, 74 FR 53954, 53955 (Oct. 21, 2009) (SEC adopted a “notice and access” model for delivery of proxy materials); Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA, 85 FR 31884, 31921 (May 27, 2020) (Department of Labor (DOL) adopted a “notice and access” model for plan administrators to furnish required notices). Under the “full delivery” model, delivering a copy of the notice document to the individual entitled to notice satisfies the notice obligation. 85 FR at 31921 (DOL permitted plan administrators who did not have websites to email required notices to individuals). Courts have consistently recognized that mailing a notice to an individual’s mailing address satisfies a legal obligation to provide notice. *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 800 (1983). Courts have similarly recognized that delivery of a notice document to an individual’s electronic address (as occurs under the full delivery model) is equivalent to mailing. *See e.g. F.T.C. v. PCCare247 Inc.*, No. 12 CIV. 7189 PAE, 2013 WL 841037, at \*4 (S.D.N.Y. Mar. 7, 2013) (collecting cases). Courts have also found the “notice and access” model “equivalent” to providing notice by first class mail, *Lee v. SunTrust Mortg., Inc.*, No. 1:12–CV–2823–SCJ, 2012 WL 12884865, at \*1 n. 1 (N.D. Ga. Sept. 19, 2012) (describing the notice provided by the court’s electronic filing system “equivalent of service . . . by first class mail, postage prepaid” (ellipsis in original) (internal citation omitted); *accord United States v. Hanrahan*, No. CIV 09–0219 JB/KBM, 2010 WL 2292912, at \*1 (D.N.M. Apr. 28, 2010); *see also Stemcor USA, Inc. v. Miracero, S.A. de C.V.*, 66 F. Supp.3d 394, 398 (S.D.N.Y. 2014) (stating that “the notice of electronic filing is the practical cyber-equivalent of physical service of a tangible copy of the filed paper”). Thus, VA believes that either the “full delivery” model or the “notice and access” model are an appropriate alternative to mailing decisional notice.

Both the “full delivery” model and the “notice and access” model would require VA to communicate information directly to a recipient’s electronic address and, at present, VA does not believe that sufficient information

technology capabilities are in place. Therefore, in this rulemaking, VA seeks to (1) propose regulatory amendments that would allow VA to implement a “notice and access” and/or a “full delivery” model of providing notice related to claims for VA benefits if and when VA is prepared to do so.

## IV. Specific Regulatory Changes Proposed

### A. Part 1—General Provisions

Section 5104(a) requires VA to provide a copy of the decision notice both to the claimant and to the claimant’s representative, if any. Similarly, section 7104(e) requires the Board to provide a copy of the decision notice both to the parties to the appeal and to their representatives, if any. Because representatives may have different needs and different degrees of access to technology than the individuals they represent, VA proposes that a representative’s election be independent from the election of the claimant, appellant or other party the representative represents.

#### 1. Notice to Claimants, Appellants, and Other Parties

Currently, 38 CFR 1.710 governs delivery of benefit payments and correspondence. When this provision was first promulgated in 1988, postal mail was VA’s primary means of providing notice . . . , and accordingly the provision requires notice “directed to the address specified by the claimant.” To facilitate electronic notice, VA proposes to amend the provision to encompass means of transmission other than mail. With advancements in electronic communications, the concept of an “address” is no longer inherently associated with a physical location. Black’s Law Dictionary (11th ed. 2019). Instead, an “address” is simply the designation of “a place where a person or organization may be communicated with,” Merriam-Webster’s Collegiate Dictionary 15 (11th ed. 2008), and whether a person or organization can be communicated with at a particular place depends on the means of communication used and the nature of the communication. For instance, an individual may be able to receive correspondence, but not payments, at a particular electronic address, or vice versa. Thus, an individual may have more than one address for VA purposes. To reflect this, VA proposes to amend the first sentence of § 1.710(a) to read “All correspondence and all checks for benefits payable to claimants under laws administered by the Department of



Veterans Affairs shall be directed to the address specified by the claimant for the means of transmission used.” VA also proposes a revision to the third sentence.

This regulation implements a statutory provision which states that “Benefits under laws administered by the Secretary may not be denied an applicant on the basis that the applicant does not have a mailing address.” 38 U.S.C. 3003(c) (1987) (subsequently redesignated 38 U.S.C. 5126). The legislative history makes clear that the intent of the enactment was to assist individuals who are experiencing homelessness in accessing monetary benefits. It did not relieve veterans of their duty to keep VA informed of their whereabouts or to provide VA with a current mailing address if they have one. *Hyson v. Brown*, 5 Vet. App. 262, 265 (1993). While VA intends to increase its reliance on electronic communications, the decision whether to communicate with a claimant by mail or through electronic means also depends on the resources of the VA office issuing the notice. Thus, VA will continue to communicate with claimants via mail in some circumstances and claimants must accordingly continue to keep VA apprised of their current mailing address. Consistent with the language of the underlying statute, VA proposes to amend the last sentence of paragraph (a) to read “[i]n no event will a claim or payment of benefits be denied because the claimant has no mailing address.” Currently, § 1.710(d) states that, if the claimant has not provided a current mailing address, all correspondence and checks will be delivered to the appropriate Agent Cashier. VA proposes to add language clarifying that this procedure applies in circumstances where notice would otherwise be mailed.

Section 1.710 is the only provision under the undesignated center heading “Homeless Claimants.” VA proposes to amend the undesignated center heading to read “Delivery of Benefit Payments and Correspondence To Claimants.”

VA also proposes to add § 1.711 titled “Furnishing required notice.”

In paragraph (a) of the new section, VA proposes to define relevant terms. VA regulations use words like “writing” and “notice” with respect to information provided by VA as well as information provided by third parties. To make clear that the definitions in this paragraph are only intended to apply to notice provided by VA and not submissions to VA required to be in writing, VA proposes to include language reflecting that limitation.

In section 807 of the PACT Act, Congress distinguished notice of “a decision . . . affecting the provision of benefits to a claimant,” 38 U.S.C. 5104, from other types of legally required notice. While VA has broad flexibility to determine whether to send many types of notice electronically, 38 U.S.C. 5100(2), VA’s authority to send decision notice electronically is limited to situations where the claimant, beneficiary or representative has elected to receive decisional notice electronically. 38 U.S.C. 5104(c). To reflect this distinction, VA proposes to define the terms “decisional notice” and “nondecisional notice.” VA intends the term “decisional notice” to refer to notice under 38 U.S.C. 5104(a) and 7104(e). VA proposes to define the term “nondecisional notice” as “legally required notice other than decisional notice.”

To make clear that the term “address” is not limited to physical locations and that an individual may have more than one valid “address” on record at one time, VA proposes to state that “address means a place, specified by an individual where the individual is able to receive communications through a particular means. The term includes postal addresses, telephone numbers, email addresses, and unique identifiers associated with VA web-based systems.”

Congress did not use consistent terminology in the statutes governing decision notice. Section 5104 requires notice to a “claimant” while section 7104 requires notice to an “appellant” or “other party.” Because § 1.711 applies to both types of decisions, VA proposes to define the term addressee to encompass all of these individuals.

VA proposes to define “writing” as “words, symbols or marks intentionally recorded on something tangible, such as paper, computer, electronic storage device, or any other medium.”

To accommodate the “notice and access” option, VA proposes to define the term “alert” as “a communication informing the addressee that a notice is available through a VA web-based system,” and to define “notice content” as “the information VA is required to communicate to the addressee.”

Where VA is required to provide direct notice to a specific claimant, VA satisfies that obligation by sending the notice to the claimant’s latest address of record. However, VA is concerned the term “latest” can be read to imply a claimant or beneficiary only has one “address” at any point in time. If VA is authorized to communicate with claimants and beneficiaries through more than one means, an individual

may have more than one valid “address” on record with VA at any one time. Thus, in § 1.711(b), VA proposes to state: “Where notice is directed to a specific addressee, VA satisfies its notice obligation by transmitting, to the addressee’s last address of record for the means of transmission used, either (1) the required notice content, or (2) an alert.”

While Congress has limited VA’s authority to provide decisional notice electronically to instances where the individual has elected electronic notice, Congress has not imposed a similar restriction with respect to nondecisional notice. *PVA*, 345 F.3d at 1348. VA accordingly has discretion to determine the appropriate means of nondecisional notice. To account for these flexibilities, in paragraph (c), VA proposes to state “Except as otherwise provided, nondecisional notice may be transmitted orally or in writing.” Whenever VA provides notice through oral communication with a claimant, it will be reflected in the claimant’s file.

In § 1.711(d), VA proposes to include additional information regarding how VA will furnish decisional notice. VA’s current practice is to provide decisional notice to claimants, beneficiaries, and representatives through postal mail. For individuals who do not elect electronic decisional notice, VA does not propose to change its existing practice. For individuals who do elect electronic decisional notice, for the reasons explained in Section I of this rulemaking, VA proposes to retain its discretion to determine whether a specific decision notice will be sent by postal mail or electronic means.

Regarding elections and revocations, VA proposes to state that an addressee elects electronic decision notice and revokes a prior election by selecting the appropriate option within a VA web-based system that solicits such elections and revocations. To accommodate technological advances, VA also proposes to state that other means of electing electronic decision notice and revoking an election may be prescribed by the Secretary and published in the notice section of the **Federal Register**.

## 2. Notice to Representatives

As for providing decision notices to representatives, currently, the first sentence of 38 CFR 1.525(d) requires VA to supply copies of adjudication notices to representatives while the second sentence describes a representative’s authority to continue to act following the claimant’s death. Because these two sentences concern two distinct topics, VA proposes to redesignate the second sentence of 38 CFR 1.525(d) as 38 CFR

1.525(f). VA also proposes to amend paragraph (d) to reflect the same principles reflected in § 1.711 of this part. In addition, VA proposes to include the following language in paragraph (d): “The election of electronic decision notice or revocation thereof by a representative receiving notice pursuant to this paragraph is independent of any election or revocation thereof by the claimant.”

### B. Part 3—Adjudication

#### 1. Definition of Notice

VA proposes to amend current 38 CFR 3.1, which contains the definitions applicable to VA’s pension, compensation, and dependency and indemnity compensation benefit programs.

In current paragraph (q) of § 3.1 the term “notice” is defined as “written notice sent to a claimant or payee at his or her latest address of record.” 38 CFR 3.1(q). When the same requirements apply to a particular class of persons or things, defining that class at the beginning of the part or section may shorten and simplify the regulations. However, an overly broad definition may have the opposite effect, increasing complexity by requiring a number of exceptions and exclusions.

When the definition of “notice” was first added to part 3 in 1962, much of the communication technology that is ubiquitous today—internet, email, cell phones, voicemail, fax—either did not exist or was not widely available for consumer use. The U.S. Postal Service, however, was an effective means to reach the vast majority of claimants and beneficiaries. Because postal mailing requires the identification of a specific postal address and, often, a specific recipient, these identifiers would have been common characteristics of notices sent by VA by mail.

However, the association between these characteristics and the concept of “notice” provided by VA has loosened over time. VA has an obligation to notify a claimant of the information and evidence necessary to substantiate a claim. However, because claimant-specific notice is not required, it is often possible for VA to meet this obligation by including the information on claim forms. 79 FR 57660, 57676–77 (Sept. 25, 2014). Moreover, for certain types of notice, Congress has required that a claimant or representative elect electronic notice before VA provides electronic notice, while, for other types of notice, Congress has left the question of whether to use electronic notice to VA’s discretion, without regard to whether the recipient has specifically

elect to receive notice electronically. Therefore, situations may arise in which a particular claimant or beneficiary receives certain notices electronically and others by mail. Given the number of potential variations, VA proposes to remove the definition of “notice” from § 3.1(q).

#### 2. References to “Latest Address of Record”

Several other sections in 38 CFR part 3 require VA to transmit notice to the claimant’s “latest address of record.” If VA is authorized to communicate with claimants and beneficiaries through more than one means, an individual may have more than one valid “address” on record with VA at any one time. Section 807 of the PACT Act removed the reference to “latest address of record” from 38 U.S.C. 5112(b)(6), an effective date provision applicable to reductions and discontinuances “by reason of change in law or administrative issue, change in interpretation of a law or administrative issue, or, for compensation purposes, a change in service-connected or employability status or change in physical condition.” 38 U.S.C. 5112(b)(6). In light of the statutory change, VA proposes to remove the equivalent language from the regulations implementing that statutory provision. The affected regulatory provisions are 38 CFR 3.105(d), 3.105(e), 3.105(g) and 3.114(b). The “latest address of record” language also appears in §§ 3.105(f), 3.105(h) and 3.905(b). In those instances, the language is not statutory. VA also proposes to amend these provisions to reflect that an individual may have more than one valid address on record with VA at any one time.

#### 3. References to “Letter” and “Mail”

To facilitate electronic notice, VA proposes to remove references to “mail” and “letter” that are solely a feature of VA’s regulations. Specifically, VA proposes to replace the term “in letters” with “when,” in § 3.150(b), replace the term “mailing” with “issuance” in § 3.1010(f)(3) and to replace the term “mails” with “issues” in § 3.2600(b).

#### 4. Decisional Notice

Current § 3.103(a) states “Every claimant has the right to written notice of the decision made on his or her claim,” 38 CFR 3.103(a), and subsequent paragraphs also state that VA will provide decisional notice in writing. VA is not proposing to change its current practice of providing documentable decisional notice, and VA does not propose to begin relying on oral

communications for decision notice. However, to prevent any possible ambiguity regarding whether the ordinary meaning of “written” includes communication by electronic means, VA proposes to add the following sentence in a new paragraph (g): “VA will furnish the written notice described in paragraph (f) in accordance with §§ 1.525(d)(5) and 1.711(d) of this chapter.”

Current § 3.103(f) states “[w]ritten notification must include in the notice letter or enclosures or a combination thereof” certain specified elements. The words “letter” and “enclosure” are typically associated with physical mailing. To allow for electronic notice, VA proposes to amend the language to read “The notice document or enclosures or attachments or a combination thereof must include”.

#### 5. Computation of Time Limits

Once VA provides notice, then any applicable timelines, requests for information and/or other deadlines will start as of the date of notice. Currently, VA regulations reflect this, stating “[i]n computing the time limit for any action required of a claimant or beneficiary, . . . [t]he first day of the specified period . . . shall be the date of mailing of notification to the claimant or beneficiary of the action required and the time limit therefor. The date of the letter of notification shall be considered the date of mailing for purposes of computing time limits.” 38 CFR 3.110. For mailed notice, the courts have made clear that the date on which VA provides notice is the date on which the notice, “correctly addressed, stamped with the proper postage,” was “delivered . . . into the custody of the U.S. Postal Service.” *Davis v. Brown*, 7 Vet. App. 298, 303 (1994). VA is presumed to have taken these steps on the date appearing on the notice letter, *Miley v. Principi*, 366 F.3d 1343, 1347 (Fed. Cir. 2004), and, if these steps are taken, the addressee is presumed to receive the notice. *Anania v. McDonough*, 1 F.4th 1019, 1022 (Fed. Cir. 2021).

However, these principles are not limited to correspondence sent by mail. The presumption that VA mailed a letter on the date appearing on the letter is just one circumstance in which the courts have applied the presumption of regularity. “The presumption of regularity provides that, in the absence of clear evidence to the contrary, the court will presume that public officers have properly discharged their official duties.” *Miley*, 366 F.3d at 1347. When *Miley* was decided, the statute governing appeals of initial VA

decisions stated that appeals must be initiated “within one year from the date of mailing of notice of the result of initial review or determination.” *Id.* at 1344. Section 807 of the PACT Act changed the statutory duty such that VA is authorized to provide decision notices by means other than mail but did not alter the operation of the presumption of regularity. Therefore, if the statute permits electronic notice, the presumption that VA will dispatch the notice in accordance with the applicable statute will apply to notices sent electronically. The presumption of receipt is also not limited to mail. Rather, it applies to any reliable means of communication—the postal service, fax, email, etc.—by which a communication is “properly dispatched”. *Kennell v. Gates*, 215 F.3d 825, 829 (8th Cir. 2000). Therefore, the presumption of receipt would also apply to notices sent electronically. Consistent with the scope of these presumptions, VA proposes to amend 38 CFR 3.110(b) to extend the principles currently applicable to mailed notice to notice provided by other means.

With respect to its electronic filing system, courts have concluded that notice has been accomplished and the required deadlines begin to run from the date the court transmits the “Notice of Electronic Filing” rather than the date the individual retrieves the document from the electronic court filing system. See *McNaney v. Sampson & Morris Grp., Inc.*, No. 2:21–CV–1809, 2022 WL 1017388, at \*4 (W.D. Pa. Apr. 5, 2022). VA proposes to apply the same principle when notice is provided via alerts pursuant to proposed §§ 1.525(d) and 1.711.

### C. Part 13 Fiduciary Activities

VA proposes to amend part 13 to align current regulations with the PACT Act.

#### 1. Definition of Written Notice

Currently, 38 CFR 13.20 defines the term “written notice” to mean “that VA will provide to the beneficiary and the beneficiary’s representative and legal guardian, if any, a written decision in a fiduciary matter that is appealable under § 13.600. Such notice will include: (1) A clear statement of the decision, (2) The reason(s) for the decision, (3) A summary of the evidence considered in reaching the decision, and (4) The necessary procedures and time limits to initiate an appeal of the decision.” This definition, which applies to all of part 13, is specific to decisional notice. However, elsewhere in part 13, the term “written notice” is used to refer to things other than notice of a decision. See 38 CFR 13.230(g)(2)

(requiring “written notice” when a bond is furnished or adjusted at the beneficiary’s expense); 13.300(a)(3) (requiring “written notice” of periodic onsite reviews); 13.510(c) (requiring VA to provide “written notice” to the beneficiary of a fiduciary’s request to withdraw). Therefore, VA proposes to relocate the material pertaining to content of the notice to § 13.600 and to remove the remainder of the definition.

#### 2. Notice of Decisions That Are Appealable to the Board

In part 13, appeals to the Board are specifically addressed in § 13.600. Therefore, VA proposes a new § 13.600(b)(3) which will state “notice of a decision that is appealable to the Board pursuant to paragraph (a) of this section will be transmitted in accordance with §§ 1.525(d)(5) and 1.711(d) of this chapter.”

#### 3. References to “Mail”

As explained in Section I of this rulemaking, section 807 of the PACT Act removed the reference to mailing as the trigger for the commencement of the period to file a Notice of Disagreement (NOD). Consistent with this statutory change, VA proposes to amend § 13.400(d)(1)(ii) by replacing “mailed” with “issued.”

In addition, consistent with the reasoning in Section IV.B.3 of this rulemaking regarding impediments to electronic notice that are solely regulatory, VA proposes to amend § 13.300(c)(3) by replacing “mails” with “issues” and to amend § 13.400(d)(1)(i) by replacing “mailed” with “issued”.

#### D. Part 19 Board of Veterans’ Appeals: Legacy Appeals Regulations

VA proposes to amend part 19, subparts B and C, to reflect the option for the agency of original jurisdiction (AOJ) to issue notice to a claimant by electronic means pursuant to this rulemaking. Section 807 of the PACT Act removed the reference to mailing as the trigger for the commencement of the period to file a NOD. Consistent with this statutory change, VA proposes to amend §§ 19.24(b)(3)(ii), 19.26(b) and (c)(1)(ii), and 19.52 to remove language referring to the mailing of notice of an AOJ decision and replace it with language referring more generally to the issuance of notice of an AOJ decision. In addition, currently, the part 19 regulatory provisions addressing the period to appeal an AOJ decision use “one-year” and “1-year” interchangeably. For consistency, VA proposes to replace “1-year” with “one year.”

Consistent with the reasoning in Section IV.B.3 of this rulemaking, VA proposes to amend § 19.26(b) to remove the references to “mail” and “letter”. Currently, paragraph (b)(2) states “For written contacts, VA will mail a letter requesting clarification to the claimant and send a copy to his or her representative and fiduciary, if any.” This language merely repeats VA’s general practice regarding written notice. See 38 CFR 1.525(d), 1.710(a). Therefore, rather than merely replacing the terms “mail” and “letter,” VA proposes to remove paragraph (b)(2) in its entirety. VA proposes to consolidate the introductory text of paragraph (b) and the text of paragraph (b)(1) into a single paragraph.

VA also proposes to amend § 19.52 to address computation of time limits when the pertinent notice is furnished electronically. Where a time limit runs from the date of electronic notice, VA proposes to apply the same principles described in Section IV.B.5 of this rulemaking. While section 807 of the PACT removed the reference to mailing as the trigger for the commencement of the period to file a NOD, the reference to mailing as the trigger for the commencement of the period to file a Substantive Appeal in response to a Statement of the Case remains unchanged. Thus, VA only proposes to amend the portions of § 19.52 that concern the time limit for filing a NOD.

#### F. Part 20 Board of Veterans’ Appeals: Rules of Practice

##### 1. Decisional Notice

Through the PACT Act, Congress authorized VA to provide electronic notice of a Board decision on an appeal if the appellant or their representative elects to receive electronic notice. With respect to the election, Congress used the same language with respect to Board decisions as it did with respect to AOJ decisions. Therefore, VA proposes to implement the provisions as a single election. In part 20, § 20.801 applies to decisions under the modernized review system, § 20.903 to decisions under the legacy system, and § 20.1405(f) to decisions on claims motions to revise Board decisions based on of clear and unmistakable error. To implement the election provision, at the end of each section, VA proposes to add the following or similar language: “Notice of a decision will be transmitted in accordance with §§ 1.525(d)(5) and 1.711(d) of this chapter.” In addition, VA proposes to remove the last sentence of § 20.1409(a), as it is duplicative of language VA proposes to add to § 20.1405(f).

## 2. Computation of Time Limits

Section 20.110 addresses computation of time limits. Paragraph (b) contains language similar to § 3.110(a). However, whereas § 3.110(a) applies to “the time limit for any action required of a claimant or beneficiary,” § 20.110(b) applies to “the time limit for filing a written document.” Unlike part 3, part 20 includes provisions applicable to circumstances where a representative is not acting on behalf of a claimant. See 38 CFR 20.6 (Withdrawal of services by a representative). Thus, the part 20 rule governing time limits is not limited to actions by a claimant, beneficiary, or appellant. However, there is nothing about the principle underlying the rule that limits it to filing of written documents. To more accurately reflect the scope, in § 20.110(b), VA proposes to replace the words “filing a written document” with the words “for any action by a party or representative”.

Unlike § 3.110, § 20.110 does not currently address how the first day of the time period is determined. Rather, in part 20, the applicable rule is repeated in the sections establishing specific time periods. Because each of these provisions apply the same standard for determining the first day of the time period, VA proposes to state the standard in new § 20.110(c) and to remove it from other sections in part 20. Proposed § 20.110(c) would contain the same principles as § 3.110(b). In addition, VA proposes to remove the corresponding language from §§ 20.104(c), 20.203(b), 20.402, 20.404, 20.502, 20.503, 20.804(c), 20.908(a), 20.908(b)(1), 20.1002(c)(2), 20.1305(a), 20.1305(d), 20.1405(e), 20.1408.

## 3. References to “Letter,” “Mail,” “Stamped,” and “Last Address of Record”

As explained in Section I of this rulemaking, section 807 of the PACT Act removed the reference to mailing as the trigger for the commencement of the period to file a Notice of Disagreement (NOD). Consistent with this statutory change, VA proposes to amend §§ 20.202, 20.203(b), 20.402, 20.502(a) by replacing variations of “mail” with variations of “issue.”

Consistent with the reasoning in Section IV.B.3 of this rulemaking regarding impediments to electronic notice that are solely regulatory, VA proposes to replace variations of the term “mail” with variations of “issue” in §§ 20.104(c), 20.709(h)(3), 20.714, 20.715(a)(2), 20.1002(c)(2), 20.1100(a), 20.1305(a), 20.1305(d), 20.1408, and 20.1409(a). VA also proposes to remove references to “letter” in

§§ 20.711(b)(2)(i), 20.1002(c)(2), 20.1305(a), and 20.1305(d). In § 20.1405(e), to make clear that the pertinent time period runs from the date the Board provides the party a copy of the General Counsel opinion rather than the date the General Counsel provided the opinion to the Board, VA proposes to replace “of mailing” with “a copy of the opinion was furnished”.

In §§ 20.1100(a) and 20.1409(a), VA proposes to replace language stating that the date of the Board decision will be “stamped” on the decision with language stating that the date will appear on the decision notice. These provisions, which address finality and determining the finality of a Board decision based on the date on the decision notice, align with current practice regarding AOJ decisions.

Consistent with the reasoning in Section IV.B.1 of the rulemaking, VA proposes to add the phrase “for the means of transmission used” after the phrase “last address of record” in §§ 20.406, 20.505, and 20.1408.

Executive Order 12866, 13563, and 14094

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is a significant regulatory action under Executive Order 12866 as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at [www.regulations.gov](http://www.regulations.gov).

## Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a

significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). VA believes the impact to be minimal because, as stated in the preamble, VA is merely adding an additional method of VA notice delivery and implementing statutory provisions allowing claimants and representatives to elect to receive electronic decision notice, if they so choose. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements to 5 U.S.C. 606 and 604 do not apply.

## Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

## Paperwork Reduction Act

This proposed rule contains no provision constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

## List of Subjects

### 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Crime, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Parking, Penalties, Postal service, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

### 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

### 38 CFR Part 13

Surety bonds, Trusts and trustees, Veterans.

### 38 CFR Parts 19 and 20

Administrative practice and procedure, Claims, Veterans.

## Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this

document on April 6, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

**Luvenia Potts,**

*Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.*

For the reasons set forth in the preamble, VA proposes to amend 38 CFR parts 1, 3, 13, 19, and 20 as follows:

**PART 1—GENERAL PROVISIONS**

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

**Authority:** 38 U.S.C. 5101, and as noted in specific sections. 38 U.S.C. 1751–1754 and 7331–7334. Sections 1.500 to 1.527 issued under 72 Stat. 1114, 1236, as amended; 38 U.S.C. 501, 5701.

■ 2. Amend § 1.525 by revising paragraph (d) and adding paragraph (f) to read as follows:

**§ 1.525 Inspection of records by or disclosure of information to recognized representatives of organizations and recognized attorneys.**

\* \* \* \* \*

(d)(1) For purposes of VA's obligations to provide notice to representatives under laws affecting the provision of benefits to veterans or the dependents or survivors of veterans:

*Address* means a place, specified by the claimant's representative where the claimant's representative is able to receive communications through a particular means.

*Alert* means a communication informing the addressee claimant's representative that a notice is available through a VA web-based system.

*Claimant's representative* means any person holding power of attorney, a recognized attorney who has filed the requisite declaration, or the accredited representative of a recognized organization holding power of attorney.

*Decisional notice* means notice of a determination affecting the provision of benefits to a claimant or beneficiary.

*Nondecisional notice* means legally required notice other than decisional notice.

*Notice content* means the information VA is required to communicate to the claimant's representative.

*Writing* means words, symbols or marks intentionally recorded on something tangible, such as paper, computer, electronic storage device, or any other medium.

(2) The claimant's representative shall be supplied with a copy of each notice

to the claimant respecting the adjudication of the claim.

(3) Where notice is directed to the claimant's representative, VA satisfies its obligation by transmitting, to the representative's latest address of record for the means of transmission used, either:

- (i) The required notice content, or
- (ii) An alert.

(4) Except as otherwise provided, nondecisional notice may be transmitted orally or in writing.

(5) With respect to decisional notice:

(i) In cases where the claimant's representative has not elected to receive decisional notice electronically, VA will mail the notice content.

(ii) In cases where the claimant's representative has elected to receive decisional notice electronically, VA will either:

(A) Transmit either of the communications described in paragraph (d)(3) of this section through electronic means; or

(B) Mail the notice content.

(6) A claimant's representative elects to receive decisional notice electronically by selecting the electronic decision notice option within a VA web-based system that solicits such elections, or through other means prescribed by the Secretary and published in the notice section of the **Federal Register**.

(7) A claimant's representative revokes a prior election to receive decisional notice electronically by making the appropriate selection in a VA web-based system that solicits such revocations, or through other means prescribed by the Secretary and published in the notice section of the **Federal Register**.

(8) The election of electronic decision notice or revocation thereof by a representative receiving notice pursuant to this paragraph (d)(8) is independent of any election or revocation thereof by the claimant.

\* \* \* \* \*

(f) If a claimant dies before action on the claim is completed, the person or organization holding power of attorney or the attorney who has filed the requisite declaration may continue to act until the action is completed except where the power of attorney or requisite declaration was filed on behalf of a dependent.

■ 3. Revise the undesignated center heading preceding § 1.710 and revise § 1.710 to read as follows:

**Delivery of Benefits Payments and Correspondence to Claimants**

**§ 1.710 Homeless claimants: Delivery of benefit payments and correspondence.**

(a) All correspondence and all checks for benefits payable to claimants under laws administered by the Department of Veterans Affairs shall be directed to the address specified by the claimant for the means of transmission used. The Department of Veterans Affairs will honor for this purpose any address of the claimant in care of another person or organization or in care of general delivery at a United States post office. In no event will a claim or payment of benefits be denied because the claimant has no mailing address.

(b) To ensure prompt delivery of benefit payments and correspondence, claimants who seek personal assistance from Veterans Benefits Counselors when filing their claims shall be counseled as to the importance of providing his or her current mailing address and, if no address is provided, the procedures for delivery described in paragraph (d) of this section.

(c) The Department of Veterans Affairs shall prepare and distribute to organizations specially serving the needs of veterans and the homeless, including but not limited to shelters, kitchens and private outreach facilities, information encouraging such organizations to counsel individuals on the importance of providing mailing addresses to the Department of Veterans Affairs and advising them of this regulation.

(d) If a claimant fails or refuses to provide a current mailing address, to the Department of Veterans Affairs, items described in paragraph (a) of this section that would otherwise be mailed to the claimant will be delivered to the Agent Cashier of the regional office which adjudicated or is adjudicating the claim in the case of compensation, pension or survivors' benefits, to the Agent Cashier of the Department of Veterans Affairs facility closest to the educational institution or training establishment attended by a claimant in the case of education benefits, or to the Agent Cashier of any other Department of Veterans Affairs facility deemed by the Agency to be appropriate under the circumstances of the particular case. The claimant, within 30 days after issuance, may obtain delivery of any check or correspondence held by an Agent Cashier upon presentation of proper identification. Checks unclaimed after 30 days will be returned to the Department of the Treasury and the correspondence to the regional office or facility of jurisdiction. Thereafter, the

claimant must request the reissuance of any such check or item of correspondence by written notice to the Department of Veterans Affairs.

(Authority: 38 U.S.C. 5120; 5126)

■ 4. Add § 1.711 to read as follows:

**§ 1.711 Furnishing required notice.**

(a) *Definitions.* For purposes of VA's obligations to provide notice under a law affecting the provision of benefits to veterans or the dependents or survivors of veterans:

*Address* means a place, specified by an individual where the individual is able to receive communications through a particular means. The term includes postal addresses, telephone numbers, email addresses, and unique identifiers associated with VA web-based systems.

*Addressee* means a claimant, beneficiary, dependent of a veteran, or another individual legally entitled to receive notice.

*Alert* means a communication informing the addressee that a notice is available through a VA web-based system.

*Decisional notice* means notice of a determination affecting the provision of benefits to a claimant or beneficiary.

*Nondecisional notice* means legally required notice other than decisional notice.

*Notice content* means the information VA is required to communicate to the addressee.

*Writing* means words, symbols or marks intentionally recorded on something tangible, such as paper, computer, electronic storage device, or any other medium.

(b) *Notice to a specific addressee.* Where notice is directed to a specific addressee, VA satisfies its notice obligation by transmitting, to the addressee's last address of record for the means of transmission used, either:

- (1) The required notice content; or
- (2) An alert.

(c) *Nondecisional notice.* Except as otherwise provided, nondecisional notice may be transmitted orally or in writing.

(d) *Decisional notice.* (1) In cases where the addressee has not elected to receive decisional notice electronically, VA will mail the notice content.

(2) In cases where the addressee has elected to receive decisional notice electronically, VA will either:

(i) Transmit either of the communications described in paragraph (b) of this section through electronic means; or

(ii) Mail the notice content.

(3) An addressee elects to receive decisional notice electronically by

selecting the option for electronic decision notice within a VA web-based system that solicits such elections, or through other means prescribed by the Secretary and published in the notice section of the **Federal Register**.

(4) An addressee revokes a prior election to receive decisional notice electronically by making the appropriate selection within a VA web-based system that solicits such revocations, or through other means prescribed by the Secretary and published in the notice section of the **Federal Register**.

**PART 3—ADJUDICATION**

**Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation**

■ 5. The authority citation for part 3, subpart A, continues to read as follows:

**Authority:** 38 U.S.C. 501(a), unless otherwise noted.

**§ 3.1 [Amended]**

■ 6. Amend § 3.1 by removing and reserving paragraph (q).

■ 7. Amend § 3.103 by revising paragraph (f) and adding paragraph (g) to read as follows:

**§ 3.103 Procedural due process and other rights.**

\* \* \* \* \*

(f) *Notification of decisions.* The claimant or beneficiary and his or her representative will be notified in writing of decisions affecting the payment of benefits or granting of relief. The notice document or enclosures or attachments or a combination thereof must include:

- (1) Identification of the issues adjudicated;
- (2) A summary of the evidence considered;
- (3) A summary of the laws and regulations applicable to the claim;
- (4) A listing of any findings made by the adjudicator that are favorable to the claimant under § 3.104(c);
- (5) For denied claims, identification of the element(s) required to grant the claim(s) that were not met;
- (6) If applicable, identification of the criteria required to grant service connection or the next higher-level of compensation;
- (7) An explanation of how to obtain or access evidence used in making the decision; and
- (8) A summary of the applicable review options under § 3.2500 available for the claimant to seek further review of the decision.

(g) *Furnishing of notice.* VA will furnish the written notice described in paragraph (f) of this section in accordance with §§ 1.525(d)(5) and 1.711(d) of this chapter.

**§ 3.105 [Amended]**

■ 8. Amend § 3.105, in paragraphs (d) through (h), by removing the words “at his or her latest address of record”.

■ 9. Amend § 3.110 by revising paragraph (b) to read as follows:

**§ 3.110 Computation of time limit.**

\* \* \* \* \*

(b) The first day of the specified period referred to in paragraph (a) of this section shall be the date VA sent the communication described in § 1.711(b) of this chapter. For written notice, the date of the document containing the notice content shall be considered the date VA sent the communication described in § 1.711(b) of this chapter for purposes of computing time limits. As to appeals, see §§ 19.52, 20.203, and 20.110 of this chapter.

(Authority: 38 U.S.C. 501)

**§ 3.114 [Amended]**

■ 10. Amend § 3.114, in paragraph (b), by removing the words “at his or her last address of record”.

**§ 3.150 [Amended]**

■ 11. Amend § 3.150, in paragraph (b), by removing the words “in letters” and adding in their place the word “when”.

**§ 3.905 [Amended]**

■ 12. Amend § 3.905, in paragraph (b), by removing the words “sent to the person's latest address of record” and adding in their place the words “sent to the person's latest address of record for the means of communication used”.

■ 13. Amend § 3.1010, in paragraph (f)(3), by removing the word “mailing” and adding in its place the word “issuance”.

**Subpart D—Universal Adjudication Rules That Apply to Benefit Claims Governed by Part 3 of This Title**

**§ 3.2600 [Amended]**

■ 14. Amend § 3.2600, in paragraph (b), by removing the word “mails” and adding in their place the word “issues” wherever they appear.

**PART 13—FIDUCIARY ACTIVITIES**

■ 15. The authority citation for part 13 continues to read as follows:

**Authority:** 38 U.S.C. 501, 5502, 5506–5510, 6101, 6106–6108, and as noted in specific sections.

**§ 13.20 [Amended]**

■ 16. Revise § 13.20 by removing the definition of “Written notice”.

**§ 13.300 [Amended]**

■ 17. Amend § 13.300, in paragraph (c)(3), by removing the word “mails”

and adding in its place the word "issues".

§ 13.400 [Amended]

- 18. Amend § 13.400, in paragraphs (d)(1)(i) and (ii), by removing the word "mailed" and adding in its place the word "issued".
- 19. Amend § 13.600 by adding paragraph (b)(3) to read as follows:

§ 13.600 Appeals.

\* \* \* \* \*

(b) \* \* \*

(3) Notice of a decision that is appealable to the Board pursuant to paragraph (a) of this section:

- (i) Will be transmitted in accordance with §§ 1.525(d)(5) and 1.711(d) of this chapter; and
- (ii) Will include:
  - (A) A clear statement of decision;
  - (B) The reason(s) for the decision;
  - (C) A summary of the evidence considered in reach the decision; and
  - (D) The necessary procedures and time limits to initiate an appeal of the decision.

PART 19—BOARD OF VETERANS' APPEALS: LEGACY APPEALS REGULATIONS

Subpart B—Legacy Appeals and Legacy Appeals Processing by Agency of Original Jurisdiction

- 20. The authority citation for part 19 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

- 21. Amend § 19.24 by revising paragraph (b)(3)(ii) to read as follows:

§ 19.24 Action by agency of original jurisdiction on Notice of Disagreement required to be filed on a standardized form.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(i) \* \* \*

(ii) One year from the date of issuance of notice of the decision of the agency of original jurisdiction.

\* \* \* \* \*

- 22. Amend § 19.26 by revising paragraph (b) and (c)(1)(ii) to read as follows:

§ 19.26 Action by agency of original jurisdiction on Notice of Disagreement.

\* \* \* \* \*

(b) Unclear communication or disagreement. If within one year after issuing an adverse decision (or 60 days for simultaneously contested claims), the AOJ receives a written communication expressing dissatisfaction or disagreement with the adverse decision, but the AOJ cannot

clearly identify that communication as expressing an intent to appeal, or the AOJ cannot identify which denied claim(s) the claimant wants to appeal, then the AOJ will contact the claimant to request clarification of the claimant's intent. This contact may be either oral or written. For oral contacts, VA will contact whoever filed the communication. VA will make a written record of any oral clarification request conveyed to the claimant including the date of the adverse decision involved and the response. In any request for clarification, the AOJ will explain that if a response to this request is not received within the time period described in paragraph (c) of this section, the earlier, unclear communication will not be considered an NOD as to any adverse decision for which clarification was requested.

(c) \* \* \*

(1) \* \* \*

(i) \* \* \*

(ii) One year after the date of issuance of notice of the adverse decision being appealed (60 days for simultaneously contested claims).

\* \* \* \* \*

§ 19.32 [Amended]

- 23. Amend § 19.32 by removing the words "1-year" and adding in their place the words "one-year".

- 24. Amend § 19.52 by revising paragraphs (a), (b)(1), and (b)(2)(i) and (ii) to read as follows:

§ 19.52 Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.

(a) Notice of Disagreement. Except in the case of simultaneously contested claims, a claimant, or his or her representative, must file a Notice of Disagreement with a determination by the agency of original jurisdiction within one year from the date of issuance of the communication notifying the claimant of the determination. Otherwise, that determination will become final. The date of issuance of the determination will be presumed to be the same as the date of that communication for purposes of determining whether an appeal has been timely filed.

(b) \* \* \*

(1) General. Except in the case of simultaneously contested claims, a Substantive Appeal must be filed within 60 days from the date that the agency of original jurisdiction mails the Statement of the Case, or within the remainder of the one-year period from the date of mailing of the determination being appealed was issued, whichever period

ends later. The date notice of mailing of the Statement of the Case will be presumed to be the same as the date of the Statement of the Case and the date of issuance of notice of the determination will be presumed to be the same as the date of that communication for purposes of determining whether an appeal has been timely filed.

(2) \* \* \*

(i) A claimant submits additional evidence within one year of the date of issuance of the determination being appealed was issued; and

(ii) That evidence requires, in accordance with § 19.31 of this chapter, that the claimant be furnished a Supplemental Statement of the Case, then the time to submit a Substantive Appeal shall end not sooner than 60 days after such Supplemental Statement of the Case is mailed to the appellant, even if the 60-day period extends beyond the expiration of the one-year appeal period.

\* \* \* \* \*

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

- 25. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

Subpart B—The Board

- 26. Amend § 20.104 by revising paragraph (c) to read as follows:

§ 20.104 Rule 104. Jurisdiction of the Board.

\* \* \* \* \*

(c) Authority to determine jurisdiction. The Board shall decide all questions pertaining to its jurisdictional authority to review a particular case. When the Board, on its own initiative, raises a question as to a potential jurisdictional defect, all parties to the proceeding and their representative(s), if any, will be given notice of the potential jurisdictional defect(s) and granted a period of 60 days following the date on which such notice is issued to present written argument and additional evidence relevant to jurisdiction and to request a hearing to present oral argument on the jurisdictional question(s). The Board may dismiss any case over which it determines it does not have jurisdiction.

\* \* \* \* \*

- 27. Amend § 20.110 by revising paragraphs (b) and (c) to read as follows:

§ 20.110 Rule 110. Computation of time limit for filing.

\* \* \* \* \*



(b) *Computation of time limit.* In computing the time limit for any action by a party or representative, the first day of the specified period will be excluded and the last day included. Where the time limit would expire on a Saturday, Sunday, or legal holiday, the next succeeding workday will be included in the computation.

(c) *Date of issuance.* Where the time period runs from the date VA provides notice, the first day of the specified period referred to in paragraph (b) of this section shall be the date VA sent the communication described in § 1.711(b) of this chapter. For written notice, the date of the document containing the notice content shall be considered the date VA sent the communication described in § 1.711(b) of this chapter for purposes of computing time limits.

### Subpart C—Commencement and Filing of Appeals

#### § 20.202 [Amended]

- 28. Amend § 20.202 by:
  - a. In paragraph (c)(2), removing the word “mails” and adding in its place the word “issues”;
  - b. In paragraph (f), removing the word “mailing” and adding in its place the words “issuance of notice of”; and
  - c. In paragraph (g)(1)(ii), removing the word “mailing” and adding in its place the word “issuance”.

#### § 20.203 [Amended]

- 29. Amend § 20.203, in paragraph (b), removing the word “mails” and adding in its place the word “issues” and removing the last sentence.

### Subpart E—Appeal in Simultaneously Contested Claims

#### § 20.402 [Amended]

- 30. Amend § 20.402 by:
  - a. In the first sentence, removing the word “mailing” and adding in its place the word “issuance”; and
  - b. Removing the last sentence.

#### § 20.404 [Amended]

- 31. Amend § 20.404 by removing the last sentence.

#### § 20.406 [Amended]

- 32. Amend § 20.406 by removing the words “last address of record” and adding in their place the words “last address of record for the means of transmission used”.

### Subpart F—Legacy Appeal in Simultaneously Contested Claims

- 33. Revise § 20.502 to read as follows:

#### § 20.502 Rule 502. Time limits for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case in simultaneously contested claims.

(a) *Notice of Disagreement.* In simultaneously contested claims, the Notice of Disagreement from the person adversely affected must be filed within 60 days from the date of issuance of the notification of the determination to him or her; otherwise, that determination will become final.

(b) *Substantive Appeal.* In the case of simultaneously contested claims, a Substantive Appeal must be filed within 30 days from the date of mailing of the Statement of the Case.

(c) *Supplemental Statement of the Case.* Where a Supplemental Statement of the Case is furnished by the agency of original jurisdiction in a simultaneously contested claim, a period of 30 days from the date of mailing of the Supplemental Statement of the Case will be allowed for response, but the receipt of a Supplemental Statement of the Case will not extend the time allowed for filing a Substantive Appeal as set forth in paragraph (b) of this section. Provided a Substantive Appeal has been timely filed in accordance with paragraph (b) of this section, the response to a Supplemental Statement of the Case is optional and is not required for the perfection of an appeal.

#### § 20.503 [Amended]

- 34. Amend § 20.503 by removing the last sentence.

#### § 20.505 [Amended]

- 35. Amend § 20.505 by removing the words “last address of record” and adding in their place the words “last address of record for the means of transmission used”.

### Subpart H—Hearings on Appeal

#### § 20.709 [Amended]

- 36. Amend § 20.709, in paragraph (h)(3), by removing the word “mailed” and adding in its place the word “issued”.

#### § 20.711 [Amended]

- 37. Amend § 20.711, in paragraph (b)(2)(i) by removing the words “the letter of notification” and adding in their place the words “issuance of notice”.

#### § 20.714 [Amended]

- 38. Amend § 20.714 by removing the word “mailed” and adding in its place the word “issued”.

#### § 20.715 [Amended]

- 39. Amend § 20.715, in paragraph (a)(2), by removing the word “mailing” and adding in its place the word “issuance”.
- 40. Amend § 20.801 by adding paragraph (d) to read as follows:

#### § 20.801 Rule 801. The decision.

\* \* \* \* \*

(d) *Notice.* Notice of a decision will be transmitted in accordance with §§ 1.525(d)(5) and 1.711(d) of this chapter.

(Authority: 38 U.S.C. 7104)

#### § 20.804 [Amended]

- 41. Amend § 20.804, in paragraph (c), by removing the last sentence.

### Subpart J—Action by the Board in Legacy Appeals

- 42. Amend § 20.903 by adding paragraph (d) to read as follows:

#### § 20.903 Rule 903. The decision.

\* \* \* \* \*

(d) *Notice.* Notice of a decision will be transmitted in accordance with §§ 1.525(d)(5) and 1.711(d) of this chapter.

(Authority: 38 U.S.C. 7104)

#### § 20.908 [Amended]

- 43. Amend § 20.908 by:
  - a. In paragraph (a), removing the last sentence; and
  - b. In paragraph (b)(1), removing the last sentence.

### Subpart K—Vacatur and Reconsideration

#### § 20.1002 [Amended]

- 44. Amend § 20.1002(c)(2) by:
  - a. In the first sentence, removing the words “mailing of the letter of notification” and adding in their place the words “issuance of notice”; and
  - b. Removing the second sentence.

### Subpart L—Finality

- 45. Amend § 20.1100 by revising paragraph (a) to read as follows:

#### § 20.1100 Rule 1100. Finality of decisions of the Board.

(a) *General.* Unless the Chairman of the Board orders reconsideration, and with the exception of matters listed in paragraph (b) of this section, all Board decisions are final on the date of notice of the decision. With the exception of matters listed in paragraph (b) of this section, the decision rendered by the reconsideration Panel in an appeal in which the Chairman has ordered reconsideration is final.

\* \* \* \* \*



**Subpart N—Miscellaneous**

■ 46. Amend § 20.1305 by revising paragraphs (a) and (d) to read as follows:

**§ 20.1305 Rule 1305. Procedures for legacy appellants to request a change in representation, personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.**

(a) *Request for a change in representation, request for a personal hearing, or submission of additional evidence within 90 days following notification of certification and transfer of records.* An appellant in a legacy appeal, as defined in § 19.2 of this chapter, and his or her representative, if any, will be granted a period of 90 days following the date of issuance of notice to them that an appeal has been certified to the Board for appellate review and that the appellate record has been transferred to the Board, or up to and including the date the appellate decision is promulgated by the Board, whichever comes first, during which they may submit a request for a personal hearing, additional evidence, or a request for a change in representation. Any such request or additional evidence should be submitted directly to the Board and not to the agency of original jurisdiction. If any such request or additional evidence is submitted to the agency of original jurisdiction instead of to the Board, the agency of original jurisdiction must forward it to the Board in accordance with § 19.37(b) of this chapter. Any evidence which is submitted at a hearing on appeal which was requested during such period will be considered to have been received during such period, even though the hearing may be held following the expiration of the period. Any pertinent evidence submitted by the appellant or representative is subject to the

requirements of paragraph (d) of this section if a simultaneously contested claim is involved.

\* \* \* \* \*

(d) *Simultaneously contested claims.* In simultaneously contested claims, if pertinent evidence which directly affects payment, or potential payment, of the benefit sought is submitted by any claimant and is accepted by the Board under the provisions of this section, the substance of such evidence will be issued to each of the other claimants who will then have 60 days from the date of issuance of notice of the new evidence within which to comment upon it and/or submit additional evidence in rebuttal. For matters over which the Board does not have original jurisdiction, a waiver of initial agency of original jurisdiction consideration of pertinent additional evidence received by the Board must be obtained from each claimant in accordance with paragraph (c) of this section. No further period will be provided for response to such comment or rebuttal evidence.

\* \* \* \* \*

**Subpart O—Revision of Decisions on Grounds of Clear and Unmistakable Error**

■ 47. Amend § 20.1405 by revising paragraphs (e) and (f) to read as follows:

**§ 20.1405 Rule 1405. Disposition.**

\* \* \* \* \*

(e) *General Counsel opinions.* The Board may secure opinions of the General Counsel in connection with a motion under this subpart. In such cases, the Board will notify the party and his or her representative, if any. When the opinion is received by the Board, a copy of the opinion will be furnished to the party's representative or, subject to the limitations provided in

38 U.S.C. 5701(b)(1), to the party if there is no representative. A period of 60 days from the date a copy of the opinion was furnished will be allowed for response.

(f) *Decision.* The decision of the Board on a motion under this subpart will be in writing. The decision will include separately stated findings of fact and conclusions of law on all material questions of fact and law presented on the record, the reasons or bases for those findings and conclusions, and an order granting or denying the motion. Notice of the decision will be transmitted in accordance with §§ 1.525(d)(5) and 1.711(d) of this chapter.

■ 48. Revise § 20.1408 to read as follows:

**§ 20.1408 Rule 1408. Special rules for simultaneously contested claims.**

In the case of a motion under this subpart to revise a final Board decision in a simultaneously contested claim, as that term is used in Rule 3(l) (§ 20.3(l)), a copy of such motion shall, to the extent practicable, be issued to all other contesting parties. Other parties have a period of 30 days from the date of issuance of the copy of the motion to file a brief or argument in answer. Notices in simultaneously contested claims will be forwarded to the last address of record for the means of transmission used of the parties concerned and such action will constitute sufficient evidence of notice.

■ 49. Amend § 20.1409 by revising paragraph (a) to read as follows:

**§ 20.1409 Rule 1409. Finality and appeal.**

(a) A decision on a motion filed by a party or initiated by the Board pursuant to this subpart is final on the date of notice of the decision.

\* \* \* \* \*

[FR Doc. 2023-11361 Filed 6-1-23; 8:45 am]

BILLING CODE 8320-01-P

# Notices

Federal Register

Vol. 88, No. 106

Friday, June 2, 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

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Safety, Security, and Protection, USDA.

**ACTION:** Notice of a new system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended, and Office of Management and Budget Circular No. A-108 *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act*, the U.S. Department of Agriculture (USDA) proposes a new system of records, USDA/OSSP-1, the Enterprise Physical Access Control System (ePACS). The Office of the Safety, Security, and Protections maintains ePACS, which contains the information required to control physical access to USDA managed facilities and restricted areas within the facilities in all regions across the United States. The notice also conveys the system location, categories of records, routine uses (one of which permits records to be provided to the National Archives and Records Administration), storage, safeguards, retention and disposal, system manager and address, notification procedures, records access, and contesting procedures.

**DATES:** In accordance with 5 U.S.C. 552a(e)(4) and (11) this notice is applicable upon publication; subject to a 30-day notice and comment period in which to comment on the routine uses described in the routine uses section of this system of records notice. Please submit any comments by July 3, 2023.

**ADDRESSES:** Comments may be submitted by one of the following methods:

—*Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or

attach a file for lengthier comments. Go to <https://www.regulations.gov>.

Follow the on-line instructions at that site for submitting comments.

—*Postal Mail/Commercial Delivery:*

Office of Safety, Security and Protection, 1400 Independence Ave. SW, Washington, DC 20250.

*Instructions:* All items submitted by mail or electronic mail must include the Agency name and docket number USDA-2021-13. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For general questions, please contact Samuel Willis, System Owner/Manager, Office of Safety, Security and Protection, 1400 Independence Avenue SW, Washington, DC 20250, (833) 682-4675.

For Privacy Act questions concerning this system of records notice, please contact Michele Washington, USDA, Departmental Administration Information Technology Office, Office of the Chief Information Officer United States Department of Agriculture (202) 577-8021.

For general USDA Privacy Act questions, please contact the USDA Chief Privacy Officer, Information Security Center, Office of Chief Information Officer, USDA, Jamie L. Whitten Building, 1400 Independence Ave. SW, Washington, DC 20250; email: [USDAPrivacy@ocio.usda.gov](mailto:USDAPrivacy@ocio.usda.gov).

**SUPPLEMENTARY INFORMATION:** USDA is proposing to establish a new system of records notice entitled USDA/OSSP-1, the Enterprise Physical Access Control System (ePACS). The primary purpose of this system is to collect data required to manage physical access to USDA operated facilities and restricted areas within the facilities in all regions across the United States. This system maintains individuals' personal individual verification (PIV) information to support the USDA's efforts related to protecting USDA facilities and operating the USDA visitor management program. Efforts have been made to safeguard records in accordance with applicable rules and policies, including all applicable USDA automated systems security and access policies. Strict controls have been imposed to minimize the risk of

compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

**SYSTEM NAME AND NUMBER:**

USDA/OSSP-1, Enterprise Physical Access Control System (ePACS)

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

The ePACS is maintained and physically located at USDA's Digital Infrastructure Services Center at 8930 Ward Parkway, Kansas City, Missouri 64114.

**SYSTEM MANAGER(S):**

Director, Facility Protection Division, Office of Safety, Security, and Protection, 1400 Independence Avenue SW, Washington, DC 20250, (202) 260-8930.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Homeland Security Presidential Directive-12 (HSPD-12), Departmental Physical Security Program, DR 1650-001, December 9, 2021, and Authority to Operate (ATO), 06/07/2022.

**PURPOSE(S) OF THE SYSTEM:**

The ePACS provides a centralized infrastructure for the use of the USDA standard personal individual verification (PIV) card for access to federally controlled facilities as mandated by HSPD-12. The ePACS provides a means for USDA Agencies to deploy electronic access control to its facilities; supports the mitigation of identified threats and vulnerabilities; and ensures that unauthorized individuals do not have access to critical USDA assets. Incorporated into ePACS is the Visitor Management System (VMS), which allows visitors to log into a website and request to visit USDA locations where VMS is implemented.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Categories of individuals covered by this system include individuals with electronic facility physical access credentials including USDA employees, contractor employees, building

occupants, interns, visitors, and volunteers.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Categories of records in the system consists of records created for individuals to obtain electronic facility access credentials as well as temporary badges for facility access. The ePACS generally handles physical access security management information including physical access card status, physical access card category, physical access card expiration date, and physical access card holder emergency response responsibilities.

The data stored in ePACS includes: Federal Agency Smart Credential Number (FASC-N), Card Category, Card Status, Card Expiration Date, Photo, First Name, Middle Name, Last Name, Employee type, Employee Status, Emergency Responder, Department, Agency, Sub-agency, City, State, date of birth, and entry and exit date and time.

**RECORD SOURCE CATEGORIES:**

Information in this system is obtained from an official Department information technology system and is loaded into the system of records from the following source system: the Department's system of records entitled USDA/OCIO-2, eAuthentication Service—71 FR 42346—July 26, 2006, USDA/OCIO-2, eAuthentication Service (eAuth)—77 FR 15024—March 14, 2012, USDA/OCIO-2 eAuthentication Service—82 FR 8503—January 26, 2017.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, records contained in this system may be disclosed outside USDA as a routine use pursuant to 5 U.S.C. 552a(b)(3), to the extent that such uses are compatible with the purposes for which the information was collected. Such permitted routine uses include the following:

A. To the Department of Justice (DOJ) when: (a) USDA or any component thereof; or (b) any employee of USDA in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and USDA determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is deemed by USDA to be for a purpose that is compatible with the purpose for which USDA collected the records.

B. To a Congressional Office in response to an inquiry from that Congressional Office made at the written request of the individual about whom the record pertains.

C. To the National Archives and Records Administration (NARA) or other Federal Government agencies pursuant to records management activities being conducted under 44 U.S.C. 2904 and 2906.

To appropriate agencies, entities, and persons when (1) USDA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) USDA has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals, USDA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure to such agencies, entities, and persons is reasonably necessary to assist in connection with USDA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm; or to another Federal agency or Federal entity, when 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 agency (including its information systems, programs, and operations), the Federal Government, or national security.

When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program, statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate Federal, State, local, foreign, Tribal, or other public authority responsible for enforcing, investigating, or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity. Referral to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting violation of law, or of enforcing or implementing a statute, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential

violation of law, whether civil, criminal, or regulatory in nature.

D. To a court or adjudicative body in a proceeding when: (a) USDA or any component thereof; or (b) any employee of USDA in his or her official capacity; or (c) any employee of USDA in his or her individual capacity where USDA has agreed to represent the employee; or the United States Government is a party to litigation or has an interest in such litigation, and USDA determines that the records are both relevant and necessary to the litigation, and that use of such records is therefore deemed by USDA to be for a purpose that is compatible with the purpose for which USDA collected the records.

To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the USDA, when necessary to accomplish an agency function related to this system of records. Individuals providing information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to USDA officers and employees.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Records are stored on encrypted servers within a secured and controlled environment. Records backup storage is maintained by the USDA's Digital Infrastructure Services Center (DISC) in a virtual tape library at the USDA's DISC facility in Kansas City, MO. Copies of the backup records are maintained at the USDA DISC facility in St. Louis, MO. The ePACS has no hardcopy paper records that require storage.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Records are retrieved by a combination of name and date range.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Records compiled under this SORN will be maintained in accordance with NARA General Records Schedule (GRS) Transmittal 32 issued March 2022, Items 110 and 120, and NARA records retention schedules DAA-GRS2017-0006-0014, and DAA-GRS2021-0001-0005, to the extent applicable. Records may be retained for a longer period as required by litigation, investigation, and/or audit. A master file backup is created at the end of the calendar year and maintained in St. Louis, Mo. The St. Louis offsite storage site is located approximately 250 miles from the primary data facility and is not susceptible to the same hazards.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Records in this system are safeguarded by restricting accessibility, in accordance with USDA security and access policies. The safeguarding includes secured servers, firewall(s), network protection, and an encrypted password. Each user is assigned a level of role-based access, which is strictly controlled and granted through USDA-approved, secure application (after the user has successfully completed the Government National Agency Check with Inquiries (NACI) investigation).

Physical security measures are in place to prevent unauthorized persons from accessing ePACS as only government furnished equipment is allowed. The ePACS users are also required to complete appropriate training to learn requirements for safeguarding records maintained under the Privacy Act. USDA's Digital Infrastructure Services Center (DISC) safeguards records and ensures that privacy requirements are met in accordance with Federal and cyber security mandates. DISC provides continuous storage management, encryption, security administration, regular dataset backups, and contingency planning/disaster recovery.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to gain access to a record in this system of records, must contact the system manager at the address listed above and provide the system manager with the necessary particulars such as full name, date of birth, work address, country of citizenship. Requesters must also reasonably specify the record contents sought. The request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity. All requests for access to records must be in writing and should be submitted to the system manager at the address listed above. A determination whether a record may be accessed will be made at the time a request is received. All inquiries should be addressed in accordance with the "Notification Procedures" below.

**CONTESTING RECORD PROCEDURES:**

Individuals seeking to contest or amend information maintained in the system should direct their request to the above listed System Manager and should include the reason for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate. A request for contesting records should contain: Name, address including zip code, name of the system

of records, year of records in question, and any other pertinent information to help identify the data requested.

**NOTIFICATION PROCEDURES:**

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to the individual, from the System Manager listed above: See RECORD ACCESS PROCEDURES.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**Samuel Willis,**

*Director—Facility Protection Division, Office of Safety, Security and Protection, Departmental Administration, United States Department of Agriculture.*

[FR Doc. 2023–11753 Filed 6–1–23; 8:45 am]

**BILLING CODE 3410–98–P**

**DEPARTMENT OF COMMERCE****Bureau of Economic Analysis**

**Agency Information Collection Activities; Submission for Office of Management and Budget (OMB) Review; Comment Request; Expenditures Incurred by Recipients of Biomedical Research and Development Awards From the National Institutes of Health (NIH)**

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on March 21, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* Bureau of Economic Analysis (BEA), Commerce.

*Title:* Expenditures Incurred by Recipients of Biomedical Research and Development Awards from the National Institutes of Health (NIH).

*OMB Control Number:* 0608–0069.

*Form Number(s):* None.

*Type of Request:* Regular submission, extension of a current information collection.

*Number of Respondents:* 150.

*Average Hours per Response:* 16 hours is the average but may vary

among respondents because of differences in institution structure, size, and complexity.

*Burden Hours:* 2,400 hours.

*Needs and Uses:* The survey obtains the distribution of expenditures incurred by recipients of biomedical research awards from the NIH and will provide information on how the NIH award amounts are expended across several major categories. This information, along with wage and price data from other published sources, will be used to generate the Biomedical Research and Development Price Index (BRDPI). The BRDPI is an index of prices paid for the labor, supplies, equipment, and other inputs required to perform the biomedical research the NIH supports in its intramural laboratories and through its awards to extramural organizations. The BRDPI is a vital tool for planning the NIH research budget and analyzing future NIH programs. A survey of award recipients is currently the only means for updating the expenditure category weights that are used to prepare the BRDPI. BEA develops the index for NIH under a reimbursable interagency agreement.

A survey questionnaire with a cover letter that includes a brief description of, and rationale for, the survey will be sent to potential respondents by August 2023, 2024, and 2025. A report of the respondent's expenditures of the NIH award amounts following the proposed format for expenditure categories attached to the survey's cover letter, will be requested to be returned no later than December 8 of each survey year, which in most years will be approximately 120 days after mailing. Survey respondents will be selected based on award levels, which determine the weight of the respondent in the BRDPI. BEA proposes to survey 150 organizations that receive NIH biomedical research awards. This will include the top 100 organizations in total awards received; 40 additional organizations that are not primarily in the "Research and Development (R&D) contracts" category; and 10 additional organizations that are primarily in the "R&D contracts" category. Based on awards data for Fiscal Year 2022 by type of organization, the top 100 organizations received \$25.2 billion in awards (approximately 76 percent of total awards); the remaining awards-receiving organizations received \$8.1 billion.

*Affected Public:* Universities or other organizations that are NIH award recipients.

*Frequency:* Annual.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* 45 CFR 75.302, 75.308, 75.361, and 75.364; 15 U.S.C. 1525; 42 U.S.C. 282.

This information collection request may be viewed at [www.reginfo.gov](http://www.reginfo.gov). Follow the instructions to view the Department of Commerce collections currently under review by OMB.

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](http://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 and entering either the title of the collection or the OMB Control Number 0608–0069.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.*

[FR Doc. 2023–11725 Filed 6–1–23; 8:45 am]

BILLING CODE 3510–06–P

**DEPARTMENT OF COMMERCE**

**Foreign-Trade Zones Board**

[B–9–2023]

**Foreign-Trade Zone (FTZ) 46; Authorization of Production Activity; Patheon Pharmaceuticals Inc.; (Pharmaceutical Products); Cincinnati, Ohio**

On January 27, 2023, Patheon Pharmaceuticals Inc. submitted a notification of proposed production activity to the FTZ Board for its facilities within Subzone 46K, in Cincinnati, Ohio.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (88 FR 7394, February 3, 2023). On May 30, 2023, the applicant was notified of the FTZ Board’s decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board’s regulations, including section 400.14.

Dated: May 30, 2023.

**Elizabeth Whiteman,**

*Executive Secretary.*

[FR Doc. 2023–11779 Filed 6–1–23; 8:45 am]

BILLING CODE 3510–DS–P

**DEPARTMENT OF COMMERCE**

**Foreign-Trade Zones Board**

[B–10–2023]

**Foreign-Trade Zone (FTZ) 148; Authorization of Production Activity; CoLinX, LLC; (Wheel Hub-Bearing Assemblies); Crossville, Tennessee**

On January 27, 2023, CoLinX, LLC submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 148, in Crossville, Tennessee.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (88 FR 7394, February 3, 2023). On May 30, 2023, the applicant was notified of the FTZ Board’s decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board’s regulations, including section 400.14.

Dated: May 30, 2023.

**Elizabeth Whiteman,**

*Executive Secretary.*

[FR Doc. 2023–11778 Filed 6–1–23; 8:45 am]

BILLING CODE 3510–DS–P

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A–570–912]

**Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Notice of Court Decision Not in Harmony With the Results of 2014–2015 Antidumping Administrative Review; Notice of Amended Final Results**

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

**SUMMARY:** On May 18, 2023, the U.S. Court of International Trade (CIT) issued its final judgment in *Guizhou Tyre Co., Ltd. & Guizhou Tyre Import & Export Co., Ltd., et al. v. United States*, Consol. Court No. 17–00100, Slip Op. 23–79 (CIT 2023) (*Remand Order*), sustaining the U.S. Department of Commerce’s (Commerce) second remand results pertaining to the administrative review of the antidumping duty (AD) order on certain new pneumatic off-the-road tires (OTR Tires) from the People’s Republic of China (China) covering the period September 1, 2014, through August 31, 2015. Commerce is notifying the public

that the CIT’s final judgment is not in harmony with Commerce’s final results of the administrative review, and that Commerce is amending the final results with respect to the dumping margin assigned to mandatory respondent, Xuzhou Xugong Tyres Co., Ltd., Armour Rubber Co. Ltd., and Xuzhou Hanbang Tyre Co., Ltd. (collectively, Xugong), as well as all other qualifying separate rate respondents that are plaintiffs in the action (*i.e.*, Qingdao Qihang Tyre Co., Ltd. (Qingdao Qihang), Qingdao Free Trade Zone Full-World International Trading Co., Ltd. (Full World), Trelleborg Wheel Systems (Xingtai) China, Co., Ltd. (Trelleborg), and Weihai Zhongwei Rubber Co., Ltd. (Zhongwei)).

**DATES:** Applicable May 28, 2023.

**FOR FURTHER INFORMATION CONTACT:** Brendan Quinn, Program Manager, 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) 482–5848.

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 21, 2017, Commerce published its *Final Results* in the 2014–2015 AD administrative review of OTR Tires from China.<sup>1</sup> After correcting ministerial errors contained in the *Final Results*, on June 14, 2017, Commerce published the *Amended Final Results*, and calculated a weighted-average dumping margin of 33.14 percent for Xugong, which was also used as the separate rate applicable to various respondents not individually examined in the administrative review, including Qingdao Qihang, Full World, Trelleborg, and Zhongwei.<sup>2</sup> Further, in the *Final Results* and *Amended Final Results*, Commerce determined that certain companies, including Guizhou Tyre Co Ltd. (GTC) and Guizhou Tyre Import and Export Co., Ltd. (GTCIE) (collectively, GTC/GTCIE) and Aeolus Tyre Co., Ltd., are part of the China-wide entity.<sup>3</sup>

Aeolus, Full World, GTC/GTCIE, Qingdao Qihang, Trelleborg, Xugong, and Zhongwei, appealed Commerce’s *Final Results/Amended Final Results*.

<sup>1</sup> See *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015*, 82 FR 18733 (April 21, 2017) (*Final Results*), and accompanying Issues and Decision Memorandum.

<sup>2</sup> See *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2014–2015*, 82 FR 27224 (June 14, 2017) (*Amended Final Results*).

<sup>3</sup> *Id.*

The CIT remanded the *Final Results/ Amended Final Results* to Commerce to: (1) reconsider its separate rate determination as to GTC and Aeolus; (2) redetermine Xugong’s weighted average dumping margin without making deductions for value-added tax (VAT); and (3) apply any relief that resulted from the recalculation of Xugong’s individually-determined rate to Full World, Qingdao, Trelleborg, and Zhongwei.<sup>4</sup> In the First Remand Redetermination, issued in September 2019, Commerce: (1) recalculated export price (EP) and constructed export price (CEP) for Xugong without making deductions for Chinese VAT, resulting in a 16.78% weighted-average dumping margin for Xugong, which is also assigned to all other qualifying separate rate respondents that are plaintiffs in the action (*i.e.*, Full World, Qingdao Qihang, Trelleborg, and Zhongwei); and (2) reconsidered the record with respect to the decision to deny separate rate status to Aeolus and GTC/GTCIE in the *Final Results* and *Amended Final Results*, but continued to determine that both Aeolus and GTC failed to rebut the

presumption of government control and remained ineligible for a separate rate.<sup>5</sup> The CIT sustained, in part, Commerce’s determination to recalculate EP and CEP for Xugong without making deductions for Chinese VAT, and the resulting redetermination of the weighted-average dumping margins for Xugong and for all other qualifying separate rate respondents, but remanded for a second time the decisions to continue to deny separate-rate status to Aeolus and GTC/GTCIE.<sup>6</sup> In its second remand redetermination, issued in September 2021, Commerce reconsidered the record evidence with respect to each prong of the enumerated *de facto* separate rate criteria in accordance with the *Guizhou Tyre II* opinion, and continued to find that both Aeolus and GTC/GTCIE failed to rebut at least one of the four *de facto* criteria and, thus, continued to be ineligible for a separate rate.<sup>7</sup> On May 18, 2023, the CIT sustained Commerce’s final redetermination.<sup>8</sup>

**Timken Notice**

In its decision in *Timken*,<sup>9</sup> as clarified by *Diamond Sawblades*,<sup>10</sup> the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s May 18, 2023, judgment constitutes a final decision of the CIT that is not in harmony with Commerce’s *Final Results*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

**Amended Final Results**

Because there is now a final court judgment, Commerce is amending its *Final Results* and *Amended Final Results* with respect to mandatory respondent Xugong and all other qualifying separate rate respondents that are plaintiffs in the action (*i.e.*, Full World, Qingdao Qihang, Trelleborg, and Zhongwei) as follows:

Exporter	Weighted-average dumping margin (percent)
Xuzhou Xugong Tyres Co., Ltd., Armour Rubber Company Ltd., or Xuzhou Hanbang Tyre Co., Ltd .....	16.78
Weihai Zhongwei Rubber Co., Ltd .....	16.78
Qingdao Qihang Tyre Co., Ltd .....	16.78
Qingdao Free Trade Zone Full-World International Trading Co., Ltd .....	16.78
Trelleborg Wheel Systems (Xingtai) China, Co. Ltd .....	16.78

**Cash Deposit Requirements**

Because the AD order on OTR Tires from China was revoked,<sup>11</sup> Commerce

<sup>4</sup> See *Guizhou Tyre Co., Ltd. & Guizhou Tyre Import & Export Co., Ltd., et al. v. United States*, 389 F. Supp. 3d 1350 (CIT 2019) (*Guizhou Tyre I*).

<sup>5</sup> See *Final Results of Redetermination Pursuant to Court Remand, Guizhou Tyre Co., Ltd. & Guizhou Tyre Import & Export Co., Ltd., et al. v. United States*, Court No. 17–00100, Slip Op. 19–64 (CIT 2019), dated September 23, 2019 (*First Remand Redetermination*).

<sup>6</sup> See *Guizhou Tyre Co., Ltd. & Guizhou Tyre Import & Export Co., Ltd., et al. v. United States*, 519 F. Supp. 3d 1248 (CIT 2021) (*Guizhou Tyre II*).

<sup>7</sup> See *Final Results of Redetermination Pursuant to Court Remand, Guizhou Tyre Co., Ltd. & Guizhou Tyre Import & Export Co., Ltd., et al. v. United States*, Court No. 17–00100, Slip Op. 21–60 (CIT 2021), dated September 24, 2021 (*Second Remand Redetermination*).

<sup>8</sup> See *Remand Order*.

<sup>9</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>10</sup> See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

will not issue cash deposit instructions as a result of this Court decision.

**Liquidation of Suspended Entries**

In the event the CIT’s ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise exported by the companies listed above in accordance with 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis*. Where an import-specific *ad valorem* assessment rate is zero or *de*

<sup>11</sup> See *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of Sunset Reviews and Revocation of Antidumping Duty and Countervailing Duty Orders*, 84 FR 20616 (May 10, 2019).

*minimis*,<sup>12</sup> we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

**Notification to Interested Parties**

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: May 26, 2023.

**Lisa W. Wang,**  
Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–11775 Filed 6–1–23; 8:45 am]

**BILLING CODE 3510–DS–P**

<sup>12</sup> See 19 CFR 351.106(c)(2).

## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-580-891]

**Carbon and Alloy Steel Wire Rod From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022**

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

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily finds that POSCO, a producer and exporter of carbon and alloy steel wire rod (wire rod) from the Republic of Korea (Korea), did not sell subject merchandise in the United States at prices below normal value during the period of review (POR) May 1, 2021, through April 30, 2022. We invite all interested parties to comment on these preliminary results.

**DATES:** Applicable June 2, 2023.

**FOR FURTHER INFORMATION CONTACT:** Lingjun Wang, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2316.

**SUPPLEMENTARY INFORMATION:****Background**

On May 21, 2018, Commerce published in the **Federal Register** the antidumping duty order on wire rod from Korea.<sup>1</sup> On April 8, 2019, Commerce revoked, in part, the *Order* with respect to grade 1078 and higher tire cord quality wire rod used in the production of tire cord wire.<sup>2</sup> On June 13, 2019, Commerce revoked, in part, the *Order* with respect to valve spring quality (VSQ) wire rod.<sup>3</sup>

Commerce is conducting this administrative review in accordance with section 751(a)(1)(B) of Tariff Act of 1930, as amended (the Act). On July 14, 2022, in accordance with 19 CFR 351.221(c)(1)(i), we initiated this review identifying POSCO as the sole producer

<sup>1</sup> See *Carbon and Alloy Steel Wire Rod from Italy, the Republic of Korea, Spain, the Republic of Turkey, and the United Kingdom: Antidumping Duty Orders and Amended Final Affirmative Antidumping Duty Determinations* for Spain and the Republic of Turkey, 83 FR 23417 (May 21, 2018) (*Order*).

<sup>2</sup> See *Carbon and Alloy Steel Wire Rod from the Republic of Korea and the United Kingdom: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 84 FR 13888 (April 8, 2019).

<sup>3</sup> See *Carbon and Alloy Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Changed Circumstances Review*, 84 FR 27582 (June 13, 2019).

and exporter subject to this review.<sup>4</sup> On January 13, 2023, we extended the deadline for these preliminary results to May 26, 2023.<sup>5</sup>

For a detailed description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.<sup>6</sup>

**Scope of the Order**

The scope of the *Order* includes certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter. Excluded from the scope are grade 1078 and higher tire cord quality wire rod to be used in the production of tire cord wire. Also, excluded from the scope are VSQ steel products which are defined as wire rod. For a complete description of the scope of the *Order*, see the Preliminary Decision Memorandum.<sup>7</sup>

**Methodology**

Commerce is conducting this review in accordance with section 751(a) of the Act. Constructed export prices are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is attached as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

**Preliminary Results of Review**

We preliminarily determine the following weighted-average dumping margin exists for the period May 1, 2021, through April 30, 2022:

<sup>4</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 42144 (July 14, 2022).

<sup>5</sup> See Memorandum, "Extension of Deadline for Preliminary Results," dated January 13, 2023.

<sup>6</sup> See Memorandum, "Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Carbon and Alloy Steel Wire Rod from the Republic of Korea; 2021–2022," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

<sup>7</sup> *Id.*

Producer/exporter	Weighted-average dumping margin (percent)
POSCO/POSCO International Corporation <sup>8</sup> .....	0.00

**Assessment Rates**

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.<sup>9</sup> The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties, where applicable.<sup>10</sup> Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Pursuant to 19 CFR 351.212(b)(1), if POSCO's weighted-average dumping margin is not zero or *de minimis* (*i.e.*, less than 0.5 percent) in the final results of this review, we will calculate an importer-specific *ad valorem* duty assessment rate based on the ratio of the total amount of dumping calculated for the U.S. sales for a given importer to the total entered value of those sales. If, in the final results, either POSCO's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For entries of subject merchandise during the POR produced by POSCO for which it did not know that its

<sup>8</sup> In the 2020–2021 administrative review of the *Order*, we found that POSCO and POSCO International Corporation (PIC) are affiliated and should be treated as a single entity. See *Carbon and Alloy Steel Wire Rod from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021*, 87 FR 33468 (June 2, 2022), and accompanying Preliminary Decision Memorandum, at 5–10, unchanged in *Carbon and Alloy Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2020–2021* (October 4, 2022). In the absence of information demonstrating any changes, we are continuing to treat POSCO and PIC as a single entity for purpose of this administrative review.

<sup>9</sup> See 19 CFR 351.212(b).

<sup>10</sup> See section 751(a)(2)(C) of the Act.



merchandise was destined for the United States, we will instruct CBP to liquidate such unreviewed entries pursuant to the reseller policy,<sup>11</sup> *i.e.*, the assessment rate for such entries will be equal to the all-others rate established in the investigation (*i.e.*, 41.10 percent), if there is no rate for the intermediate company(ies) involved in the transaction.

### Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for POSCO will be equal to POSCO's weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent, and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the underlying investigation, but the producer is, then the cash deposit rate will be the rate established for the completed segment for the most recent POR for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 41.10 percent, the all-others rate established in the underlying investigation.<sup>12</sup> These deposit requirements, when imposed, shall remain in effect until further notice.

### Verification

As provided in section 782(i)(3) of the Act, Commerce intends to verify the information relied on here in advance of the final results of this review.

### Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice in accordance with 19 CFR 351.224(b).

Case briefs or other written comments may be submitted to the Assistance

Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this review. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the time limit for filing case briefs.<sup>13</sup> Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>14</sup> Executive summaries should be limited to five pages total, including footnotes. Case and rebuttal briefs should be filed using ACCESS and must be served on interested parties.<sup>15</sup> Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.<sup>16</sup>

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed request for a hearing must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.<sup>17</sup> Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.<sup>18</sup>

### Final Results of Review

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the publication of these preliminary results in the **Federal Register** pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1), unless otherwise extended.<sup>19</sup>

<sup>13</sup> See 19 CFR 351.309(d)(1).

<sup>14</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>15</sup> See 19 CFR 351.303.

<sup>16</sup> See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

<sup>17</sup> See 19 CFR 351.310(c); see also 19 CFR 351.303(b)(1).

<sup>18</sup> See 19 CFR 351.310(c).

<sup>19</sup> See section 751(a)(3)(A) of the Act.

### Notification to Importers

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

### Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: May 26, 2023.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

### Appendix

#### List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Discussion of the Methodology
- V. Currency Conversion
- VI. Recommendation

[FR Doc. 2023-11776 Filed 6-1-23; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-061]

#### Fine Denier Polyester Staple Fiber From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order

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

**SUMMARY:** As a result of this expedited first sunset review, the U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on fine denier polyester staple fiber (fine denier PSF) from the People's Republic of China (China) would be likely to lead to continuation or recurrence of countervailable subsidies at the levels indicated in the "Final Results of Sunset Review" section of this notice.

**DATES:** Applicable June 2, 2023.

**FOR FURTHER INFORMATION CONTACT:** George McMahan, AD/CVD Operations, Office VI, Enforcement and Compliance,

<sup>11</sup> See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

<sup>12</sup> See *Order*, 81 FR at 23419.



International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1167.

#### SUPPLEMENTARY INFORMATION:

#### Background

On February 1, 2023, Commerce published the notice of initiation of the first sunset review of the *Order*,<sup>1</sup> pursuant to section 751(c) of the Tariff Act of 1930, as amended (Act).<sup>2</sup> Commerce received a notice of intent to participate from Auriga Polymers Inc., Fiber Industries LLC, Nan Ya Plastics Corporation, America, and Sun Fiber LLC (collectively, domestic interested parties) within the deadline specified in 19 CFR 351.218(d)(1)(i).<sup>3</sup> Each claimed interested party status under section 771(9)(C) of the Act as domestic producers engaged in the production of fine denier PSF in the United States.

Commerce received an adequate substantive response to the *Initiation Notice* from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).<sup>4</sup> Commerce received no substantive responses from any other interested party, including the Government of China, nor was a hearing requested.

On March 23, 2023, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.<sup>5</sup> As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B)(2) and (C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order*.

#### Scope of the Order

The product covered by this *Order* is fine denier PSF from China. For a complete description of the scope of this

order, see the Issues and Decision Memorandum.<sup>6</sup>

#### Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum, including the likelihood of continuation or recurrence of countervailable subsidies and the net countervailable subsidy rates likely to prevail if the *Order* were revoked.<sup>7</sup> The issues discussed in the Issues and Decision Memorandum are listed in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Services System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://enforcement.trade.gov/frn/index.html>.

#### Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to the continuation or recurrence of countervailable subsidies at the following rates:

Producer/exporter	Subsidy rate (percent <i>ad valorem</i> )
Jiangyin Hailun Chemical Fiber Co. Ltd. <sup>8</sup> .....	37.75
Jiangyin Huahong Chemical Fiber Co. Ltd. <sup>9</sup> .....	47.57
All Others .....	42.66

#### Administrative Protective Order

This notice serves as the only reminder to parties subject to

administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

#### Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act, and 19 CFR 351.218.

Dated: May 26, 2023.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

#### Appendix

##### List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. History of the Order
- V. Legal Framework
- VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of Countervailable Subsidies
  2. Net Countervailable Subsidy Rates That Are Likely To Prevail
  3. Nature of the Subsidies
- VII. Final Results of Sunset Review
- VIII. Recommendation

[FR Doc. 2023-11777 Filed 6-1-23; 8:45 am]

**BILLING CODE 3510-DS-P**

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

[RTID 0648-XD053]

##### 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.

Thermal Power Co., Ltd.; and Jiangyin Yunlun Chemical Fiber Co., Ltd.. See *Fine Denier Polyester Staple Fiber from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 51396 (November 6, 2017) (*Preliminary Determination*), and accompany Preliminary Decision Memorandum (PDM).

<sup>9</sup> Commerce found the following companies to be cross-owned with Jiangyin Huahong Chemical Fiber Co. Ltd.: Jiangsu Huahong Industrial Group Co., Ltd.; Jiangyin Hongkai Chemical Fiber Co., Ltd.; Jiangyin Huahong International Trade Co., Ltd.; and Jiangyin Huakai Polyesterer Co., Ltd. See *Preliminary Determination PDM*.

<sup>1</sup> See *Fine Denier Polyester Staple Fiber from the People's Republic of China and India: Amended Final Affirmative Countervailing Duty Determination for the People's Republic of China and Countervailing Duty Orders for the People's Republic of China and India*, 83 FR 11681 (March 16, 2018); and *Fine Denier Polyester Staple Fiber from the People's Republic of China and India: Amended Final Affirmative Countervailing Duty Determination for the People's Republic of China and Countervailing Duty Orders for the People's Republic of China and India*, 83 FR 12149 (March 20, 2018) (collectively, *Order*).

<sup>2</sup> See *Initiation of Five-Year (Sunset) Reviews*, 88 FR 6700 (February 1, 2023) (*Initiation Notice*).

<sup>3</sup> See Domestic Interested Parties' Letter, "Domestic Interested Parties' Notice of Intent to Participate," dated February 15, 2023.

<sup>4</sup> See Domestic Interested Parties' Letter, "Domestic Interested Parties' Substantive Response," dated March 2, 2023.

<sup>5</sup> See Commerce's Letter, "Sunset Reviews Initiated on February 1, 2023," dated March 23, 2023.

<sup>6</sup> See Memorandum, "Issues and Decision Memorandum for the Expedited First Sunset Review of the Countervailing Duty Order on Fine Denier Polyester Staple Fiber from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

<sup>7</sup> *Id.*

<sup>8</sup> Commerce found the following companies to be cross-owned with Jiangyin Hailun Chemical Fiber Co. Ltd.: Jiangyin Bolun Chemical Fiber Co., Ltd.; Jiangyin Fenghua Synthetic Fiber Co., Ltd.; Jiangsu Hailun Petrochemicals Co., Ltd.; Jiangyin Huamei Special Fiber Co., Ltd.; Jiangyin Huasheng Polymerization Co., Ltd.; Jiangyin Huaxing Synthetic Co., Ltd.; Jiangying Huayi Polymerization Co., Ltd.; Jiangsu Sanfangxiang Group Co., Ltd.; Jiangsu Sanfangxiang International Trading Co., Ltd.; Sanhai International Trading PTE Ltd.; Jiangyin Xingsheng Plastic Co., Ltd.; Jiangyin Xingtai New Material Co., Ltd.; Jiangsu Xingye Plastic Co., Ltd.; Jiangsu Xingye Polytech Co., Ltd.; Jiangyin Xingyu New Material Co., Ltd.; Jiangyin Xinlun Chemical Fiber Co., Ltd.; Jiangyin Xinyuan

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public hybrid meeting of its Herring Committee 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 Thursday, June 22, 2023, at 9:30 a.m.

**ADDRESSES:** Webinar registration URL information: <https://attendee.gotowebinar.com/register/5982149628204238171>.

**Meeting address:** This meeting will be held at the Four Points by Sheraton, One Audubon Road, Wakefield, MA 01880; phone: (781) 245-9300.

**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 Herring Committee will meet to receive recommendations from the Herring Advisory Panel and a report from the Herring Plan Development Team (PDT) covering these agenda topics. Revisit Amendment 8 Inshore Midwater Trawl Closure to suggest revisions to a draft problem statement and discuss preliminary PDT work on Committee tasking. River Herring and Shad discussion on a potential change in 2023 Council priorities to develop river herring and shad time/area closures. They will make recommendations to the Council, as appropriate. 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 30, 2023.

**Rey Israel Marquez,**

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

[FR Doc. 2023-11754 Filed 6-1-23; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Gear-Marking Requirements for Atlantic Large Whale Take Reduction Plan**

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on February 13, 2023 (88 FR 9252) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

*Title:* Gear-Marking Requirements for Atlantic Large Whale Take Reduction Plan.

*OMB Control Number:* 0648-0364.

*Form Number(s):* None.

*Type of Request:* Regular (extension of a current information collection).

*Number of Respondents:* 3,970.

*Average Hours per Response:* Each mark requires approximately 6.7-8.6 minutes of time.

*Total Annual Burden Hours:* 222,391.

*Needs and Uses:* In 1996, pursuant to section 118 of the MMPA, the National Marine Fisheries Service (NMFS) established and convened an Atlantic Large Whale Take Reduction Team (Team) to assist in the development of the Atlantic Large Whale Take

Reduction Plan (Plan). Throughout this process, the Team has provided NMFS with recommended measures designed to reduce mortality and serious injury to North Atlantic right (Eubalaena glacialis), humpback (Megaptera novaeangliae), minke (Balaenoptera acutorostrata), and fin (Balaenoptera physalus) whales from incidental interactions with commercial fishing gear. To gather information on where entanglements are occurring and what type of gear is involved, the Team developed gear marking requirements. As a result, any person setting trap/pot or gillnet gear to fish commercially in some areas of the Atlantic Ocean are required to paint or otherwise mark their gear with specific color codes, designating the type of gear and area where it is set, in addition to specific buoy marking requirements.

NMFS is continuing the gear marking regulations amended in the 2021 rule for the Northeast Region Trap/Pot Management Area (northeast region) commercial trap/pot fisheries because increased gear marking continues to be necessary to improve our understanding of where entanglement incidents occur (RIN 648-BJ09). The gear modifications required by the rule became effective May 1, 2022, which is at the start of the American lobster/Jonah crab fishing year.

The continuation of this data collection allows for improved information on entanglement origins that will further enable NMFS to reduce injuries and deaths of large whales, especially North Atlantic right whales, due to incidental entanglement in United States commercial fishing gear. In order to develop fair and effective management measures, the Team requires comprehensive data on when, where, and how fixed gear vessels fish, and where whales become entangled in fishing gear.

*Affected Public:* Individuals or households; Business or other for-profit organizations.

*Frequency:* All gear must be marked and maintained so marks are visible. On average, gear is replaced every 5-6 years, at which time the new gear must be marked.

*Respondent's Obligation:* Mandatory. *Legal Authority:* Marine Mammal Protection Act, Endangered Species Act.

This information collection request may be viewed at [www.reginfo.gov](http://www.reginfo.gov). Follow the instructions to view the Department of Commerce collections currently under review by OMB.

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](http://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 and entering either the title of the collection or the OMB Control Number 0648–0364.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.*

[FR Doc. 2023–11803 Filed 6–1–23; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648–XD049]

#### 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 Groundfish 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 Tuesday, June 20, 2023, at 1 p.m.

**ADDRESSES:** Webinar registration URL information: <https://attendee.gotowebinar.com/register/2073639778606826075>.

*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 Groundfish Advisory Panel will receive a report from the Groundfish Plan Development Team (PDT) covering these agenda topics. The Advisory Panel will discuss. Framework Adjustment 66/Specifications and Management Measures (*to be initiated*)—this action may include 2024–26 specifications for redfish, Northern windowpane flounder, and Southern windowpane

flounder, 2024–25 specifications for white hake and U.S./Canada resources of Eastern Georges Bank cod, Eastern GB haddock, and GB yellowtail flounder, a revised white hake rebuilding plan, and Atlantic halibut management. They will also discuss a Framework Adjustment on Acceptable Biological Catches (ABC) Control Rules (*to be initiated*)—updates to the work plan, feedback from the Scientific and Statistical Committee, and facilitated meeting planning. The panel will talk about an Atlantic Cod Transition Plan—updates to the work plan, the general criteria for defining management units, and the latest cod spawning research. Also on the agenda is Gulf of Maine Haddock—a potential change in 2023 Council priorities to revise Gulf of Maine haddock specifications for 2024 and 2025 in Framework Adjustment 66. The panel will make recommendations to the Groundfish Committee, as appropriate. 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 26, 2023.

**Rey Israel Marquez,**

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

[FR Doc. 2023–11729 Filed 6–1–23; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648–XD054]

#### 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 Groundfish Committee 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 Wednesday, June 21, 2023, at 9:30 a.m.

#### ADDRESSES:

*Webinar registration URL information:* <https://attendee.gotowebinar.com/register/8671259301116413280>.

*Meeting address:* This meeting will be held at the Four Points by Sheraton, One Audubon Road, Wakefield, MA 01880; phone: (781) 245–9300.

*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 Groundfish Committee will meet to receive recommendations from the Recreational Advisory Panel and Groundfish Advisory Panel, and a report from the Groundfish Plan Development Team (PDT) covering these agenda topics, Framework Adjustment 66/Specifications and Management Measures (*to be initiated*)—this action may include 2024–26 specifications for redfish, Northern windowpane flounder, and Southern windowpane flounder, 2024–25 specifications for white hake and U.S./Canada resources of Eastern Georges Bank cod, Eastern GB haddock, and GB yellowtail flounder, a revised white hake rebuilding plan, and Atlantic halibut management. Framework Adjustment on Acceptable Biological Catches (ABC) Control Rules (*to be initiated*)—updates to the work plan, feedback from the Scientific and

Statistical Committee, and facilitated meeting planning. Atlantic Cod Transition Plan—updates to the work plan, the general criteria for defining management units, and the latest cod spawning research. Gulf of Maine Haddock—a potential change in 2023 Council priorities to revise Gulf of Maine haddock specifications for 2024 and 2025 in Framework Adjustment 66. Recommendations to the Council, as appropriate, and Other business: update on MSE Project of Atlantic Cod Science and Management (GMRI) and report from a Workshop on Groundfish Cooperative Research (CLF/UMass-SMAST) and additional other business, 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 30, 2023.

#### Key Israel Marquez,

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

[FR Doc. 2023-11760 Filed 6-1-23; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XD048]

#### 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 Recreational 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 Tuesday, June 20, 2023, at 8:30 a.m.

#### ADDRESSES:

*Webinar registration URL information:* <https://attendee.gotowebinar.com/register/2715006901519231071>.

*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 Recreational Advisory Panel will receive a report from the Groundfish Plan Development Team (PDT) covering these agenda topics. The Advisory Panel will discuss Framework Adjustment 66/ Specifications and Management Measures (*to be initiated*)—this action may include 2024–26 specifications for redfish, Northern windowpane flounder, and Southern windowpane flounder, 2024–25 specifications for white hake and U.S./Canada resources of Eastern Georges Bank cod, Eastern GB haddock, and GB yellowtail flounder, a revised white hake rebuilding plan, and Atlantic halibut management. They will also discuss a Framework Adjustment on Acceptable Biological Catches (ABC) Control Rules (*to be initiated*)—updates to the work plan, feedback from the Scientific and Statistical Committee, and facilitated meeting planning. The panel will talk about an Atlantic Cod Transition Plan—updates to the work plan, the general criteria for defining management units, and the latest cod spawning research. Also on the agenda is Gulf of Maine Haddock—a potential change in 2023 Council priorities to revise Gulf of Maine haddock specifications for 2024 and 2025 in Framework Adjustment 66. The panel will make recommendations to the Groundfish Committee, as appropriate. 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 26, 2023.

#### Key Israel Marquez,

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

[FR Doc. 2023-11728 Filed 6-1-23; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

#### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; NTIA Internet Use Survey

**AGENCY:** National Telecommunications and Information Administration (NTIA), Department of Commerce.

**ACTION:** Notice of information collection, request for comment.

**SUMMARY:** The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed and continuing information collections to help us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

**DATES:** To ensure consideration, comments regarding this proposed information collection must be received on or before August 1, 2023.

**ADDRESSES:** Interested persons are invited to submit written comments to Rafi Goldberg, Senior Policy Advisor, Digital Equity, NTIA, 1401 Constitution

Avenue NW, Suite 4725, Washington, DC 20230, or via email at [rgoldberg@ntia.gov](mailto:rgoldberg@ntia.gov). Please reference OMB Control Number 0660–0021 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or specific questions related to collection activities should be directed to Rafi Goldberg, Senior Policy Advisor, Digital Equity, NTIA, 1401 Constitution Avenue NW, Suite 4725, Washington, DC 20230, at (202) 482–4375 or [rgoldberg@ntia.gov](mailto:rgoldberg@ntia.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

NTIA seeks approval under the Paperwork Reduction Act (PRA) to add 65 questions to the November 2023 edition of the U.S. Census Bureau's Current Population Survey (CPS). This collection of questions is known as the NTIA Internet Use Survey and is also referred to as the CPS Computer and Internet Use Supplement. NTIA has sponsored sixteen such surveys since 1994.

President Biden has made clear the Administration's goal to ensure that "every community in America has access to affordable, high-speed internet."<sup>1</sup> Digitally connected Americans populate the modern workforce, drive creative innovation throughout the economy, and ensure a growing customer base to help sustain our nation's global competitiveness; data from the NTIA Internet Use Survey will inform policies aimed at achieving digital equity so that the internet's benefits are accessible to all Americans. The research and policy analysis enabled by this data collection are particularly important in light of the historic investments being made through the Biden-Harris Administration's internet for All programs, and following a pandemic that has further highlighted the importance of the internet in daily life.

NTIA is working with Congress, the Federal Communications Commission (FCC), other federal agencies, state and local governments, industry, and nonprofits to develop and promote policies that foster ubiquitous broadband deployment, adoption, and effective use. These policies help to ensure that families and businesses can

obtain competitively priced high-speed internet service, and that everyone is able to gain the skills necessary to use the technology. Collecting current, systematic, and comprehensive information on internet use and non-use by U.S. households is critical to enabling policymakers to gauge progress made to date and identify specific areas and demographic groups in which adoption is a concern with a specificity that permits carefully targeted and cost-effective responses.

The U.S. Census Bureau is widely regarded as a premier data collector based on centuries of experience and rigorous scientific methods. Collection of NTIA's requested internet usage data will occur in conjunction with a future edition of the U.S. Census Bureau's CPS, thereby significantly reducing the potential burdens on the U.S. Census Bureau and on surveyed households.

The U.S. government has a pressing need for comprehensive data in this area. The U.S. Government Accountability Office (GAO), NTIA, and the FCC have issued reports noting the importance of useful broadband data for policymakers. Moreover, Congress has passed legislation—including the Broadband Data Improvement Act, the American Recovery and Reinvestment Act, the Broadband DATA Act, the Consolidated Appropriations Act, 2021, and most recently, the Infrastructure Investment and Jobs Act—wholly or in part to facilitate data collection, research, and policy analysis in this area. Modifying the CPS to include NTIA's requested internet use questions will enable the Commerce Department and NTIA to respond to congressional concerns and directives. It will also enable NTIA to continue using timely data in the State Digital Equity Capacity Grant Program, which employs a funding formula that by law must be based in part on estimates from the NTIA Internet Use Survey.<sup>2</sup>

NTIA has made a copy of the proposed information collection instrument available at <https://www.ntia.gov/federal-register-notice/2023/2023-internet-use-survey-information-collection>.

**II. Method of Collection**

The NTIA internet Use Survey will be administered by the U.S. Census Bureau as a supplement to the CPS. Data will be collected through personal visits and live telephone interviews using computer-assisted telephone interviewing and computer-assisted personal interviewing.

**III. Data**

*OMB Control Number:* 0660–0021.

*Form Number(s):* None.

*Type of Review:* Regular submission; Revision of a current information collection.

*Affected Public:* Individuals and households.

*Estimated Number of Respondents:* 50,000 households.

*Estimated Time per Response:* 10 minutes.

*Estimated Total Annual Burden Hours:* 8,334.

*Estimated Total Annual Cost to Public:* \$0.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* 47 U.S.C. 902(b)(2)(M), (P).

**IV. Request for Comments**

We are soliciting public comments to permit NTIA to: (a) Evaluate whether the proposed information collection is necessary for the proper functioning of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including via the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including any personal identifying information that you include—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.*

[FR Doc. 2023–11726 Filed 6–1–23; 8:45 am]

**BILLING CODE 3510–60-P**

<sup>1</sup> "Remarks by President Biden in State of the Union Address, February 7, 2023," available at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/02/07/remarks-by-president-biden-in-state-of-the-union-address-2/>.

<sup>2</sup> 47 U.S.C. 1723(d)(3)(A)(i).

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from the Procurement List.

**SUMMARY:** The Committee is proposing to add service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) and service(s) previously furnished by such agencies.

**DATES:** Comments must be received on or before: July 2, 2023.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street, Suite 325, Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785-6404, or email [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

### Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

#### Service(s)

**Service Type:** Grounds Maintenance  
**Mandatory for:** US Air Force, Robins Air Force Base, Robins AFB, GA

**Designated Source of Supply:** Mavagi Enterprises, Inc., San Antonio, TX  
**Contracting Activity:** DEPT OF THE AIR FORCE, FA8501 AFSC PZIO

**Service Type:** Janitorial Service  
**Mandatory for:** FAA, Albuquerque Air Route Traffic Control Center, Albuquerque, NM

**Designated Source of Supply:** Adelante Development Center, Inc., Albuquerque, NM

**Contracting Activity:** Federal Aviation Administration, 697DCK Regional Acquisitions SVCS

### Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

#### Product(s)

**NSN(s)—Product Name(s):**

7125-01-667-1400—Cabinet, Storage, Blow-Molded, 66", Platinum

7125-01-667-1401—Cabinet, Storage, Blow-Molded, 66", Black

7125-01-667-1402—Cabinet, Storage, Blow-Molded, 46", Black

7125-01-667-1403—Cabinet, Storage, Blow-Molded, 46", Platinum

7125-01-667-1404—Cabinet, Storage, Blow-Molded, 72", Black

7125-01-667-1407—Cabinet, Storage, Blow-Molded, 72", Platinum

**Designated Source of Supply:** MidWest Enterprises for the Blind, Inc., Kalamazoo, MI

**Contracting Activity:** GSA/FAS FURNITURE SYSTEMS MGT DIV, PHILADELPHIA, PA

**NSN(s)—Product Name(s):**

8465-00-258-2432—Liner, Field Pack, Green, 50" x 30"

8465-00-935-6857—Liner, Field Pack, Green, 21.50" x 17.75"

8465-00-935-6858—Liner, Field Pack, Green, 39" x 27"

**Designated Source of Supply:** Casco Area Workshop, Inc., Harrisonville, MO

**Contracting Activity:** DLA TROOP SUPPORT, PHILADELPHIA, PA

**NSN(s)—Product Name(s):**

1025-01-232-6822—Sponge, Chamber Swabbing

**Designated Source of Supply:** New Horizons Rehabilitation Services, Inc., Auburn Hills, MI

**Contracting Activity:** DLA LAND AND MARITIME, COLUMBUS, OH

#### Service(s)

**Service Type:** Janitorial Service  
**Mandatory for:** U.S. Navy, NEX Food Court, 1560 Mall Drive, Norfolk Naval Air Station, Norfolk, VA

**Designated Source of Supply:** Sara's Mentoring Center, Inc., Virginia Beach, VA

**Contracting Activity:** DEPT OF THE NAVY, Navy Exchange Service Command

**Michael R. Jurkowski,**

*Acting Director, Business Operations.*

[FR Doc. 2023-11736 Filed 6-1-23; 8:45 am]

**BILLING CODE 6353-01-P**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Agency Information Collection Activities; Comment Request; President's Volunteer Service Awards Application

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Corporation for National and Community Service (operating as AmeriCorps) is proposing to renew an information collection.

**DATES:** Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by August 1, 2023.

**ADDRESSES:** You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) Electronically through [www.regulations.gov](http://www.regulations.gov) (preferred method).

(2) By mail sent to: AmeriCorps, Attention Rhonda Taylor, 250 E Street SW, Washington, DC 20525.

(3) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (2) above, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Comments submitted in response to this notice may be made available to the public through *regulations.gov*. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

**FOR FURTHER INFORMATION CONTACT:** Rhonda Taylor, 202-606-6721, or by email at [rtaylor@cns.gov](mailto:rtaylor@cns.gov).

### SUPPLEMENTARY INFORMATION:

**Title of Collection:** President's Volunteer Service Awards.

**OMB Control Number:** 3045-0086.

**Type of Review:** Renewal.

**Respondents/Affected Public:**

Individuals and Households; Businesses and Organizations; State, Local or Tribal Governments.

**Total Estimated Number of Annual Responses:** 200,000.

**Total Estimated Number of Annual Burden Hours:** 66,666.

**Abstract:** AmeriCorps is soliciting comments concerning its proposed renewal of the President's Volunteer

Service Awards (PVSA), parts A, B, C, D and E. There are no changes in the information collection, and it will be used in the same manner as the existing application. AmeriCorps also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on July 31, 2023.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection on [regulations.gov](https://www.regulations.gov).

**Rhonda Taylor,**

*Director, Partnerships & Program Engagement.*

[FR Doc. 2023-11675 Filed 6-1-23; 8:45 am]

BILLING CODE 6050-28-P

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### Notice of Intent To Prepare a Supplemental Environmental Impact Statement for the Matagorda Ship Channel Improvement Project, Calhoun and Matagorda Counties, TX

**AGENCY:** Corps of Engineers, Department of the Army, DoD.

**ACTION:** Notice of intent to prepare a draft supplemental environmental impact statement for the Matagorda Ship Channel Improvement Project, Calhoun and Matagorda Counties, TX.

**SUMMARY:** The Galveston District, U.S. Army Corps of Engineers (USACE) intends to prepare a Draft Supplemental Environmental Impact Statement (SEIS) for the Matagorda Ship Channel Improvement Project consistent with the National Environmental Policy Act of 1969 (NEPA). On April 22, 2020, the Record of Decision (ROD) was signed for the Matagorda Ship Channel Improvement Project (MSCIP), Calhoun and Matagorda Counties, TX Final Integrated Feasibility Report and Environmental Impact Statement (IFR-EIS). During the pre-construction engineering and design (PED) phase, the USACE identified a discrepancy between its PED calculations concerning the quantity of material to be dredged from the Matagorda Ship Channel and the quantity of such material that was evaluated in the IFR-EIS. Due to the discrepancy, the USACE determined a SEIS would be prepared, and the ROD dated April 22, 2020, was withdrawn for further consideration of findings in the SEIS. In accordance with the Council on Environmental Quality regulations, the USACE will prepare a SEIS to document and disclose the impacts of substantial changes to the proposed action and new information that are relevant to environmental concerns. This notice also announces the USACE intent to seek public input on the scope of the SEIS, information, or topics to be addressed, and public concerns surrounding the proposed action.

**DATES:** Public scoping comments should be submitted on or before July 3, 2023, electronically or mailed as written letters. One public scoping meeting will be held on June 7, 2023, from 6:00 p.m. to 8:00 p.m. at the Bauer Exhibit Hall in Calhoun County, 186 Henry Barber Way, Port Lavaca, TX 77979.

**ADDRESSES:** Submit all electronic public comments via email to Dr. Raven Blakeway: [MSC\\_SEI@usace.army.mil](mailto:MSC_SEI@usace.army.mil). Written comments may be mailed to

U.S. Army Corps of Engineers, Galveston District, ATTN: Dr. Raven Blakeway, P.O. Box 1229, Galveston, TX 77553-1229.

Pertinent information about the study can be found at: <https://www.swg.usace.army.mil/Business-With-Us/Planning-Environmental-Branch/Documents-for-Public-Review/>.

#### FOR FURTHER INFORMATION CONTACT:

Questions or comments regarding the proposed Draft SEIS can be addressed by contacting Dr. Raven Blakeway by phone at 409-790-9058, emailing at [MSC\\_SEIS@usace.army.mil](mailto:MSC_SEIS@usace.army.mil), or mailed to U.S. Army Corps of Engineers, Galveston District, ATTN: Dr. Raven Blakeway, P.O. Box 1229, Galveston, TX 77553-1229.

#### SUPPLEMENTARY INFORMATION:

1. *Authority.* The Matagorda Ship Channel Improvement Project (MSCIP) study described in the Final Integrated Feasibility Report and Environmental Impact Statement (IFR-EIS) was authorized under section 216 of the Flood Control Act of 1970 (Pub. L. 91-611) and original construction was authorized under section 101 of the Rivers and Harbors Act of 1958 (Pub. L. 85-500). Section 216 authorizes the USACE to review a completed navigation, flood risk reduction, water supply, or related project due to significantly changed physical or economic conditions, and to report to Congress with recommendations regarding modification of the project's structures or operation, and for improving the quality of the environment in the overall public interest. Modifications to the original project were proposed in the IFR-EIS and the project was authorized for construction in the Water Resources Development Act of 2020 (Pub. L. 116-260). The lead agency for this action is the USACE and the non-federal sponsor is the Calhoun Port Authority (CPA).

2. *Background.* The purpose of the proposed action is to reduce transportation costs and increase operational efficiencies of maritime commerce movement while providing for safe, reliable navigation of the Matagorda Ship Channel (MSC). The current channel dimensions are incapable of accommodating the forecasted commodity and fleet growth without significant and system-wide inefficiencies. By expanding channel dimensions, cargo vessels could reduce or eliminate light loading measures, and larger cargo vessels unable to transit the existing channel configuration could begin using the Port of Port Lavaca (herein the Port) and adjacent facilities.



The MSC is 26 miles long, beginning at the entrance channel offshore in the Gulf of Mexico and terminating at the Port at Point Comfort. The channel is located 125 miles southwest of Galveston, Texas and 80 miles northeast of Corpus Christi, Texas. The northern reach of the channel is in Calhoun County, while the southern reach and entrance channel are in Matagorda County. The MSC is maintained between 38 and 40 feet (ft) mean lower low water (MLLW) and averages 200 to 300 ft wide. The channel has a 1,000-ft by 1,000-ft primary turning basin located near Point Comfort and the Port. Mean natural water depth in Matagorda Bay is approximately 13 ft, while depth in adjacent bays ranges from seven to eight feet.

The USACE prepared the MSCIP IFR-EIS to document the feasibility of increasing economic efficiencies in the MSC and included identification of a Recommended Plan that proposed deepening the entrance channel to 49 ft MLLW and widening it from 300 ft to 550 ft; deepening the main channel to 47 ft MLLW and widening it from 200 ft to 300 ft; and increasing the turning basin to 1,200 ft by 1,200 ft. The Final IFR-EIS was completed in September 2019 and the Chief of Engineers (Chief's) Report was signed November 15, 2019 and transmitted to the U.S. Congress to request authorization of the MSCIP's Recommended Plan. The Record of Decision was signed by the Assistant Secretary of the Army (ASA) of Civil Works (CW) on April 22, 2020. Congress authorized construction of the MSCIP, in accordance with the plans and subject to conditions as described in the Chief's Report, in section 401 of the Water Resource Development Act of 2020 (Pub. L. 116-260), signed into law by President Trump on December 28, 2020.

The Final IFR-EIS described conceptual designs of the Recommended Plan and disclosed the potential impacts to the human and natural environment from its implementation. The Final IFR-EIS and ROD demonstrated how the Recommended Plan complies with environmental laws, executive orders, and regulations. Since the transmittal of the Chief's Report and construction authorization, the MSCIP has moved from the feasibility phase to the Preconstruction Engineering and Design (PED) phase, which involves completing detailed engineering, design, and technical studies needed to begin construction as recommended in the Chief's Report. In response to additional technical studies and the collection of site-specific data, several modifications

to the Recommended Plan need to be considered, and particularly how the new information changes the effects analysis completed in the Final IFR-EIS. As such, the ASA(CW) rescinded the ROD for the MSCIP in a Memorandum for Record (MFR) dated December 5, 2022.

Following the Council of Environmental Quality (CEQ) regulations (40 CFR parts 1500 through 1508), 40 CFR 1502.9(d), the USACE determined that a Draft SEIS would be prepared because the agency (i) made substantial changes to the proposed action that are relevant to environmental concerns and (ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

Expected impacts include short- and long-term impacts to existing aquatic habitats, fish and wildlife including federally protected species and their habitat, water quality, noise, and recreation features. Impacts to aquatic habitats are anticipated to require compensatory mitigation. Additional details related to sediment testing will be described in the SEIS.

3. *Alternatives.* The Final IFR-EIS evaluated a range of alternatives that would modify the existing MSC, as well as a No Action Plan that would maintain the channel at the current dimensions. The Draft SEIS will focus on comparing the Recommended Plan, as described in the Chief's Report and Final IFR-EIS and proposed design changes being considered. The Draft SEIS will evaluate potential benefits and impacts of the design changes in the Recommended Plan including direct, indirect, and cumulative effects to the human and natural environments that balance the interests of navigation safety and commerce and environmental impacts. The USACE also requests identification of potential alternatives, information, and analyses relevant to the proposed action.

4. *Public Participation.* Scoping completed prior to and after publication of this NOI will be used to develop the Draft SEIS. The scoping comment period begins with publication of this notice and ends on July 3, 2023. All comments received during the scoping period are being used to identify additional significant resources and impacts that should be considered in the Draft SEIS. Additional comments received outside the scoping period will be considered prior to the Draft SEIS public review period, to the extent possible. For comments that cannot be addressed prior to the public review period, the comments will be included

with the public review period comments and addressed at that time.

One public scoping meeting is scheduled for June 7, 2023. A Public Notice was published for the scoping meeting on the Galveston District website and in the Legal Notices section of the Bay City Tribune. Public news releases announcing the scoping period timeframe; public meeting date, time, and location; and where to send comments were published in the appropriate local newspapers, on the Galveston District and CPA websites, and were distributed to the local stakeholders and known interested parties.

5. *Coordination.* The USACE will serve as the lead federal agency in the preparation of the Draft SEIS. Other federal and state agencies have been invited to participate throughout the study process as Coordinating or Participating Agencies. Further coordination with environmental agencies will be conducted under the NEPA, the Fish and Wildlife Coordination Act, the Endangered Species Act, the Clean Water Act, the Clean Air Act, the National Historic and Preservation Act, the Magnuson-Stevens Fishery Conservation and Management Act, and the Coastal Zone Management Act.

6. *Availability of Draft SEIS.* The USACE currently estimates that the Draft SEIS will be available for public review and comment in or around late 2023 or early 2024. At that time, the USACE will provide a 45-day public review period for individuals and agencies to review and comment. The USACE will notify all interested agencies, organizations, and individuals of the availability of the draft document at that time.

**Wesley E. Coleman, Jr.,**

*Programs Director, U.S. Army Corps of Engineers, Southwestern Division.*

[FR Doc. 2023-11730 Filed 6-1-23; 8:45 am]

**BILLING CODE P**

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## DEPARTMENT OF EDUCATION

### National Advisory Council on Indian Education (NACIE)

**AGENCY:** National Advisory Council on Indian Education (NACIE), Department of Education.

**ACTION:** Notice of an open meeting.

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**SUMMARY:** This notice sets forth the agenda, time, and instructions to access or participate in the June 29-30, 2023, virtual meeting of NACIE. This notice provides information about the meeting



to members of the public who may be interested in attending the meeting and how to provide written comment for the meeting.

**DATES:** The NACIE open virtual meeting will be held on June 29–30, 2023, from 1:00–4:30 p.m. (EST).

**FOR FURTHER INFORMATION CONTACT:**

Crystal C. Moore, Designated Federal Official, Office of Elementary and Secondary Education (OESE)/Office of Indian Education (OIE), U.S. Department of Education, 400 Maryland Avenue SW, Office 3W243, Washington, DC 20202. Telephone: 202–453–5593, Email: [Crystal.Moore@ed.gov](mailto:Crystal.Moore@ed.gov).

**SUPPLEMENTARY INFORMATION:**

*Statutory Authority and Function:*

NACIE is authorized by section 6141 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended (20 U.S.C. 7471). The work of NACIE was expanded by Executive Order 14049. In accordance with section 6141 of the ESEA, NACIE shall advise the Secretary of Education and the Secretary of Interior on the funding and administration (including the development of regulations and administrative policies and practices) of any program, including any program established under title VI, part A of the ESEA, with respect to which the Secretary of Education has jurisdiction and (1) that includes Indian children or adults as participants or (2) that may benefit Indian children or adults. Also in accordance with section 6141 of the ESEA, NACIE shall make recommendations to the Secretary of Education for filling the position of Director of Indian Education whenever a vacancy occurs and shall submit to Congress, no later than June 30 of each year, a report on its activities that includes recommendations that are considered appropriate for the improvement of Federal education programs that include Indian children or adults as participants or that may benefit Indian children or adults, and recommendations concerning the funding of any such program. In accordance with section 3 of Executive Order 14049, NACIE shall advise the Co-Chairs of the White House Initiative on Advancing Educational Equity, Excellence and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities (WHI–NATCU), in consultation with the WHI–NATCU, on (1) what is needed for the development, implementation, and coordination of educational programs and initiatives to improve educational opportunities and outcomes for Native Americans; (2) how to promote career pathways for in-demand jobs for Native

American students, including registered apprenticeships as well as internships, fellowships, mentorships, and work-based learning initiatives; (3) ways to strengthen Tribal Colleges and Universities and increase their participation in agency programs; (4) how to increase public awareness of and generate solutions for the educational and training challenges and equity disparities that Native American students face and the causes of these challenges and disparities; (5) approaches to establish local and national partnerships with public, private, philanthropic, and nonprofit stakeholders to advance the policy set forth in Section 1 of Executive Order 14049, consistent with applicable law; and (6) actions for promoting, improving, and expanding educational opportunities for Native languages, traditions, and practices to be sustained through culturally responsive education. Also, in accordance with section 3 of Executive Order 14049, NACIE and the Executive Director of the WHI–NATCU (Executive Director) shall, as appropriate and consistent with applicable law, facilitate frequent collaborations between the WHI–NATCU and Tribal Nations, Alaska Native Entities, and other Tribal organizations. Finally, in accordance with Section 3 of Executive Order 14049, NACIE shall consult with the Executive Director so that the Executive Director can address NACIE's efforts pursuant to section 3(a) of Executive Order 14019 in the annual report of the WHI–NATCU submitted to the President.

*Meeting Agenda:* The purpose of this meeting is to convene NACIE and conduct the following business: review of bylaws and charter; taking action to establish subcommittees; discussion of advice to be provided to the Secretary of Interior and Secretary of Education; vote to approve NACIE's Annual Report to Congress; and discussion with other federal stakeholders (e.g., U.S. Department of the Interior, Bureau of Indian Education (BIE), WHI–NATCU, and U.S. Department of Education, Office of Indian Education).

**Instructions for Accessing the Meeting**

Members of the public may access the NACIE meeting via virtual teleconference. Up to 350 lines will be available on a first come, first serve basis for those who wish to join via teleconference. The dial-in, listen only phone number for the meeting is 1–669–254–5252, Meeting ID: 160 419 7650, passcode: 700243. The web link to register to access the meeting via [Zoom.gov](https://www.zoom.gov/) is [\[meeting/register/vJltc-ihqT0vGn9d84t3fIDBSw5SZnum6YQ\]\(https://www.zoom.gov/j/ltc-ihqT0vGn9d84t3fIDBSw5SZnum6YQ\).](https://www.zoom.gov/</a></p>
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*Public Comment:* Members of the public interested in submitting written comments may do so via email to Crystal Moore at [Crystal.Moore@ed.gov](mailto:Crystal.Moore@ed.gov). Written comments should pertain to the work of NACIE.

*Reasonable Accommodations:* The virtual meeting is accessible to individuals with disabilities. If you will need an auxiliary aid or service for the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice no later than June 22, 2023. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

*Access to Records of the Meeting:* The Department will post the official minutes of this meeting on the OESE website, <https://oese.ed.gov/offices/office-of-indian-education/national-advisory-council-on-indian-education-oie/>, 21 days after the meeting. Pursuant to 5 U.S.C. 1009(b), the public may also inspect NACIE records at the Office of Indian Education, United States Department of Education, 400 Maryland Avenue SW, Washington, DC 20202, Monday–Friday, 8:30 a.m. to 5:00 p.m. (EST). Please email Crystal Moore at [Crystal.Moore@ed.gov](mailto:Crystal.Moore@ed.gov) to schedule an appointment.

*Electronic Access to this Document:* The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You also may access documents of the Department published in the **Federal Register** by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: § 6141 of the ESEA, as amended (20 U.S.C. 7471).

James F. Lane,

Principal Deputy Assistant Secretary  
Delegated the Authority to Perform the  
Functions and Duties of the Assistant  
Secretary Office of Elementary and Secondary  
Education.

[FR Doc. 2023-11788 Filed 6-1-23; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

### Applications for New Awards; National Center on School Infrastructure

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2023 for the National Center on School Infrastructure (NCSI), Assistance Listing Number 84.184R. This notice relates to the approved information collection under OMB control number 1894-0006.

**DATES:**

*Applications Available:* June 5, 2023.

*Deadline for Transmittal of*

*Applications:* August 7, 2023.

*Deadline for Intergovernmental*

*Review:* October 6, 2023.

*Pre-Application Webinar Information:* Information about a pre-application webinar will be available on the program website at: <https://oese.ed.gov/offices/school-infrastructure-programs-sip/>.

**ADDRESSES:** For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at <https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs>. Please note that these Common Instructions supersede the version published on December 27, 2021.

**FOR FURTHER INFORMATION CONTACT:**

Staci Cummins, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202-6450.

Telephone: 202-987-1674. Email: [oese.school.infrastructure@ed.gov](mailto:oese.school.infrastructure@ed.gov).

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

**SUPPLEMENTARY INFORMATION:**

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* The purpose of the NCSI program is to establish a national center on school infrastructure that will serve as a clearinghouse of resources for States and local educational agencies (LEAs) related to improving and developing safe, healthy, sustainable, and equitable public school infrastructure through public school infrastructure improvements, and provide technical assistance (TA) to Supporting America's School Infrastructure (SASI) grantees and high-need LEAs seeking to leverage available resources to improve public school facilities for all students.

*Background:*

Schools, especially those in high-need LEAs, face ongoing challenges in ensuring that their school facilities provide safe, healthy, sustainable, and equitable learning environments. Fifty million students and 6 million adults spend their days learning and working in public school buildings.<sup>1</sup> Public schools account for the second most expansive public State and local infrastructure in the country, after highways. Yet, a 2020 U.S. Government Accountability Office (GAO) report found that an estimated 54 percent of LEAs in the United States reported that they need to replace or update major systems in more than half of their buildings,<sup>2</sup> and the 2021 Report Card for America's Infrastructure rated the Nation's school buildings as a D-plus.<sup>3</sup> In addition to necessary updates, the average public school building was 44 years old as of 2012, according to the most recent comprehensive dataset on public school facilities, the 2013 National Center on Education Statistics Condition of America's Public School Facilities.<sup>4</sup>

LEAs, especially those in low-income neighborhoods, face challenges related to project financing, Federal and State grant application procedures, and understanding how to leverage available resources to improve school infrastructure. In making necessary infrastructure updates, LEAs face an estimated annual gap of \$85 billion between the level of investment and level of need to maintain safe and up-to-date facilities, according to the 2021

State of Our Schools Report by the 21st Century School Fund.<sup>5</sup> Relatedly, the 2021 State of our Schools Report indicates that most school facility financing is provided locally and almost half of States provide little to no funding to LEAs for school infrastructure. Eleven States provide no funding at all, and an additional 10 States provide between 1 and 9 percent of an LEA's costs for maintaining school infrastructure.<sup>6</sup> Without State funding, LEAs rely on local property or sales tax revenue; schools in low-income communities do not have sufficient revenue to finance enough borrowing to address their accumulated deficiencies from aged infrastructure. In this way, schools in low-income communities are disproportionately impacted by inequitable funding systems across the country.

Despite decades of inequitable school funding systems and aging school infrastructure across the country, the COVID-19 pandemic illuminated the scope of the issue and the harm dilapidated school buildings have on our students and educators. In many public schools, the poor state of facilities hampered the return to in-person learning during the COVID-19 pandemic or led to lost instructional time when school ventilation systems were unable to maintain safe and healthy classroom conditions. Specifically, the GAO report found that an estimated 41 percent of school districts need to update or replace heating, ventilation, and air-conditioning (HVAC) systems in at least half of their schools, representing about 36,000 schools nationwide. If not addressed, HVAC-related problems, such as older systems that leak and damage flooring or ceiling tiles, can lead to indoor air quality problems and mold, aggravate asthma, and result in lost learning time.

The increase in extreme weather exacerbates these issues. For example, schools that do not have air-conditioning have had to adjust schedules to accommodate extreme heat or retrofit buildings with air-conditioning, requiring additional updates to piping and insulation to avoid air quality problems caused by moisture and condensation. Due to recent increases in extreme weather conditions, maintaining safe and

<sup>1</sup> <https://nces.ed.gov/programs/coe/indicator/cga/public-school-enrollment>.

<sup>2</sup> <https://www.gao.gov/assets/gao-20-494.pdf>.

<sup>3</sup> [https://infrastructurereportcard.org/wp-content/uploads/2020/12/National\\_IRC\\_2021-report.pdf](https://infrastructurereportcard.org/wp-content/uploads/2020/12/National_IRC_2021-report.pdf).

<sup>4</sup> <https://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2014022>.

<sup>5</sup> [https://static1.squarespace.com/static/5a5ccab5bff20008734885eb/t/618aab5d79d53d3ef439097c/1636477824193/SOOS-IWBI2021-2\\_21CSF+print\\_final.pdf](https://static1.squarespace.com/static/5a5ccab5bff20008734885eb/t/618aab5d79d53d3ef439097c/1636477824193/SOOS-IWBI2021-2_21CSF+print_final.pdf).

<sup>6</sup> [https://static1.squarespace.com/static/5a5ccab5bff20008734885eb/t/618aab5d79d53d3ef439097c/1636477824193/SOOS-IWBI2021-2\\_21CSF+print\\_final.pdf](https://static1.squarespace.com/static/5a5ccab5bff20008734885eb/t/618aab5d79d53d3ef439097c/1636477824193/SOOS-IWBI2021-2_21CSF+print_final.pdf).

healthy classroom conditions remains a challenge for schools across the United States, particularly in areas with higher proportions of students from “socially vulnerable groups,” according to GAO’s 2022 study on disaster recovery.<sup>7</sup> This GAO report also shows that school districts serving high proportions of children from vulnerable groups—including children who are from low-income backgrounds, children of color, English learners, and children with disabilities—are particularly susceptible to the adverse effects of disasters and may need more recovery assistance compared to school districts with less vulnerable student populations.

In addition, many States face challenges in building their own capacity to support LEAs in maintaining and improving school infrastructure. According to GAO’s 2020 survey of the 50 States and District of Columbia, most States (38 of 49) either had not conducted or did not know if their State had conducted a State-level facilities condition assessment to determine school facilities’ needs.<sup>8</sup> States that had not conducted a statewide facilities condition assessment frequently said they do not assess school conditions because it is primarily the responsibility of LEAs, further compromising the ability of high-need LEAs to maintain safe, healthy, sustainable, and equitable learning environments.

Recent investments in school infrastructure, including the development of resources on related topics, across Federal agencies demonstrate the Federal Government’s commitment to enhancing equity and sustainability in schools. For example, in 2022, the U.S. Department of Energy announced a new grant program focused on energy improvements at public school facilities, especially in the highest-need districts, designed to save schools money.<sup>9</sup> Similarly, the White House released a toolkit on Federal resources for addressing school infrastructure needs in April 2022.<sup>10</sup> Additionally, the Environmental Protection Agency recently released grant announcements enabled by the Bipartisan Infrastructure Law for its *Voluntary School and Child Care Lead Testing and Reduction Grant Program*, which allows grant funding for lead

remediation and testing in K–12 schools.<sup>11</sup>

Additional investment in consolidating available resources and training State and LEA personnel responsible for decision-making, planning, data, budgeting, operations, accountability, and management of public school facilities is necessary to enhance their ability to access and utilize the resources available to address the infrastructure challenges facing LEAs.

To help address these challenges and build on other Federal educational infrastructure efforts, the Department will use School Safety National Activities funds to create a national clearinghouse and TA center, NCSI, that will consolidate resources on topics related to public school infrastructure improvements that support safe, healthy, sustainable, and equitable public school facilities. NCSI will also provide targeted TA to State entity grantees awarded funds under the SASI grant program and universal TA to States and LEAs on leveraging available resources to assess and make public school infrastructure improvements in their highest-need public schools.

*Priority:* This competition includes one absolute priority. We are establishing this priority for the FY 2023 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

*Absolute Priority:* This priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this absolute priority.

This priority is:

*Develop a Clearinghouse of Resources and a Technical Assistance Center on School Infrastructure.*

Applicants must propose to establish a national center on school infrastructure that will serve as a clearinghouse of resources for States and LEAs related to improving and developing safe, healthy, equitable, and sustainable school infrastructure, and provide TA to SASI grantees and high-need LEAs seeking to leverage available resources to improve public school facilities for all students.

*Requirements:* We are establishing these application and program requirements for the FY 2023 grant competition and any subsequent year in

which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1).

*Program Requirements:* The grantee under this program must meet the following program requirements:

(a) Develop a service plan annually in consultation with the Department that incorporates factors identified by the Department, addresses implementation challenges faced by SASI grantees and high-need LEAs in those States, and reflects emerging needs in public school infrastructure and sustainability. The annual service plan must be an update to the grantee’s 5-year plan submitted as part of its application. The annual service plan must also include, at a minimum, the following elements: capacity-building services to be delivered through both universal TA to States and LEAs and targeted TA to individual SASI grantees, key personnel, milestones, outputs, and outcome measures.

(b) Develop and implement an effective personnel management system that enables the grantee to retain and efficiently obtain the services of practitioners, researchers, policy professionals, and other consultants with direct experience with school infrastructure at the Federal, State, and local levels.

(c) Hire a project director capable of managing all aspects of the TA Center.

(d) Within 90 days of receiving funding, demonstrate substantial progress in securing any needed subcontractors to assist with carrying out the proposed services.

(e) Develop and maintain an NCSI clearinghouse website with an easy-to-navigate design that meets government or industry-recognized standards for accessibility, including 508 compliance.

(f) Gather, organize, and make available school infrastructure data to support Federal policymaking, including through national surveys.

(g) Assemble a Technical Assistance Advisory Committee consisting of subject matter experts, including State and LEA representatives, that will meet at least twice per year to work collaboratively on public school infrastructure improvement strategies and implementation practices.

(h) Consolidate and disseminate resources and best practices on public school infrastructure, including resources and best practices available across Federal agencies, as a means of providing universal TA to States and LEAs. To meet this requirement, the grantee must conduct the following activities:

<sup>7</sup> <https://www.gao.gov/assets/gao-22-104606.pdf>.

<sup>8</sup> <https://www.gao.gov/products/gao-20-494>.

<sup>9</sup> <https://www.energy.gov/scep/grants-energy-improvements-public-school-facilities>.

<sup>10</sup> <https://www.whitehouse.gov/wp-content/uploads/2022/04/White-House-School-Infrastructure-Toolkit-04.04.22.pdf>.

<sup>11</sup> <https://www.epa.gov/dwcapacity/wiin-grant-voluntary-school-and-child-care-lead-testing-and-reduction-grant-program>.

(i) Consolidate and disseminate resources on topics related to public school infrastructure and sustainability, such as public school facilities planning, management, funding, and accountability; public school infrastructure improvements; tax credit or bond opportunities; regulations impacting infrastructure projects; facilities condition assessments and data management; the effects of education facilities on health, safety, equity, student achievement, and staff retention; environmental sustainability and climate resiliency; and potential cost-saving opportunities through procurement, resource efficiency, and preventative maintenance.

(ii) Facilitate national communication related to school infrastructure, sustainability, and equitable access to adequate public school facilities.

(iii) Consolidate and disseminate resources on topics uniquely impacting high-need LEAs or LEAs with demonstrated need in non-SASI States related to public school infrastructure and sustainability as needed.

(i) Utilize subject matter experts as appropriate to increase knowledge on school facilities.

(j) Develop regular (*e.g.*, quarterly) communication and collaboration with SASI State entity grantees through mechanisms such as communities of practice or professional learning groups.

(k) Provide targeted TA to SASI State entity grantees regarding public school infrastructure and sustainability topics, which must include the following activities:

(i) Strengthen SASI State entity grantee understanding of Federal funding and tax credits available to support school infrastructure projects and financial planning and management, including the braiding of Federal, State, and local funds for school infrastructure.

(ii) Increase SASI State entity grantee knowledge regarding regulations that impact federally funded infrastructure projects (*e.g.*, Buy America, Build America Act and the National Historic Preservation Act of 1966).<sup>12</sup>

(iii) Build SASI State entity grantee capacity to improve data and information management systems in order to better assess the condition of public school infrastructure in States.

(iv) Build SASI State entity grantee capacity to leverage available resources

to assess and make public school infrastructure improvements.

(l) Provide other targeted TA to SASI State entity grantees and high-need LEAs regarding school infrastructure and sustainability topics, which may include the following activities:

(i) Strengthen SASI State entity grantee and high-need LEA understanding of how education facilities affect health, safety, equity, and student achievement.

(ii) Increase SASI State entity grantee and high-need LEA understanding of Federal, State, and local policies and practices related to public school facilities planning, management, funding, and accountability.

(iii) Build SASI State entity grantee and high-need LEA capacity to identify and make public school infrastructure improvements that promote environmental sustainability and climate resiliency.

(iv) Build SASI State entity grantee and high-need LEA capacity to identify cost-saving opportunities through procurement, resource efficiency, and preventative maintenance.

(v) Build SASI State entity grantee and high-need LEA capacity to braid Federal, State, or local funds to support infrastructure projects.

(vi) Support the use of built and natural environments as instructional tools and community centers (*e.g.*, outdoor classrooms, school gardens, community charging stations, school as a learning tool, school-based health centers, or joint-use agreements).

(vii) Develop resources and best practices on topics related to school infrastructure and sustainability.

(m) Provide targeted TA related to school infrastructure and sustainability to States and LEAs with demonstrated need in non-SASI States as requested and resources permitting.

*Application Requirements:* In their applications, applicants must meet the following requirements.

(a) Describe how the center will implement its project services to provide TA, including a communication plan.

(b) Demonstrate expertise and experience in the following areas:

(i) School infrastructure research, data, information management systems, available resources (*e.g.*, funding opportunities), and best practices.

(ii) Research, data, available resources, and best practices on environmentally sustainable schools.

(iii) Financial planning and management, including the braiding of Federal, State, and local funds for school infrastructure.

(iv) Research, data, and best practices on equitable resource allocation,

including ensuring equitable access to adequate school facilities that enable all students to succeed academically.

(c) Describe the current research on capacity-building that will inform the applicant's capacity-building services, including how the applicant will promote self-sufficiency and longevity of State-led school improvement activities.

(d) Describe the applicant's demonstrated experience in providing training, information, and support, to States, LEAs, schools, and organizations.

(e) Present a proposed 5-year service plan. The proposed service plan must include, at a minimum, the following elements: capacity-building services to be delivered through both universal TA to States and LEAs and targeted TA to individual SASI grantees, key personnel, milestones, outputs, and outcome measures.

(f) Present a logic model informed by research or evaluation findings that demonstrates a rationale explaining how the project is likely to improve or achieve relevant and expected outcomes. The logic model must communicate how the project will achieve its expected outcomes (short-term, mid-term, and long-term) and provide a framework for both the formative and summative evaluations of the project consistent with the applicant's evaluation plan. Include a description of underlying concepts, assumptions, expectations, beliefs, and theories, as well as the relationships and linkages among these variables, and any empirical support for this framework.

(g) Present a proposed evaluation plan that describes the criteria for determining which (1) milestones were met; (2) outputs were met; (3) recipient outcomes (*i.e.*, short-term, mid-term, long-term) were met; and (4) capacity-building services were implemented as intended.

*Definitions:* For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, the following definitions apply. The definitions of "demonstrates a rationale," "logic model," "project component," and "relevant outcome" are from 34 CFR 77.1(c). The definitions of "local educational agency" and "State educational agency" are from section 8101 of the Elementary and Secondary Education Act of 1965, as amended (ESEA). We are establishing the definitions of "high-need LEA," "public school facilities," "public school infrastructure," "public school infrastructure improvements," "SASI State entity grantee," "State," and

<sup>12</sup> The Buy America, Build America Act can be found here: <https://www.congress.gov/bill/117th-congress/senate-bill/1303>. Information on the National Historic Preservation Act of 1966 can be found here: <https://www.govinfo.gov/app/details/USCODE-2021-title16/USCODE-2021-title16-chap1A-subchapII-sec470>.

“sustainable” for the FY 2023 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1).

*Demonstrates a rationale* means a key project component included in the project’s logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

*High-need LEA* will be defined by SASI applicants as a part of their application (the definition for funded SASI applicants will be finalized in consultation with the Department as part of the grant award process). The definition for funded SASI applicants must include a measure of poverty and a measure of capacity to fund school facility improvements. As applicable, SASI applicants may include in the definition secondary factors that impact the ability of an LEA or an individual school within an LEA to effectively make public school infrastructure improvements, such as the documented condition of facilities or geographic isolation of the LEA or individual schools within an LEA, or use the following definitions:

(a) **Poverty:** An LEA may be defined as high-need if it is among the LEAs in the State with the highest numbers or percentages of students counted as eligible under section 1124(c) of the ESEA (20 U.S.C. 6333(c)).

(b) **Capacity to Fund Facilities:** An LEA may be defined as high-need if it is among the LEAs in the State with the most limited capacity to raise funds for the long-term improvement of public school facilities, as determined by an assessment of—

(i) The current and historic ability of the LEA to raise funds for construction, renovation, modernization, and major repair projects for school infrastructure;

(ii) Whether the LEA has been able to issue bonds or receive other funds to support school construction projects; and

(iii) The bond rating of the LEA.

*Local educational agency* means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(a) **Administrative Control and Direction—**The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(b) **Bureau of Indian Education Schools—**The term includes an elementary or secondary school funded by the Bureau of Indian Education but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the ESEA with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency (SEA) other than the Bureau of Indian Education.

(c) **Education Service Agencies—**The term includes educational service agencies and consortia of those agencies.

(d) **State Educational Agency—**The term includes the SEA in a State in which the SEA is the sole educational agency for all public schools.

*Logic model* (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.*, the active “ingredients” that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

*Project component* means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.*, training teachers on instructional practices for English learners and follow-on coaching for these teachers).

*Public school facilities* means a building used to provide free public education, including instructional, resource, food service, and general or administrative support areas, so long as they are a part of the facility.

*Public school infrastructure* means school buildings, facilities, and grounds, including the built and natural outdoor environment of a public elementary school or secondary school, that are necessary for an LEA to provide a safe, healthy, sustainable, and equitable learning environment for all students.

*Public school infrastructure improvements* means activities related to building, acquiring, altering, remodeling, repairing, modernizing, or extending of public school facilities,

including planning, design, financing, maintenance, and operations of public school infrastructure.

*Relevant outcome* means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

*SASI State entity grantee* means an agency of the State other than the SEA with authority or responsibility over public school facilities.

*State* means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas, consistent with section 8101(36) of the ESEA.

*State educational agency* means the agency primarily responsible for the State supervision of public elementary schools and secondary schools.

*Sustainable* means practices, policies, programs, and systems that do not deplete or permanently damage fiscal or environmental resources, while maintaining social well-being.

*Waiver of Proposed Rulemaking:* Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities, requirements, and definitions. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under section 4631(a)(1)(B) of the ESEA (20 U.S.C. 7281) and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the priority, requirements, and definitions under section 437(d)(1) of GEPA. This priority, requirements, and definitions will apply to the FY 2023 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition.

*Program Authority:* Section 4631(a)(1)(B) of the ESEA (20 U.S.C. 7281); Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Bill, 2023, H.R. 117–403, [www.congress.gov/congressional-report/117th-congress/house-report/403/1](http://www.congress.gov/congressional-report/117th-congress/house-report/403/1).

*Note:* Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management

and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

*Note:* The regulations in 34 CFR part 86 apply to institutions of higher education only.

## II. Award Information

*Type of Award:* Cooperative agreement.

*Estimated Available Funds:* \$2,000,000 annually.

*Maximum Award:* We will not make an award exceeding \$2,000,000 for a single budget period of 12 months.

*Estimated Number of Awards:* 1.

*Note:* The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

## III. Eligibility Information

1. *Eligible Applicants:* Research organizations, institutions, agencies, or consortia of such entities, with the demonstrated ability or capacity to carry out the activities described.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see [www2.ed.gov/about/offices/list/ocfo/intro.html](http://www2.ed.gov/about/offices/list/ocfo/intro.html).

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

## IV. Application and Submission Information

### 1. Application Submission

*Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at <https://www.federalregister.gov/documents/2022/12/07/2022->

[26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs](#). Please note that these Common Instructions supersede the version published on December 27, 2021.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the NCSI program, your application may include business information that you consider proprietary. In 34 CFR 5.11, we define “business information” and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended). Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under “Other Attachments Form,” please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 30 pages and (2) use the following standards:

- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget

justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

6. *Notice of Intent to Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. To do so, please email the program contact person listed under **FOR FURTHER INFORMATION CONTACT** with the subject line “Intent to Apply,” and include the applicant’s name and a contact person’s name and email address. Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is included in parentheses following the title of the specific selection criterion.

The selection criteria are as follows:

(a) *Quality of the project design* (up to 30 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs (up to 10 points).

(ii) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework (up to 10 points).

(iii) The extent to which performance feedback and continuous improvement are integral to the design of the proposed project (up to 10 points).

(b) *Quality of project services* (up to 35 points)

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are

members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (up to 5 points).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services (up to 10 points).

(ii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice (up to 5 points).

(iii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services (up to 15 points).

(c) *Quality of project personnel* (up to 10 points)

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (up to 5 points).

(3) In addition, the Secretary considers the qualifications, including relevant training and experience, of key project personnel (up to 5 points).

(d) *Quality of the management plan* (up to 20 points)

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (up to 5 points).

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project (up to 2 points).

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project (up to 8 points).

(iv) The extent to which the time commitments of the project director and

principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project (up to 5 points).

(e) *Quality of the project evaluation* (up to 5 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies (up to 5 points).

2. *Review and Selection Process:* We remind potential applicants that, in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, and 110.23.).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently \$250,000), under 2 CFR 200.206(a)(2), we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system

(currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds \$10,000,000, the reporting requirements in 2 CFR part 200, appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus all the other Federal funds you receive exceed \$10,000,000.

5. *In General.* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other



requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

### 3. *Open Licensing Requirements:*

Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to [www.ed.gov/fund/grant/apply/appforms/appforms.html](http://www.ed.gov/fund/grant/apply/appforms/appforms.html).

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* For the purpose of Department reporting under 34 CFR 75.110, we have established the

following performance measures for the NCSI program:

(a) The percentage of SASI State entity grantees and high-need LEAs reporting the following:

(1) NCSI resources were useful and applicable to their work as evidenced.

(2) The TA provided by the NCSI resulted in changes in policies or practices.

(3) Satisfaction with the quality, usefulness, and relevance of TA provided by the NCSI.

(b) The percentage of other States and LEAs reporting the following:

(1) NCSI resources were useful and applicable to their work as evidenced.

(2) The TA provided by the NCSI resulted in changes in policies or practices.

(3) Satisfaction with the quality, usefulness, and relevance of TA provided by the NCSI.

(c) The number of times that NCSI provided direct TA to the following:

(1) A SASI grantee or high-need LEA in a SASI grantee State.

(2) A non-SASI grantee State or LEA in a non-SASI grantee State seeking TA.

(c) The extent to which the NCSI provided services and products to a wide range of recipients.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things, whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

## VII. Other Information

*Accessible Format:* On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3

file, braille, large print, audiotape, or compact disc, or other accessible format.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at [www.govinfo.gov](http://www.govinfo.gov). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**James F. Lane,**

*Principal Deputy Assistant Secretary, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.*

[FR Doc. 2023-11790 Filed 6-1-23; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

### Applications for New Awards; Supporting America's School Infrastructure Grant Program

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2023 for the Supporting America's School Infrastructure (SASI) Grant Program, Assistance Listing Number (ALN) number 84.184K. This notice relates to the approved information collection under OMB control number 1894-0006.

**DATES:**

*Applications Available:* June 5, 2023.

*Deadline for Transmittal of Applications:* August 7, 2023.

*Deadline for Intergovernmental Review:* October 6, 2023.

*Pre-Application Webinar Information:* Information about a pre-application webinar will be available on the program website at: <https://oese.ed.gov/offices/school-infrastructure-programs-sip/>.

**ADDRESSES:** For the addresses for obtaining and submitting an application, please refer to our Common



Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at <https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs>. Please note that these Common Instructions supersede the version published on December 27, 2021.

**FOR FURTHER INFORMATION CONTACT:** Staci Cummins, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202-6450. Telephone: 202-987-1674. Email: [oe.se.school.infrastructure@ed.gov](mailto:oe.se.school.infrastructure@ed.gov).

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Full Text of Announcement

##### I. Funding Opportunity Description

*Purpose of Program:* The purpose of this program is to increase the capacity of States to support high-need local educational agencies (LEAs) and schools in leveraging other available Federal, State, and local resources to improve school facilities and environments through public school infrastructure improvements to ensure that their public school facilities are safe, healthy, sustainable, and equitable learning environments for all students.

##### *Background:*

Schools, especially those in high-need LEAs, face ongoing challenges in ensuring that their school facilities provide safe, healthy, sustainable, and equitable learning environments. Fifty million students and 6 million adults spend their days learning and working in public school buildings.<sup>1</sup> Public schools account for the second most expansive public State and local infrastructure in the country, after highways. Yet, a 2020 U.S. Government Accountability Office (GAO) report found that an estimated 54 percent of LEAs in the United States reported that they need to replace or update major systems in more than half of their buildings,<sup>2</sup> and the 2021 Report Card for America's Infrastructure rated the Nation's school buildings as a D-plus.<sup>3</sup> In addition to necessary updates, the

average public school building was 44 years old as of 2012, according to the most recent comprehensive dataset on public school facilities, the 2013 National Center on Education Statistics Condition of America's Public School Facilities.<sup>4</sup>

LEAs, especially those in low-income neighborhoods, face challenges related to project financing, Federal and State grant application procedures, and understanding how to leverage available resources to improve school infrastructure. In making necessary infrastructure updates, LEAs face an estimated annual gap of \$85 billion between the level of investment and level of need to maintain safe and up-to-date facilities, according to the 2021 State of Our Schools Report by the 21st Century School Fund.<sup>5</sup> Relatedly, the 2021 State of our Schools Report indicates that most school facility financing is provided locally and almost half of States provide little to no funding to LEAs for school infrastructure. Eleven States provide no funding at all, and an additional 10 States provide between 1 and 9 percent of an LEA's costs for maintaining school infrastructure.<sup>6</sup> Without State funding, LEAs rely on local property or sales tax revenue; schools in low-income communities do not have sufficient revenue to finance enough borrowing to address their accumulated deficiencies from aged infrastructure. In this way, schools in low-income communities are disproportionately impacted by inequitable funding systems across the country.

Despite decades of inequitable school funding systems and aging school infrastructure across the country, the COVID-19 pandemic illuminated the scope of the issue and the harm dilapidated school buildings have on our students and educators. In many public schools, the poor state of facilities hampered the return to in-person learning during the COVID-19 pandemic or led to lost instructional time when school ventilation systems were unable to maintain safe and healthy classroom conditions. Specifically, the GAO report found that an estimated 41 percent of school districts need to update or replace heating, ventilation, and air-

conditioning (HVAC) systems in at least half of their schools, representing about 36,000 schools nationwide. If not addressed, HVAC-related problems, such as older systems that leak and damage flooring or ceiling tiles, can lead to indoor air quality problems and mold, aggravate asthma, and result in lost learning time.

Extreme weather exacerbates these issues. For example, schools that do not have air-conditioning have had to adjust schedules to accommodate extreme heat or retrofit buildings with air-conditioning, requiring additional updates to piping and insulation to avoid air quality problems caused by moisture and condensation. Due to recent increases in extreme weather conditions, maintaining safe and healthy classroom conditions remains a challenge for schools across the United States, particularly in areas with higher proportions of students from "socially vulnerable groups" according to GAO's 2022 study on disaster recovery.<sup>7</sup> This GAO report also shows that school districts serving high proportions of children from vulnerable groups—including children who are from low-income backgrounds, children of color, English learners, and children with disabilities—are particularly susceptible to the adverse effects of disasters and may need more recovery assistance compared to school districts with less vulnerable student populations.

In addition, many States face challenges in building their own capacity to support LEAs in maintaining and improving school infrastructure. According to GAO's 2020 survey of the 50 States and District of Columbia, most States (38 of 49) either had not conducted or did not know if their State had conducted a State-level facilities condition assessment to determine school facilities' needs.<sup>8</sup> States that had not conducted a statewide facilities condition assessment frequently said they do not assess school conditions because it is primarily the responsibility of LEAs, further compromising the ability of high-need LEAs to maintain safe, healthy, sustainable, and equitable learning environments.

Recent investments in school infrastructure, including the development of resources on related topics, across Federal agencies demonstrate the Federal Government's commitment to enhancing equity and sustainability in schools. For example, in 2022, the U.S. Department of Energy announced a new grant program focused on energy improvements at public

<sup>4</sup> <https://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2014022>.

<sup>5</sup> [https://static1.squarespace.com/static/5a5ccab5bfff20008734885eb/t/618aab5d79d53d3ef439097c/1636477824193/SOOS-IWBI2021-2\\_21CSF+print\\_final.pdf](https://static1.squarespace.com/static/5a5ccab5bfff20008734885eb/t/618aab5d79d53d3ef439097c/1636477824193/SOOS-IWBI2021-2_21CSF+print_final.pdf).

<sup>6</sup> [https://static1.squarespace.com/static/5a5ccab5bfff20008734885eb/t/618aab5d79d53d3ef439097c/1636477824193/SOOS-IWBI2021-2\\_21CSF+print\\_final.pdf](https://static1.squarespace.com/static/5a5ccab5bfff20008734885eb/t/618aab5d79d53d3ef439097c/1636477824193/SOOS-IWBI2021-2_21CSF+print_final.pdf).

<sup>1</sup> <https://nces.ed.gov/programs/coe/indicator/cga/public-school-enrollment>.

<sup>2</sup> <https://www.gao.gov/assets/gao-20-494.pdf>.

<sup>3</sup> [https://infrastructurereportcard.org/wp-content/uploads/2020/12/National\\_IRC\\_2021-report.pdf](https://infrastructurereportcard.org/wp-content/uploads/2020/12/National_IRC_2021-report.pdf).

<sup>7</sup> <https://www.gao.gov/assets/gao-22-104606.pdf>.

<sup>8</sup> <https://www.gao.gov/products/gao-20-494>.

school facilities, especially in the highest-need districts, designed to save schools money.<sup>9</sup> Similarly, the White House released a toolkit on Federal resources for addressing school infrastructure needs in April 2022.<sup>10</sup> Additionally, the Environmental Protection Agency recently released grant announcements enabled by the Bipartisan Infrastructure Law for its *Voluntary School and Child Care Lead Testing and Reduction Grant Program*, which allows grant funding for lead remediation and testing in K–12 schools.<sup>11</sup>

Additional investment in consolidating available resources and training State and LEA personnel responsible for decision-making, planning, data, budgeting, operations, accountability, and management of public school facilities is necessary to enhance their ability to access and utilize the resources available to address the infrastructure challenges facing LEAs.

To help address these challenges, the Department will use School Safety National Activities funds to increase State capacity to support high-need LEAs and provide technical assistance to those LEAs regarding how to leverage available resources to assess public school infrastructure needs and how to make infrastructure improvements in their highest-need public schools.

**Priorities:** We are establishing two absolute priorities and one competitive preference priority for the FY 2023 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

**Absolute Priorities:** For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet these absolute priorities.

Only one application per State may be submitted to this grant competition under either Absolute Priority 1 or Absolute Priority 2.

Applicants must clearly identify the specific absolute priority the proposed project addresses in the project abstract.

*Note:* The Department may create two funding slates—one for applicants that meet Absolute Priority 1 and one for applicants that meet Absolute Priority 2. As a result, the Department may fund applications out of the overall rank order, provided applications of sufficient quality are submitted, but the Department is not bound to do so.

These priorities are:

**Absolute Priority 1—Building Capacity of State Educational Agency (SEA).**

To meet this priority, an eligible State educational agency (as defined in this document) must propose a project to increase its capacity to support high-need LEAs (as defined in this document) and provide technical assistance to those LEAs regarding how to leverage available resources to assess infrastructure needs and how to make public school infrastructure improvements in their highest-need public schools.

**Absolute Priority 2—Building Capacity of State Entity (Other than the SEA).**

To meet this priority, an eligible State entity other than the SEA with authority or responsibility over educational facilities (*i.e.*, if the SEA does not have authority over or responsibility for educational facilities) must propose a project in collaboration with the SEA to increase its capacity to support high-need LEAs and provide technical assistance to those LEAs regarding how to leverage available resources to assess infrastructure needs and how to make public school infrastructure improvements in their highest-need public schools.

**Competitive Preference Priority:** For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is a competitive preference priority for applications under Absolute Priority 1. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 5 points for Competitive Preference Priority 1 to any application from an SEA under Absolute Priority 1 that addresses this priority. The total number of competitive preference points an SEA applicant may compete for is 5.

An applicant must clearly identify in the project abstract and the project narrative section of its application that it wishes the Department to consider the application for purposes of earning competitive preference priority points.

This priority is:

**Competitive Preference Priority 1—SEAs with Low Capacity in Areas of School Infrastructure.** (Up to 5 points)

To meet this priority, an applicant must demonstrate that it currently has low or no administrative capacity to support LEAs in its State in assessing facility conditions or making public school infrastructure improvements, by attesting that it meets one or more of the following criteria:

(i) The SEA does not currently provide capital funding for school construction or renovations, consistent with the most recent annual Public Elementary-Secondary Education Finance Data the SEA reported to the U.S. Census Bureau. (0 or 3 point)

(ii) The SEA does not currently employ a dedicated staff person whose primary job responsibility is providing technical assistance to LEAs regarding school infrastructure improvements. (0 or 2 points)

**Requirements:** We are establishing these application and program requirements for the FY 2023 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition.

Application requirement (c) only applies to State entities other than the SEA that have authority over or responsibility for educational facilities. All remaining application requirements apply to all eligible applicants.

**Program Requirements:** Applicants that receive an award under this program must—

(a) Within one calendar year of receiving the award, complete a needs assessment of high-need LEAs to determine their issues, needs, and potential opportunities related to school infrastructure, and incorporate the needs assessment findings into the applicant's logic model and annual reporting.

(b) Develop or improve State and local data and information systems management related to public school infrastructure (*e.g.*, the condition of school facilities).

(c) Evaluate the current State-level public school infrastructure funding systems and make recommendations that would ensure systems provide all students access to a safe, healthy, sustainable, and equitable learning environment.

(d) Establish or improve statewide systems for training LEA officials responsible for public school infrastructure or public school infrastructure improvements.

(e) Engage in activities necessary to plan the project period and evaluate impact (*e.g.*, collect baseline data).

(f) Provide technical assistance to high-need LEAs as they implement safe, healthy, sustainable, and equitable

<sup>9</sup> <https://www.energy.gov/scep/grants-energy-improvements-public-school-facilities>.

<sup>10</sup> <https://www.whitehouse.gov/wp-content/uploads/2022/04/White-House-School-Infrastructure-Toolkit-04.04.22.pdf>.

<sup>11</sup> <https://www.epa.gov/dwcapacity/wiin-grant-voluntary-school-and-child-care-lead-testing-and-reduction-grant-program>.

infrastructure improvements with Federal, State, local, and private funding.

(g) Build the capacity of SEA and State entity (as applicable for State entity applicants) staff by engaging in professional development on topics related to public school infrastructure and sustainability, including public school facilities planning, management, funding, and accountability; public school infrastructure improvements; regulations impacting infrastructure projects; facilities condition assessments and data management; the effects of education facilities on health, safety, equity, staff retention, and student achievement; environmental sustainability and climate resiliency; and potential cost-savings opportunities through procurement, resource efficiency, and preventative maintenance.

(h) Applicants that receive an award under this program may also use funds, in accordance with their proposed application, on any of the following activities—

(i) Facility conditions assessments for high-need LEAs.

(ii) Support for high-need LEAs in developing sustainable financing models and partnerships.

(iii) Support for high-need LEAs in long-term infrastructure planning.

(iv) Review and update State standards, policies, procedures, regulations, or codes related to school infrastructure and provide related technical assistance to high-need LEAs.

(v) Provide technical assistance to high-need LEAs on planning and implementing public school infrastructure improvements that advance environmental sustainability and climate resiliency.

(vi) Collaborate and coordinate with related Federal, State, and local organizations, and school-based efforts, to increase State capacity to support LEAs in the areas of public school infrastructure and sustainability.

(i) Allocate or hire at least one full-time employee to administer and implement the activities outlined in the grant application.

(j) Annually report to the Department—

(i) How high-need LEA capacity is being increased, as described in the logic model, including the key project components and short-term, mid-term, and long-term outcomes.

(ii) Which LEAs in the State have been designated as high-need, how they meet the definition of high-need, and which received direct technical assistance.

*Application Requirements:*

(a) Describe the “high-need LEAs” designated by the State to be served by the proposed project.

Applicants must define “high-need LEA” and describe how it will determine an LEA meets the definition of high-need. In addition, an applicant must describe how it will annually determine which LEAs meet the definition of high-need over the project period to ensure those designated as high-need benefit from the program.

(b) Logic Model.

Describe the applicant’s approach to building internal capacity using a logic model. The applicant must describe its approach to increasing its capacity to support high-need LEAs in leveraging available resources to achieve safe, healthy, sustainable, and equitable school environments through public school infrastructure improvements using a logic model (as defined in 34 CFR 77.1), including the key project components and relevant outcomes (as defined in 34 CFR 77.1). The description should indicate how the proposed approach will improve or expand on any previous approaches, how the new approach will address barriers, and how the applicant will sustain support for high-need LEAs after the project period has ended.

(c) Interagency collaboration with the SEA.

A State entity applying under Absolute Priority 2 must describe how it will coordinate and collaborate with the SEA when implementing the project. A collaboration plan with the SEA must include—

(i) How the State entity will develop and maintain interagency communication and coordination with the SEA.

(ii) The role of the State entity and SEA in the project.

(iii) A description of how the project will increase the capacity of the SEA to support high-need LEAs in leveraging available resources to assess and make infrastructure improvements in their highest-need public schools.

(d) In addressing the selection criteria, present a proposed evaluation plan that describes the criteria for which (a) milestones were met; (b) outputs were met; (c) recipient outcomes (*i.e.*, short-term, mid-term, long-term) were met; and (d) capacity-building services are implemented as intended.

*Definitions:* For FY 2023, and any subsequent year in which we make awards from the list of unfunded applications from this competition, the following definitions apply. The definitions of “logic model,” “project component,” and “relevant outcome” are from 34 CFR 77.1(c). The definitions

of “local educational agency” and “State educational agency” are from section 8101 of the Elementary and Secondary Education Act of 1965, as amended (ESEA). We are establishing the definitions of “high-need LEA,” “public school facilities,” “public school infrastructure,” “public school infrastructure improvements,” “state entity,” and “sustainable” for the FY 2023 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1).

*Demonstrates a rationale* means a key project component included in the project’s logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

*High-need LEA* will be defined by the applicant as a part of the application (the definition for funded applicants will be finalized in consultation with the Department as part of the grant award process). The definition must include a measure of poverty and a measure of capacity to fund school facility improvements. As applicable, applicants may include in the definition secondary factors that impact the ability of an LEA or an individual school within an LEA to effectively make public school infrastructure improvements, such as the documented condition of facilities or geographic isolation of the LEA or individual schools within an LEA. An SEA may use the following definitions of poverty and capacity to fund facilities:

(a) *Poverty:* An LEA may be defined as high-need if it is among the LEAs in the State with the highest numbers or percentages of students counted as eligible under section 1124(c) of the ESEA (20 U.S.C. 6333(c)).

(b) *Capacity to Fund Facilities:* An LEA may be defined as high-need if it is among the LEAs in the State with the most limited capacity to raise funds for the long-term improvement of public school facilities, as determined by an assessment of—

(i) the current and historic ability of the LEA to raise funds for construction, renovation, modernization, and major repair projects for school infrastructure;

(ii) whether the LEA has been able to issue bonds or receive other funds to support school construction projects; and

(iii) the bond rating of the LEA.

*Local educational agency* means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a

service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(a) Administrative Control and Direction—The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(b) Bureau of Indian Education Schools—The term includes an elementary or secondary school funded by the Bureau of Indian Education but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the ESEA with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency (SEA) other than the Bureau of Indian Education.

(c) Education Service Agencies—The term includes educational service agencies and consortia of those agencies.

(d) State Educational Agency—The term includes the SEA in a State in which the SEA is the sole educational agency for all public schools.

*Logic model* (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.*, the active “ingredients” that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

*Project component* means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.*, training teachers on instructional practices for English learners and follow-on coaching for these teachers).

*Public school facility* means a building used to provide free public education, including instructional, resource, food service, and general or administrative support areas, so long as they are a part of the facility.

*Public school infrastructure* means school buildings, facilities and grounds, including the built and natural outdoor environment of a public elementary

school or secondary school that are necessary for an LEA to provide a safe, healthy, sustainable, and equitable learning environment for all students.

*Public school infrastructure improvements* means activities related to building, acquiring, altering, remodeling, repairing, modernizing, or extending of public school facilities, including planning, design, financing, maintenance, and operations of public school infrastructure.

*Relevant outcome* means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

*State* means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas, consistent with section 8101(36) of the ESEA. (Section 8101(48) of the ESEA)

*State educational agency* means the agency primarily responsible for the State supervision of public elementary schools and secondary schools.

*State entity* means an agency of the State other than the SEA with authority or responsibility over public school facilities.

*Sustainable* means practices, policies, programs, and systems that do not deplete or permanently damage fiscal or environmental resources, while maintaining social well-being.

*Program Authority:* Section 4631(a)(1)(B) of the ESEA (20 U.S.C. 7281); Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Bill, 2023, H.R. 117–403, [www.congress.gov/congressional-report/117th-congress/house-report/403/1](http://www.congress.gov/congressional-report/117th-congress/house-report/403/1).

*Note:* Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

*Waiver of Proposed Rulemaking:* Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities, selection criteria, definitions, application requirements, and other requirements. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under section 4631(a)(1)(B) of the ESEA and the Departments Of Labor, Health And Human Services, And Education, And Related Agencies Appropriations Bill, 2023 and therefore qualifies for this exemption. In order to

ensure timely grant awards, the Secretary has decided to forgo public comment on the priorities, requirements, definitions, and selection criteria under section 437(d)(1) of GEPA. These priorities, requirements, definitions, and selection criteria will apply to the FY 2023 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* \$40,000,000.

*Estimated Range of Awards:* \$3,000,000 to \$5,000,000 for the full 60 months.

*Estimated Average Size of Awards:* \$4,000,000.

*Estimated Number of Awards:* 8–13.

*Note:* The Department is not bound by any estimates in this notice. Contingent upon the availability of funds and the quality of applications, the Department anticipates making awards for the full 60-months using FY 2023 and FY 2024 appropriations. The Department may make partial awards using FY 2023 appropriations and award the remaining funds using FY 2024 appropriations when they become available.

*Project Period:* Up to 60 months.

## III. Eligibility Information

1. *Eligible Applicants:* The following entities are eligible to apply under this competition—

(a) SEAs.

(b) State entity other than the SEA that has authority over or responsibility for education facilities if the SEA does not have this authority.

(c) A consortium comprised entirely of agencies or organizations within a single State described in clauses (a) or (b). Applicants applying under a consortium of eligible entities will be required to designate a lead agency in order to apply under the appropriate Absolute Priority and must meet all of

the requirements of 34 CFR 75.127 through 75.129.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see [www2.ed.gov/about/offices/list/ocfo/intro.html](http://www2.ed.gov/about/offices/list/ocfo/intro.html).

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Limitation on Awards:* The Department will make only one award per State.

4. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

#### IV. Application and Submission Information

##### 1. Application Submission

*Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at <https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs>, which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on December 27, 2021.

##### 2. Submission of Proprietary

*Information:* Given the types of projects that may be proposed in applications for the SASI program, your application may include business information that you consider proprietary. In 34 CFR 5.11, we define “business information” and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended). Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under

Exemption 4. In the appropriate Appendix section of your application, under “Other Attachments Form,” please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

4. *Funding Restrictions:* We reference regulations outlining additional funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 30 pages and (2) use the following standards:

- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

#### V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is included in parentheses following the title of the specific selection criterion. Each criterion also includes the factors that reviewers will consider in determining the extent to which an applicant meets the criterion.

The selection criteria are as follows:

- (a) *Need for the Project (up to 15 points).*
- (1) The Secretary considers the need for the proposed project.
- (2) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project (up to 2 points).

(ii) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project (up to 8 points).

(iii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses (up to 5 points).

(b) *Quality of the Project Design (up to 30 points).*

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs (up to 5 points).

(ii) The extent to which the proposed activities constitute a coherent, sustained program of training in the field (up to 5 points).

(iii) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population (up to 5 points).

(iv) The extent to which the applicant demonstrates that it has the resources to operate the project beyond the length of the grant, including a multiyear financial and operating model and accompanying plan; the demonstrated commitment of any partners; evidence of broad support from stakeholders (e.g., State educational agencies, teachers’ unions) critical to the project’s long-term success; or more than one of these types of evidence (up to 10 points).

(v) The extent to which the proposed project demonstrates a rationale (as defined in this notice) (up to 5 points).

(c) *Quality of Project Services (up to 30 points).*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (up to 5 points).

(3) In addition, the Secretary considers the following factors:

(i) The likely impact of the services to be provided by the proposed project on the intended recipients of those services (up to 10 points).

(ii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services (up to 10 points).

(iii) The extent to which the services to be provided by the proposed project are focused on those with greatest needs (up to 5 points).

(d) *Adequacy of Resources (up to 10 points).*

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the budget is adequate to support the proposed project (up to 10 points).

(e) *Quality of Management Plan (up to 10 points).*

(1) The Secretary considers quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (up to 10 points).

(f) *Quality of Project Evaluation (up to 5 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies (up to 5 points).

2. *Review and Selection Process:* We remind potential applicants that, in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or

submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently \$250,000), under 2 CFR 200.206(a)(2), we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds \$10,000,000, the reporting requirements in 2 CFR part 200, appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus all the other Federal funds you receive exceed \$10,000,000.

5. *In General.* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice

inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan

can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to [www.ed.gov/fund/grant/apply/appforms/appforms.html](http://www.ed.gov/fund/grant/apply/appforms/appforms.html).

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* For the purpose of Department reporting under 34 CFR 75.110, we have established the following performance measures for the SASI program under both Absolute Priorities 1 and 2:

(1) the number of grantees that attain or exceed the established targets for the outcome indicators for their projects that have been approved by the Secretary.

(2) the number and percentage of high-need LEAs in the grantee State that report annually to the grantee that the overall condition of their school building(s) is adequate.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things, whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

## VII. Other Information

*Accessible Format:* On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotope, or compact disc, or other accessible format.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at [www.govinfo.gov](http://www.govinfo.gov). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**James F. Lane,**

*Principal Deputy Assistant Secretary,  
Delegated the Authority to Perform the  
Functions and Duties of the Assistant  
Secretary, Office of Elementary and  
Secondary Education.*

[FR Doc. 2023-11789 Filed 6-1-23; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF ENERGY

### Agency Information Collection Revision

**AGENCY:** U.S. Department of Energy.

**ACTION:** Submission for Office of Management and Budget (OMB) review: comment request.

**SUMMARY:** The Department of Energy (DOE) has submitted request to revise an information collection request to the

OMB under the provisions of the Paperwork Reduction Act of 1995 in connection with the issuance of an interim final rule. The information collection requests a revision the *DOE Loan Guarantees for Energy Projects*, OMB Control Number 1910-5134.

**DATES:** Comments regarding this collection must be received on or before July 3, 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, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 881-8585.

**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](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Mr. Steven Westhoff, Attorney-Adviser, Loan Programs Office, email: [LPO.IFR@hq.doe.gov](mailto:LPO.IFR@hq.doe.gov), or phone: (240) 220-4994. The collection instruments can be viewed at: <https://www.energy.gov/lpo/title-17-clean-energy-financing> (Title 17 Program Guidance); and <https://www.energy.gov/lpo/articles/tribal-energy-loan-guarantee-program-solicitation-current> (TELGP solicitation).

**SUPPLEMENTARY INFORMATION:** This information collection request contains: (1) *OMB No.:* 1910-5134; (2) *Information Collection Request Title:* DOE Loan Guarantees for Energy Projects; (3) *Type of Request:* Revision; (4) *Purpose:* This information collection request revision is submitted in conjunction with the issuance of an interim final rule "Loan Guarantees for Clean Energy Projects" at 10 CFR part 609. The revision adds the "Program Guidance for Title 17 Clean Energy Financing Program" as a collection instrument under the control number. The revision also explains the public reporting burden associated with the information collection under the Program Guidance for Title 17 Clean Energy Financing Program; (5) *Annual Estimated Number of Respondents:* 92; (6) *Annual Estimated Number of Total Responses:* 92; (7) *Annual Estimated Number of Burden Hours:* 13,478; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* \$2,544,421.



*Statutory Authority:* Title XVII and TELGP authorize the collection of information.

### Signing Authority

This document of the Department of Energy was signed on May 26, 2023, by Jigar Shah, Director, Loan Programs Office, 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 30, 2023.

**Treena V. Garrett,**

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

[FR Doc. 2023-11746 Filed 6-1-23; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas & Oil Pipeline Rate and Refund Report filings:

#### Filings Instituting Proceedings

*Docket Numbers:* RP23-786-000.  
*Applicants:* Northern Natural Gas Company.

*Description:* § 4(d) Rate Filing: 20230525 Miscellaneous Filing to be effective 6/25/2023.

*Filed Date:* 5/25/23.

*Accession Number:* 20230525-5117.

*Comment Date:* 5 p.m. ET 6/6/23.

*Docket Numbers:* RP23-787-000.

*Applicants:* ANR Pipeline Company.

*Description:* Compliance filing: VXP—Request for Tariff Waiver to be effective N/A.

*Filed Date:* 5/25/23.

*Accession Number:* 20230525-5167.

*Comment Date:* 5 p.m. ET 6/6/23.

*Docket Numbers:* RP23-788-000.

*Applicants:* Enable Mississippi River Transmission, LLC.

*Description:* § 4(d) Rate Filing: Amended NRA—WRB Refining to be effective 6/1/2023.

*Filed Date:* 5/26/23.

*Accession Number:* 20230526-5030.

*Comment Date:* 5 p.m. ET 6/7/23.

*Docket Numbers:* RP23-789-000.

*Applicants:* Kinetica Deepwater Express, LLC.

*Description:* Compliance filing: Petition for Approval of Settlement to be effective 11/1/2023.

*Filed Date:* 5/26/23.

*Accession Number:* 20230526-5057.

*Comment Date:* 5 p.m. ET 6/7/23.

*Docket Numbers:* RP23-790-000.

*Applicants:* White River Hub, LLC.

*Description:* Annual Fuel Gas Reimbursement Report of White River Hub, LLC.

*Filed Date:* 5/26/23.

*Accession Number:* 20230526-5075.

*Comment Date:* 5 p.m. ET 6/7/23.

*Docket Numbers:* RP23-791-000.

*Applicants:* Equitrans, L.P.

*Description:* § 4(d) Rate Filing: Negotiated Rate Agreement—5/27/2023 to be effective 5/27/2023.

*Filed Date:* 5/26/23.

*Accession Number:* 20230526-5079.

*Comment Date:* 5 p.m. ET 6/7/23.

*Docket Numbers:* RP23-792-000.

*Applicants:* Rockies Express Pipeline LLC.

*Description:* Compliance filing: REX 2023-05-26 Annual Penalty Charge Reconciliation to be effective N/A.

*Filed Date:* 5/26/23.

*Accession Number:* 20230526-5118.

*Comment Date:* 5 p.m. ET 6/7/23.

*Docket Numbers:* RP23-793-000.

*Applicants:* Tallgrass Interstate Gas Transmission, LLC.

*Description:* Compliance filing: TIGT 2023-05-26 Annual Penalty Charge Reconciliation to be effective N/A.

*Filed Date:* 5/26/23.

*Accession Number:* 20230526-5119.

*Comment Date:* 5 p.m. ET 6/7/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

#### Filings in Existing Proceedings

*Docket Numbers:* RP23-694-001.

*Applicants:* Equitrans, L.P.

*Description:* Compliance filing: FOSA Updates Compliance Filing to be effective 6/1/2023.

*Filed Date:* 5/26/23.

*Accession Number:* 20230526-5088.

*Comment Date:* 5 p.m. ET 6/7/23.

Any person desiring to protest in any of the above proceedings must file in

accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: May 26, 2023.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2023-11763 Filed 6-1-23; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC23-67-000.

*Applicants:* Foxhound Solar, LLC, Dominion Solar Projects VI, Inc.

*Description:* Foxhound Solar, LLC et al. submits Response to FERC's April 19, 2023 Deficiency Letter re the Application for Authorization Pursuant to Section 203 of the Federal Power Act.

*Filed Date:* 5/16/23.

*Accession Number:* 20230516-5116.

*Comment Date:* 5 p.m. ET 5/30/23.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG23-173-000.

*Applicants:* Horus Louisiana I, LLC.

*Description:* Horus Louisiana I, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

*Filed Date:* 5/25/23.

*Accession Number:* 20230525-5136.

*Comment Date:* 5 p.m. ET 6/15/23.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER18-99-008.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Compliance filing: South Central MCN LLC Compliance Filing Pursuant to Order Issued to be effective 4/1/2018.

*Filed Date:* 5/26/23.

*Accession Number:* 20230526-5026.



*Comment Date:* 5 p.m. ET 6/16/23.  
*Docket Numbers:* ER23–1161–000.  
*Applicants:* Pacific Gas and Electric Company.

*Description:* Refund Report: CCSF Refund Report for missed Unmetered Points (WDT SA 275) to be effective N/A.

*Filed Date:* 5/26/23.

*Accession Number:* 20230526–5000.

*Comment Date:* 5 p.m. ET 6/16/23.

*Docket Numbers:* ER23–1972–000.

*Applicants:* Energy Harbor LLC.

*Description:* Request for Waiver and Expedited Consideration of Energy Harbor LLC.

*Filed Date:* 5/25/23.

*Accession Number:* 20230525–5197.

*Comment Date:* 5 p.m. ET 6/15/23.

*Docket Numbers:* ER23–1973–000.

*Applicants:* BE-Pine 1 LLC.

*Description:* Baseline eTariff Filing: Baseline new to be effective 5/27/2023.

*Filed Date:* 5/26/23.

*Accession Number:* 20230526–5111.

*Comment Date:* 5 p.m. ET 6/16/23.

*Docket Numbers:* ER23–1975–000.

*Applicants:* Tri-State Generation and Transmission Association, Inc.

*Description:* § 205(d) Rate Filing: Initial Filing of Service Agreement No. 911 to be effective 4/27/2023.

*Filed Date:* 5/26/23.

*Accession Number:* 20230526–5120.

*Comment Date:* 5 p.m. ET 6/16/23.

*Docket Numbers:* ER23–1976–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 6163; Queue No. AD1–155 to be effective 7/26/2023.

*Filed Date:* 5/26/23.

*Accession Number:* 20230526–5137.

*Comment Date:* 5 p.m. ET 6/16/23.

*Docket Numbers:* ER23–1977–000.

*Applicants:* California Independent System Operator Corporation.

*Description:* § 205(d) Rate Filing: 2023–05–26 Recollation-Assigning New Collation Values (no tariff changes) 1 of 2 to be effective 6/28/2010.

*Filed Date:* 5/26/23.

*Accession Number:* 20230526–5166.

*Comment Date:* 5 p.m. ET 6/16/23.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date.

Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 26, 2023.

**Kimberly D. Bose,**

Secretary.

[FR Doc. 2023–11764 Filed 6–1–23; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2146–273]

#### Alabama Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment of License.

b. *Project No:* P–2146–273.

c. *Date Filed:* May 12, 2023.

d. *Applicant:* Alabama Power Company (Alabama Power).

e. *Name of Project:* Coosa River Project.

f. *Location:* The project is located on the Coosa River, in Coosa, Chilton, Talladega and Shelby counties, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Alan L. Peeples, Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, AL 35291–8180, (205) 257–1401.

i. *FERC Contact:* Zeena Aljibury, (202) 502–6065, [zeena.aljibury@ferc.gov](mailto:zeena.aljibury@ferc.gov).

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance date of this notice by the Commission.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your

name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2146–273. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Alabama Power requests approval to modify Unit 3 at the Lay Development to address significant maintenance needs and to improve power and efficiency. The proposed scope of work for Unit 3 includes complete turbine replacement, wicket gate replacement, wicket gate stem bushings installation, turbine, and generator bearing upgrades, and related component replacement. Alabama Power states the turbine replacement is not expected to result in an increase to the total rated capacity or the maximum discharge of the unit at rated conditions. Alabama Power notes that project operations will not change, and refurbishment will not include any structural changes to the project facilities.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), for

TTY, call (202) 502-8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

p. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or [OPP@ferc.gov](mailto:OPP@ferc.gov).

Dated: May 26, 2023.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2023-11762 Filed 6-1-23; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2532-094, Project No. 2454-085, Project No. 2663-064]

#### ALLETE, Inc.; Notice of Intent To File License Applications, Filing of Pre-Application Document (PAD), Commencement of ILP Pre-Filing Process, and Scoping; Request for Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

a. *Type of Filing:* Notice of Intent to File License Applications for New Licenses and Commencing Pre-filing Process.

b. *Project Nos.:* P-2532-094, P-2454-085, and P-2663-064.

c. *Dated Filed:* March 30, 2023.

d. *Submitted By:* ALLETE, Inc. (ALLETE).

e. *Name of Projects:* Little Falls Hydroelectric Project (Little Falls Project), Sylvan Hydroelectric Project (Sylvan Project), and Pillager Hydroelectric Project (Pillager Project).

f. *Location:* The Little Falls Project is on the Mississippi River near the City of Little Falls in Morrison County, Minnesota. The Sylvan Project is located on the Crow Wing River near the City of Baxter in Cass, Crow Wing, and Morrison Counties, Minnesota. The Pillager Project is located on the Crow Wing River near the City of Pillager in Cass and Morrison Counties, Minnesota.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Applicant Contact:* Mr. Greg Prom, Senior Environmental Compliance Specialist, Minnesota Power/ALLETE, Inc., 30 West Superior Street, Duluth, MN 55802-2093; Phone at (218) 355-3191 or email at [gprom@allete.com](mailto:gprom@allete.com).

i. *FERC Contact:* Jay Summers at (202) 502-8764; or email at [jay.summers@ferc.gov](mailto:jay.summers@ferc.gov).

j. *Cooperating agencies:* Federal, State, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the

joint agency regulations thereunder at 50 CFR part 402 and (b) the State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating ALLETE as the Commission's non-Federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. ALLETE filed with the Commission a Pre-Application Document (PAD; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed on the Commission's website (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (866) 208-3676 or TYY, (202) 502-8659.

You may register online at <https://ferconline.ferc.gov/ferconline.aspx> to be notified via email of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Commission staff's Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the addresses above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission.

The Commission strongly encourages electronic filing. Please file all documents using the Commission's eFiling system at <https://ferconline.ferc.gov/ferconline.aspx>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/QuickComment.aspx>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington,

DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Little Falls Hydroelectric Project No. 2532–094 and/or Sylvan Hydroelectric Project No. 2454–085 and/or Pillager Hydroelectric Project No. 2663–064.

All filings with the Commission must bear the appropriate heading: “Comments on Pre-Application Document,” “Study Requests,” “Comments on Scoping Document 1,” “Request for Cooperating Agency Status,” or “Communications to and from Commission Staff.” Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by July 28, 2023.

p. The Commission’s scoping process will help determine the required level of analysis and satisfy the NEPA scoping requirements, irrespective of whether the Commission prepares an environmental assessment or Environmental Impact Statement.

### Scoping Meetings

Commission staff will hold two scoping meetings for the projects to receive input on the scope of the NEPA document. An evening meeting will be held at 7:00 p.m. on June 21, 2023, at the Little Falls Service Center in Little Falls, Minnesota, and will focus on receiving input from the public. A daytime meeting will be held at 9:30 a.m. on June 22, 2023, at the same location, and will focus on the concerns of resource agencies, non-governmental organizations (NGOs), and Indian tribes. We invite all interested agencies, Indian Tribes, non-governmental organizations, and individuals to attend one or both of these meetings. The times and locations of these meetings are as follows:

#### Evening Scoping Meeting

Date: Wednesday, June 21, 2023  
Time: 7:00 p.m. (CDT)  
Place: Little Falls Service Center  
Address: 1201 11th St. NE, Little Falls, MN 56345  
Phone: (320) 632–2318 Ext. 5010

#### Daytime Scoping Meeting

Date: Thursday, June 22, 2023  
Time: 9:30 a.m. (CDT)  
Place: Little Falls Service Center  
Address: 1201 11th St. NE, Little Falls, MN 56345  
Phone: (320) 632–2318 Ext. 5010

SD1, which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission’s mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at <http://www.ferc.gov>, using the “eLibrary” link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

### Environmental Site Reviews

The applicant and Commission staff will conduct environmental site reviews of the projects. All interested individuals, agencies, tribes, and NGOs are invited to attend. All participants are responsible for their own transportation to the sites and during the site visits. Please RSVP via email to [gprom@allete.com](mailto:gprom@allete.com) or notify Greg Prom at (218) 355–3191 on or before June 14, 2023 if you plan to attend the environmental site reviews. The times and locations of the environmental site reviews are as follows:

#### Little Falls Hydroelectric Project

Date: Wednesday, June 21, 2023  
Time: 10:30 a.m. (CDT)  
Place: Little Falls Service Center; Little Falls Hydroelectric Project  
Address: 1201 11th St. NE, Little Falls, MN 56345

#### Pillager Hydroelectric Project

Date: Wednesday, June 21, 2023  
Time: 1:00 p.m. (CDT)  
Place: Pillager Hydroelectric Project  
Address: 13449 Pillager Dam Rd., Pillager, MN 56473

#### Sylvan Hydroelectric Project

Date: Wednesday, June 21, 2023  
Time: 2:00 p.m. (CDT)  
Place: Sylvan Hydroelectric Project  
Address: 13753 Sylvan Dam Rd. SW, Pillager, MN 56473

Participants will meet at the Little Falls Service Center parking lot and depart to the Little Falls Project at 10:30 a.m. (CDT). All participants are responsible for their own transportation. After the site visit for the Little Falls Hydroelectric Project, participants will travel to the Pillager Project, located at 13449 Pillager Dam Rd., Pillager, MN 56473. After the site visit for the Pillager Project, participants will travel to the Sylvan Hydroelectric Project, located at 13753 Sylvan Dam Rd. SW, Pillager, MN 56473.

The applicant will provide hard hats and safety glasses to participants.

However, all persons attending the environmental site reviews must wear sturdy, closed-toe shoes or boots.

### Meeting Objectives

At the scoping meetings, staff will: (1) initiate scoping of the issues; (2) review and discuss existing conditions; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in part 5 of the Commission’s regulations and, to the extent possible, maximizes coordination of Federal, State, and Tribal permitting and certification processes; and (5) discuss the potential of any Federal or State agency or Indian Tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in paragraphs n and p, respectively, of this document.

### Meeting Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project. Individuals, NGOs, Indian tribes, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the NEPA document.

q. The Commission’s Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or [OPP@ferc.gov](mailto:OPP@ferc.gov).

Dated: May 26, 2023.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2023–11768 Filed 6–1–23; 8:45 am]

BILLING CODE 6717–01–P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. AD22–9–000]

**New England Winter Gas-Electric Forum; Supplemental Notice of Second New England Winter Gas-Electric Forum**

As announced in the Notice of Forum and the Supplemental Notice of Forum issued in this proceeding on February 16, 2023, and April 13, 2023, respectively, the Federal Energy Regulatory Commission (Commission) will convene a Commissioner-led forum on Tuesday, June 20, 2023, from approximately 9:00 a.m. to 5:00 p.m. Eastern Time, to discuss possible solutions to the electricity and natural gas challenges facing the New England Region. The final agenda for this forum is attached, which identifies the forum panelists. Attached to this notice are questions for the panelists; we request panelists file position statements addressing these questions in this docket no later than June 9, 2023. Written responses to these questions are voluntary and will be used to supplement the record for discussion at the forum.

The forum will be open to the public and be held at the DoubleTree by Hilton Portland, 363 Maine Mall Rd, Portland, ME, 04106. Registration for in-person attendance is required, and there is no fee for attendance. A link to attendee registration is available on the New England Winter Gas-Electric Forum event page on the Commission's website. Due to space constraints, seating for this event will be limited and registrants that get a confirmed space will be contacted via email. Only confirmed registrants will be admitted to the forum given the maximum occupancy limit at the venue (as required by fire and building safety code). Therefore, the Commission encourages members of the public who wish to attend this event in person to register at their earliest convenience. Online registration will be open until June 19, the day before the forum, or as long as attendance capacity is available. Once registration has reached capacity, registration will be closed. However, those interested in attending after capacity has been reached can join a waiting list (using the same registration link) and be notified if space becomes available. Those who are unable to attend in person may watch the free webcast.

The webcast will allow persons to listen and observe the forum remotely

but not participate. Information on this forum, including a link to the webcast, will be posted prior to the event on this forum's event page on the Commission's website. A recording of the webcast will be made available after the forum in the same location on the Calendar of Events. The forum will be transcribed. Transcripts of the forum will be available for a fee from Ace-Federal Reporters, Inc. (202–347–3700).

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to [accessibility@ferc.gov](mailto:accessibility@ferc.gov), call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this forum, please contact [NewEnglandForum@ferc.gov](mailto:NewEnglandForum@ferc.gov) or [sarah.mckinley@ferc.gov](mailto:sarah.mckinley@ferc.gov) for technical or logistical questions.

Dated: May 26, 2023.

**Kimberly D. Bose,**  
*Secretary.*

**Second New England Winter Gas-Electric Forum****Docket No. AD22–9–000****June 20, 2023****Agenda**

*9:00 a.m.–9:15 a.m.:* Welcome and Opening Remarks from the Chairman and Commissioners  
*9:15 a.m.–9:45 a.m.:* Opening Presentations: Winters 2023/2024 and 2024/2025 in New England and the Role of Everett

The forum will commence with a presentation by ISO New England Inc. (ISO–NE) that discusses the upcoming winters of 2023/2024 and 2024/2025 with consideration for the Everett Marine Terminal's (Everett) availability and its impact on the ISO–NE electric grid. Following ISO–NE's presentation on upcoming winters, a second presentation by Richard Levitan will explain Everett's physical capabilities and its impact on the electric and natural gas systems in New England.

**Panelists**

- *Stephen George, Director, Operational Performance, Training and Integration, ISO New England*
- *Richard Levitan, President, Levitan & Associates*

*9:45 a.m.–10:45 a.m.:* Panel 1: Should Everett be Retained and, if so, how?

Panel 1 will allow panelists to provide their views on the need for Everett on the electric and natural gas systems in New England. This panel

may also discuss fuel procurement needs and challenges, including the fuel procurement and LNG capabilities available to New England from facilities other than Everett. Finally, this panel will discuss the constraints surrounding the planned retirement of Everett and the future winter expected impacts on the New England electric and natural gas systems.

**Panelists**

- *Carrie H. Allen, Constellation Energy Generation, SVP and DGC, Regulatory Policy*
- *Vamsi Chadalavada, Executive Vice President and Chief Operating Officer, ISO New England*
- *Charles Dickerson, President and CEO, Northeast Power Coordinating Council (NPCC)*
- *Dan Dolan, President, New England Power Generators Association (NEPGA)*
- *James Holodak, Jr., Vice President, Energy Supply, National Grid*
- *Richard Levitan, President, Levitan & Associates*
- *Robert Neustaedter, Directory of Regulatory Affairs, Repsol*
- *Ernesto Ochoa, Vice President of Commercial, Kinder Morgan*

**Panelist Questions**

Please comment on whether Everett is needed for the reliable operation of the electric and/or natural gas systems in New England during the upcoming winters and beyond. As part of these comments, please address the following:

a. Is there sufficient information available to make this assessment? If not, what additional information would be most useful to determine whether there is a need to retain Everett (e.g., information about the uses of, beneficiaries of, and costs to maintain the Everett facility)?

b. Is LNG from other sources (e.g., Repsol and/or Excelerate) a full substitute for the LNG from Everett? If not, under what circumstances is it not a full substitute and are there conditions under which electric system and/or gas system operators would be unable to meet electric and/or gas demand or maintain reliable service if Everett retires?

c. To the extent there is a need for Everett's continued operation, does that need change over a longer time horizon? If so, what circumstances drive its need?

d. What are potential next steps on these issues in both the short-term (winters 2023/2024 and 2024/2025) and beyond (beginning winter 2025/2026)?

*10:45 a.m.–11:15 a.m.:* Third

Presentation: Extreme Weather Risks

to ISO–NE, Presentation of the EPRI Study by ISO–NE and EPRI

The third presentation, by ISO–NE and the Electric Power Research Institute (EPRI), will detail the development of the EPRI model, the assumptions used, parameters considered, and the study results for the target year of 2027.<sup>1</sup> ISO–NE and EPRI will also explain the study's key conclusions and offer thoughts on how those conclusions should be considered in the context of developing solutions to the region's electricity and natural gas challenges.

#### Panelists

- *Vamsi Chadalavada, Executive Vice President and Chief Operating Officer, ISO New England*
  - *Stephen George, Director, Operational Performance, Training and Integration, ISO New England*
- 11:15 a.m.–12:15 p.m.: Panel 2:  
Reactions to the EPRI Study

This panel will give panelists an opportunity to provide their reactions to the EPRI study's assumptions, inputs, and results. This panel will discuss what actionable steps should be taken, if any, as a result of the study's findings, and whether additional study or analysis is needed.

#### Panelists

- *Phil Bartlett, Chair, Maine Public Utilities Commission*
- *Vamsi Chadalavada, Executive Vice President and Chief Operating Officer, ISO New England*
- *James Daly, Vice President Energy Supply, Eversource Energy*
- *Ronald T. Gerwatowski, Chairman, Rhode Island Public Utilities Commission*
- *Stephen George, Director, Operational Performance, Training and Integration, ISO New England*
- *Ben Griffiths, Senior Director of New England Regulatory Policy, LS Power*
- *Mark Lauby, Senior Vice President and Chief Engineer, North American Electric Reliability Corporation (NERC)*

<sup>1</sup> Each year as part of its Annual Work Plan, ISO–NE develops "Anchor Projects," which for 2023 includes ISO–NE's work with EPRI to develop an "innovative framework for conducting a probabilistic energy-security study that assesses the operational impact of future extreme weather events." See ISO–NE, *ISO New England's 2023 Annual Work Plan*, (October 2022) at 7, [https://www.iso-ne.com/static-assets/documents/2022/10/2023\\_awp\\_final\\_10\\_12\\_22.pdf](https://www.iso-ne.com/static-assets/documents/2022/10/2023_awp_final_10_12_22.pdf). The preliminary study results for Winter 2027 can be found on the ISO–NE website. See ISO–NE, *Operational Impacts of Extreme Weather Events, Preliminary Results of Energy Adequacy Studies for Winter 2027*, (May 16, 2023), [https://www.iso-ne.com/static-assets/documents/2023/05/a10\\_operational\\_impact\\_of\\_extreme\\_weather\\_events.pdf](https://www.iso-ne.com/static-assets/documents/2023/05/a10_operational_impact_of_extreme_weather_events.pdf).

- *Rob Perkins, Vice President of Pipeline Management, Kinder Morgan*

#### Panelist Questions

Please comment on the assumptions and conclusions of the EPRI study and what next steps should be taken given the study's results. As part of these comments, please address the following:

- Do these findings provide the information needed to make decisions about winter energy risks in New England? If not, what additional information is needed?
- Are additional or continuous studies needed to assess New England electric and gas winter issues? If so, what analyses are needed and how often should this be conducted?

12:15 p.m.–1:45 p.m.: Lunch Break  
1:45 p.m.–3:00 p.m.: Panel 3: Path to Sustainable Solutions—Infrastructure

Based on the findings and issues identified in the previous panels and presentations, Panel 3 will shift toward discussing potential infrastructure solutions beyond winter 2023/2024. While retention of Everett has been raised as one possible solution, this panel will discuss the merits of other, longer-term solutions available to the region and the timelines for implementing them. Potential topics for discussion include: (1) new electric transmission interconnections with other regions; (2) the timing and impact of new offshore wind, onshore wind, and solar resource development; (3) transmission planning to enable efficient development of expected offshore wind additions; (4) increased natural gas pipeline infrastructure/capacity; and (5) increased oil and natural gas storage capability.

#### Panelists

- *David Cavanaugh, Senior Vice President Regulatory & Market Affairs, Energy New England*
- *Patricia DiOrio, Head of Americas Project Development, Orsted North America*
- *Vandan Divatia, Vice President, Transmission Policy, Compliance, and Interconnections, Eversource Energy*
- *Katie Dykes, Commissioner, Connecticut Department of Energy and Environmental Protection*
- *Bob Ethier, Vice President, System Planning, ISO New England*
- *Richard Paglia, Vice President, Marketing & Business Development, Enbridge*
- *Rebecca Tepper, Secretary, Massachusetts Executive Office of Energy and Environmental Affairs*

#### Panelist Questions

Please comment on what infrastructure is necessary to support reliable electric and gas system operations in New England. As part of these comments, please address the following:

- Are those infrastructure projects currently being pursued? If not, why not?
- What obstacles need to be addressed to allow new infrastructure to be placed timely into operation, and how are those obstacles currently being addressed?
- What steps, if any, should the Commission, ISO–NE, the New England states, and/or others take to address obstacles under their jurisdiction?

3:00 p.m.–3:15 p.m.: Break  
3:15 p.m.–4:30 p.m.: Panel 4: Path to Sustainable Solutions—Market Design

In Panel 4, Commissioners and panelists will discuss potential market solutions to New England's winter reliability challenges. Specifically, this panel will discuss any potential merits and benefits of market design changes to ISO–NE markets to enhance resource performance incentives, including incentives for resources to make advanced fuel procurements and/or maintain fuel inventories in the winter months; and align capacity market structure and rules with observed reliability risks—e.g., by reforming resource capacity accreditation and/or conducting prompt and/or seasonal capacity auctions.

#### Panelists

- *Riley Allen, Commissioner, Vermont Public Utility Commission*
- *Michelle Gardner, Executive Director Regulatory Affairs—Northeast, NextEra Energy Resources*
- *Mark Karl, Vice President, Market Development and Settlements, ISO New England*
- *Donald Kreis, Consumer Advocate, New Hampshire Office of the Consumer Advocate*
- *Pallas LeeVanSchaick, Vice President, Potomac Economics*
- *Aleks Mitreski, Senior Director, Regulatory Affairs, Brookfield Renewables*
- *Christie Prescott, Director, Energy Supply, United Illuminating*
- *Andrew Weinstein, Vice President, FERC Market Policy, Vistra*

#### Panelist Questions

Please comment on what market reforms are necessary to support reliable electric and gas system operations in New England. As part of these comments, please address the following:

a. What proposals currently under consideration in the stakeholder process and in the ISO-NE work plan would be most helpful to address New England's winter electric and gas system challenges?

i. Are these proposals appropriately prioritized? If not, what should be done and how can necessary market changes be expedited?

ii. At a high level, are there any major concerns with the current proposals under discussion that should be addressed?

b. Are there additional reforms that are not currently under consideration in the stakeholder process that are necessary for energy resources to enhance fuel procurement strategies? If so, what other reforms should be considered? How should these market changes should be prioritized?

4:30 p.m.-5:00 p.m.: Closing Roundtable

In the Closing Roundtable, Commissioners and panelists will discuss what was learned through the presentations and panels and consider next steps. Topics will include what solutions stakeholders agree on pursuing and the timeline for implementing them as well as discussion of if, how, and when longer term solutions can be implemented sooner than currently expected.

*Panelists*

- *Jim Robb, President and CEO, North American Electric Reliability Corporation (NERC)*
- *Gordon van Welie, President and CEO, ISO New England*

*State Representatives*

- *Phil Bartlett, Chair, Maine Public Utilities Commission*

- *Katie Dykes, Commissioner, Connecticut Department of Energy and Environmental Protection*
- *Ronald T. Gerwatowski, Chairman, Rhode Island Public Utilities Commission*
- *Carleton Simpson, Commissioner, New Hampshire Public Utilities Commission*
- *Rebecca Tepper, Secretary, Massachusetts Executive Office of Energy and Environmental Affairs*
- *June Tierney, Commissioner, Vermont Department of Public Service*

[FR Doc. 2023-11765 Filed 6-1-23; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. RM98-1-000]

**Records Governing Off-the-Record Communications; Public Notice**

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the

decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. This filing may be viewed on the Commission's website at <http://www.ferc.gov> using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Docket Nos.	File date	Presenter or requester
Prohibited:		
1. CP20-55-000 .....	5-18-2023	FERC Staff <sup>1</sup> .
2. CP22-2-000 .....	5-18-2023	FERC Staff <sup>2</sup> .
Exempt:		
1. P-2197-000 .....	5-25-2023	U.S. Senator Ted Budd.

Dated: May 26, 2023.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2023-11767 Filed 6-1-23; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**Privacy Act of 1974; System of Records**

**AGENCY:** Federal Energy Regulatory Commission, Department of Energy.

**ACTION:** Notice of a modified system of records.

**SUMMARY:** As required by the Privacy Act of 1974, notice is hereby given that the Federal Energy Regulatory Commission (FERC) is amending the system of records entitled "FERC-62, Public Information Request" by revising the System Location; System Manager; Purpose; Categories of Individuals; Categories of Records; Record Source

<sup>1</sup> Emailed comments from Yancette Halverson and 147 others.

<sup>2</sup> Emailed comments from Brett Little and 48 others.

Categories; Policies and Practices for Retrieval of Records; and Administrative, Technical, and Physical Safeguards. FERC is publishing the system notice in its entirety.

**DATES:** Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by FERC, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If FERC receives public comments, FERC shall review the comments to determine whether any changes to the notice are necessary.

**ADDRESSES:** Comments may be submitted in writing to Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, or electronically to [privacy@ferc.gov](mailto:privacy@ferc.gov). Comments should indicate that they are submitted in response to Public Information Request. (FERC–62).

**FOR FURTHER INFORMATION CONTACT:** Mittal Desai, Chief Information Officer & Senior Agency Official for Privacy, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6432.

**SUPPLEMENTARY INFORMATION:** The changes are made to reflect combining SORN FERC 61—Requests for Commission Publications and Information with this SORN and to include records collected through surveys. The notice is also being modified to add 11 new routine uses, including two prescribed routine uses that will permit FERC to disclose information as necessary in response to an actual or suspected breach of its own records or to assist another agency in its efforts to respond to a breach.

**SYSTEM NAME AND NUMBER:**

Public Information Request (FERC–62).

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Federal Energy Regulatory Commission, Offices of External Affairs and Public Participation, Office of the Executive Secretary, 888 First Street NE, Washington, DC 20426.

**SYSTEM MANAGER(S):**

Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 302, 18 CFR 388.104 and 18 CFR 388.106.

**PURPOSE(S) OF THE SYSTEM:**

To allow FERC to track information requests; to monitor status of public inquiries and average turn-around times for processing requests; to provide statistics to management on services provided; to identify trends in types of information being requested; to determine whether the responses to individual requesters were sufficient; to monitor trends in the volume of inquiries submitted to FERC based on assessed categories; and to enhance customer service by FERC staff and improve the types and quality of educational and informational materials available for distribution to the public.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Members of the general public, FERC staff, including FERC employees and contractors, Federal, State and local governments, Tribes, regulated entities, and public and private interest groups.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, address, affiliation, telephone number, email address, company, description of information being requested, receipt of request, completion dates, resolution of the request, and method of payment.

**RECORD SOURCE CATEGORIES:**

Members of the general public, FERC staff, including FERC employees and contractors, Federal, State and local governments, tribes, regulated entities, and public and private interest groups.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, information maintained in this system may be disclosed to authorized entities outside FERC for purposes determined to be relevant and necessary as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To appropriate agencies, entities, and persons when (1) FERC suspects or has confirmed that there has been a breach of the system of records; (2) FERC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (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 Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

2. To another Federal agency or Federal entity, when FERC 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.

3. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

4. To the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.

5. To the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

6. To disclose information to another Federal agency, to a court, Tribe, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding. In those cases where the Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge.

7. To the Department of Justice (DOJ) for its use in providing legal advice to FERC or in representing FERC in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by FERC to be relevant and necessary to the advice or proceeding, and such proceeding names as a party in interest: (a) FERC; (b) any employee of FERC in his or her official capacity; (c) any employee of FERC in his or her individual capacity where DOJ has agreed to represent the employee; or (d) the United States, where FERC determines that litigation is likely to affect FERC or any of its components.

8. To non-Federal Personnel, such as contractors, agents, or other authorized individuals performing work on a



contract, service, cooperative agreement, job, or other activity on behalf of FERC or Federal Government and who have a need to access the information in the performance of their duties or activities.

9. To the National Archives and Records Administration in records management inspections and its role as Archivist.

10. To the Merit Systems Protection Board or the Board's Office of the Special Counsel, when relevant information is requested in connection with appeals, special studies of the civil service and other merit systems, review of Office of Personnel Management rules and regulations, and investigations of alleged or possible prohibited personnel practices.

11. To appropriate Federal, State, Tribe, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order.

12. To appropriate agencies, entities, and person(s) that are a party to a dispute, when FERC determines that information from this system of records is reasonably necessary for the recipient to assist with the resolution of the dispute; the name, address, telephone number, email address, and affiliation; of the agency, entity, and/or person(s) seeking and/or participating in dispute resolution services, where appropriate.

#### POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in paper (assorted documents) or electronic media. Data center buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures. Physical access to the server rooms is limited to authorized personnel only. Records are maintained in lockable file cabinets in a lockable room with access limited to those employees whose official duties require access; servers are stored in secured facilities in cipher locked server rooms. Computer data is secured by password. The system is secured with the safeguards required by FedRAMP and NIST SP 800-53.

#### POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by date, name, company name, email address, telephone number or address.

#### POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained under the National Archives and Records Administration's General Records Schedule 4.2: Information Access and

Protection Records; Disposition Authority: DAA-GRS-2013-0007-0001: Temporary. Destroy when 90 days old, but longer retention is authorized if required for business use.

#### ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

See Policies and Practices for Storage of Records.

#### RECORD ACCESS PROCEDURES:

Individuals requesting access to the contents of records must submit a request through the Office of External Affairs. The Freedom of Information Act website is located at <https://ferc.gov/freedom-information-act-foia-and-privacy-act>. Requests may be submitted by email to [foia-ceii@ferc.gov](mailto:foia-ceii@ferc.gov). Written requests for access to records should be directed to: Director, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

#### CONTESTING RECORD PROCEDURES:

See Record Access Procedures.

#### NOTIFICATION PROCEDURES:

Generalized notice is provided by the publication of this notice. For specific notice, see Records Access Procedure, above.

#### EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

#### HISTORY:

The previous **Federal Register** notice citation is 79 FR 17533.

Issued: May 26, 2023.

**Kimberly D. Bose**,  
Secretary.

[FR Doc. 2023-11766 Filed 6-1-23; 8:45 am]

BILLING CODE 6717-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2023-0061; FRL-10581-04-OCSPP]

### Certain New Chemicals; Receipt and Status Information for April 2023

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a

Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 4/1/2023 to 4/30/2023.

**DATES:** Comments identified by the specific case number provided in this document must be received on or before July 3, 2023.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2023-0061, through the *Federal eRulemaking Portal* at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

#### FOR FURTHER INFORMATION CONTACT:

*For technical information contact:* Jim Rahai, Project Management and Operations Division (MC 7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-8593; email address: [rahai.jim@epa.gov](mailto:rahai.jim@epa.gov).

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Executive Summary

##### A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 4/01/2023 to 4/30/2023. The Agency is providing notice of receipt of PMNs, SNUNs, and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report



on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notice>. This information is updated on a weekly basis.

#### *B. What is the Agency's authority for taking this action?*

Under the TSCA, 15 U.S.C. 2601 *et seq.*, a chemical substance may be either an "existing" chemical substance or a "new" chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a "new chemical substance," while a chemical substance that is listed on the TSCA Inventory is classified as an "existing chemical substance." (See TSCA section 3(11).) For more information about the TSCA Inventory please go to: <https://www.epa.gov/tsca-inventory>.

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN, or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for "test marketing" purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: <https://www.epa.gov/chemicals-under-tsca>.

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

#### *C. Does this action apply to me?*

This action provides information that is directed to the public in general.

#### *D. Does this action have any incremental economic impacts or paperwork burdens?*

No.

#### *E. What should I consider as I prepare my comments for EPA?*

1. *Submitting confidential business information (CBI).* Do not submit this information to EPA through [regulations.gov](https://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

## II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending, or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (see the **Federal Register** of May 12, 1995 (60 FR 25798) (FRL-4942-7)). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5

cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notice>. This information is updated on a weekly basis.

## III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices screened by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.*, domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter "A" (*e.g.*, P-18-1234A). The version column designates submissions in sequence as "1", "2", "3", etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANS APPROVED \* FROM 04/01/2023 TO 04/30/2023

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P-21-0193A.	6	04/13/2023	Santolubes Manufacturing, LLC.	(S) This product will be used in gear oils & greases, wind turbines, HX-1 (incidental food contact) lubricants and EV (Electric Vehicle) motors. It will be used by OEMs in these applications as components in finished formulations. The intended use of these products is 100% industrial and not intended for use as consumer products.	(S) Fatty acids, C8-10, diesters with polyethylene glycol.
P-23-0016A.	2	04/18/2023	Kuraray America, Inc. ...	(G) Additive for paints, UV inks, coatings, etc. ...	(S) 2-Propanol, 1, 3- bis(3- methyl- 2- buten-1- yl) oxy)-.
P-23-0088A.	4	03/31/2023	Integrity bio-chemical, LLC.	(G) Industrial Wastewater Coagulation, Mining, mineral processing.	(S) Glycine, reaction products with oxidized maltodextrin.
P-23-0088A.	5	04/07/2023	Integrity bio-chemical, LLC.	(G) Mining, mineral processing, Industrial Wastewater Coagulation.	(S) Glycine, reaction products with oxidized maltodextrin.
P-23-0089A.	2	03/31/2023	Integrity bio-chemical, LLC.	(G) Mining, Mineral and Industrial Wastewater Processing.	(S) Maltodextrin, 6-[3-(dimethyl-2-propen-1-ylammonio)propyl] ether, chloride.
P-23-0089A.	3	04/07/2023	Integrity bio-chemical, LLC.	(G) Mining, Mineral and Industrial Wastewater Processing.	(S) Maltodextrin, 6-[3-(dimethyl-2-propen-1-ylammonio)propyl] ether, chloride.
P-23-0090A.	2	03/31/2023	Integrity bio-chemical, LLC.	(G) Mining, mineral processing and Industrial Wastewater Coagulation.	(S) Dextran, 3-(dimethyl,2-propen-1-ylammonio)propyl ether, chloride.
P-23-0090A.	3	04/07/2023	Integrity bio-chemical, LLC.	(G) Mining, mineral processing and Industrial Wastewater Coagulation.	(S) Dextran, 3-(dimethyl,2-propen-1-ylammonio)propyl ether, chloride.
P-23-0091A.	2	03/31/2023	Integrity bio-chemical, LLC.	(G) Oil and gas, shale stabilization, Mining flocculant, Oil and gas, fines control.	(S) Maltodextrin, oxidized, reaction products with ethylenediamine.
P-23-0091A.	3	04/07/2023	Integrity bio-chemical, LLC.	(G) Oil and gas, shale stabilization, Mining flocculant, Oil and gas, fines control.	(S) Maltodextrin, oxidized, reaction products with ethylenediamine.
P-23-0092A.	3	04/18/2023	CBI .....	(G) An additive in ink formulations .....	(G) Maleic modified rosin polyol ester cyclic acid.
P-23-0100A.	2	04/03/2023	CBI .....	(G) Dispersion agent used in glass fiber formation.	(G) Amines, alkyl reaction products with acrylic acid. salts.
P-23-0101A.	5	04/06/2023	CBI .....	(G) Chemical intermediate .....	(G) Glycerides from fermentation of genetically modified microorganism, epoxidized.
P-23-0102A.	5	04/06/2023	CBI .....	(G) Chemical component .....	(G) Glycerides from fermentation of genetically modified microorganism.
P-23-0103A.	5	04/06/2023	CBI .....	(G) Reactant .....	(G) Glycerides from fermentation of genetically modified microorganism, epoxidized, reaction products with ethanol.
P-23-0105A.	2	04/12/2023	Heebut Materials, LLC	(G) Plastic and rubber additive .....	(G) Multi-Walled Carbon Nanotube.
P-23-0107A.	4	04/07/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent (Precursor), Liquid and Solid Products Containing MWCNT.	(S) Multiwalled Carbon Nanotube.
P-23-0107A.	5	04/20/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent (Precursor), Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor, Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant.	(S) Multiwalled Carbon Nanotube.
P-23-0108A.	4	04/07/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent (Precursor), Liquid and Solid Products Containing MWCNT.	(S) Multiwalled Carbon Nanotube.
P-23-0108A.	5	04/20/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent (Precursor), Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P-23-0109A.	3	04/07/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid and Solid Products Containing MWCNT.	(S) Multiwalled Carbon Nanotube.
P-23-0109A.	4	04/20/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P-23-0110A.	3	04/07/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid and Solid Products Containing MWCNT.	(S) Multiwalled Carbon Nanotube.
P-23-0110A.	4	04/20/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.

TABLE I—PMN/SNUN/MCANS APPROVED \* FROM 04/01/2023 TO 04/30/2023—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P-23-0111	4	04/07/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent (Precursor), Liquid and Solid Products Containing MWCNT.	(S) Multiwalled Carbon Nanotube.
P-23-0111A.	5	04/20/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent (Precursor), Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P-23-0112	4	04/07/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid and Solid Products Containing MWCNT.	(S) Multiwalled Carbon Nanotube.
P-23-0112A.	5	04/20/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P-23-0113	4	04/07/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid and Solid Products Containing MWCNT.	(S) Multiwalled Carbon Nanotube.
P-23-0113A.	5	04/20/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P-23-0114	3	04/07/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent (Precursor), Liquid and Solid Products Containing MWCNT.	(S) Multiwalled Carbon Nanotube.
P-23-0114A.	4	04/20/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent (Precursor), Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P-23-0115	3	04/07/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent (Precursor), Liquid and Solid Products Containing MWCNT.	(S) Multiwalled Carbon Nanotube.
P-23-0115A.	4	04/20/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent (Precursor), Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P-23-0116	3	04/07/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid and Solid Products Containing MWCNT.	(S) Multiwalled Carbon Nanotube.
P-23-0116A.	4	04/20/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P-23-0120	2	04/04/2023	Ultium Cells, LLC .....	(G) Substance for use in the manufacture of battery components.	(G) Cobalt lithium manganese nickel oxide, metals.
P-23-0121	2	04/04/2023	Ultium Cells, LLC .....	(G) Substance for use in the manufacture of battery components.	(G) Metal cobalt lithium manganese nickel oxide, metal.
P-23-0122	2	04/04/2023	Ultium Cells, LLC .....	(G) Substance for use in the manufacture of battery components.	(G) Cobalt lithium manganese nickel oxide, metals.
P-23-0124	1	03/29/2023	CBI .....	(G) Photolithography .....	(G) Sulfonium, tricarboxylic-, 2-heteroatom-substituted-(halocarboxylic)carboxylate (1:1).
P-23-0125	1	04/04/2023	CBI .....	(G) Photolithography .....	(G) Sulfonium, tricarboxylic-, polyfluoropolyhydro-heteroatom substituted carbomonocyclic-2-heteroatom substituted carbomonocyclic heteropolycycle-5-alkanesulfonate (1:1).

TABLE I—PMN/SNUN/MCANS APPROVED \* FROM 04/01/2023 TO 04/30/2023—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P-23-0125A.	2	04/13/2023	CBI .....	(G) Photolithography .....	(G) Sulfonium, tricarboxylic-, polyfluoropolyhydro-heteroatom substituted carbomonocyclic-2-heteroatom substituted carbomonocyclic heteropolycycle-5-alkanesulfonate (1:1).
P-23-0126	1	04/13/2023	CBI .....	(G) Destructive Use .....	(G) Alken-1-ol.
SN-22-0002A.	4	04/25/2023	Eastman Chemical Company, Inc.	(S) Solvent in a variety of applications .....	(S) 2-Pyrrolidinone, 1-butyl-.
SN-22-0010A.	3	04/21/2023	CBI .....	(S) Monomer chemical, reactive diluent in UV coating formulations (this is new use), Monomer or reactive diluent for 3D printing formulations. Monomer or reactive diluent in UV-inkjet and screen-printing ink formulations, Monomer or reactive diluent, additive in UV adhesive formulations (this is new use).	(S) 2-Oxazolidinone, 3-ethenyl-5-methyl-.
SN-23-0002A.	4	04/10/2023	CBI .....	(S) The LCPFACs have no function or application.	(S) Octanoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-pentadecafluoro-.
SN-23-0003A.	4	04/10/2023	CBI .....	(G) The LCPFACs have no function or application.	(S) Dodecanoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,12-tricosafafluoro-.
SN-23-0004A.	4	04/10/2023	CBI .....	(G) The LCPFACs have no function or application.	(S) Nonanoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,9-hepta-decafluoro-.
SN-23-0005A.	4	04/10/2023	CBI .....	(G) The LCPFACs have no function or application.	(S) Decanoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-nonadecafluoro-.
SN-23-0006A.	4	04/10/2023	CBI .....	(G) The LCPFACs have no function or application.	(S) Undecanoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,11-heneicosafafluoro-.
SN-23-0008A.	4	04/05/2023	CBI .....	(G) The LCPFACs have no function or application.	(S) Tetradecanoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14,14-hepta-cosafluoro-.
SN-23-0009A.	4	04/05/2023	CBI .....	(G) The LCPFACs have no function or application.	(S) Tridecanoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,13-pentacosafafluoro-.
SN-23-0010A.	4	04/05/2023	CBI .....	(G) The LCPFACs have no function or application.	(S) Hexadecanoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14,15,15,16,16,16-hentriacontafafluoro-.
SN-23-0011A.	4	04/05/2023	CBI .....	(G) The LCPFACs have no function or application.	(S) Octadecanoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14,15,15,16,16,17,17,18,18,18-pentatriacontafafluoro-.
SN-23-0017A.	3	04/05/2023	CBI .....	(G) The LCPFACs have no function or application.	(S) Octanoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-pentadecafluoro-.
SN-23-0018A.	3	04/05/2023	CBI .....	(G) The LCPFACs have no function or application.	(S) Nonanoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,9-hepta-decafluoro-.
SN-23-0019A.	3	04/05/2023	CBI .....	(G) The LCPFACs have no function or application.	(S) Decanoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-nonadecafluoro-.
SN-23-0020A.	3	04/05/2023	CBI .....	(G) The LCPFACs have no function or application.	(S) Undecanoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,11-heneicosafafluoro-.
SN-23-0021A.	3	04/05/2023	CBI .....	(G) The LCPFACs have no function or application.	(S) Dodecanoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,12-tricosafafluoro-.
SN-23-0022.	2	04/03/2023	Kuraray America, Inc. ...	(G) Additive in paints, inks, coatings, etc. ....	(S) 2-Propenoic acid, 2-methyl-, 3-methyl-3-buten-1-yl ester.
SN-23-0022A.	3	04/13/2023	Kuraray America, Inc. ...	(G) Additive in paints, inks, coatings, etc., Raw material for polymer manufacturing.	(S) 2-Propenoic acid, 2-methyl-, 3-methyl-3-buten-1-yl ester.
SN-23-0022A.	4	04/18/2023	Kuraray America, Inc. ...	(G) Additive in paints, inks, coatings, etc., Raw material for polymer manufacturing.	(S) 2-Propenoic acid, 2-methyl-, 3-methyl-3-buten-1-yl ester.

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned

to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the

type of amendment (e.g., amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCs APPROVED \* FROM 04/01/2023 TO 04/30/2023

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
P-04-0830 .....	04/27/2023	04/27/2023	Amended information, relinquished CBI claims.	(S) Thiocyanic acid, 3-(trietoxysilyl)propyl ester, reaction products with silica.
P-09-0231 .....	04/10/2023	04/12/2012	N .....	(G) Modified rosin, esters with alkanols.
P-17-0295 .....	04/03/2023	03/31/2023	N .....	(S) (z)-1-chloro-2,3,3,3-tetrafluoropropene.

TABLE II—NOCS APPROVED \* FROM 04/01/2023 TO 04/30/2023—Continued

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
P-21-0084 .....	03/31/2023	03/25/2023	N .....	(G) Carbopolycycle octa-alkene, halo.

\* The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission.

In Table III of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information that has been received during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 04/01/2023 TO 04/30/2023

Case No.	Received date	Type of test information	Chemical substance
P-16-0150 .....	04/20/2023	Fish Early Life Stage Toxicity Test (OCSPP Guideline 850.1400), Mysid Chronic Toxicity Test (OCSPP Guideline 850.1350).	(G) Chlorofluorocarbon.
P-16-0543 .....	04/25/2023	Exposure Monitoring Report .....	(G) Halogenophosphoric acid metal salt.

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: May 26, 2023.

**Pamela Myrick,**

Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2023-11727 Filed 6-1-23; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL OP-OFA-072]

### Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202-564-5632 or <https://www.epa.gov/nepa>.

Weekly receipt of Environmental Impact Statements (EIS)

Filed May 22, 2023 10 a.m. EST

Through May 26, 2023 10 a.m. EST

Pursuant to 40 CFR 1506.9.

#### Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search>.

EIS No. 20230071, Final, FAA, AR, Adoption—Beddown of a Foreign Military Sales Pilot Training Center at Ebbing Air National Guard Base, Arkansas or Selfridge Air National Guard Base, Michigan, Contact: Dean McMath, 817-222-5617.

The Federal Aviation Administration (FAA) has adopted the United States Air Force's Final EIS No.20230013, filed 01/25/2023 with the Environmental Protection Agency. The FAA was a cooperating agency on this project. Therefore, republication of the document is not necessary under section 1506.3(b)(2) of the CEQ regulations.

EIS No. 20230072, Final, NASA, UT, Final Mars Sample Return (MSR) Campaign Programmatic Environmental Impact Statement, Review Period Ends: 07/03/2023, Contact: Steve Slaten, 202-358-0016.

Dated: May 26, 2023.

**Nancy Abrams,**

Associate Director, Office of Federal Activities.

[FR Doc. 2023-11738 Filed 6-1-23; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-R03-OAR-2023-0205; FRL-10981-01-R3]

### Clean Air Act Operating Permit Program; Petition To Object to the Title V Permit for Cove Point LNG Terminal; Maryland

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final action.

**SUMMARY:** Pursuant to the Clean Air Act (CAA), the Administrator of the Environmental Protection Agency (EPA) signed an Order, dated March 8, 2023, granting a petition to object to a state operating permit issued by the Maryland Department of the Environment (MDE). The Order responds to an October 28, 2022 petition, relating to the Cove Point LNG Terminal (Cove Point), a liquefied natural gas storage and terminal facility located in Calvert County, Maryland. The petition was submitted by the Environmental Integrity Project and the Chesapeake Climate Action Network (the Petitioners). This Order constitutes final action on that petition requesting that the Administrator object to the issuance of the proposed CAA title V permit.

**ADDRESSES:** Copies of the final Order, the petition, and all pertinent information relating thereto can be requested by electronic mail to the address set forth below in the **FOR FURTHER INFORMATION CONTACT** section. The final Order is also available electronically at the following website: [www.epa.gov/title-v-operating-permits/title-v-petition-database](https://www.epa.gov/title-v-operating-permits/title-v-petition-database).

**FOR FURTHER INFORMATION CONTACT:** Matthew Willson, Permits Branch, Air & Radiation Division, EPA Region III, (215) 814-5795, [willson.matthew@epa.gov](mailto:willson.matthew@epa.gov).

**SUPPLEMENTARY INFORMATION:** The CAA affords EPA a 45-day period to review and object to, as appropriate, title V operating permits proposed by state permitting authorities. Section 505(b)(2)

of the CAA authorizes any person to petition the EPA Administrator within 60 days after the expiration of a review period to object to a state title V operating permit if EPA has not done so. Petitions must be based only on objections raised with reasonable specificity during the public comment period, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or that the grounds for objection or other issue arose after the comment period.

MDE issued the final Cove Point renewal operating permit (permit no. 24-009-0021) on September 15, 2022. In their October 28, 2022 petition (numbered III-2022-14), the Petitioners sought EPA objection on the basis that the title V permit failed to include any testing, monitoring, or reporting requirements that assured compliance with certain project-wide particulate matter limits, and failed to set forth testing, monitoring, or reporting requirements sufficient to assure continuous compliance with certain unit-specific and project-wide particulate matter limits. The Order explains the reasons behind EPA's decision to grant the petition for objection.

**Cristina Fernandez,**

*Director, Air & Radiation Division, Region III.*

[FR Doc. 2023-11739 Filed 6-1-23; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-R06-OW-2022-0603; FRL-6179.1-02-R6]

### Final NPDES General Permit for New and Existing Sources and New Dischargers in the Offshore Subcategory of the Oil and Gas Extraction Category for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (GMG290000)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final NPDES general permit issuance.

**SUMMARY:** The Director of the Water Division, Environmental Protection Agency (EPA), Region 6 provides in this notice that the National Pollutant Discharge Elimination System (NPDES) General Permit No. GMG290000 for existing and new sources and new dischargers in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category, located in and

discharging to the Outer Continental Shelf offshore of Louisiana and Texas was reissued on May 11, 2023 with an effective date of May 11, 2023. The discharge of produced water to that portion of the Outer Continental Shelf from Offshore Subcategory facilities located in the territorial seas of Louisiana and Texas is also authorized by this permit.

**DATES:** This permit was issued May 11, 2023, is effective on May 11, 2023, and expires May 10, 2028. This effective date is necessary to provide dischargers with the immediate opportunity to comply with Clean Water Act (CWA) requirements in light of the expiration of the 2022 permit on September 30, 2022. In accordance with 40 CFR part 23, this permit shall be considered issued for the purpose of judicial review on June 16, 2023. Under section 509(b) of the CWA, judicial review of this general permit can be held by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued for judicial review. Under section 509(b)(2) of the CWA, the requirements in this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings. Deadlines for submittal of notices of intent are provided in Part I.A.2 of the permit.

**FOR FURTHER INFORMATION CONTACT:** Ms. Evelyn Rosborough, Water Division, Region 6 (6-WDPE), U.S. Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270. Telephone: (214) 665-7515. Email: [rosborough.evelyn@epa.gov](mailto:rosborough.evelyn@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Notice of the proposal of the draft permit was published in the **Federal Register** on July 22, 2022. EPA Region 6 has considered all comments received and makes several significant changes as listed below. A copy of the Region's responses to comments and the final permit may be found online from the *Federal eRulemaking Portal*: <https://www.regulations.gov> at Docket ID No EPA-R06-OW-2022-0603. Significant changes include:

1. Well, heads, pipelines, jumpers and associated infrastructures connected to the facility are considered part of the host facility even when the infrastructure crosses lease block boundaries.

2. NOI requirements allow for all vessels, to be able to file one valid NOI when performing jobs in the same lease

block, if jobs are performed for the same designated operator.

3. Operators who filed under the previous permit have an additional 30 days to submit eNOI, if the system is unavailable during the 60 day renewal period. These operators are covered under the reissued permit for up to 90 days.

4. Only new operators, not covered under the previous permit, can submit temporary NOIs when system is unavailable. Due date and coverage for temporary NOI extended 14 days, after the system becomes available, if the system remains unavailable after 14 days.

5. Removed continuous monitoring language from cooling water intake requirements.

6. Removed the additional requirements for a signed agreement for transfers.

7. Flow rate monitoring for Well Treatment Fluids, Completion Fluids, and Workover Fluids.

8. Characteristic Assessment requirements for Well Treatment Fluids, Completion Fluids, and Workover Fluids have been removed.

9. For Sanitary Waste, all limits must be complied with in the event the Marine Sanitation Device is not properly operating or not operating.

10. Cooling water intake structure operation for New Fixed Facilities that Employ Sea Chests as Intake Structures and New Fixed Facilities that do not employ sea chests as intake structures require development, and implementation of operation and maintenance plans, with reporting requirements for numeric exceedances.

11. All facilities are subject to monitoring requirements if they discharged during said monitoring period, regardless of whether the discharge lasted the full period.

12. Methods and/or calculations for estimated flow must be documented.

13. Sample type for oil and grease is grab or composite.

14. The use of other disinfection technologies, including, but not limited to, bio membrane filtration and ultraviolet light are allowed as substitutes for systems that use chlorine, provided that the MSD is approved by the U.S. Coast Guard and results in equivalent or improved disinfection of the Sanitary Waste stream to that considered in the ELG. TRC monitoring is not required for alternative MSDs that do not use chlorine, when the system is not properly operating or not operating, unless a chlorine based product is used as a backup disinfectant.

15. Operators must flush and capture the materials contained in pipelines,

umbilicals, and other equipment prior to disconnection. No releases or discharges of fluid from pipelines, umbilicals, and/or other equipment that have not been fully flushed prior to being disconnected or cut from the facility are authorized under this NPDES permit.

16. Calculation for WET critical dilutions and testing frequencies is based on calendar year.

17. Waiver for the minimum number of samples to be collected for WET tests, should the effluent cease discharging for produced water.

18. For Treatment, Completion, and Workover discharges, acute WET results can be derived from chronic WET test.

19. Compliance schedule for WET acute limits related to Treatment, Completion, and Workover discharges and sample holding time of 72 hours.

20. No approved Alternative Test Procedure (ATP) for WET, however they can be requested at any time following 40 CFR 136.5.

21. 72 hour hold time for WET samples for Chemically Treated Miscellaneous Discharges.

22. For Chemically Treated Miscellaneous Discharges, non-continuous discharges are discharges that occur less than or equal to once per week and last less than 24 hours. These discharges shall be monitored once per discharge.

23. State general permit or state individual permit may be required in addition to authorization under this permit.

24. Defines decommissioning and Subsea Cleaning Fluids.

25. 7-day chronic toxicity requirements for Well Treatment Fluids, Completion Fluids, and Workover Fluids has been moved from limitations to monitoring section, to provide clarity that chronic is monitoring only.

26. Free oil language has been updated to reference DMRs and twenty-four hour reporting requirements.

27. Part I.C. reflects Other Limitations, Prohibitions and Discharges not Authorized. Moved Limitations on Coverage section in Part I.A.1 to Part I.C for Prohibitions and Discharges Not Authorized.

28. Permit does not authorize radioactive materials that are under the jurisdiction of the NRC.

29. Miscellaneous Discharges of Water Which Have Been Chemically Treated includes discharges from well operations other than those covered by other sections of Part I.B of the permit.

30. Corrections to the Permit Summary Table. Table is for reference only.

31. Corrected data for Discharge Monitoring Reports (DMRs) and Other

Reports must be submitted as soon as the error has been identified but no later than the following quarter. Submittal of corrected data does not excuse any permit violation.

32. If Offshore 24-Hour Reporting Application Portal is not available, an email shall be sent within 24 hours of occurrence of specified violations and electronic report shall be submitted within 14 days of the system becoming available.

33. A facility map that delineates authorized discharge locations and type must be submitted, as an attachment, when filing the eNOI.

34. Language has been updated to specify that new operators are not eligible for coverage and existing operators may not submit new NOI's during the administrative continued period.

35. Updated language to provide clarity that timely updates to "CDX" are required, in lieu of "eNOI."

36. Numeric exceedances of maximum through-screen design intake velocity and dates must also be included on DMRs, for all new facilities required to comply with intake structure monitoring requirements.

37. Definition of Mobile Offshore Drilling Unit (MODU) has been removed from the permit because it does not exist in the Code of Federal Regulations. Part I.A.2 has been updated to provide examples of MODUs.

38. Civil and administrative penalty amounts have been updated to reflect updated statutory amounts.

39. Once a month temperature monitoring for produced water.

## II. Other Legal Requirements

Other statutory and regulatory requirements are discussed in the fact sheet that include: Oil Spill Requirement; Ocean Discharge Criteria Evaluation; Marine Protection, Research, and Sanctuaries Act; National Environmental Policy Act; Magnuson-Stevens Fisheries Conservation and Management Act; Endangered Species Act; State Water Quality Standards and State Certification; Coastal Zone Management Act; and Paperwork Reduction Act.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations

have been documented in the docket for this action.

**Charles W. Maguire,**

*Director, Water Division, EPA Region 6.*

[FR Doc. 2023-11770 Filed 6-1-23; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Agency for Healthcare Research and Quality, HHS.

**ACTION:** Notice

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project "AHRQ Research Reporting System (ARRS)." This proposed information collection was previously published in the **Federal Register** on March 29th, 2023 and allowed 60 days for public comment. AHRQ received no substantive comments from members of the public. The purpose of this notice is to allow an additional 30 days for public comment.

**DATES:** Comments on this notice must be received by July 3, 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](http://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.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427-1477, or by email at [doris.lefkowitz@AHRQ.hhs.gov](mailto:doris.lefkowitz@AHRQ.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### Proposed Project

##### AHRQ Research Reporting System (ARRS)

AHRQ has developed a systematic method for its grantees to report project progress and important preliminary findings for grants funded by the

Agency. This system, the AHRQ Research Reporting System (ARRS), previously known as the Grants Reporting System (GRS), was last approved by OMB on August 31, 2020. The system addressed the shortfalls in the previous reporting process and established a consistent and comprehensive reporting solution for grants in AHRQ. The ARRS provides a centralized repository of grants research progress and additional information that can be used to support initiatives within the Agency. This includes future research planning and support for administrative activities such as performance monitoring, budgeting, and knowledge transfer, as well as for strategic planning.

This Project has the following goals:

- (1) To promote the transfer of critical information more frequently and efficiently and enhance the Agency’s ability to support research designed to improve the outcomes and quality of health care, reduce its costs, and broaden access to effective services
- (2) To increase the efficiency of the Agency in responding to ad-hoc information requests
- (3) To support Executive Branch requirements for increased transparency and public reporting
- (4) To establish a consistent approach throughout the Agency for information collection regarding grant progress and a systematic basis for oversight and for

facilitating potential collaborations among grantees

(5) To decrease the inconvenience and burden on grantees of unanticipated ad-hoc requests for information by the Agency in response to particular (one-time) internal and external requests for information

This project is being conducted by AHRQ through its contractor, Science Applications International Corporation, Inc, pursuant to AHRQ’s statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness, and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C 299a(a)(1) and (2).

**Method of Collection**

Grantees use the ARRS system to report project progress and important preliminary findings for grants funded by the Agency. Grantees submit progress reports on a monthly or quarterly basis, which are reviewed by AHRQ personnel. All users access the ARRS system through a secure online interface which requires a user id and password entered through the ARRS Login screen. When status reports are due AHRQ notifies Principal Investigators (PI) via email.

The ARRS is an automated user-friendly resource that is utilized by AHRQ staff for preparing, distributing, and reviewing reporting requests to grantees for the purpose of information sharing. AHRQ personnel are able to systematically search the information collected and stored in the ARRS database. Personnel will also use the information to address internal and/or external requests for information regarding grant progress, preliminary findings, and other requests, such as Freedom of Information Act requests, and producing responses related to federally mandated programs and regulations.

**Estimated Annual Respondent Burden**

Exhibit 1 shows the estimated annualized burden hours for the respondents. It will take grantees an estimated 15 minutes to enter the necessary data into the ARRS System. Frequency of reporting varies from monthly to once a year. The total number of responses submitted for the past year is considered for this estimation. Based on that, the total annualized burden hours are estimated to be 125 hours.

Exhibit 2 shows the estimated annualized cost burden for the respondents. The total estimated cost burden for respondents is \$5,475.

**EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS**

Form name	Number of responses	Hours per response	Total burden hours
Data entry into ARRS .....	500	15/60	125
Total .....	500	N/A	125

**EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN**

Form name	Number of responses	Total burden hours	Average hourly wage rate *	Total cost burden
Data entry into ARRS .....	500	125	\$43.80	\$5,475
Total .....	500	125	N/A	\$5,475

\* Based upon the average wages for Healthcare Practitioner and Technical Occupations (29-0000), “National Compensation Survey: Occupational Wages in the United States, May 2021,” U.S. Department of Labor, Bureau of Labor Statistics, [http://www.bls.gov/oes/current/oes\\_nat.htm#29-0000](http://www.bls.gov/oes/current/oes_nat.htm#29-0000).

**Request for Comments**

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ’s information collection are requested with regard to any of the following: (a) whether the proposed collection of information is necessary for the proper performance of AHRQ’s health care research and health

care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ’s estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d)

ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency’s subsequent request for OMB approval of the



proposed information collection. All comments will become a matter of public record.

Dated: May 26, 2023.

**Marquita Cullom,**  
Associate Director.

[FR Doc. 2023-11723 Filed 6-1-23; 8:45 am]

BILLING CODE 4160-90-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2012-D-0322]

#### Action Level for Inorganic Arsenic in Apple Juice: Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing the availability of a final guidance for industry entitled “Action Level for Inorganic Arsenic in Apple Juice.” The guidance identifies for industry an action level for inorganic arsenic in apple juice that is intended to help protect public health by reducing exposure to inorganic arsenic and is achievable with the use of current good manufacturing practices. It also describes our intended sampling and enforcement approach. Thus, the guidance finalizes the approach presented in the draft guidance issued in 2013.

**DATES:** The announcement of the guidance is published in the **Federal Register** on June 2, 2023.

**ADDRESSES:** You may submit either electronic or written comments on FDA 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-2012-D-0322 for “Action Level for Inorganic Arsenic in Apple Juice: Guidance for Industry.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For

more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

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 guidance to the Division of Plant Products and Beverages, Office of Food Safety, Center for Food Safety and Applied Nutrition (HFS-317), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

**FOR FURTHER INFORMATION CONTACT:** Eileen Abt, Center for Food Safety and Applied Nutrition (HFS-317), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-1529; or Denise See, Center for Food Safety and Applied Nutrition, Office of Regulations and Policy (HFS-024), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-2378.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

We are announcing the availability of a guidance for industry entitled “Action Level for Inorganic Arsenic in Apple Juice.” We are issuing this guidance consistent with our good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on this topic. 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.

In the **Federal Register** of July 15, 2013 (78 FR 42086), we announced the availability of a draft guidance for industry entitled “Arsenic in Apple Juice: Action Level.” We also announced the availability of two related scientific documents: a document entitled “Supporting Document for Action Level for Arsenic in Apple Juice” (supporting document),

and a risk assessment entitled “A Quantitative Assessment of Inorganic Arsenic in Apple Juice” (the risk assessment document). We gave interested parties an opportunity to submit comments by September 13, 2013.

This guidance finalizes FDA’s action level for inorganic arsenic in apple juice of 10 micrograms per kilogram ( $\mu\text{g}/\text{kg}$ ) or 10 parts per billion (ppb) and identifies FDA’s intended sampling and enforcement approach. The basis for the action level is set forth in the guidance document, as well as the risk assessment document originally made available on July 15, 2013, that can be accessed in the docket referenced above at <https://www.regulations.gov>. The guidance reviews data on inorganic arsenic levels in apple juice, health effects from exposure to inorganic arsenic, and the ability of manufacturers to achieve different levels of inorganic arsenic in apple juice. It also explains FDA’s rationale for identifying an action level of 10  $\mu\text{g}/\text{kg}$  or 10 ppb for inorganic arsenic in apple juice.

Arsenic is present in the environment as a naturally occurring substance or as a result of contamination from human activity. In foods, arsenic may be present as inorganic arsenic (the primary toxic form of arsenic) or organic arsenic. Exposure to inorganic arsenic is associated with adverse human health effects, including cancer and neurodevelopmental effects. Apple juice is one source of exposure to arsenic from food, and a greater potential source of exposure for children than adults, because children’s dietary patterns are often less varied than those of adults, and they consume more apple juice relative to their body weight than do adults. We expect that the 10  $\mu\text{g}/\text{kg}$  or 10 ppb action level, though non-binding, will help protect public health by encouraging manufacturers to reduce levels of inorganic arsenic in apple juice and therefore reduce human exposure to inorganic arsenic. We also expect that this level is achievable by industry with the use of current good manufacturing practices. We intend to consider the action level of 10  $\mu\text{g}/\text{kg}$  or 10 ppb inorganic arsenic as an important source of information for determining whether apple juice is adulterated within the meaning of section 402(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(1)).

In finalizing the guidance, we incorporated data from the supporting document and added an analysis of new data on inorganic arsenic levels in apple juice, health effects from exposure to inorganic arsenic, and the ability of

manufacturers to limit inorganic arsenic in apple juice, in evaluating the appropriate action level. We also made changes to the text for clarity, including explaining the term “added” in this context and that “apple juice” includes apple cider, and we have also revised the title of the guidance to more clearly show that we are setting an action level. In addition, we added information on our understanding of arsenical pesticide use in the United States and expanded the discussion of the rationale for setting an action level based on sampling and testing results and the discussion of FDA’s sampling and enforcement approach. We also incorporated new references in support of these changes and to reflect the citation of recently published FDA data and a new reference to FDA’s *Closer to Zero* action plan.

We also considered all comments received during the comment period in finalizing the document. Comments on the draft guidance requested that we consider establishing action levels for other foods containing arsenic, such as other apple products, other fruit juices, and rice; that the action level be lower than 10 ppb; that we consider additional risk management approaches; and that questioned the achievability of the action level of 10 ppb in apple juice. We did not receive new data from the comments supporting establishment of either a higher or lower action level. None of the comments caused us to change the approach set out in the draft guidance. We have clarified in the title of the final guidance that the action level of 10 ppb applies to inorganic arsenic.

Other comments suggested modifications to the risk assessment document. We note that the risk assessment report underwent peer review before we made it available to the public. (This can be found at <https://www.fda.gov/science-research/peer-review-scientific-information-and-assessments/completed-peer-reviews>.) None of these comments supported a determination that the risk assessment document needs to be modified. We will continue to monitor research developments on adverse health effects of inorganic arsenic exposure to determine if new data support changes to the guidance.

## II. Paperwork Reduction Act of 1995

This final guidance contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

## III. Electronic Access

Persons with access to the internet may obtain the guidance at either <https://www.fda.gov/FoodGuidances>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>. Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: May 30, 2023.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2023–11769 Filed 6–1–23; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2023–N–2079]

#### Hospira, Inc., et al.; Withdrawal of Approval of Eight Abbreviated New Drug Applications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is withdrawing approval of eight abbreviated new drug applications (ANDAs) from multiple applicants. The applicants notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

**DATES:** Approval is withdrawn as of July 3, 2023.

**FOR FURTHER INFORMATION CONTACT:** Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676, Silver Spring, MD 20993–0002, 240–402–6980, [Martha.Nguyen@fda.hhs.gov](mailto:Martha.Nguyen@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** The applicants listed in the table have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications under the process described in § 314.150(c) (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

Application No.	Drug	Applicant
ANDA 075160 .....	Metoprolol Tartrate Injectable, 1 milligram (mg)/milliliter (mL)	Hospira, Inc., 275 North Field Dr., Bldg. H1-3S, Lake Forest, IL 60045.
ANDA 077029 .....	Calcipotriene Solution, 0.005% .....	Tolmar, Inc., 701 Centre Ave., Fort Collins, CO 80526.
ANDA 079186 .....	Dorzolamide Hydrochloride (HCl) Solution/Drops, Equivalent to (EQ) 2% base.	American Regent, Inc., 5 Ramsey Rd., Shirley, NY 11967.
ANDA 200457 .....	Ibuprofen Suspension, 100 mg/5 mL .....	Arise Pharmaceuticals LLC, 12 Roszel Rd., Unit B202, Princeton, NJ 08543.
ANDA 204356 .....	Ammonia N 13 Injectable, 3.75 millicurie (mCi)-260 mCi/mL	Wisconsin Medical Radiopharmacy LLC, 11236 West Lapham St., West Allis, WI 53214.
ANDA 205605 .....	Amikacin Sulfate Injectable, EQ 50 mg base/mL .....	Fresenius Kabi USA, LLC, Three Corporate Dr., Lake Zurich, IL 60047.
ANDA 205687 .....	Ammonia N 13 Injectable, 3.75 mCi-260 mCi/mL .....	Essential Isotopes, LLC, 1513 Research Park Dr., Columbia, MO 65211.
ANDA 210265 .....	Fludeoxyglucose F18 Injectable, 20 mCi/mL-200 mCi/mL ...	University of Texas Southwestern Medical Center, 5323 Harry Hines Blvd., Dallas, TX 75390.

Therefore, approval of the applications listed in the table, and all amendments and supplements thereto, is hereby withdrawn as of July 3, 2023. Approval of each entire application is withdrawn, including any strengths and dosage forms inadvertently missing from the table. Introduction or delivery for introduction into interstate commerce of products without approved new drug applications violates section 301(a) and (d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(a) and (d)). Drug products that are listed in the table that are in inventory on July 3, 2023 may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: May 30, 2023.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2023-11744 Filed 6-1-23; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2022-D-1729]

#### Migraine: Developing Drugs for Preventive Treatment; Draft Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a draft guidance for industry entitled “Migraine: Developing Drugs for Preventive Treatment.” This draft guidance document is intended to assist sponsors in the clinical development of drugs for the preventive treatment of

migraine. The draft guidance is intended to complement, not replace, the guidance for industry “Migraine: Developing Drugs for Acute Treatment,” and focuses on specific drug development and trial design issues that are unique to the study of drugs for the preventive treatment of migraine. This draft guidance is intended to serve as a focus for continued discussions among FDA’s Division of Neurology II, sponsors, the academic community, and the public.

**DATES:** Submit either electronic or written comments on the draft guidance by August 1, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

**ADDRESSES:** You may submit comments on any guidance at any time as follows:

#### Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a

written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

**Instructions:** All submissions received must include the Docket No. FDA-2022-D-1729 for “Migraine: Developing Drugs for Preventive Treatment.” 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. 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:**

Heather Fitter, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4362, Silver Spring, MD 20993, 301–796–3984.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

FDA is announcing the availability of a draft guidance for industry entitled “Migraine: Developing Drugs for Preventive Treatment.” The draft guidance is intended to assist sponsors with developing drugs for the preventive treatment of migraine. The draft guidance provides FDA’s current thinking regarding the overall development program and clinical trial designs to support approval of drugs for the preventive treatment of migraine.

Migraine is a chronic neurovascular disorder characterized by recurrent attacks of often severe headache, typically accompanied by nausea and

sensitivity to light and/or sound. Pharmacological approaches to the treatment of migraine include drugs to abort migraine attacks as they arise (acute treatment of migraine) and drugs to reduce the frequency of migraine attacks (preventive treatment). This draft guidance addresses the development of drugs for the preventive treatment of migraine, including trial population, trial design, dose selection, efficacy endpoints, and statistical considerations. This draft guidance does not address the development of drugs intended for the acute treatment of migraine, as this has been covered by the previously published guidance for industry “Migraine: Developing Drugs for Acute Treatment,” available at <https://www.fda.gov/media/89829/download>.<sup>1</sup>

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 “Migraine: Developing Drugs for Preventive Treatment.” 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 201 have been approved under OMB control number 0910–0572, and the collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014.

**III. Electronic Access**

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

<sup>1</sup> We update guidances periodically. For the most recent version of a guidance, check the FDA guidance web page at <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>.

Dated: May 30, 2023.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2023–11751 Filed 6–1–23; 8:45 am]

**BILLING CODE 4164–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute on Drug Abuse; 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:* National Institute on Drug Abuse Special Emphasis Panel; HEAL Initiative: Research to Foster an Opioid Use Disorder Treatment System Patients Can Count on (RM1).

*Date:* June 27, 2023.

*Time:* 11:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Trinh T. Tran, Ph.D., Scientific Review Officer, Scientific Review Branch, Office of Extramural Policy, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–5843, [trinh.tran@nih.gov](mailto:trinh.tran@nih.gov).

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; HEAL Initiative: Translating Research to Practice ending the Overdose Crisis.

*Date:* June 29–30, 2023.

*Time:* 10:00 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Sheila Pirooznia, Ph.D., Scientific Review Officer, Division of Extramural Review, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 496–9350, [sheila.pirooznia@nih.gov](mailto:sheila.pirooznia@nih.gov).

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel;

Substance Use Prevention Effectiveness Research Among Youth and Families in the Child Welfare System.

*Date:* July 7, 2023.

*Time:* 10:30 a.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Shareen Amina Iqbal, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 443-4577, [shareen.iqbal@nih.gov](mailto:shareen.iqbal@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

*Dated:* May 26, 2023.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023-11737 Filed 6-1-23; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development, Special Emphasis Panel; HBC/Member Conflict.

*Date:* June 29, 2023.

*Time:* 11:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Eunice Kennedy Shriver National Institute of Child

Health and Human Development, 6710B Rockledge Drive, Room 2131D, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Anita Szajek, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2131D, Bethesda, MD 20892, [anita.szajek@nih.gov](mailto:anita.szajek@nih.gov). (Catalogue of Federal Domestic Assistance Program Nos. 93.865, Research for Mothers and Children, National Institutes of Health, HHS)

*Dated:* May 26, 2023.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023-11735 Filed 6-1-23; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0136]

#### Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for Entrepreneur Parole

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

**DATES:** Comments are encouraged and will be accepted for 60 days until August 1, 2023.

**ADDRESSES:** All submissions received must include the OMB Control Number 1615-0136 in the body of the letter, the agency name and Docket ID USCIS-2016-0005. Submit comments via the Federal eRulemaking Portal website at <http://www.regulations.gov> under e-Docket ID number USCIS-2016-0005.

**FOR FURTHER INFORMATION CONTACT:** USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommès, Chief, telephone number (240) 721-3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <https://www.uscis.gov>, or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

#### SUPPLEMENTARY INFORMATION:

##### Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS-2016-0005 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the 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 submission of responses.

### Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Entrepreneur Parole.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I-941; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Entrepreneurs can use this form to make an initial request for parole based upon significant public benefit; make a subsequent request for parole for an additional period; or file an amended application to notify USCIS of a material change.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I-941 is 2,940 and the estimated hour burden per response is 4.25 hours. The estimated total number of respondents for the biometric processing is 2,940 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 15,935 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$1,440,600.

Dated: May 26, 2023.

**Samantha L. Deshommes,**

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023-11780 Filed 6-1-23; 8:45 am]

**BILLING CODE 9111-97-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0104]

#### Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection; Petition for U Nonimmigrant Status

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

**DATES:** Comments are encouraged and will be accepted until July 3, 2023.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at <https://www.regulations.gov> under e-Docket ID number USCIS-2010-0004. All submissions received must include the OMB Control Number 1615-0104 in the body of the letter, the agency name and Docket ID USCIS-2010-0004.

**FOR FURTHER INFORMATION CONTACT:** USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721-3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <https://www.uscis.gov>, or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

#### SUPPLEMENTARY INFORMATION:

##### Comments

The information collection notice was previously published in the **Federal Register** on March 23, 2023, at 88 FR 17588, allowing for a 60-day public comment period. USCIS did not receive

any comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS-2010-0004 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <https://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the 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 submission of responses.

### Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for U Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-918,

Supplement A, and Supplement B; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households; Federal Government; or State, local or Tribal Government. This petition permits victims of certain qualifying criminal activity and their immediate family members to apply for temporary nonimmigrant classification. This nonimmigrant classification provides temporary immigration benefits, potentially leading to certain victims of criminal activity who: suffered substantial mental or physical abuse as a result of having been a victim of criminal activity; have information regarding the criminal activity; and assist government officials in investigating and prosecuting such criminal activity.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I-918 is 29,400 and the estimated hour burden per response is 5 hours. The estimated total number of respondents for the information collection Supplement A is 17,900 and the estimated hour burden per response is 1.5 hours. The estimated total number of respondents for the information collection Supplement B is 29,400 and the estimated hour burden per response is 1 hour. The estimated total number of respondents for the information collection of Biometric Services is 47,300 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 258,591 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$201,025.

Dated: May 26, 2023.

**Samantha L. Deshommes,**

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023-11717 Filed 6-1-23; 8:45 am]

**BILLING CODE 9111-97-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0130]

#### Agency Information Collection Activities; Revision of a Currently Approved Collection: Record of Abandonment of Lawful Permanent Residence Status

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

**DATES:** Comments are encouraged and will be accepted until July 3, 2023.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at <https://www.regulations.gov> under e-Docket ID number USCIS-2013-0005. All submissions received must include the OMB Control Number 1615-0130 in the body of the letter, the agency name and Docket ID USCIS-2013-0005.

**FOR FURTHER INFORMATION CONTACT:** USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, Telephone number (240) 721-3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <https://www.uscis.gov>, or call the USCIS Contact Center at (800) 375-5283; TTY (800) 767-1833.

#### SUPPLEMENTARY INFORMATION:

##### Comments

The information collection notice was previously published in the **Federal Register** on March 01, 2023, at 88 FR

12979, allowing for a 60-day public comment period. USCIS did not receive comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <https://www.regulations.gov> and enter USCIS-2013-0005 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <https://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the 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 submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Record of Abandonment of Lawful Permanent Resident Status.



(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-407; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and Households. Lawful Permanent Residents (LPRs) use Form I-407 to inform USCIS and formally record their abandonment of lawful permanent resident status. U.S. Citizenship and Immigration Services uses the information collected in Form I-407 to record the LPR's abandonment of lawful permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I-407 is 14,449 and the estimated hour burden per response is .25 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 3,612 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$3,540,005.

Dated: May 26, 2023.

**Samantha L. Deshommnes,**

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023-11721 Filed 6-1-23; 8:45 am]

BILLING CODE 9111-97-P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0032]

#### Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for Waiver of Grounds of Inadmissibility Under Sections 245A or 210 of the Immigration and Nationality Act

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance

with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

**DATES:** Comments are encouraged and will be accepted until July 3, 2023.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at <https://www.regulations.gov> under e-Docket ID number USCIS-2006-0047. All submissions received must include the OMB Control Number 1615-0032 in the body of the letter, the agency name and Docket ID USCIS-2006-0047.

**FOR FURTHER INFORMATION CONTACT:** USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommnes, Chief, telephone number (240) 721-3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <https://www.uscis.gov>, or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

#### SUPPLEMENTARY INFORMATION:

##### Comments

The information collection notice was previously published in the **Federal Register** on March 9, 2023, at 88 FR 14632, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <https://www.regulations.gov> and enter USCIS-2006-0047 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public

viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <https://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the 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 submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Inadmissibility Under Sections 245A or 210 of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-690; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Applicants for lawful permanent residence under INA 210 or 245A who are inadmissible under certain grounds of inadmissibility at INA 212(a) would use Form I-690 to seek a waiver of inadmissibility. USCIS uses the information provided through Form I-690 to adjudicate waiver requests from individuals who are inadmissible to the United States. Based upon the instructions provided, a respondent can gather and submit the required documentation to USCIS for consideration of an inadmissibility waiver.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of



respondents for the information collection I-690 is 30 and the estimated hour burden per response is 2 hours and 53 minutes; the estimated total number of respondents for the information collection I-690 Supplement 1, Applicants With a Class A Tuberculosis Condition, is 11 and the estimated hour burden per response is 2 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 108 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$4,523.00.

Dated: May 26, 2023.

**Samantha L. Deshombres,**

Chief, Regulatory Coordination Division,  
Office of Policy and Strategy, U.S. Citizenship  
and Immigration Services, Department of  
Homeland Security.

[FR Doc. 2023-11719 Filed 6-1-23; 8:45 am]

BILLING CODE 9111-97-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-HQ-MB-2023-N041; FF09M21200-  
234-FXMB1231099BPP0; OMB Control  
Number 1018-New]

#### Agency Information Collection Activities; Submission to the Office of Management and Budget; Northeast Region Hunter Participation Surveys

**AGENCY:** Fish and Wildlife Service,  
Interior.

**ACTION:** Notice of information collection;  
request for comment.

**SUMMARY:** In accordance with the  
Paperwork Reduction Act of 1995, we,  
the U.S. Fish and Wildlife Service  
(Service), are proposing a new  
information collection not in use  
without Office of Management and  
Budget (OMB) approval.

**DATES:** Interested persons are invited to  
submit comments on or before July 3,  
2023.

**ADDRESSES:** Written comments and  
recommendations for the proposed  
information collection should be  
submitted within 30 days of publication  
of this notice at [https://  
www.reginfo.gov/public/do/PRAMain](https://www.reginfo.gov/public/do/PRAMain).  
Find this particular information  
collection by selecting “Currently under  
Review—Open for Public Comments” or  
by using the search function. Please  
provide a copy of your comments to the  
Service Information Collection

Clearance Officer, U.S. Fish and  
Wildlife Service, MS: PRB (JAO/3W),  
5275 Leesburg Pike, Falls Church, VA  
22041-3803 (mail); or by email to [Info\\_Coll@fws.gov](mailto:Info_Coll@fws.gov).  
Please reference “1018-  
New NE Hunt Surveys” in the subject  
line of your comments.

#### FOR FURTHER INFORMATION CONTACT:

Madonna L. Baucum, Service  
Information Collection Clearance  
Officer, by email at [Info\\_Coll@fws.gov](mailto:Info_Coll@fws.gov),  
or by telephone at (703) 358-2503.  
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:

In accordance with the Paperwork  
Reduction Act (PRA; 44 U.S.C. 3501 *et  
seq.*) and its implementing regulations  
in the Code of Federal Regulations  
(CFR) at 5 CFR 1320, all information  
collections require approval under the  
PRA. We may not conduct or sponsor  
and you are not required to respond to  
a collection of information unless it  
displays a currently valid OMB control  
number.

On February 9, 2023, we published in  
the **Federal Register** (88 FR 8448) a  
notice of our intent to request that OMB  
approve this information collection. In  
that notice, we solicited comments for  
60 days, ending on April 10, 2023. In an  
effort to increase public awareness of,  
and participation in, our public  
commenting processes associated with  
information collection requests, the  
Service also published the **Federal  
Register** notice on [Regulations.gov](https://www.regulations.gov)  
(Docket No. FWS-R5-NWRS-2022-  
0152) to provide the public with an  
additional method to submit comments  
(in addition to the typical [Info\\_Coll@  
fws.gov](mailto:Info_Coll@fws.gov) email and U.S. mail submission  
methods). We received one anonymous  
comment in response to that notice  
which did not address the information  
collection requirements. Therefore, no  
response is required to that comment.

As part of our continuing effort to  
reduce paperwork and respondent  
burdens, we are again inviting the  
public and other Federal agencies to  
comment on new, proposed, revised,  
and continuing collections of  
information. This helps us assess the  
impact of our information collection  
requirements and minimize the public’s  
reporting burden. It also helps the  
public understand our information

collection requirements and provide the  
requested data in the desired format.

We are especially interested in public  
comment addressing the following:

(1) Whether or not the collection of  
information is necessary for the proper  
performance of the functions of the  
agency, including whether or not the  
information will have practical utility;

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

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

(4) How might the agency minimize  
the burden of the collection of  
information on those who are to  
respond, including through the use of  
appropriate automated, electronic,  
mechanical, or other technological  
collection techniques or other forms of  
information technology, *e.g.*, permitting  
electronic submission of response.

Comments that you submit in  
response to this notice are a matter of  
public record. Before including your  
address, phone number, email address,  
or other personal identifying  
information in your comment, you  
should be aware that your that your  
entire comment—including your  
personal identifying information—may  
be publicly available at any time. While  
you can ask us in your comment to  
withhold your personal identifying  
information from public review, we  
cannot guarantee that we will be able to  
do so.

*Abstract:* The Service has overall  
Federal responsibility for managing the  
Nation’s fish and wildlife resources.  
Part of the Service’s mission is to  
provide the public with wildlife-based  
outdoor recreation opportunities on  
National Wildlife Refuges, National Fish  
Hatcheries, and other Service lands  
(collectively, refuges). These outdoor  
recreation opportunities include  
hunting, which is an important  
opportunity for people to connect with  
nature, harvest food, and assist the  
Service in managing wildlife  
populations.

The National Wildlife Refuge System  
Administration Act, as amended by the  
National Wildlife Refuge System  
Improvement Act (the Act; 16 U.S.C.  
668dd *et seq.*) stipulates that refuges  
undergo a comprehensive conservation  
planning process that, among other  
things, must look at the compatibility of  
wildlife-dependent recreation  
(including hunting) on refuges. We will  
use the information from the proposed  
survey effort to inform planning on  
refuges as mandated by the Act.

Hunting on refuges is regulated by both State and Federal laws, as well as through refuge-specific regulations. These refuge-specific regulations are made in accordance with hunt plans required to be developed for each refuge. These hunt plans outline refuge-specific bag limits, season dates, areas open and closed to hunting, allowed hunting time, and other requirements. The hunt plans are an important tool that refuges use to manage harvest, safety, and visitor experience.

Creating hunt plans relies on sound biological and social data. Understanding hunter experience, preference, and harvest helps refuge

managers and planners tailor hunt plans to suit biological and visitor objectives and maintain a safe environment for hunters and non-hunting visitors.

To ensure the surveys were comprehensive, the Service convened an interdisciplinary team made up of biologists, managers, visitor services specialists, social scientists, and law enforcement officers. The team identified data gaps needed to inform future hunt plan development, identified safety concerns, and considered methods to better understand hunter preference in order to improve visitor experience.

The public may request copies of any form or document contained in this

information collection by sending a request to the Service Information Collection Clearance Officer in ADDRESSES, above.

*Title of Collection:* Northeast Region Hunter Participation Surveys.

*OMB Control Number:* 1018–New.

*Form Numbers:* Forms 3–2557 and 3–2558.

*Type of Review:* Request for new OMB control number.

*Respondents/Affected Public:* Individuals.

*Respondent's Obligation:* Voluntary.

*Frequency of Collection:* On occasion.

*Total Estimated Annual Nonhour Burden Cost:* None.

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response (minutes)	Estimated annual burden hours *
<b>Form 3–2557, "Hunter Participation Survey"</b>					
Individuals .....	50	1	50	20	17
<b>Form 3–2558, "Spring Turkey Hunter Participation Survey"</b>					
Individuals .....	50	1	50	10	8
<i>Totals:</i> .....	100	.....	100	.....	25

\* Rounded.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Madonna Baucum,**

*Information Collection Clearance Officer, U.S. Fish and Wildlife Service.*

[FR Doc. 2023–11747 Filed 6–1–23; 8:45 am]

**BILLING CODE 4333–15–P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

[Docket No. FWS–HQ–MB–2023–0085; FXMB12310900WHO–234–FF09M26000; OMB Control Number 1018–0023]

**Agency Information Collection Activities; Migratory Bird Surveys**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service

(Service), are proposing to renew an information collection, with changes.

**DATES:** Interested persons are invited to submit comments on or before August 1, 2023.

**ADDRESSES:** Send your comments on the information collection request (ICR) by one of the following methods (please reference OMB Control No. 1018–0023 in the subject line of your comment):

- *Internet (preferred):* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS–HQ–MB–2023–0085.

- *Email:* [Info\\_Coll@fws.gov](mailto:Info_Coll@fws.gov).
- *U.S. mail:* Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W); Falls Church, VA 22041–3803.

**FOR FURTHER INFORMATION CONTACT:**

Madonna L. Baucum, Service Information Collection Clearance Officer, by email at [Info\\_Coll@fws.gov](mailto:Info_Coll@fws.gov), or by telephone at (703) 358–2503. 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:** In accordance with the Paperwork Reduction Act (PRA; 44 U.S.C. 3501 *et seq.*) and its implementing regulations in the Code of Federal Regulations (CFR) at 5 CFR 1320, all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

- (1) Whether or not the collection of information is necessary for the proper performance of the functions of the

agency, including whether or not the information will have practical utility;

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

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

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* The Migratory Bird Treaty Act (16 U.S.C. 703–711) and the Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for (1) the wise management of migratory bird populations frequenting the United States, and (2) the setting of hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well-being. These responsibilities dictate that we gather accurate data on various characteristics of migratory bird harvest. Based on information from harvest surveys, we can adjust hunting regulations as needed to optimize harvests at levels that provide a maximum of hunting recreation while keeping populations at desired levels.

Under 50 CFR 20.20, migratory bird hunters must register for the Migratory Bird Harvest Information Program (HIP) in each State in which they hunt each year. State natural resource agencies must send names and addresses of all migratory bird hunters to the Service's Branch of Monitoring and Information Management, Division of Migratory Bird Management, on an annual basis.

The Migratory Bird Hunter Survey is based on the Migratory Bird Harvest Information Program. We randomly

select migratory bird hunters and ask them to report their harvests. The resulting estimates of harvest per hunter are combined with the complete list of migratory bird hunters to provide estimates of the total harvest for the species surveyed.

The Parts Collection Survey estimates the species, sex, and age composition of the harvest, and the geographic and temporal distribution of the harvest. Randomly selected successful hunters who responded to the Migratory Bird Hunter Survey the previous year, as well as a sample of hunters who were not surveyed the previous year, are asked to complete and return a letter if they are willing to participate in the Parts Collection Survey. We provide postage-paid envelopes to respondents before the hunting season and ask them to send in a wing or the tail feathers from each duck or goose that they harvest, or a wing from each mourning dove, woodcock, band-tailed pigeon, or rail that they harvest. We use the wings and tail feathers to identify the species, sex, and age of the harvested sample. We also ask respondents to report the date and location of harvest for each bird on the outside of the envelope. We combine the results of this survey with the harvest estimates obtained from the Migratory Bird Hunter Survey to provide species-specific national harvest estimates.

The combined results of these surveys enable us to evaluate the effects of season length, season dates, and bag limits on the harvest of each species, and thus help us determine appropriate hunting regulations.

The Sandhill Crane Harvest Survey is an annual questionnaire survey of people who obtained a sandhill crane hunting permit. At the end of the hunting season, we randomly select a sample of permit holders and ask them to report the date, location, and number of birds harvested for each of their sandhill crane hunts. Their responses provide estimates of the temporal and geographic distribution of the harvest as well as the average harvest per hunter, which, combined with the total number of permits issued, enables us to estimate the total harvest of sandhill cranes. Based on information from this survey, we adjust hunting regulations as needed.

In 2019, we implemented a new, online platform for the Migratory Bird Hunter Survey. The platform is optimized for use on multiple devices (computer, tablet, or phone; Android or Apple OS). This online survey platform walks a participant through the process of entering their harvest for a single day and asks for one piece of information at

a time, which reduces confusion and the likelihood that the hunter will provide incorrect information. The online system improves data quality and prevents errors (*e.g.*, reporting harvest of the wrong species, or in the wrong State). We conducted the full paper survey through 2022, in order to ensure that data collected through the online platform was sound, and to provide a side-by-side comparison of harvest estimates that could be used to calibrate the old survey to the new one. This was particularly important for maintaining a continuous time series of harvest estimates, despite changing methodology. In the spring of 2023, we will conduct the full survey using the online application but will provide a paper survey by mail to those hunters who request them.

### Proposed Revisions

We propose to revise our Parts Collection Survey over the next 3 years (2023–2026) to replace or substantially augment bird wings and tails collection with photos of harvested birds, in order to reduce survey costs and perceived risk of disease transmission through the handling of wild bird parts. Preliminary assessments have indicated that photos taken by hunters of harvested waterfowl can be used to determine species, age and sex of birds, without requiring examination of bird parts “in the hand.”

We propose to conduct a 3-year pilot study with the development of a mobile application that can be used by hunters to take photos of the birds they harvest and upload them to our database, and a web-based interface for expert biologists to use to examine and identify birds from photos. We propose to conduct the pilot study with up to 150 hunters each year, which allows us to (1) evaluate the potential of using photo identification for other species in the Parts Collection survey including doves, band-tailed pigeons, woodcock and rails, (2) to achieve sample sizes sufficient to assess the limitations of photo identification for all waterfowl species, (3) to develop methods to enhance the quality of hunter-supplied photos, and (4) to amass an annotated set of photos to provide to researchers investigating the potential of machine-learning based image classification methods for automated identification of species, age and sex.

In addition, there is the potential for introducing other biases in data collection when transitioning to a photo survey; to assess these biases and provide uninterrupted information on annual harvest we intend to conduct the full parts survey during this 3-year period to provide a comparison of

results among the two surveys. If photo identification proves difficult for some species, we may continue a limited sample of parts collection to ensure harvest estimates can be calculated.

*Title of Collection:* Migratory Bird Information Program and Migratory Bird Surveys, 50 CFR 20.20.

*OMB Control Number:* 1018-0023.  
*Form Number:* Forms 3-165, 3-165A through E, and 3-2056J through N.  
*Type of Review:* Revision of a currently approved collection.  
*Respondents/Affected Public:* States and migratory game bird hunters.  
*Respondent's Obligation:* Mandatory for HIP registration information;

voluntary for participation in the surveys.

*Frequency of Collection:* Annually for States or on occasion for migratory bird hunters.

*Total Estimated Annual Nonhour Burden Cost:* None.

Collection type/form number	Number of respondents	Average number of responses each	Number of annual responses *	Average time per response	Total annual burden hours *
<b>Migratory Bird Harvest Information Program (State Governments)</b>					
	49	18	882	129 hours .....	113,778
<b>Migratory Bird Hunter Survey (Individuals)</b>					
Form 3-2056J .....	31,900	1	31,900	4 minutes .....	2,127
Form 3-2056K .....	16,900	1	16,900	3 minutes .....	845
Form 3-2056L .....	8,500	1	8,500	3 minutes .....	425
Form 3-2056M .....	10,200	1	10,200	2 minutes .....	340
<i>Subtotals:</i> .....	<i>67,500</i>	.....	<i>67,500</i>	.....	<i>3,737</i>
<b>Parts Collection Survey—Online (Individuals)</b>					
Form 3-165 .....	4,700	22	103,400	5 minutes .....	8,617
Form 3-165A .....	770	5.5	4,235	5 minutes .....	353
Form 3-165B .....	3,540	1	3,540	1 minute .....	59
Form 3-165C .....	260	1	260	1 minute .....	4
Form 3-165D .....	770	1	770	1 minute .....	13
Form 3-165E .....	750	1.5	1,125	5 minutes .....	94
<i>Subtotals:</i> .....	<i>10,790</i>	.....	<i>113,330</i>	.....	<i>9,140</i>
<b>Sandhill Crane Harvest Survey (Individuals)</b>					
Form 3-2056N .....	5,900	1	5,900	1.5 minutes ...	148
<b>Pilot Digital Photo Survey (Individuals)</b>					
Form 3-165 .....	60	22	1,320	2 minutes .....	44
Form 3-165A .....	60	5.5	330	2 minutes .....	11
Form 3-165B .....	60	1	60	1 minute .....	1
Form 3-165C .....	60	1	60	1 minute .....	1
Form 3-165D .....	30	1	30	1 minute .....	1
Form 3-165E .....	30	1.5	45	2 minutes .....	2
<i>Subtotals:</i> .....	<i>300</i>	.....	<i>1,845</i>	.....	<i>59</i>
<i>Totals:</i> .....	<i>84,539</i>	.....	<i>189,457</i>	.....	<i>126,861</i>

\* Rounded.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Madonna Baucum,**  
*Information Collection Clearance Officer, U.S. Fish and Wildlife Service.*

[FR Doc. 2023-11745 Filed 6-1-23; 8:45 am]

BILLING CODE 4333-15-P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

[FWS-R2-ES-2023-N043;  
 FXES11130200000-234-FF02ENEH00]

**Endangered Wildlife; Recovery Permit Applications**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of permit applications; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to

comment on the following applications for permits to conduct activities intended to recover and enhance endangered species survival. With some exceptions, the Endangered Species Act (ESA) prohibits certain activities that may impact endangered species, unless a Federal permit allows such activity. The ESA also requires that we invite public comment before issuing these permits.

**DATES:** To ensure consideration, please submit your written comments by July 3, 2023.

**ADDRESSES:**

**Document availability:** Request documents from the contact in the **FOR FURTHER INFORMATION CONTACT** section.

**Comment submission:** Submit comments by email to [fw2\\_te\\_permits@fws.gov](mailto:fw2_te_permits@fws.gov). Please specify the permit application you are interested in by number (e.g., Permit Record No. PER1234567).

**FOR FURTHER INFORMATION CONTACT:** Marty Tuegel, Supervisor, Environmental Review Division, by phone at 505–248–6651, or via email at [marty\\_tuegel@fws.gov](mailto:marty_tuegel@fws.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:**

**Background**

With some exceptions, the Endangered Species Act of 1973, as

amended (ESA; 16 U.S.C. 1531 *et seq.*), prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA’s definition of “take” includes hunting, shooting, harming, wounding, or killing, and also such activities as pursuing, harassing, trapping, capturing, or collecting.

The ESA and our implementing regulations in the Code of Federal Regulations (CFR) at title 50, part 17, provide for issuing such permits and require that we invite public comment before issuing permits for activities involving listed species.

A recovery permit we issue under the ESA, section 10(a)(1)(A), authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or enhance the species’ propagation or survival. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50

CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

**Permit Applications Available for Review and Comment**

Documents and other information submitted with these applications are available for review by any party who submits a request as specified in **ADDRESSES**. Our release of documents is subject to Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552) requirements.

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. We invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Please refer to the permit record number when submitting comments.

Permit record No.	Applicant	Species	Location	Activity	Type of take	Permit action
PER1906200 ....	Perrine, Ethan; Austin, Texas.	Bee Creek Cave harvestman ( <i>Texella reddelli</i> ), Bone Cave harvestman ( <i>Texella reyes</i> ), Cokendolpher Cave harvestman ( <i>Texella cokendolpheri</i> ), Government Canyon Bat Cave meshweaver ( <i>Cicurina vespera</i> ), Government Canyon Bat Cave spider ( <i>Tayshaneta microps</i> ), Madla Cave meshweaver ( <i>Cicurina madla</i> ), Robber Baron Cave meshweaver ( <i>Cicurina baronia</i> ), Tooth Cave pseudoscorpion ( <i>Tartarocreagris texana</i> ), Tooth Cave spider ( <i>Tayshaneta myopica</i> ), beetle ( <i>Rhadine infernalis</i> ), beetle ( <i>Rhadine exilis</i> ), Coffin Cave mold beetle ( <i>Batrisodes texanus</i> ), Comal Springs riffle beetle ( <i>Heterelmis comalensis</i> ), Helotes mold beetle ( <i>Batrisodes venyivi</i> ), Kretschmarr Cave mold beetle ( <i>Texamaurops reddelli</i> ), Tooth Cave ground beetle ( <i>Rhadine persephone</i> ), Austin blind salamander ( <i>Eurycea waterloensis</i> ), Barton Springs salamander ( <i>Eurycea sosorum</i> ), Texas blind salamander ( <i>Eurycea rathbuni</i> ), diminutive amphipod ( <i>Gammarus hyalleloides</i> ), Peck’s cave amphipod ( <i>Stygobromus pecki</i> ), Pecos amphipod ( <i>Gammarus pecos</i> ).	Texas .....	Presence/absence surveys, excavation, habitat reintroduction, voucher specimens.	Harass, harm, kill	New.
PER1906334 ....	HDR Engineering, Inc.; Austin, Texas.	Golden-cheeked warbler ( <i>Setophaga chrysoparia</i> ).	Texas .....	Presence/absence surveys, habitat assessment.	Harass, harm .....	New.
PER1906336 ....	Ammerman, Loren; San Angelo, Texas.	Mexican long-nosed bat ( <i>Leptonycteris nivalis</i> )	Texas .....	Presence/absence surveys, capture, handle, tag, bio-sample.	Harass, harm, capture.	Renew/Amend.
PER1906337 ....	Keller, David; White Rock, New Mexico.	Southwestern willow flycatcher ( <i>Empidonax traillii extimus</i> ), Jemez Mountains salamander ( <i>Plethodon neomexicanus</i> ).	New Mexico .....	Presence/absence surveys, capture, handle.	Harass, harm, capture.	Renew.
PER1906338 ....	Randklev, Charles; Dallas, Texas.	Texas hornshell ( <i>Popenaias popeii</i> ) .....	New Mexico, Texas.	Presence/absence surveys, capture, handle.	Harass, harm, capture.	Renew.
PER2325256 ....	Geluso, Keith; Kearney, Nebraska.	Mexican long-nosed bat ( <i>Leptonycteris nivalis</i> ), New Mexico meadow jumping mouse ( <i>Zapus hudsonius luteus</i> ).	Arizona, New Mexico.	Presence/absence surveys, capture, handle.	Harass, harm, capture.	Renew/Amend.

Permit record No.	Applicant	Species	Location	Activity	Type of take	Permit action
PER2182168 ....	Hathcock, Charles; Youngville, New Mexico.	Southwestern willow flycatcher ( <i>Empidonax traillii extimus</i> ), Jemez Mountains salamander ( <i>Plethodon neomexicanus</i> ).	New Mexico .....	Presence/absence surveys, capture, band, bio-sample.	Harass, harm, capture.	Renew/ Amend.
PER2325259 ....	New Mexico Department of Transportation Environmental Bureau; Santa Fe, New Mexico.	Southwestern willow flycatcher ( <i>Empidonax traillii extimus</i> ).	New Mexico .....	Presence/absence surveys.	Harass, harm .....	Renew.
PER1889346 ....	Tschirhart, Kara; San Antonio, Texas.	Golden-cheeked warbler ( <i>Setophaga chrysoparia</i> ).	Texas .....	Presence/absence surveys.	Harass, harm .....	New.
PER1902037 ....	Abeyta, Elisa; Santa Fe, New Mexico.	Southwestern willow flycatcher ( <i>Empidonax traillii extimus</i> ), Jemez Mountains salamander ( <i>Plethodon neomexicanus</i> ).	New Mexico .....	Presence/absence surveys.	Harass, harm .....	New.
PER2208304 ....	Permits West, Inc.; Santa Fe, New Mexico.	Lesser prairie chicken ( <i>Tympanuchus pallidicinctus</i> ).	Colorado, Kansas, New Mexico, Oklahoma, Texas.	Presence/absence surveys.	Harass, harm .....	Amend.
PER2325252 ....	Collins, Valerie; San Antonio, Texas.	Jaguarundi ( <i>Puma yagouaroundi cacomitti</i> ), ocelot ( <i>Leopardus (=Felis) pardalis</i> ), golden-cheeked warbler ( <i>Setophaga chrysoparia</i> ), northern aplomado falcon ( <i>Falco femoralis septentrionalis</i> ), Houston toad ( <i>Bufo houstonensis</i> ), Bee Creek Cave harvestman ( <i>Texella reddelli</i> ), Bone Cave harvestman ( <i>Texella reyesi</i> ), Cokendolpher Cave harvestman ( <i>Texella cokendolpheri</i> ), Government Canyon Bat Cave meshweaver ( <i>Cicurina vespera</i> ), Government Canyon Bat Cave spider ( <i>Tayshaneta microps</i> ), Madla Cave meshweaver ( <i>Cicurina madla</i> ), (Robber Baron Cave meshweaver ( <i>Cicurina baronia</i> ), Tooth Cave pseudoscorpion ( <i>Tartarocreagris texana</i> ), Tooth Cave spider ( <i>Tayshaneta myopica</i> ), beetle ( <i>Rhadine infernalis</i> ), beetle ( <i>Rhadine exilis</i> ), Coffin Cave mold beetle ( <i>Batrisodes texanus</i> ), Helotes mold beetle ( <i>Batrisodes venyivi</i> ), Kretschmarr Cave mold beetle ( <i>Texamaurops reddelli</i> ), Tooth Cave ground beetle ( <i>Rhadine persephone</i> ).	Texas .....	Presence/absence surveys, collect.	Harass, harm, kill	Renew.
PER2203837 ....	Olsson, Inc.; Oklahoma City, Oklahoma.	Lesser prairie chicken ( <i>Tympanuchus pallidicinctus</i> ).	Colorado, Kansas, New Mexico, Oklahoma, Texas.	Presence/absence surveys, lek surveys.	Harass, harm .....	New.
PER2325253 ....	Newgord, Gary; Austin, Texas.	Golden-cheeked warbler ( <i>Setophaga chrysoparia</i> ), northern aplomado falcon ( <i>Falco femoralis septentrionalis</i> ), red-cockaded woodpecker ( <i>Picoides borealis</i> ), Houston toad ( <i>Bufo houstonensis</i> ).	Texas .....	Presence/absence surveys, habitat assessments.	Harass, harm .....	Renew.
PER2182167 ....	Johnson, Kevin; Oklahoma City, Oklahoma.	Lesser prairie chicken ( <i>Tympanuchus pallidicinctus</i> ).	Colorado, Kansas, New Mexico, Oklahoma, Texas.	Presence/absence surveys.	Harass, harm .....	New.
PER2325254 ....	Renfrow, Jeff; Terlingua, Texas.	Texas hornshell ( <i>Popenaias popeii</i> ) .....	Texas .....	Presence/absence surveys, collect.	Harass, harm, kill	New.
PER2333296 ....	Haverland, Matthew; San Marcos, Texas.	Lesser prairie chicken ( <i>Tympanuchus pallidicinctus</i> ).	New Mexico, Texas.	Presence/absence surveys.	Harass, harm .....	Amend.
PER2482682 ....	Seiden, Christopher; Yukon, Oklahoma.	Lesser prairie chicken ( <i>Tympanuchus pallidicinctus</i> ).	Colorado, Kansas, New Mexico, Oklahoma, Texas.	Presence/absence surveys.	Harass, harm .....	New.
PER2653860 ....	Seff, Jared; Albuquerque, New Mexico.	Jemez Mountains salamander ( <i>Plethodon neomexicanus</i> ).	New Mexico .....	Presence/absence surveys.	Harass, harm .....	New.

**Public Availability of Comments**

All comments we receive become part of the public record associated with this action. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, National Environmental Policy Act, and Service and Department of the Interior policies

and procedures. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While

you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of

organizations or businesses, will be made available for public disclosure in their entirety.

#### Authority

We provide this notice under section 10 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Amy Lueders,

*Regional Director, Southwest Region, U.S. Fish and Wildlife Service.*

[FR Doc. 2023–11801 Filed 6–1–23; 8:45 am]

BILLING CODE 4333–15–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[223.LLAK941200.L1440000.ET0000; AA–95542]

#### Public Land Order No. 7922; Mendenhall Glacier Recreation Area; Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This Public Land Order (PLO) withdraws approximately 4,560 acres of National Forest System lands near Juneau, Alaska, from location and entry under the United States mining laws, and from leasing under the mineral leasing laws, for a 20-year period, subject to valid existing rights, to protect the recreational and natural resource values of the lands adjacent to the Mendenhall Glacier Recreation Area as the Mendenhall Glacier recedes.

**DATES:** This PLO takes effect on June 2, 2023.

#### FOR FURTHER INFORMATION CONTACT:

Chelsea Kreiner, BLM Alaska State Office, 222 West Seventh Avenue, Mailstop 13, Anchorage, AK 99513–7504, (907) 271–4205, or [ckreiner@blm.gov](mailto:ckreiner@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 purpose of the withdrawal established by this PLO is to maintain the natural setting and protect the recreational and natural resource values as the Mendenhall Glacier recedes and leaves additional lands unprotected adjacent to an existing withdrawal created in 1952 by PLO No. 829. The lands remain open

to other uses at the discretion of the Authorized Officer.

#### Order

By virtue of the authority vested in the Secretary of the Interior by section 204(d) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (d), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws, and from leasing under the mineral leasing laws, and reserved for protection of the recreational and natural resource values of lands in the vicinity of the Mendenhall Glacier:

#### Copper River Meridian, Alaska

##### *Tongass National Forest*

T. 39 S, Rs. 65 and 66 E, more particularly described as follows:

Beginning at Corner No. 2, U.S. Survey No. 1536, Alaska.

Thence, along the record courses of PLO 829, N 18°30' W, a distance of 160 chains; Thence, N 55°00', a distance of 100 chains, to the Point of Beginning of the Mendenhall Glacier Withdrawal; Thence, N 26°00' E, a distance of 110 chains; Thence, N 78°30' E, a distance of 260 chains; Thence, S 8°30' E, a distance of 133 chains; Thence, S 33°00' W, a distance of 90 chains; Thence, S 77°00' W, a distance of 101 ± chains, to the boundary of PLO 829; Thence, along said boundary on the following courses, N 20°00' W, a distance of 24 ± chains; Thence, N 45°00' W, a distance of 80 chains; Thence, West, a distance of 110 chains, to the Point of Beginning of the Mendenhall Glacier Withdrawal, containing 4,560 ± acres.

2. This withdrawal will expire 20 years from the effective date of this order, unless, as a result of a review conducted prior to the expiration date, pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

(Authority: 43 U.S.C. 1714.)

Shannon A. Estenoz,

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2023–11783 Filed 6–1–23; 8:45 am]

BILLING CODE 3411–15–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS–WASO–NRNHL–DTS#–35933; PPWOCRADIO, 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 20, 2023, for listing or related actions in the National Register of Historic Places.

**DATES:** Comments should be submitted electronically by June 20, 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](mailto: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 20, 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.

**DISTRICT OF COLUMBIA****District of Columbia**

Washington Navy Yard (Boundary Increase II), 200 Tingley St. SE, Washington, BC100009069

**FLORIDA****Duval County**

Eastside Historic District (African American Architects in Segregated Jacksonville, 1865–1965 MPS), Roughly bounded by East 7th St., MLK Jr. Pkwy, Arlington Expy, and Cemetery St., Jacksonville, MP100009081

**IOWA****Calhoun County**

First National Bank of Pomeroy, 101 South Main St. (originally Otsego Street), Pomeroy, SG100009076

**Pottawattamie County**

Council Bluffs Federal Building and Post Office, 8 South 6th St., Council Bluffs, SG100009075

**Winneshiek County**

Decorah Hospital, 305 Montgomery St., Decorah, SG100009067

**MARYLAND****Baltimore Independent City**

Mitchell, Congressman Parren J., House, (Civil Rights in Baltimore, Maryland, 1831–1976 MPS), 1805 Madison Ave., Baltimore, MP100009062

**MONTANA****Powell County**

Robworth Apartments, 625 Main St., Deer Lodge, SG100009074

**NEW YORK****Kings County**

Prospect Lefferts Gardens Historic District, Portions of Sterling, Maple, Midwood, and Fenimore Sts., Lefferts, Bedford, Rogers and Nostrand Aves., Lincoln and Rutland Rds., Brooklyn, SG100009073

**SOUTH DAKOTA****Minnehaha County**

Cathedral Historic District (Boundary Increase), Roughly bounded by West 9th and West 10th Sts., South Prairie, North Trapp, and South Menlo Aves., Sioux Falls, BC100009066

**TENNESSEE****Coffee County**

Fox House (Tullahoma MPS), 502 Lake Hills Rd., Tullahoma, MP100009078

**TEXAS****Dallas County**

Deep Ellum Historic District, Roughly bounded by Dallas Area Rapid Transit (DART) alignment and Elm St., South Hall St., North Central Expy., and E.R.L. Thornton Fwy. (I 30), Dallas, SG100009082

**VIRGINIA****Fairfax County**

Drover's Rest, 8526 Georgetown Pk., McLean, SG100009070

**Norfolk Independent City**

Downtown Norfolk Financial Historic District, Bounded by East Main, East Plume, Bank, and Atlantic Sts., Commercial Pl., St. Paul's Blvd., Waterside Dr. and the Elizabeth R., Norfolk, SG100009071

**Westmoreland County**

Montross Historic District, Bounded by VA 3/ Kings Hwy., Alma and Ames Lns., Court Sq., Polk St., and Rectory Rd., Montross, SG100009072

**WISCONSIN****Grant County**

Trinity Episcopal Church, 250 Market St., Platteville, SG100009063

**Marinette County**

Anaem Omot, Address Restricted, Wausaukee vicinity, SG100009086

A request for removal has been made for the following resources:

**PENNSYLVANIA****Philadelphia County**

Elk's Lodge BPOE No. 2, 306–320 North Broad St., Philadelphia, OT84003535

**TENNESSEE****Grainger County**

Lea Springs, 11 mi. southwest of Rutledge off U.S. 11, west on Lea Lake Rd., Rutledge vicinity, OT75001754

**Monroe County**

Johnson, Elisha, Mansion, Ballplay Rd., Tellico Plains, OT74001923

*Authority:* Section 60.13 of 36 CFR part 60.

Dated: May 24, 2023.

**Sherry A. Frear,**

*Chief, National Register of Historic Places/ National Historic Landmarks Program.*

[FR Doc. 2023–11799 Filed 6–1–23; 8:45 am]

**BILLING CODE 4312–52–P**

**INTERNATIONAL TRADE COMMISSION****Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Semiconductor Devices, and Methods of Manufacturing Same*

*and Products Containing the Same, DN 3681*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov).

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Efficient Power Conversion Corporation on May 26, 2023. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor devices, and methods of manufacturing same and products containing the same. The complainant names as respondents: Innoscience (Zhuhai) Technology Company, Ltd. of China; Innoscience, Inc. of Santa Clara, CA; and Innoscience America, Inc. of Santa Clara, CA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public



health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number ("Docket No. 3681") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing

Procedures<sup>1</sup>). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,<sup>2</sup> solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.<sup>3</sup>

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: May 30, 2023.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2023-11774 Filed 6-1-23; 8:45 am]

**BILLING CODE 7020-02-P**

<sup>1</sup> Handbook for Electronic Filing Procedures: [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf).

<sup>2</sup> All contract personnel will sign appropriate nondisclosure agreements.

<sup>3</sup> Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. DEA-1208]

#### Importer 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 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 July 3, 2023. Such persons may also file a written request for a hearing on the application on or before July 3, 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 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA **Federal Register** Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.34(a), this is notice that on April 19, 2023, Veranova, L.P., 2003 Nolte Drive, West Deptford, New Jersey 08066-1727, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Coca Leaves .....	9040	II
Thebaine .....	9333	II
Opium, raw .....	9600	II
Noroxymorphone .....	9668	II
Poppy Straw Concentrate.	9670	II
Fentanyl .....	9801	II

The company plans to import Coca Leaves (9040), Opium, raw (9600), and Poppy Straw Concentrate (9670) in order to bulk manufacture Active Pharmaceutical Ingredients (API) for distribution to its customers. The company plans to also import Thebaine (9333), Noroxymorphone (9668), and Fentanyl (9801) to use as analytical reference standards, both internally and to be sold to their customers to support testing of Veranova, L.P. APIs 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. 2023-11740 Filed 6-1-23; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF JUSTICE**

[OMB Number 1110-0046]

**Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection; Friction Ridge Cards: Arrest and Institution FD-249; Applicant FD-258; Identity History Summary Request FD-1164; FBI Standard Palm Print FD-884; Supplemental Finger and Palm Print FD-884a; Voluntary Appeal File Fingerprint FD-1212; Firearm-Related Challenge Fingerprint FD-1211**

**AGENCY:** Federal Bureau of Investigation, Criminal Justice Information Services Division, Department of Justice.

**ACTION:** 30-Day notice.

**SUMMARY:** Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in

accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register**, Volume 88 pages 16664-16665, on March 20, 2023, allowing a 60-day comment period.

**DATES:** The DOJ encourages public comment and will accept input until July 3, 2023.

**FOR FURTHER INFORMATION CONTACT:** If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Larry E. Cotton-Zinn, Management and Program Analyst, FBI, CJIS, Criminal History Information and Policy Unit, BTC-3, 1000 Custer Hollow Road, Clarksburg, WV 26306; phone: 304-625-5590 or email [fbi-iii@fbi.gov](mailto:fbi-iii@fbi.gov).

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and/or
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website [www.reginfo.gov/public/do/PRAMain](http://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 and entering either the title of the information collection or the OMB Control Number 1110-0046. This information collection request may be

viewed at [www.reginfo.gov](http://www.reginfo.gov). Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ 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 DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

**Overview of This Information Collection**

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *Title of the Form/Collection:* Friction Ridge Cards: Arrest and Institution; Applicant; Identity History Summary Request; FBI Standard Palm Print; Supplemental Finger and Palm Print; Voluntary Appeal File Fingerprint; Firearm-Related Challenge Fingerprint.

3. *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Agency form number: Forms FD-249 (Arrest and Institution), FD-258 (Applicant), and FD-1164 (Identity History Summary Request); FD-884 (FBI Standard Palm Print); FD-884a (Supplemental Finger and Palm Print); FD-1212 (Voluntary Appeal File Fingerprint); FD-1211 (Firearm-Related Challenge Fingerprint) encompassed under OMB 1110-0046; CJIS Division, FBI, DOJ.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, state, federal and tribal law enforcement agencies; civil entities requesting security clearance and background checks. This collection is needed to collect information on individuals requesting background checks, security clearance, or those individuals who have been arrested for or accused of criminal activities. Acceptable data is stored as part of the Next Generation Identification System (NGI) of the FBI.

5. *Obligation to Respond:* Required to obtain or retain a benefit.

6. *Total Estimated Number of Respondents:* 460,762.

7. *Total Estimated Number of Responses:* 69,200,000.

8. *Estimated Time per Respondent:* 10 minutes.

9. *Frequency:* On occasion.

10. *Total Estimated Annual Time Burden:* 11,500,000 hours.

11. *Total Estimated Annual Other Costs Burden:* \$0.

If additional information is required contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Suite 3E.405B, Washington, DC 20530.

Dated: May 25, 2023.

**John R. Carlson,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2023-11712 Filed 6-1-23; 8:45 am]

**BILLING CODE 4410-02-P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Prohibited Transaction Exemption 2023-14; Exemption Application No. D-12089]

#### Exemption From Certain Prohibited Transaction Restrictions Involving UBS AG (UBS) and Credit Suisse Asset Management, LLC (CSAM), Located in Zurich, Switzerland

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of exemption.

**SUMMARY:** The Labor Department previously issued several temporary individual prohibited transaction exemptions (PTEs) that allow certain Qualified Professional Asset Managers (QPAMs) related to UBS and Credit Suisse Group AG (CSAG) (the UBS QPAMs, CS Affiliated QPAMs, and the CS Related QPAMs, as further defined below) to continue to rely on the exemptive relief provided by Prohibited Transaction Class Exemption (PTE) 84-14, notwithstanding five judgments of convictions involving entities within the UBS and CSAG corporate umbrellas, as described below (the Convictions). The most recent individual exemptions are PTE 2020-01 (for UBS) and PTE 2022-01 (for CSAG). Those individual exemptions will no longer be available following the upcoming merger between CSAG and UBS (the Merger), solely as a result of the Merger. This exemption allows the UBS QPAMs, CS Affiliated QPAMs, and the CS Related QPAMs to continue to rely on PTE 84-14 as of the closing date of the Merger, if certain conditions are met. This individual exemption is necessary to preserve the ability of the QPAMs to engage in the transactions permitted by PTE 84-14, which would be lost solely due to the impending merger of UBS and Credit Suisse (and not because of a new conviction for either UBS or Credit

Suisse or their affiliates, or due to any other disqualifying reason). This exemption will be effective for one year beginning on the closing date of the Merger. The limited duration of this exemption reflects the lack of information UBS and Credit Suisse Asset Management, LLC (CSAM) submitted to the Department regarding the effects the Merger will have on Covered Plans with assets managed by the UBS QPAMs and CS Affiliated and Related QPAMs.

**DATES:** The exemption will be in effect for a period of one year beginning on the closing date of the Merger.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Brennan of the Department at (202) 693-8456. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On May 12, 2023, the Department published a notice of proposed exemption in the *Federal Register*<sup>1</sup> permitting the UBS QPAMs, CS Affiliated QPAMs, and the CS Related QPAMs to continue to rely on the exemptive relief provided by Prohibited Transaction Class Exemption (PTE) 84-14. The Department is granting this exemption to ensure that the participants and beneficiaries of ERISA-covered Plans and IRAs managed by the UBS QPAMs, CS Affiliated QPAMs, and the CS Related QPAMs (together, Covered Plans) are protected. This exemption provides only the relief specified in the text of the exemption and does not provide relief from violations of any law other than the prohibited transaction provisions of Title I of ERISA and the Code expressly stated herein.

The Department intends for the terms of this exemption to promote adherence by the UBS QPAMs, CS Affiliated QPAMs, and the CS Related QPAMs to basic fiduciary standards under Title I of ERISA and the Code. Most importantly, the Department's primary objective in granting this time-limited exemption is to ensure that Covered Plans can terminate their relationships with one of these QPAMs in an orderly and cost-effective fashion in the event the fiduciary of a Covered Plan determines that it is prudent to do so.

Based on UBS and CSAM's (the Applicants') adherence to all the conditions of the exemption, the Department makes the requisite findings under ERISA Section 408(a) that the exemption is: (1) administratively feasible, (2) in the interest of Covered Plans and their participants and beneficiaries, and (3) protective of the rights of the participants and

beneficiaries of Covered Plans. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, individually and taken as a whole, necessary for the Department to grant the relief requested by the Applicants. Absent these or similar conditions, the Department would not have granted this exemption. Further, non-compliance with any of these conditions will result in loss of the availability of this exemption.

### Background

1. Credit Suisse Group AG (CSG) is currently a publicly traded corporation headquartered in Zurich, Switzerland that owns a 100% interest in Credit Suisse AG (CSAG). Currently, two Credit Suisse asset management affiliates, Credit Suisse Asset Management, LLC (CSAM LLC) and Credit Suisse Asset Management Limited (CSAM Ltd.) (together, the CS Affiliated QPAMs) manage the assets of Covered Plans on a discretionary basis. CSAG also owns a five percent or more interest in certain other entities that may provide investment management services to plans but that are not affiliates of CSAG (the CS Related QPAMs).

2. UBS AG (UBS) is a Swiss-based global financial services company organized under the laws of Switzerland. UBS Asset Management (Americas) Inc., UBS Realty Investors LLC, UBS Hedge Fund Solutions LLC, and UBS O'Connor LLC are currently the four UBS affiliates that rely on PTE 84-14 (the UBS QPAMs).

#### PTE 84-14

3. PTE 84-14 reflects the Department's conclusion that it could provide broad relief from the prohibited transaction provisions of ERISA Section 406(a) and Code Section 4975(c)(1) only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent discretionary manager that meets the exemption's conditions, known as a QPAM.

4. Section I(g) of PTE 84-14 prevents an entity that may otherwise meet the definition of a QPAM from utilizing the exemptive relief provided by PTE 84-14 for itself and its client plans, if that entity or an "affiliate" thereof<sup>2</sup> or any

<sup>2</sup> Section VI(d) of PTE 84-14 defines the term "affiliate" for purposes of Section I(g) as "(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person. (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust or

direct or indirect owner of a 5 percent or more interest in the QPAM has within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of criminal activity described in that section.

5. The inclusion of Section I(g) in PTE 84–14 is, in part, based on an expectation that QPAMs will maintain a high standard of integrity. This expectation extends not only to the QPAM itself, but also to those who may be in a position to influence the QPAM's policies.

6. Since 2014, various entities within the corporate umbrellas of UBS and CSAG have been collectively convicted of five disqualifying crimes described in Section I(g) of PTE 84–14 (the Convictions). To protect Covered Plans from the costs and harms that could arise if the UBS QPAMs and the CS Affiliated and CS Related QPAMs suddenly lost their ability to engage in potentially beneficial transactions under PTE 84–14 due to these Convictions, the Department issued a number of temporary individual exemptions.<sup>3</sup>

7. On April 17, 2023, UBS and CSAM (and their affiliated QPAMs) submitted an application with the Department requesting modifications to their existing exemptions. In their request, UBS and CSAM stated that, following the Merger, “it is important that the combined bank be able to continue the asset management businesses that the two banks currently maintain independently, including their subsidiaries’ QPAM services.” UBS and CSAM requested “separate somewhat harmonized, exemptions because at this time it is not clear when, and how, the Credit Suisse QPAMs will be restructured within the UBS structure after closing.” Essentially, in the application, UBS and CSAM sought the Department’s approval to allow the affected QPAMs to continue relying on

unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and (4) Any employee or officer of the person who—(A) Is a highly compensated employee (as defined in Section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.”

<sup>3</sup>In connection with the Credit Suisse-related convictions, the Department issued the following exemptions: PTE 2022–01 (87 FR 1186 (Jan. 10, 2022)); PTE 2019–07 (84 FR 61928 (Nov. 14, 2019)); PTE 2015–14 (80 FR 59817 (Oct. 2, 2015)); PTE 2014–11 (79 FR 68716 (Nov. 18, 2014)). In connection with the UBS-related convictions, the Department issued: PTE 2020–01 (85 FR 8020 (Feb. 12, 2020)); PTE 2019–01 (84 FR 6163 (Feb. 26, 2019)); PTE 2017–07 (82 FR 61903 (Dec. 29, 2017)); PTE 2016–17 (81 FR 94049 (Dec. 22, 2016)); PTE 2013–09 (78 FR 56740 (Sep. 13, 2013)).

the terms and conditions of their existing exemptions.

#### *Harm to Covered Plans in the Absence of QPAM Relief*<sup>4</sup>

8. CSAM represents that if the CS Affiliated and Related QPAMs lose the ability to rely upon PTE 84–14, the Covered Plan clients of those QPAMs would suffer the time and expense of finding replacement asset managers where they otherwise might not choose to do so. Further, transactions currently dependent on the QPAM Exemption would be in default, and counterparties may provide less advantageous pricing, or not bid at all, because the plan’s investment manager is not a QPAM. CSAM submits that Covered Plans that choose to remain with CSAM following CSAM’s loss of QPAM relief would have a circumscribed set of transactions available to them, or their transactions could be more expensive because of the preference that counterparties have for transacting business with QPAMs.

9. In its request for modifications to its existing exemption, UBS states that the requested modifications will help ensure that the QPAMs continue to operate without disruption to their plan clients, which in turn is necessary for UBS and CSAM to successfully complete the Merger.

#### **Written Comments**

In the proposed exemption, the Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption by May 18, 2023. The Department received one written comment from the Applicants and no requests for a public hearing.

#### *I. Comments From the Applicants*

##### **Comment 1: Modify the Existing UBS AG and CSAM Exemptions**

In their comment letter, the Applicants state that the modifications to the separate existing exemptions for UBS and Credit Suisse that the banks requested in their application are sufficiently protective of affected

<sup>4</sup>CSAM submitted these representations to the Department on March 16, 2023, in connection with an exemption application submitted by CSAM (the CSAM Application), for the CS Affiliated and Related QPAMs to continue to rely upon PTE 84–14 beyond the one-year term of their current individual exemption (PTE 2022–01), which expires on the earlier of July 21, 2023, or the closing date of the Merger. The CSAM Application was submitted to the Department before the Merger was announced. The Department closed the CSAM Application upon receipt of the CSAM and UBS modification request discussed herein. The CSAM Application and supporting documents are available to the public through EBSA’s Public Disclosure Office, by referencing D–12089.

Covered Plans and are carefully tailored to the circumstances presented. They assert that:

- A new, unified exemption with the additional terms proposed by the Department is not necessary;
- Modifying the existing exemptions would better account for the time needed to integrate two large financial institutions, and the imposition of new and expanded conditions—some of which are vaguely worded—immediately upon the Merger is unnecessarily punitive and burdensome; and
- The past misconduct of certain Credit Suisse affiliates does not mean additional conditions are required for the UBS QPAMs (and vice versa).

*Department’s Response:* The Department declines to make the Applicants’ requested change to the proposal. The consolidated exemption proposed by the Department contains important conditions that were not included in the previous exemptions that separately cover UBS and Credit Suisse QPAMs. Importantly, this exemption requires cross-institutional accountability. In this regard, no individuals who participated in or profited from the criminal misconduct underlying any of the five Convictions will be employed by any QPAM in the post-merger consolidated entity. This exemption also adds the Merger Report requirement. These added protections are essential to protect Covered Plans considering the uncertainties surrounding the Merger due to the lack of information the Applicants submitted to the Department regarding the Merger.

#### **Comment 2: Extend the Exemption Period To Align With UBS’s Current Exemption**

The Applicants state that the Department should not shorten the UBS exemption period but rather extend the exemption period for CSAM and its current and future asset management affiliates (which expires on July 21, 2023) to align it with the expiration of UBS’s current exemption in February 2025. Alternatively, if the Department is unwilling to extend the exemption period for CSAM to more than a year after the Merger closing dates, at a minimum the Department should leave in place the current duration of UBS’s existing exemption. The Applicants’ rationale is that:

- UBS did not seek out a merger with Credit Suisse; UBS was asked to buy Credit Suisse by the Swiss government to avoid a global financial crisis that would result if Credit Suisse failed;
- Shortening the exemption period does not provide any additional

protection to plan clients, participants, and beneficiaries. If anything, the Department's proposed reduction in UBS's exemption period and certain other statements in the Department's proposal unjustifiably and unnecessarily inject uncertainty regarding the longer-term viability of an important business line to UBS, which undermines the purpose of UBS's rescue of Credit Suisse;

- Most of the "underlying conduct" at issue was committed a number of years ago by non-QPAM entities, and it involved personnel who no longer are at UBS or Credit Suisse. Further, one of the convictions in issue will fall outside the QPAM disqualification period during the one-year exemption period the Department has proposed, and another a few months later; and

- The primary regulators of UBS and Credit Suisse have determined that the merger is in the interest of banking customers and clients and of the financial services industry.

*Department's Response:* The Department declines to extend the term of this exemption. As stated above, to date, the Department has received very limited information from the Applicants regarding the Merger. Further, the proposed exemption had only a six-day comment period. If UBS believes that additional exemptive relief is warranted, it should submit an additional application, which would allow the Department to develop a more complete administrative record, including through a longer comment period.

#### Comment 3: Merger Report

The Applicants state that UBS should not be required to submit a Merger Report to the Department every 120 days; nor should UBS be required to provide that report to Covered Plan fiduciaries. The Applicants state that the addition of multiple reports is burdensome, unrelated to the protection of plans, and would unnecessarily distract UBS from the operation of its own business lines and the task of evaluating and integrating Credit Suisse's businesses. In particular, the Applicants ask the Department to remove the requirement that, in the Merger Report, UBS provide "detailed information regarding the costs to ERISA-covered Plans and IRAs . . . that would arise if this one-year exemption is not renewed." The Applicants view this information as the most burdensome part of an application to prepare and state that requiring it several times within one year is unnecessarily burdensome. They maintain that these additional periodic

reports also risk confusing and distracting plan clients. UBS already would be required to send two notices to plan clients under the Department's proposal.<sup>5</sup>

Alternatively, if the Department retains the requirement for this new report, the Applicants request that they should be required to provide the Merger Report only once, halfway through the exemption period. For example, if the exemption period remains one year, the Applicants would send the report within 180 days after the exemption's effective date.

*Department's Response:* The Department declines to make the Applicants' requested changes, in part. First, the Department declines to remove the Merger Report requirement. The Department views the Merger Report as an essential component of this exemption due to the fact that the Applicants submitted almost no detail regarding the specifics of how Credit Suisse will be integrated into UBS post-merger. Thus, the Merger Report is an important supplement to the record and will inform the Department regarding post-merger integration developments that potentially impact Covered Plans.

However, the Department agrees that the first Merger Report required under this exemption should be due within six months after the exemption's effective date. A second Merger Report will be due 12 months after the exemption's effective date. While the Department agrees that the Merger Report does not need to include "detailed information regarding the costs to ERISA-covered Plans and IRAs that would arise if this one-year exemption is not renewed," this information must be included in any future request by UBS to extend this exemption and will be part of the record attributable to that exemption request. The Department also notes that the Board of Governors of the Federal Reserve will require UBS Group AG to submit an Implementation Plan within three months of the closing of the Merger. The Department believes that there will be at least some content overlap between the Implementation Report and the Merger Report and that some of the information prepared for inclusion in the Implementation Report can be also used in the Merger Report.

#### Comment 4: Best Knowledge

The Applicants request the removal of the proposed new definition of "best

<sup>5</sup> UBS is required to send two notices to Covered Plans: (1) a notice of its obligations under Section III(k)(7); and (2) a copy of the exemption along with a summary under Section III(l). The Merger Report would represent the third notice that UBS is required to send to Covered Plans.

knowledge," "to the best of one's knowledge," "best knowledge at that time," in Section I(i) of the proposed exemption. The Applicants state that such terms are defined to include matters that are known to the applicable individual or should be known to such individual upon the exercise of such individual's due diligence required under the circumstances, and, with respect to an entity other than a natural person, such term includes matters that are known to the directors and officers of the entity or should be known to such individuals upon the exercise of such individuals' due diligence required under the circumstances.

The Applicants state that Credit Suisse's current exemption does not define the term "best knowledge" while UBS's current exemption does not even have a "best knowledge" requirement. The Applicant submits that the new definition converts an actual knowledge standard into a "seeming negligence" standard, introducing unnecessary uncertainty into the standards for compliance with the exemption.

*Department's Response:* The Department declines to make the requested change.<sup>6</sup> The Department notes that the current exemptions relied on by UBS and Credit Suisse-related QPAMs fail to describe the "best knowledge" standard. The inclusion of language defining "best knowledge" adds clarity and consistency and removes the uncertainty surrounding what knowledge is expected from the entity or an individual.

#### Comment 5: Material Changes

The Applicants request the Department to delete footnote 2 from the proposed exemption, which states that the exemption would "cease to apply" "if there is any material change in a transaction covered by the exemption, or in a material fact or representation that is part of the record attributable to D-12089.<sup>7</sup> The Applicants maintain that the plain language of the reference in the footnote to "a transaction covered by the exemption" would suggest that a change in a transaction that relies on PTE 84-14 would render PTE 84-14 unavailable. The Applicants presume that this is not the Department's intended meaning, since a loan relying on a QPAM exemption, for example,

<sup>6</sup> Contrary to UBS's assertion, both the previous UBS and Credit Suisse exemptions contain the "best knowledge" requirement in certain conditions. In its comment on [the proposed version of] PTE 2017-07, UBS requested the addition of "best knowledge" language in certain conditions of that exemption.

<sup>7</sup> See 88 FR at 30786.

may be revised at any time in the best interest of plans.

*Department's Response:* The Department is revising footnote 2, so that that the referenced language refers to a material change in the Merger or to the record attributable to D-12089, and not to a transaction that relies on PTE 84-14.

Comment 6: Finalize and Publish the Exemption by May 24, 2023

The Applicants request that exemptive relief be in place by May 24, 2023 to ensure that there is time for other required disclosures in advance of the anticipated May 31, 2023 closing.

*Department's Response:* The Department was unable to publish this final exemption by May 24, 2023, due to the short amount of time between the Merger's announcement and planned closing date and the Applicants' submission of their application on April 17, 2023.

Comment 7: Audit Periods Pre-Dating the Merger

The Applicants request clarification that audit reports for time periods preceding the Merger are governed by the UBS and Credit Suisse exemptions currently in effect prior to the Merger.

*Department's Response:* The Department confirms that audit reports for time periods before the Merger closing date (and the effective date of this exemption) are governed by the UBS and Credit Suisse exemptions that were in effect during those time periods (and that precede the effective date of this exemption).

Comment 8: Audit Report Review

The Applicants request a revision to Section III(j)(8) of the proposed exemption, which would require the audit report for each UBS QPAM to be (1) provided to the Risk Committee of UBS Group AG, not the Risk Committee of UBS AG, and (2) reviewed and certified by a senior executive officer of UBS Group AG. The Applicants state that it would be more protective and consistent with UBS's current practice for the audit report to be provided to the Risk Committee of UBS Group AG, which is the parent of UBS AG.

*Department's Response:* The Department agrees with the Applicants' requested revision and has modified Section III(j)(8) accordingly.

Comment 9: Audit Report Review

Sections III(i) and III(j) of the proposed exemption imposes separate audit report requirements for the CS Affiliated QPAMs and the UBS Affiliated QPAMs, respectively. This

means that the CS QPAMs and UBS QPAMs need to continue to undergo separate audits during the term of this exemption. Further, proposed subsections III(i)(8) and III(j)(8) require (a) CSAG's Board of Directors and a Credit Suisse officer to review and certify the CS Affiliated QPAM audits, and (b) UBS's Board and a UBS officer review and to certify the UBS Affiliated QPAM audits.

The Applicants submit that aligning the recipients of the audit reports would simplify compliance and request that both the CS Affiliated QPAM audits and the UBS Affiliated QPAM audits be submitted to and certified by UBS's Board and a UBS officer.

*Department's Response:* The Department agrees with the Applicants and has revised Section III(i)(8) accordingly to align with Section III(j)(8).

Comment 10: Recipients of Notice

Section III(l) of the proposed exemption requires the Affiliated QPAMs to provide notice of the proposed and final exemption as published in the **Federal Register**, along with a summary describing the facts that led to the Convictions and a prominently displayed statement that the Convictions result in a failure to meet a condition in PTE 84-14 to "each sponsor and beneficial owner of a Covered Plan," and "the sponsor of an investment fund in any case where an Affiliated QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests."

The Applicants request that the Department revise Section III(l) so that the Affiliated QPAMs do not have to send these notices to ERISA-covered Plans and IRAs for whom UBS neither relies on the QPAM exemption nor has represented to clients that it is relying on the QPAM exemption. The Applicants submit that requiring notice to be provided to "the sponsor of an investment fund in any case where an Affiliated QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests" could be interpreted as requiring the Affiliated QPAMs to provide notice to all ERISA-covered plans and IRAs, rather than only to plans for which UBS relies on the QPAM exemption or has represented that it is relying on the QPAM exemption.

*Department's Response:* The Department disagrees with the Applicants' concerns with the notice requirement. However, the Department has revised proposed condition (III)(l) to expressly require UBS to only to send the required notices to Covered Plans

and not to accounts for which UBS neither relies on the QPAM exemption nor has represented that it is relying on the QPAM exemption.

Comment 11: Exemption Report Recipients

The Applicants request the Department to revise proposed Section III(n)(2)(iv) to clarify that the Exemption Report required by the exemption only must be provided to officers of either CSAG or UBS AG, but not both.

*Department's Response:* The Department declines to make the Applicants' requested change. Cross-institutional accountability is an important aspect of this exemption given the uncertainty surrounding the Merger. Section III(n)(2)(iv) requires the Exemption Report to be provided to the appropriate officers of CSAM or UBS AG, and the Department believes this is a minimal burden that adds protection for Covered Plans.

Comment 12: Imposing Internal Procedures

Section (o) of the proposed exemption states: "UBS Group AG imposes its internal procedures, controls, and protocols on each Misconduct Entity to reduce the likelihood of any recurrence of conduct that is the subject of the Convictions." The Applicants request the Department to revise Section III(o) to refer to UBS Group AG instead of UBS AG because the Credit Suisse QPAMs might not report to UBS AG after the Merger.

*Department's Response:* The Department agrees with the Applicants' requested change and has modified Section III(o) accordingly.

Comment 13: Deferred Prosecution Agreements (DPAs) or Non-Prosecution Agreements (NPAs)

The Applicants request that the Department revise Section III(r) to clarify that UBS only needs to disclose a DPA or NPA that is entered into during the exemption period, to avoid any suggestion that UBS must redisclose pre-existing DPAs or NPAs.

*Department's Response:* The Department agrees with the Applicants' requested revision and confirms that UBS does not need to redisclose pre-existing DPAs or NPAs, provided that such pre-existing DPAs or NPAs were previously disclosed to the Department. However, the Department notes that all such pre-existing DPAs and NPAs must be included as part of any request by UBS to extend this exemption.

#### Comment 14: Alternative Non-QPAM-Based Exemption

The Applicants state that the Department should not proceed with an alternative, non-QPAM-based individual exemption. The Department invited comments on whether to “develop[ ] an individual exemption on its own motion that would protect affected Covered Plans by permitting some, but not all, of the transactions covered by PTE 84–14.” The Department stated that, if it “took that approach, the UBS/CSAG affiliated entities would no longer rely on or reference PTE 84–14 for relief, but rather would rely on the new individual exemption for any relief, which would not be based on their status as QPAMs status under PTE 84–14.” The Applicants oppose such an alternative. They maintain that the current QPAMs have existing contracts that expressly rely on the QPAM exemption or represent that the asset manager is a QPAM, and state that those contracts do not account for an alternative such as the Department describes. Moreover, the Applicants assert that the QPAM exemption is widely accepted and understood by sophisticated clients; it cannot suddenly be replaced, and withdrawing its availability from a particular asset manager would put that firm at a competitive disadvantage. Applicants claim that this is directly contrary to the purposes of financial strength and stability that regulators intended to be achieved by UBS-Credit Suisse merger. Applicants state that if the Department is interested in creating an alternative to the QPAM exemption, it should make the alternative available to all asset managers concurrently with the QPAM exemption, so that the alternative can gain broad market adoption and any such alternative would need to be clearly delineated and published for notice and comment.

*Department’s Response:* The Department appreciates the Applicants’ response to the request for information on the idea of a non-QPAM-linked exemption and will take the response into account in any future considerations on this issue. Any decision to develop a non-QPAM-linked individual exemption will be subject to a full notice and comment period.

#### Comment 15: Miscellaneous Other Requested Revisions From the Applicants

Applicants also requested several other miscellaneous revisions to the proposed exemptions, as follows:

A. Remove references to Credit Suisse Asset Management Limited because it is

no longer acting as a QPAM. Specifically, strike Section I(a)(3), and remove references to Credit Suisse Asset Management Limited from Sections I(a)(4) and I(b)(1).

B. Revise Section I(c)(2) which read, “(2) the judgment of conviction against CSSEL in Case Number 1:21–cr–00520–WFK (the ‘CSSEL Conviction’);” to more fully describe the conviction as: “(2) the judgment of conviction against CSSEL for one count of conspiracy to commit wire fraud (18 U.S.C. 1349) that was entered in the District Court for the Eastern District of New York on July 22, 2022, in Case Number 1:21–cr–00520–WFK (the ‘CSSEL Conviction’).”

C. Revise Section I(c)(5) to include the italicized regarding the appellate court decision upholding the conviction: “the judgment of conviction on February 20, 2019, against UBS and UBS France in case Number 1105592033 in the French First Instance Court *and a decision upholding the February 20, 2019 judgment of the French First Instance Court* (the ‘2019 French Conviction’).”

D. Correct the presiding judge’s initials in the case number in Sections I(c)(4), I(f), and III(a)(i) to: “3:15–cr–00076–SRU.”

E. In Section I(e), correctly identify UBS and Credit Suisse entities that are engaging in the upcoming merger transaction, as follows: “The term ‘Exemption Period’ means the one-year period that begins on the closing date of the acquisition of CSG by UBS Group AG (hereinafter, the Merger).”

F. In Section I(h), revise “CS” to “CSAG.”

*Department’s Response:* The Department accepts the Applicants’ requested revisions and has made the corresponding changes.

#### Publicly Available Information

The complete application file (D–12089) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. For a more complete statement of the facts and representations supporting the Department’s decision to grant this exemption, please refer to the notice of proposed exemption published on May 12, 2023, at 88 FR 30785.

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA Section 408(a) does not relieve a fiduciary or other party in interest from certain requirements of other ERISA

provisions, including but not limited to any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA Section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the plan’s participants and beneficiaries and in a prudent fashion in accordance with ERISA Section 404(a)(1)(B).

(2) As required by ERISA Section 408(a), the Department hereby finds that the exemption is: (a) administratively feasible; (b) in the interests of Covered Plans and their participants and beneficiaries; and (c) protective of the rights of the Covered Plan’s participants and beneficiaries.

(3) This exemption is supplemental to, and not in derogation of, any other ERISA provisions, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive for determining whether the transaction is in fact a prohibited transaction.

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transactions that are the subject of the exemption and are true at all times.

Accordingly, after considering the entire record developed in connection with the Applicants’ exemption application, the Department has determined to grant the following exemption under the authority of ERISA Section 408(a) in accordance with the Department’s exemption procedures set forth in 29 CFR part 2570, subpart B:<sup>8</sup>

#### Exemption

##### Section I. Definitions

(a) Names of Certain Corporate Entities:

(1) The term “CSG” means Credit Suisse Group AG, a publicly traded corporation organized under the laws of Switzerland.

(2) The term “CSAG” means Credit Suisse AG and is 100% owned by CSG.

(3) The term “CSSAM LLC” or CSAM means Credit Suisse Asset Management, LLC which is a Credit Suisse asset management affiliate.

(4) The term “CSSEL” means Credit Suisse Securities (Europe) Limited and is headquartered in London, United Kingdom and indirectly a wholly owned subsidiary of CSG.

<sup>8</sup> 76 FR 66637, 66644 (October 27, 2011).



(5) The term “UBS” means UBS AG, a publicly traded corporation organized under the laws of Switzerland.

(6) The term “UBS Americas” means UBS Asset Management (Americas) Inc. and is one of the four UBS affiliates and is wholly owned by UBS Americas, Inc., a wholly owned subsidiary of UBS AG.

(7) The term “UBS France” means UBS (France) S.A. and is a wholly owned subsidiary of UBS incorporated under the laws of France.

(8) The term “UBS Hedge Fund Solutions LLC” was formerly known as UBS Alternative and Quantitative Investments, LLC is one of four UBS affiliates and is wholly owned by UBS Americas Holding LLC, a wholly owned subsidiary of UBS AG.

(9) The term “UBS O’Connor LLC” is one of four UBS affiliates and is wholly owned by UBS Americas Holding LLC, a wholly owned subsidiary of UBS AG.

(10) The term “UBS Realty Investors LLC” is one of the four UBS affiliates and is wholly owned by UBS Americas, Inc., a wholly owned subsidiary of UBS AG.

(11) The term “UBS Securities Japan” means UBS Securities Japan Co. Ltd, a wholly owned subsidiary of UBS incorporated under the laws of Japan.

(b) The term “Affiliated QPAM” means (1) the “CS Affiliated QPAM,” which is Credit Suisse Asset Management, LLC (“CSAM LLC”); and (2) the “UBS QPAMs,” which are UBS Asset Management (Americas) Inc., UBS Realty Investors LLC, UBS Hedge Fund Solutions LLC, UBS O’Connor LLC, and any future entity within the Asset Management or the Global Wealth Management Americas U.S. divisions of UBS that qualifies as a “qualified professional asset manager” (as defined in Section VI(a) of PTE 84–14) and that relies on the relief provided by PTE 84–14, and with respect to which UBS is an “affiliate” (as defined in Part VI(d) of PTE 84–14). The term Affiliated QPAM excludes a Misconduct Entity.

(c) The term “Convictions” means (1) the judgment of conviction against CSAG for one count of conspiracy to violate section 7206(2) of the Internal Revenue Code in violation of Title 18, United States Code, Section 371, that was entered in the District Court for the Eastern District of Virginia in Case Number 1:14-cr-188-RBS, on November 21, 2014 (the “CSAG Conviction”); (2) the judgment of conviction against CSSEL for one count of conspiracy to commit wire fraud (18 U.S.C. 1349) that was entered in the District Court for the Eastern District of New York on July 22, 2022, in Case Number 1:21-cr-00520-WFK (the “CSSEL Conviction”); (3) the judgment

of conviction against UBS Securities Japan Co. Ltd. in case number 3:12-cr-00268-RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, sections 1343 and 2 in connection with submission of YEN London Interbank Offered Rates and other benchmark interest rates; (4) the judgment of conviction against UBS in case number 3:15-cr-00076-SRU in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, Sections 1343 and 2 in connection with UBS’s submission of Yen London Interbank Offered Rates and other benchmark interest rates between 2001 and 2010; and (5) the judgment of conviction on February 20, 2019, against UBS and UBS France in case Number 1105592033 in the French First Instance Court and a decision upholding the February 20, 2019 judgment of the French First Instance Court (the 2019 French Conviction).

(d) The term “Covered Plan” means a plan subject to Part IV of Title I of ERISA (an “ERISA-covered plan”) or a plan subject to Code section 4975 (an “IRA”), in each case, with respect to which an Affiliated QPAM relies on PTE 84–14, or with respect to which an Affiliated QPAM (or any CSAG or UBS affiliate) has expressly represented that the manager qualifies as a QPAM or relies on PTE 84–14. A Covered Plan does not include an ERISA-covered plan or IRA to the extent the Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA. Notwithstanding the above, an Affiliated QPAM may disclaim reliance on QPAM status or PTE 84–14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where the modification is made in a bilateral document signed by the client; the client’s attention is specifically directed toward the disclaimer; and the client is advised in writing that, with respect to any transaction involving the client’s assets, the Affiliated QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84–14.

(e) The term “Exemption Period” means the one-year period that begins on the closing date of the acquisition of CSG by UBS Group AG (hereinafter, the Merger).

(f) The term “FX Misconduct” means the conduct engaged in by UBS personnel described in Exhibit 1 of the Plea Agreement (Factual Basis for Breach) entered into between UBS and

the Department of Justice Criminal Division, on May 20, 2015, in connection with Case Number 3:15-cr-00076-SRU filed in the US District Court for the District of Connecticut.

(g) The term “Misconduct Entity” means an entity subject to one of the Convictions described above, *i.e.*, UBS, UBS Securities Japan, UBS France, CSAG and CSSEL.

(h) The term “Related QPAM” means any current or future “qualified professional asset manager” (as defined in Section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14, and with respect to which CSAG or UBS owns a direct or indirect five (5) percent or more interest, but with respect to which a Misconduct Entity is not an “affiliate” (as defined in section VI(d)(1) of PTE 84–14). The term “Related QPAM” excludes a Misconduct Entity.

(i) The term “best knowledge,” “to the best of one’s knowledge,” “best knowledge at that time,” and other similar “best knowledge” terms shall include matters that are known to the applicable individual or should be known to such individual upon the exercise of such individual’s due diligence required under the circumstances, and, with respect to an entity other than a natural person, such term includes matters that are known to the directors and officers of the entity or should be known to such individuals upon the exercise of such individuals’ due diligence required under the circumstances.

### Section II. Covered Transactions

Under this exemption, the Affiliated QPAMs and the Related QPAMs would not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14)<sup>9</sup> during the Exemption Period, notwithstanding the “Convictions,” provided that the definitions in Section I and the conditions in Section III are satisfied.

### Section III. Conditions

(a) The Affiliated QPAMs and the Related QPAMs (including their officers, directors, agents other than the Misconduct Entities, employees of such QPAMs, and employees of Misconduct Entities that do work for Affiliated or Related QPAMs described in subparagraph (d) below) did not know or did not have reason to know of and did not participate in the conduct underlying the Convictions and the FX

<sup>9</sup> 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (Oct. 10, 1985), as amended at 70 FR 49305 (Aug. 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).



Misconduct. Further, any other party engaged on behalf of the Affiliated QPAMs and the Related QPAMs who had responsibility for, or exercised authority in connection with, the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct underlying the Convictions described in Section I(c)(1) and (2) and the 2019 French Conviction.

For all purposes of this exemption, the “conduct” of any person or entity that is the “subject of the Convictions” encompasses any misconduct of CSAG, CSSEL, UBS, UBS France, UBS Securities Japan, and/or their personnel: (i) that is described in Exhibit 3 to the Plea Agreement entered into between UBS and the Department of Justice Criminal Division, on May 20, 2015, in connection with case number 3:15-cr-00076-SRU; (ii) that is described in Exhibits 3 and 4 to the Plea Agreement entered into between UBS Securities Japan and the Department of Justice Criminal Division, on December 19, 2012, in connection with case number 3:12-cr-00268-RNC; (iii) that is the basis of the 2019 French Conviction; and (iv) that is the subject of the CSAG and CSSEL convictions described in Section I(c)(1) and (c)(2); and for purposes of the exemption as well as the avoidance of doubt, the term “participate in” (as included paragraph (c) below), refers not only to active participation in the criminal conduct but includes an individual or entity’s knowledge or approval of the criminal conduct, without taking active steps to prohibit such conduct, such as reporting the conduct to the individual’s supervisors, and to the Board of Directors.

(b) The Affiliated QPAMs and the Related QPAMs (including their officers, directors, agents other than the Misconduct Entities, employees of such QPAMs, and CSAG employees described in subparagraph (d)(3) below) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of that is the subject of the Convictions and the UBS FX Misconduct. Further, any other party engaged on behalf of the Affiliated QPAMs and the Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of that is the subject of the Convictions;

(c) The Affiliated QPAMs do not currently and will not in the future

employ or knowingly engage any of the individuals who participated in the criminal conduct underlying the Convictions;

(d) At all times during the Exemption Period, no Affiliated QPAM will use its authority or influence to direct an “investment fund” (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA or the Code and managed by such Affiliated QPAM with respect to one or more Covered Plans, to enter into any transaction with a Misconduct Entity or to engage a Misconduct Entity to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption. An Affiliated QPAM will not fail this condition solely because:

(1) A CSAG (or successor) affiliate serves as a local sub-custodian that is selected by an unaffiliated global custodian that, in turn, is selected by someone other than an Affiliated QPAM or Related QPAM;

(2) CSAG (or a successor) provides only necessary, non-investment related, non-fiduciary services that support the operations of an Affiliated QPAM, at an Affiliated QPAM’s own expense, and the Covered Plan is not required to pay any additional fee beyond its agreed-to asset management fee. This exception does not permit CSAG or its branches (or a successor) to provide any service to an investment fund managed by an Affiliated QPAM or Related QPAM; or

(3) CSAG (or successor) employees are double-hatted, seconded, supervised, or subject to the control of an Affiliated QPAM;

(e) Any failure of an Affiliated QPAM to satisfy Section I(g) of PTE 84-14 arose solely from the Convictions;

(f) An Affiliated QPAM or a Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an “ERISA-covered plan”) or Code section 4975 (an “IRA”) in a manner that it knew or should have known would further the criminal conduct underlying the Convictions; or cause the Affiliated QPAM or Related QPAM or its affiliates to directly or indirectly profit from the criminal conduct underlying the Convictions;

(g) No Misconduct Entity will act as a fiduciary within the meaning of ERISA section 3(21)(A)(i) or (iii) or Code section 4975(e)(3)(A) and (C) with respect to ERISA-covered Plan and IRA assets, except that each may act as such a fiduciary (1) with respect to employee benefit plans sponsored for its own

employees or employees of an affiliate; or (2) in connection with securities lending services of the New York Branch of CSAG. No Misconduct Entity will be treated as violating the conditions of the exemption solely because it acted as an investment advice fiduciary within the meaning of ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B);

(h)(1) Each Affiliated QPAM must maintain, adjust (to the extent necessary), implement, and follow the written policies and procedures described below (Policies).<sup>10</sup> The Policies must require and be reasonably designed to ensure that:

(i) The asset management decisions of the QPAM are conducted independently of the corporate and management and business activities of each Misconduct Entity, and without considering any fee a related local sub-custodian may receive from those decisions. This condition does not preclude an Affiliated QPAM, as defined in Section I(b)(1), from receiving publicly available research and other widely available information from a CSAM affiliate, other than CSSEL, or from a UBS affiliate;

(ii) The QPAM fully complies with ERISA’s fiduciary duties, and with ERISA and the Code’s prohibited transaction provisions, in each case as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The QPAM does not knowingly participate in any other person’s violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the QPAM to regulators, including but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete, to the best of such QPAM’s knowledge at that time;

(v) To the best of its knowledge at that time, the QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans, or make material misrepresentations or omit material information in its communications with Covered Plans; and

(vi) The QPAM complies with the terms of this one-year exemption, and

<sup>10</sup>This exemption does not preclude the UBS QPAMs and CS Affiliated QPAM from maintaining separate Policies provided that the Policies comply with this exemption.

CSAG complies with the terms of Section III(d)(2);

(2) Any violation of, or failure to comply with an item in subparagraphs (h)(1)(i) through (vi), is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing. This report must be made to the head of compliance and the general counsel (or their functional equivalent) of the relevant QPAM that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, if it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (2);

(3) Each Affiliated QPAM must maintain, adjust (to the extent necessary), and implement or continue a program of training during the Exemption Period (the Training) that is conducted at least annually for all relevant Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel.<sup>11</sup> The Training must:

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and the requirement for prompt reporting of wrongdoing; and

(ii) Be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code to perform the tasks required by this exemption; and

(iii) Be conducted in-person, electronically, or via a website;

(i)(1) Each CS Affiliated QPAM (as defined in Section I(b)(1)) submits to an audit by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to

evaluate the adequacy of, and each CS Affiliated QPAM's compliance with, the Policies and Training described above in Section III(h). The audit requirement must be incorporated in the Policies. The audit must cover the Exemption Period and must be completed no later than 180 days after the Exemption Period. The prior exemption audits required pursuant to PTE 2019-07 and PTE 2022-01 must be completed in accordance with the audit requirements of these prior exemptions for the prior period of November 21, 2021, through the beginning date of the Exemption Period of this one-year exemption within 180 days of the beginning of the Exemption Period of this one-year exemption. These prior exemption audits and coinciding audit reports can be combined into one audit and report for the prior exemption audits. The prior exemption audit report(s) must be submitted in accordance with section III(i)(9) below;

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney client privilege, each CS Affiliated QPAM and, if applicable, CSAM, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each CS Affiliated QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this one-year exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each CS Affiliated QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test, for each CS Affiliated QPAM, a sample of such: (1) CS Affiliated QPAM's transactions involving Covered Plans; (2) each CS Affiliated QPAM's transactions involving CSAM affiliates that serve as a local sub-custodian. The samples must be sufficient in size and nature to afford the auditor a reasonable basis to determine such CS Affiliated QPAM's operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period described in Section III(i)(1) for completing the audits, the auditor must issue a written report (the Audit Report) to CSAM and the CS Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor in connection with its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the CS Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each CS Affiliated QPAM's Policies and Training; each CS Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective CS Affiliated QPAM's noncompliance with the written Policies and Training described in Section III(h) above. The CS Affiliated QPAM must promptly address any noncompliance. The CS Affiliated QPAM must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective CS Affiliated QPAM. Any action taken or the plan of action to be taken by the respective CS Affiliated QPAM must be included in an addendum to the Audit Report (such addendum must be completed before to the certification described in Section III(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that a CS Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a CS Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular CS Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Annual Exemption Report created by the Compliance Officer, as described in Section III(o) below, as the basis for the auditor's conclusions in lieu of

<sup>11</sup> This exemption does not preclude an Affiliated QPAM from maintaining separate training programs provided each training program complies with this exemption.

independent determinations and testing performed by the auditor as required by Section III(i)(3) and (4) above; and

(ii) The adequacy of the Exemption Review described in Section III(n);

(6) The auditor must notify the respective CS Affiliated QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to the Audit Report, the general counsel, or one of the three most senior executive officers of the CS Affiliated QPAM or successor to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that, to the best of such officer's knowledge at the time, the CS Affiliated QPAM has addressed, corrected, and remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. This certification must also include the signatory's determination that, to the best of the officer's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption, and with the applicable provisions of ERISA and the Code. Notwithstanding the above, no person, including any person referenced in the CSAG or CSSEL Statement of Facts that gave rise to the CSAG or CSSEL Plea Agreement, who knew of, or should have known of, or participated in, any misconduct described in the CSAG or CSSEL Statement of Facts, by any party, may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct.

(8) The Risk Committee of UBS Group AG's Board of Directors is provided a copy of the Audit Report and a senior executive officer of UBS Group AG's Compliance and Operational Risk Control function must review the Audit Report for each CS Affiliated QPAM and must certify in writing, under penalty of perjury, that such person has reviewed each Audit Report. The Audit Report under this section III(i) must comply with the delivery and certification requirements in section III(j)(8) below;

(9) Each CS Affiliated QPAM provides its certified Audit Report to the Department by regular mail addressed to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Washington, DC 20001, or via email to *e-OED@dol.gov*. The delivery must take

place no later than 45 days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this one-year exemption. Furthermore, each CS Affiliated QPAM must make its Audit Reports unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Any engagement agreement with an auditor to perform the audit required by this exemption must be submitted to OED no later than two (2) months after the execution of such agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and used in connection with the audit, provided such access, inspection, and review is otherwise permitted by law; and

(12) CSAM and/or the CS Affiliated QPAM must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes involving the terminated auditor and CSAM and/or the CS Affiliated QPAMs;

(j)(1) Each UBS QPAM (as defined in Section I(b)(2)) submits to an audit conducted by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each UBS QPAM's compliance with, the Policies and Training described above in Section (h). The audit requirement must be incorporated in the Policies. The audit must cover the Exemption Period and it must be completed no later than 180 days after the end of the Exemption Period. The prior exemption audits required pursuant to PTE 2020–01 must be completed in accordance with the audit requirement of PTE 2020–01 for the prior periods of: (1) March 20, 2022 through March 19, 2023; and (2) March 20, 2023 through the beginning date of the Exemption Period for this one-year exemption, and each audit must be provided within 180 days of the beginning of the Exemption Period. The prior exemption audits and coinciding audit reports can be combined into one audit and report for the prior exemption audits. The prior exemption audit report(s) must be submitted in accordance with section III(j)(9) below;

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney-client privilege, each UBS QPAM and, if applicable, UBS, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each UBS QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this one-year exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each UBS QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test, for each UBS QPAM, a sample of such UBS QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine such UBS QPAM's operational compliance with the Policies and Training;

(5) For the audit, on or before the end of the relevant period described in Section I(k)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to UBS and the UBS QPAM to which the audit applies that describes the procedures performed by the auditor in connection with its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the UBS QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each UBS QPAM's Policies and Training; each UBS QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective UBS QPAM's noncompliance with the written Policies and Training described in Section III(h) above. The UBS QPAM must promptly address any noncompliance. The UBS QPAM must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's

recommendations (if any) with respect to strengthening the Policies and Training of the respective UBS QPAM. Any action taken or the plan of action to be taken by the respective UBS QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section III(j)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that a UBS QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a UBS QPAM has complied with the requirements under this subparagraph must be based on evidence that each UBS QPAM has implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Exemption Report created by the Compliance Officer, as described in Section I(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section III(j)(3) and (4) above; and

(ii) The adequacy of the Exemption Review described in Section III(n);

(6) The auditor must notify the respective UBS QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to the Audit Report, the General Counsel, or one of the three most senior executive officers of the UBS QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that, to the best of such officer's knowledge at the time, such UBS QPAM has addressed, corrected, and remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination that, to the best of such officer's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to

ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(8) The Risk Committee of UBS Group AG's Board of Directors is provided a copy of the Audit Report; and a senior executive officer of UBS Group AG's Compliance and Operational Risk Control function must review the Audit Report for each UBS QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report;

(9) Each UBS QPAM provides its certified Audit Report, by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Washington, DC 20001; or via email to *e-OED@dol.gov*. This delivery must take place no later than 45 days following completion of the Audit Report. The Audit Reports will be made part of the public record regarding this one-year exemption. Furthermore, each UBS QPAM must make its Audit Reports unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Any engagement agreement with an auditor to perform the audit required by this exemption that is entered into subsequent to the effective date of this exemption must be submitted to OED no later than two months after the execution of such agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and used in connection with the audit, provided such access and inspection is otherwise permitted by law; and

(12) UBS must notify the Department of a change in the independent auditor no later than two months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and UBS;

(k) As of the effective date of this one-year exemption, with respect to any arrangement, agreement, or contract between an Affiliated QPAM and a Covered Plan, the QPAM agrees and warrants to Covered Plans:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any prohibited transactions); and to comply with the standards of prudence and loyalty set forth in ERISA

Section 404 with respect to each such ERISA-covered plan and IRA to the extent that ERISA Section 404 is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from the QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14, other than a Conviction covered under this exemption. This condition applies only to actual losses caused by the QPAM's violations. The term Actual Losses includes, but is not limited to, losses and related costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code section 4975 as a result of a QPAM's inability to rely upon the relief in the QPAM Exemption;

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the QPAM for violating ERISA or the Code for engaging in prohibited transactions;

(4) Not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with the QPAM, with respect to any investment in a separately-managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangement involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and be effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally-

recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in a like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the QPAM for a violation of such agreement's terms. To the extent consistent with ERISA Section 410, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of UBS (and affiliates) or CSAM (and affiliates), or damages arising from acts outside the control of the Affiliated QPAM; and

(7) Within 120 days after the effective date of this one-year exemption, each QPAM must provide a notice of its obligations under this Section III(k) to each Covered Plan. For prospective Covered Plans that enter into a written asset or investment management agreement with a QPAM on or after a date that is 120 days after the effective date of this exemption, the QPAM must agree to its obligations under this Section III(k) in an updated investment management agreement between the QPAM and such clients or other written contractual agreement. Notwithstanding the above, a QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement. For new Covered Plans that were provided an investment management agreement prior to the effective date of this exemption, returning it within 120 days after the effective date of this exemption, and that signed investment management agreement requires amendment to meet the terms of the exemption, the QPAM may provide the new Covered Plan with amendments that need not be signed with any documents required by this subsection (k) within ten (10) business days after receipt of the signed agreement.

(l) Within 60 days after the effective date of this one-year exemption, each Affiliated QPAM provides notice of the proposed and final exemption as published in the **Federal Register**, along with a summary describing the facts that led to the Convictions (the Summary), which has been submitted to the Department, and a prominently displayed statement (the Statement) that the Convictions result in a failure to meet a condition in PTE 84–14, to each

sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management agreement with an Affiliated QPAM, or the sponsor of an investment fund in any case where an Affiliated QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. All prospective Covered Plan clients that enter into a written asset or investment management agreement with an Affiliated QPAM after a date that is 60 days after the effective date of this exemption must receive a copy of the notice of the exemption, the Summary, and the Statement before, or contemporaneously with, the Covered Plan's receipt of a written asset or investment management agreement from the CS Affiliated QPAM or the UBS Affiliated QPAM. The notices may be delivered electronically (including by an email that has a link to the one-year exemption). An Affiliated QPAM does not need to send the required notices to plans for which an Affiliated QPAM neither relies on QPAM nor has represented that it is relying on QPAM.

(m) The Affiliated QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Convictions. If, during the Exemption Period, an entity within the CSAM or UBS corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Convictions), relief in this exemption would terminate immediately;

(n)(1) Within 60 days after the effective date of this exemption, each QPAM must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. For purposes of this condition (n), each relevant line of business within a CS Affiliated QPAM or UBS Affiliated QPAM may designate its own Compliance Officer(s). Notwithstanding the above, the appointed Compliance Officer may not be a person who: (i) participated in the criminal conduct underlying the Convictions, or knew of, or (ii) had reason to know of, the criminal conduct without taking active documented steps to stop the misconduct;

The Compliance Officer must conduct a review of each twelve-month period of the Exemption Period (the Exemption Review), to determine the adequacy and effectiveness of the implementation of

the Policies and Training.<sup>12</sup> With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of compliance for the applicable Affiliated QPAM.

(2) With respect to the Exemption Review, the following conditions must be met:

(i) The Annual Exemption Review includes a review of the Affiliated QPAM's compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the time period; the most recent Audit Report issued pursuant to this exemption or PTE 2020–01 or PTE 2022–01; any material change in the relevant business activities of the Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the Affiliated QPAMs;

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that (A) summarizes their material activities during the prior year; (B) sets forth any instance of noncompliance discovered during the prior year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or

<sup>12</sup> Pursuant to PTE 2020–01 and PTE 2022–01 the Compliance Officer must conduct an exemption review (annual review) for each period corresponding to the audit periods set forth in those exemptions and the Compliance officer's written report submitted to the Department within three (3) months of the end of the period to which it relates. Accordingly, the final exemption review pursuant to PTE 2020–01 must cover the period March 19, 2022 through the beginning date of the Exemption Period of this one-year exemption and must be completed within three (3) months from the end of the period to which it relates. Also, the final exemption review pursuant to PTE 2022–01 must cover the period November 21, 2022 through the beginning date of the Exemption Period of this one-year exemption and must be completed within three (3) months from the end of the period to which it relates.

changed processes or systems, and management's actions on such recommendations;

(iii) In the Exemption Report, the Compliance Officer must certify in writing that to the best of his or her knowledge at the time: (A) the report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the prior year and any related correction taken to date have been identified in the Exemption Report; and (D) the Affiliated QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section III(h) above;

(iv) The Exemption Report must be provided to appropriate corporate officers of CSAM and UBS and to each Affiliated QPAM to which such report relates, and to the head of compliance and the general counsel (or their functional equivalent) of CSAM, UBS, the relevant Affiliated QPAM. The Exemption Report must be made unconditionally available to the independent auditor described in Section III(i) above;

(v) The Exemption Review, including the Compliance Officer's written Annual Exemption Report, must cover the Exemption Period, and The Annual Review, including the Compliance Officer's written Report, must be completed within three (3) months following the end of the period to which it relates;

(o) UBS Group AG imposes its internal procedures, controls, and protocols on each Misconduct Entity to reduce the likelihood of any recurrence of conduct that is the subject of the Convictions;

(p) Relief in this exemption will terminate on the date that is six months following the date that a U.S. regulatory authority makes a final decision that UBS or CSAM or an affiliate of either failed to comply in all material respects with any requirement imposed by such regulatory authority in connection with the Convictions;

(q) Each Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which the Affiliated QPAM relies upon the relief in this exemption;

(r) During the Exemption Period, UBS must: (1) immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution

Agreement (an NPA) with the U.S. Department of Justice, entered into by UBS or CSAM or any of their affiliates (as defined in Section VI(d) of PTE 84-14) during the Exemption Period in connection with conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA; and (2) immediately provide the Department with any information requested by the Department during the Exemption period, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement. UBS does not need to redisclose pre-existing DPAs or NPAs, provided that such pre-existing DPAs or NPAs were previously disclosed to the Department. However, the Department notes that all such pre-existing DPAs and NPAs must be included as part of any request by UBS to extend this exemption;

(s) Within 60 days after the effective date of this exemption, each Affiliated QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description of the Policies (Summary Policies) that accurately summarizes key components of the QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed.<sup>13</sup> With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan;

(t) An Affiliated QPAM will not fail to meet the terms of this one-year exemption solely because a different Affiliated QPAM fails to satisfy a condition for relief described in Section III(c), (d), (h), (i), (j), (k), (l), (m), (s) or (u); or if the independent auditor described in Section III(i) or (j) fails to comply with a provision of the exemption other than the requirement described in Section III(i)(11) and (j)(11), provided that such failure did not result from any actions or inactions of CSAM or UBS or its affiliates;

(u) All the material facts and representations set forth in the

<sup>13</sup> If the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate.

Summary of Facts and Representations are true and accurate; and

(v) Every six months following the merger of UBS and CSAG, UBS must submit a written report to the Department that updates the progress of the Merger. This report must also be provided to Covered Plan fiduciaries (including via an electronic link). Additionally, in its first report to the Department, UBS must: (1) identify the QPAMs using this exemption as the date of the Report; (2) provide details regarding the extent to which the CS Affiliated QPAMs have been integrated into UBS's operations and any other relevant changes with respect to any QPAMs that are using this exemption; and (3) any other changes, whether operational or otherwise, that impact any requirements under this exemption;

*Applicability Date:* The exemption will be in effect for a period of one year beginning on the closing date of the Merger.

Signed at Washington, DC, this 31st day of May 2023.

**George Christopher Cosby,**  
*Director, Office of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

[FR Doc. 2023-11864 Filed 6-1-23; 8:45 am]

**BILLING CODE 4510-29-P**

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Document Number NASA-22-060; Docket Number-NASA-2022-0002]

### National Environmental Policy Act; Mars Sample Return Campaign; Correction

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice; correction.

**SUMMARY:** NASA published a document in the **Federal Register** of May 25, 2023 concerning the availability of the Mars Sample Return (MSR) Campaign Final Programmatic Environmental Impact Statement (PEIS). The document was published one week early, which created incorrect information in the **DATES** caption.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steve Slaten, NASA Jet Propulsion Laboratory, by electronic mail at [Mars-sample-return-nepa@lists.nasa.gov](mailto: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:**

**Correction**

In the **Federal Register** of May 25, 2023, in FR Doc 2023–11703, on page 33919, in the second column, correct the **DATES** caption to read:

**DATES:** NASA will document its decision regarding alternative implementation in a Record of Decision (ROD), which would be signed no sooner than July 2, 2023, after the 30-day mandatory Final PEIS waiting period is complete as required by 40 CFR 1506.11(b)(2).

**Cheryl Parker,**

*Federal Register Liaison Officer.*

[FR Doc. 2023–11750 Filed 6–1–23; 8:45 am]

**BILLING CODE P**

**NATIONAL SCIENCE FOUNDATION****Sunshine Act Meetings**

The National Science Board's (NSB) Committee on Science and Engineering Policy (SEP) hereby gives notice of the scheduling of a videoconference for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

**TIME AND DATE:** Friday, June 9, 2023, from 3:00 p.m.–3:30 p.m. EDT.

**PLACE:** The meeting will be held by videoconference through the National Science Foundation.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Chair's opening remarks; Detailed Narrative Outline for *Indicators* report: *Knowledge- and Technology-Intensive Industries*.

**CONTACT PERSON FOR MORE INFORMATION:** Point of contact for this meeting is Chris Blair, [cblair@nsf.gov](mailto:cblair@nsf.gov), 703/292–7000. Members of the public can observe this meeting through a YouTube livestream. The YouTube link will be available from the NSB meetings web page—<https://www.nsf.gov/nsb/meetings/index.jsp>.

**Christopher Blair,**

*Executive Assistant to the National Science Board Office.*

[FR Doc. 2023–11887 Filed 5–31–23; 4:15 pm]

**BILLING CODE 7555–01–P**

**NUCLEAR REGULATORY COMMISSION**

[NRC–2023–0001]

**Sunshine Act Meetings**

**TIME AND DATE:** Weeks of June 5, 12, 19, 26, July 3, 10, 2023. The schedule for

Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: <https://www.nrc.gov/public-involve/public-meetings/schedule.html>.

**PLACE:** The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at [Anne.Silk@nrc.gov](mailto:Anne.Silk@nrc.gov). Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

**STATUS:** Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at [Wendy.Moore@nrc.gov](mailto:Wendy.Moore@nrc.gov) or [Tyesha.Bush@nrc.gov](mailto:Tyesha.Bush@nrc.gov).

**MATTERS TO BE CONSIDERED:**

**Week of June 5, 2023**

*Friday, June 9, 2023*

10:00 a.m. Meeting with Advisory Committee on Reactor Safeguards (Public Meeting); (Contact: Larry Burkhart: 301–287–3775)

*Additional Information:* The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—<https://video.nrc.gov/>.

**Week of June 12, 2023—Tentative**

*Tuesday, June 13, 2023*

10:00 a.m. Briefing on Human Capital and Equal Employment Opportunity (Public Meeting); (Contact: Angie Randall: 301–415–6806)

*Additional Information:* The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—<https://video.nrc.gov/>.

**Week of June 19, 2023—Tentative**

*Tuesday, June 20, 2023*

9:00 a.m. Briefing on Results of the Agency Action Review Meeting (Public Meeting); (Contact: Nicole Fields: 630–829–9570)

*Additional Information:* The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—<https://video.nrc.gov/>.

**Week of June 26, 2023—Tentative**

There are no meetings scheduled for the week of June 26, 2023.

**Week of July 3, 2023—Tentative**

There are no meetings scheduled for the week of July 3, 2023.

**Week of July 10, 2023—Tentative**

There are no meetings scheduled for the week of July 10, 2023.

**CONTACT PERSON FOR MORE INFORMATION:**

For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at [Wesley.Held@nrc.gov](mailto:Wesley.Held@nrc.gov).

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: May 31, 2023.

For the Nuclear Regulatory Commission.

**Wesley W. Held,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2023–11927 Filed 5–31–23; 4:15 pm]

**BILLING CODE 7590–01–P**

**OFFICE OF SCIENCE AND TECHNOLOGY POLICY****Notice of Upcoming Request for Information; National Plan for Civil Earth Observations**

**AGENCY:** Office of Science and Technology Policy (OSTP).

**ACTION:** Notice of upcoming request for information.

**SUMMARY:** The White House Office of Science and Technology Policy (OSTP) notifies the Earth Observations community that a draft of the congressionally-mandated National Plan for Civil Earth Observations (hereinafter "National Plan") will be released for a short national review period via a subsequent **Federal Register** notice in Summer 2023. This notice serves to prepare the community for the upcoming request for information.

**FOR FURTHER INFORMATION CONTACT:** Ezinne Uzo-Okoro; tel: 202–456–4010.



**SUPPLEMENTARY INFORMATION:** The third National Plan is being developed by the U.S. Group on Earth Observations, a team of interagency experts. It will explore opportunities for the entire U.S. Earth Observation Enterprise—a wide variety of stakeholders, including Federal departments and agencies, national laboratories, academia, non-profits, the private sector, think tanks, and state/local/Tribal governments—to better leverage Earth Observations to address key societal challenges and trends of the coming decade.

More coordinated and effective uses of Earth Observations will improve the United States' capability to understand, monitor, and forecast changes to the Earth system, which will enhance the Earth Observation Enterprise ability to achieve key objectives (e.g., greenhouse gas emissions reductions). Beyond examining key thematic areas for which Earth Observations can be better leveraged to achieve desired future states, the third National Plan will also provide recommendations for near- and mid-term actions needed to enable the achievement of those objectives, along with discussion of technical and non-technical cross-cutting issues that transcend thematic areas.

The first National Plan for Civil Earth Observations was released in 2014 as a supplement to the 2014 Presidential Budget Request. It was written in response to a need identified by the 2013 National Strategy for Civil Earth Observations, and by section 702 of the NASA Authorization Act of 2010 (Pub. L. 111–267). The first National Plan's objective was to enable better coordination of Earth Observation data collection, management, use, and associated investment across Federal departments and agencies. The 2013 National Strategy recommended that the National Plan be updated every three years to guide policy and budget decision-making using the latest information. The second National Plan (summary, full) was released in 2019 and extended the vision for collaboration and coordination beyond the Federal Government to include the larger Earth Observation Enterprise.

Dated: May 30, 2023.

**Stacy Murphy,**

*Deputy Chief Operations Officer/Security Officer.*

[FR Doc. 2023–11796 Filed 6–1–23; 8:45 am]

**BILLING CODE 3270-F1-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34–97605; File No. SR–ISE–2023–10]

**Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation of Certain Trading Functionality**

May 26, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on May 17, 2023, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to delay the implementation of certain trading functionality rule changes.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

In connection with a technology migration to an enhanced Nasdaq, Inc. (“Nasdaq”) functionality, the Exchange

filed various rule changes to adopt certain trading functionality currently utilized at Nasdaq affiliate exchanges. At this time, the Exchange proposes to delay the implementation of the various rule changes. Each impacted rule change and the new implementation date is described below.

**Impacted Rule Filings**

The Exchange filed the following rule changes in connection with its technology migration:

- SR–ISE–2022–11 which impacts routing;<sup>3</sup>
- SR–ISE–2022–25 which amended ATR and Repricing Rules;<sup>4</sup>
- SR–ISE–2022–28 which amended Complex Order Rules;<sup>5</sup> and
- SR–ISE–2023–06 a rule change amending multiple functionalities.<sup>6</sup>

The aforementioned rule changes (collectively “Impacted Rule Changes”) indicated that the technology migration for ISE would commence by Q4 2023 or prior to December 2023.

**New Implementation**

At this time, the Exchange proposes to delay the implementation of the Impacted Rule Changes, which all relate to ISE's upcoming technology migration, to a date prior to December 20, 2024. The Exchange will announce the initial migration date and symbol rollout schedule to Members in an Options Trader Alert.

The Exchange proposes to delay the migration to allow the Nasdaq GEMX, LLC (“GEMX”) migration<sup>7</sup> to complete

<sup>3</sup> See Securities Exchange Act Release No. 94897 (May 12, 2022), 87 FR 30294 (May 18, 2022) (SR–ISE–2022–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Routing Functionality in Connection With a Technology Migration).

<sup>4</sup> See Securities Exchange Act Release No. 96362 (November 18, 2022), 87 FR 72539 (November 25, 2022) (SR–ISE–2022–25) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ATR and Re-Pricing Rules in Connection With a Technology Migration to Enhanced Nasdaq Functionality).

<sup>5</sup> See Securities Exchange Act Release No. 96518 (December 16, 2022), 87 FR 78740 (December 22, 2022) (SR–ISE–2022–28) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain ISE Complex Order Functionalities in Connection With a Technology Migration).

<sup>6</sup> See Securities Exchange Act Release No. 96818 (February 6, 2023), 88 FR 8950 (February 10, 2023) (SR–ISE–2023–06) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules in Connection With a Technology Migration to Enhanced Nasdaq, Inc. (“Nasdaq”) Functionality).

<sup>7</sup> GEMX's migration will commence on November 6, 2023. See <http://www.nasdaqtrader.com/MicroNews.aspx?id=OTA2023-4>. See also Securities Exchange Act Release No. 97126 (March 13, 2023), 88 FR 16485 (March 17, 2023) (SR–GEMX–2023–04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation of Certain Trading Functionality).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.



and thereafter allow the Exchange and its Members additional time to prepare and test the new ISE functionality.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest for the reasons discussed below. The Exchange proposes to delay the implementation of the Impacted Rule Changes, which all relate to ISE's upcoming technology migration, to allow the GEMX migration to complete<sup>10</sup> and thereafter allow the Exchange and its Members additional time to prepare and test the new functionality. The Exchange believes that the delay is consistent with the Act because the additional time will allow the Exchange to ensure a successful ISE migration while protecting investors and the public interest by allowing the Exchange and Members more time to prepare and test.

The Exchange notes that the substance of the impacted rules is not changing, only the implementation timeline is changing with this proposal.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal to delay the implementation of the Impacted Rule Changes does not impose an undue burden on competition. The proposed delay will allow the GEMX migration to complete<sup>11</sup> and thereafter allow the Exchange and its Members additional time to prepare and test the new functionality.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public

interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)(iii) of the Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2023-10 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2023-10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-ISE-2023-10 and should be submitted on or before June 23, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 2023-11715 Filed 6-1-23; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97602; File No. SR-OCC-2023-003]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Partial Amendment No. 1 to Proposed Rule Change by The Options Clearing Corporation Concerning Clearing Member Cybersecurity Obligations

May 26, 2023.

On March 21, 2023, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2023-003 pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder to amend certain provisions in OCC's Rules relating to Clearing Member cybersecurity obligations to address the occurrence of a cyber-related disruption or intrusion of a Clearing Member ("Security Incident"). The proposed rule change was published for public comment in the

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See note 7.

<sup>11</sup> See note 7.

**Federal Register** on April 5, 2023.<sup>3</sup> The Commission has received comments regarding the proposal described in the proposed rule change.<sup>4</sup> On May 24, 2023, OCC filed Partial Amendment No. 1 to the proposed rule change. Pursuant to Section 19(b)(1) of the Act<sup>5</sup> and Rule 19b-4 thereunder,<sup>6</sup> the Commission is publishing notice of this Partial Amendment No. 1 to the proposed rule change as described in Item I below, which has been prepared primarily by OCC. The Commission is publishing this notice to solicit comment on Partial Amendment No. 1 from interested persons.

### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change Partial Amendment No. 1

The Options Clearing Corporation ("OCC") hereby submits this partial amendment, constituting Amendment No. 1 [sic], to its proposed rule change SR-OCC-2023-003 (the "Initial Filing"), in which OCC proposed new sections (d) and (e) to existing Rule 219, which Rule subsequently was renumbered to Rule 213. The Proposal requires Clearing Members to notify OCC about the occurrence of a "Security Incident", and in the event of a disconnection from OCC, obligates the Clearing Member to provide an attestation to OCC before reconnecting. OCC intends to amend Proposed Rules 213(d) and 213(e) to clarify the definition of the term "Security Incident", the threshold conditions for disconnection of a Clearing Member, and the process for a Clearing Member's reconnection.

As originally proposed in the Initial Filing, Proposed Rules 213(d) and 213(e) are as follows:

(d) *Occurrence of a Security Incident.* A Clearing Member must notify the Corporation immediately, and shall promptly confirm such notice in writing, if there has been an incident, or an incident is occurring, involving a cyber-related disruption or intrusion of the Clearing Member, including, but not limited to, any disruption or degradation of the normal operation of the Clearing Member's systems or any unauthorized entry into the Clearing Member's systems ("Security Incident"). Upon such notice, or if the Corporation has a reasonable basis to believe that a Security Incident has occurred, or is occurring, the Corporation may take actions reasonably necessary to mitigate any effects to its

operations, including the right to disconnect access, or to modify the scope and specifications of access, of the Clearing Member to the Corporation's information and data systems.

(e) *Procedures for Connecting Following a Security Incident.* After a Clearing Member reports a Security Incident, upon the request of the Corporation, the Clearing Member must complete and submit a form that describes the Security Incident and includes required representations as determined by the Corporation ("Reconnection Attestation") and an associated checklist that describes remediation efforts and provides required information as determined by the Corporation ("Reconnection Checklist"), both as provided by the Corporation from time to time.

OCC is submitting this partial amendment in response to comments received on the scope of the proposed definition of "Security Incident" and potential conflicts with other existing and proposed Securities and Exchange Commission ("SEC") rules.

Accordingly, OCC has determined to clarify what constitutes a Security Incident for purposes of new Rule 213(d). Such clarification would specify that only occurrences that have an impact on OCC's system(s) and/or operations are considered a Security Incident. In addition, OCC proposes to clarify that a Clearing Member must notify OCC if the Clearing Member becomes aware or should be aware that such incident has occurred or is occurring.

OCC also is submitting this partial amendment in response to comments about (i) the requirement that Clearing Members provide immediate notice of a Security Incident to OCC, (ii) the standards OCC would apply when determining whether to disconnect a Clearing Member from OCC, and (iii) the process for reconnection following a Security Incident that results in disconnection.

As a systemically important financial market utility, and the sole clearing agency providing clearing services for listed options in the U.S., it is vital that OCC's clearing systems remain functional and unaffected by Security Incidents. Any risk or threat to OCC's system(s) or operations could have a severe impact on the listed options markets. Therefore, time is of the essence with respect to any notification by a Clearing Member of the occurrence of a Security Incident. OCC intends to provide a dedicated OCC email address directly to Clearing Members for use in notifying OCC of a Security Incident, but without specifying the form of the notice. Accordingly, a Clearing Member can share information they believe is relevant, and OCC can follow up

directly with the affected Clearing Member as needed.

Because of the innumerable circumstances that could lead to a Security Incident, OCC's determination to disconnect a Clearing Member will be based on the facts and circumstances related to any specific Security Incident. Accordingly, OCC may consider any one or more of the following in determining whether or not to disconnect a member: the potential loss of control by a Clearing Member of its internal system(s), the potential loss of OCC's confidential data, the potential strain on or loss of OCC's resources due to OCC's inability to perform clearance and settlement functions, and the overall severity of the threat to OCC's security and operations. It is OCC's belief that not all Security Incident notifications will result in a Clearing Member disconnection. Finally, OCC also added clarification that in the event of a disconnection, a Clearing Member will remain responsible for its obligations to OCC, e.g., a Clearing Member remains responsible for the payment of margin to OCC.

With respect to the process for reconnection following a Security Incident that results in disconnection, OCC proposes to clarify that only in the event OCC disconnects a Clearing Member will the Clearing Member be required to complete the Reconnection Attestation and Reconnection Checklist. OCC also made additional edits to clarify the process for reconnection.

The text below reflects the proposed changes to the originally proposed Rules 213(d) and 213(e) in the Initial Filing. Italicized text indicates new text, and bracketed text indicates deleted text.

(d) *Occurrence of a Security Incident.* A Clearing Member must notify the Corporation immediately, and shall promptly confirm such notice in writing, if *the Clearing Member becomes aware or should be aware* that there has been an incident, or an incident is occurring, involving a cyber-related disruption or intrusion of the Clearing Member's system(s) *that is reasonably likely to pose an imminent risk or threat to the Corporation's operations. Such occurrence may include, but is not limited to* [including, but not limited to], any disruption or degradation of the normal operation of the Clearing Member's system(s) or any unauthorized entry into the Clearing Member's system(s) *that would result in loss of the Corporation's data or system integrity, unauthorized disclosure of sensitive information related to the Corporation, or the inability of the Corporation to conduct essential clearance and settlement functions* ("Security Incident"). Upon such notice, or if the Corporation has a reasonable basis to believe that a Security Incident has occurred, or is occurring, the Corporation may take actions reasonably necessary to mitigate any

<sup>3</sup> Securities Exchange Act Release No. 97225 (Mar. 30, 2023), 88 FR 20195 (Apr. 5, 2023) (File No. SR-OCC-2023-003).

<sup>4</sup> Comments on the proposed rule change are available at <https://www.sec.gov/comments/sr-occ-2023-003/sr-occ2023003.htm>.

<sup>5</sup> 15 U.S.C. 78s(b)(1)

<sup>6</sup> 17 CFR 240.19b-4.

effects to its operations, including the right to disconnect access, or to modify the scope and specifications of access, of the Clearing Member to the Corporation's information and data systems. *In determining whether to disconnect a Clearing Member, the Corporation will evaluate the facts and circumstances related to the Security Incident. The Corporation may take into consideration a number of factors, including, but not limited to, the potential loss of control by a Clearing Member of its internal system(s), the potential loss of the Corporation's confidential data, the potential strain on or loss of the Corporation's resources due to the Corporation's inability to perform clearance and settlement functions, and the overall severity of the threat to the security and operations of the Corporation. If the Corporation determines that disconnection of a Clearing Member is necessary, the Clearing Member must continue to meet its obligations to the Corporation, notwithstanding disconnection from the Corporation's systems.*

(e) *Procedures for Connecting Following a Security Incident that Results in Disconnection.* [After a Clearing Member reports a Security Incident] *In the event OCC disconnects a Clearing Member that has reported a Security Incident, upon the request of the Corporation, the Clearing Member must complete and submit a form as provided by the Corporation that describes the Security Incident and includes required representations [as determined by the Corporation] ("Reconnection Attestation"). The Clearing Member also will be required to complete [and] an associated checklist as provided by the Corporation that describes remediation efforts [and provides required information as determined by the Corporation] ("Reconnection Checklist")[, both as provided by the Corporation from time to time].*

The partial amendment would not change the purpose of, or statutory basis for the proposed rule change. All other representations in the Initial Filing remain as stated therein and no other changes are being made.

## II. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2023-003 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission,

100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2023-003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to File Number SR-OCC-2023-003 and should be submitted on or before June 23, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 2023-11714 Filed 6-1-23; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34931]

### Deregistration Under Section 8(f) of the Investment Company Act of 1940

May 26, 2023.

**AGENCY:** Securities and Exchange Commission ("Commission" or "SEC").

<sup>7</sup> 17 CFR 200.30-3(a)(31).

**ACTION:** Notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of May 2023. A copy of each application may be obtained via the Commission's website by searching for the applicable file number listed below, or for an applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC's Public Reference Room at (202) 551-8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at [Secretaries-Office@sec.gov](mailto:Secretaries-Office@sec.gov) and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the SEC by 5:30 p.m. on June 20, 2023, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary at [Secretaries-Office@sec.gov](mailto:Secretaries-Office@sec.gov).

**ADDRESSES:** The Commission: [Secretaries-Office@sec.gov](mailto:Secretaries-Office@sec.gov).

**FOR FURTHER INFORMATION CONTACT:** Shawn Davis, Assistant Director, at (202) 551-6413 or Chief Counsel's Office at (202) 551-6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549-8010.

### Clough Funds Trust [File No. 811-23059]

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On April 24, 2023, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of \$89,867.03 incurred in connection with the liquidation were paid by the applicant's investment adviser. Applicant also has retained \$101,347.27 for the purpose of

paying outstanding legal, accounting, and administrative liabilities.

*Filing Date:* The application was filed on April 28, 2023.

*Applicant's Address:* 1290 Broadway, Suite 1000, Denver, Colorado 80203.

**Evermore Funds Trust [File No. 811-22335]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Evermore Global Value Fund, a series of The RBB Fund Trust, and on December 27, 2022 made a final distribution to its shareholders based on net asset value. Expenses of \$224,831 incurred in connection with the reorganization were paid by the applicant and the applicant's investment adviser.

*Filing Dates:* The application was filed on February 22, 2023, and amended on April 26, 2023.

*Applicant's Address:* 55 Union Place, Suite 277, Summit, New Jersey 07901.

**Red Cedar Fund Trust [File No. 811-23459]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On September 27, 2022, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of \$31,699.79 incurred in connection with the liquidation were paid by the applicant and the applicant's investment adviser.

*Filing Date:* The application was filed on April 12, 2023.

*Applicant's Address:* 333 Bridge Street North West, Suite 601, Grand Rapids, Michigan 49504.

**Stone Ridge Residential Real Estate Income Fund I, Inc. [File No. 811-23451]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On April 21, 2023, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of \$12,500 incurred in connection with the liquidation were paid by the applicant's investment adviser.

*Filing Date:* The application was filed on April 24, 2023.

*Applicant's Address:* One Vanderbilt Avenue, 65th Floor, New York, New York 10017.

**Thrivent Church Loan & Income Fund [File No. 811-23362]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On April 20,

2023, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of \$46,272 incurred in connection with the liquidation were paid by the applicant's investment adviser.

*Filing Date:* The application was filed on April 24, 2023.

*Applicant's Address:* 901 Marquette Avenue, Suite 2500, Minneapolis, Minnesota 55402-3211.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 2023-11716 Filed 6-1-23; 8:45 am]

**BILLING CODE 8011-01-P**

**SMALL BUSINESS ADMINISTRATION**

**[Disaster Declaration #17852 and #17853; California Disaster Number CA-00380]**

**Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of California**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 4.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of California (FEMA- 4699-DR), dated 04/03/2023.

*Incident:* Severe Winter Storms, Straight-line Winds, Flooding, Landslides, and Mudslides.

*Incident Period:* 02/21/2023 and continuing.

**DATES:** Issued on 05/25/2023.

*Physical Loan Application Deadline Date:* 06/05/2023.

*Economic Injury (EIDL) Loan Application Deadline Date:* 01/03/2024.

**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 State of California, dated 04/03/2023, is hereby amended to include the following areas as adversely affected by the disaster.

*Primary Counties:* El Dorado, Humboldt, Lake, Marin, Mono, Napa, Nevada,

Sacramento, San Luis Obispo, Santa Barbara, Santa Clara, Shasta.

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. 2023-11743 Filed 6-1-23; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF STATE**

**[Public Notice: 12093]**

**Renewal of International Security Advisory Board Charter**

**SUMMARY:** The Department of State announces the renewal of the Charter for the International Security Advisory Board (ISAB).

The purpose of the ISAB is to provide the Department of State with a continuing source of independent insight, advice, and innovation on all aspects of arms control, disarmament, nonproliferation, outer space, critical infrastructure, cybersecurity, the national security aspects of emerging technologies, international security, and related aspects of public diplomacy. The ISAB will remain in existence for two years after the filing date of the Charter unless terminated or renewed.

For more information, contact Michelle Dover, Executive Director of the International Security Advisory Board, Department of State, Washington, DC 20520, telephone: (202) 736-4930.

(Authority: 22 U.S.C. 2651a and 41 CFR 102-3.65.)

**Michelle E. Dover,**

*Executive Director, International Security Advisory Board, Department of State.*

[FR Doc. 2023-11741 Filed 6-1-23; 8:45 am]

**BILLING CODE 4710-35-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration Aviation Rulemaking Advisory Committee; Meeting**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Aviation Rulemaking Advisory Committee (ARAC) meeting.

**SUMMARY:** This notice announces a meeting of the ARAC.

**DATES:** The meeting will be held on Thursday, July 20, 2023, from 1:00 p.m. to 4:00 p.m. Eastern Time.

Requests to attend the meeting must be received by Monday, June 26, 2023.

Requests for accommodations to a disability must be received by Monday, June 26, 2023.

Requests to submit written materials to be reviewed during the meeting must be received no later than Monday, June 26, 2023.

**ADDRESSES:** The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, and virtually on Zoom. However, if the FAA is unable to hold the meeting in person due to circumstances outside of its control, the FAA will hold a virtual meeting and notify registrants with the meeting details and post any updates on the FAA Committee website. Members of the public who wish to observe the meeting must RSVP by emailing [9-awarac@faa.gov](mailto:9-awarac@faa.gov). General committee information including copies of the meeting minutes will be available on the FAA Committee website at [https://www.faa.gov/regulations\\_policies/rulemaking/committees/documents/](https://www.faa.gov/regulations_policies/rulemaking/committees/documents/).

**FOR FURTHER INFORMATION CONTACT:** Lakisha Pearson, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, telephone (202) 267-4191; email [9-awarac@faa.gov](mailto:9-awarac@faa.gov). Any committee-related request should be sent to the person listed in this section.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The ARAC was created under the Federal Advisory Committee Act (FACA), in accordance with Title 5 of the United States Code (5 U.S.C. App. 2) to provide advice and recommendations to the FAA concerning rulemaking activities, such as aircraft operations, airman and air agency certification, airworthiness standards and certification, airports, maintenance, noise, and training.

**II. Agenda**

At the meeting, the agenda will cover the following topics:

- Status Updates:
  - Active Working Groups
  - Transport Airplane and Engine (TAE) Subcommittee
- Recommendation Reports
- Status Report from the FAA
- Any Other Business

Detailed agenda information will be posted on the FAA Committee website address listed in the **ADDRESSES** section at least one week in advance of the meeting.

**III. Public Participation**

The meeting will be open to the public for virtual or in person attendance on a first-come, first served basis, as space is limited. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section and provide the following information: full legal name, country of citizenship, and name of your industry association or applicable affiliation. Please indicate if you plan to observe the meeting in-person or virtually. When registration is confirmed, FAA will email registrants to provide meeting access information in a timely manner prior to the meeting.

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

The FAA is not accepting oral presentations at this meeting due to time constraints. Any member of the public may present a written statement to the committee at any time. The public may present written statements to ARAC by providing a copy to the Designated Federal Officer via the email listed in the **FOR FURTHER INFORMATION CONTACT** section.

Issued in Washington, DC, on May 26, 2023.

**Brandon Roberts,**

*Executive Director, Office of Rulemaking.*

[FR Doc. 2023-11773 Filed 6-1-23; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**[Docket No. FHWA-2023-0006]**

**Notice of Intent To Prepare and Environmental Impact Statement for a Proposed Highway Project, Somerset County, PA and Garrett County, MD**

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** FHWA in coordination with the Pennsylvania Department of Transportation (PennDOT) and the Maryland Department of Transportation State Highway Administration (MDOT SHA) is issuing the Notice of Intent (NOI) to solicit comments and advise

the public, agencies, and stakeholders that an Environmental Impact Statement (EIS) will be prepared to study potential improvements to the US 6219, Section 050 Transportation Improvement Project from Meyersdale, PA to Old Salisbury Road, MD. The project includes the proposed construction of an 8.0 mile (6 miles in Pennsylvania and 2 miles in Maryland) four-lane limited access facility on new alignment from the end of the Meyersdale Bypass in Somerset County, Pennsylvania to the newly constructed portion of US 219 in Garrett County, Maryland. This NOI contains a summary of the information required in the Council on Environmental Quality (CEQ) regulations. This NOI should be reviewed together with the Supplementary NOI Document, which contains important details about the proposed project and complements the information in this NOI. Persons and agencies who may be interested in or affected by the proposed project are encouraged to comment on the information in this NOI and the Supplementary NOI Document. All comments received in response to this NOI will be considered and any information presented herein, including the preliminary purpose and need, preliminary alternatives and identified impacts, may be revised in consideration of the comments.

**DATES:** Comments on the NOI or the Supplementary NOI Document are to be received by FHWA through the methods below by July 3, 2023.

**ADDRESSES:** This NOI and the Supplementary NOI Document are also available in the docket referenced above at [www.regulations.gov](http://www.regulations.gov) and on the project website located at [www.penndot.pa.gov/us219meyersdalesouth](http://www.penndot.pa.gov/us219meyersdalesouth). The Supplementary NOI Document will be mailed upon request. Interested parties are invited to submit comments by any of the following methods:

*Website:* For access to the documents, go to the Federal eRulemaking Portal located at [www.regulations.gov](http://www.regulations.gov) or the project website located at [www.penndot.pa.gov/us219meyersdalesouth](http://www.penndot.pa.gov/us219meyersdalesouth). Follow the online instructions for submitting comments.

*Mailing address or for hand delivery or courier:* Jon Crum, Team Leader—Planning and Environment, Federal Highway Administration, Pennsylvania Division Office, 30 North 3rd Street, Suite 700, Harrisburg, Pennsylvania, 17101-1720.

*Email address:* [Jonathan.Crum@dot.gov](mailto:Jonathan.Crum@dot.gov)

All submissions should include the agency name and the docket number that appears in the heading of this Notice. All comments received will be posted without change to the [www.regulations.gov](http://www.regulations.gov), including any personal information provided. A summary of the comments will be included in the Draft EIS.

**FOR FURTHER INFORMATION CONTACT:**

FHWA: Jon Crum, Team Leader for Planning and Environment, Federal Highway Administration—Pennsylvania Division, 30 North 3rd Street, Suite 700, Harrisburg, PA 17101–1720; email: [Jonathan.Crum@dot.gov](mailto:Jonathan.Crum@dot.gov); 717–221–3735. PennDOT: Nicki Donahoe, PE, Project Manager, Pennsylvania Department of Transportation, Engineering District 9–0, 1620 N. Juniata Street, Hollidaysburg, PA 16648; email: [ndonahoe@pa.gov](mailto:ndonahoe@pa.gov); 814–317–1650. MDOT: Jeremy Beck, Senior Project Manager, Maryland Department of Transportation, State Highway Administration, Office of Planning and Preliminary Engineering, 707 North Calvert Street, Baltimore, MD 21202; email: [JBeck@mdot.maryland.gov](mailto:JBeck@mdot.maryland.gov); 410–545–8518/800–548–5026.

**SUPPLEMENTARY INFORMATION:** It is important to note that the FHWA, PennDOT, and MDOT SHA are committed to public involvement for this project. All public comments received in response to this notice will be considered and revisions may be made to the information presented herein as appropriate. The environmental review of alternatives for the transportation project along Section 050 of US 219 will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*), 23 U.S.C. 139, CEQ regulations implementing NEPA (40 CFR 1500–1508), FHWA regulations implementing NEPA (23 CFR 771.101–771.139) and all applicable Federal, State, and local governmental laws and regulations.

**Background**

PennDOT originally studied US 219 improvements south of Somerset, Pennsylvania, during the 1990s. These studies identified a five-mile section of US 219 through Meyersdale, Pennsylvania, as the area's most immediate transportation problem. The Meyersdale Bypass project was constructed in 1998 as a four-lane, limited access highway located west of existing US 219 in Meyersdale Borough and Summit Township, Somerset County, Pennsylvania. This project was followed by the completion of an 11-

mile four-lane limited access facility in 2018 from Somerset to Meyersdale, Pennsylvania. In 2021, MDOT SHA completed construction of an approximately 1.4-mile section from Interstate 68 (I–68) in Maryland to Old Salisbury Road, just south of the State line.

Preliminary engineering and a Draft Environmental Impact Statement (DEIS) for US 219 originally began in 2001 but was put on hold in 2007 due to funding constraints. As a result, the document went unpublished. Several alternatives were evaluated in the DEIS, and these alternatives served as the starting point for the 2016 Planning and Environmental Linkages (PEL) Study for this project.

The PEL concluded that Alignments E and E-shift were considered reasonable and recommended to be evaluated in future NEPA Studies. However, at the time of the PEL study, adequate funding was not available to advance the project in its entirety. As a result, the team completed an evaluation to identify whether any stand-alone projects existed along the project alignments.

The PEL identified that the MD 1.4-mile section both improves the existing I–68/US 219 interchange and best addresses the PEL's Project Vision and Goals by directly serving near future planned development (Casselman Farm Development Site) located in Garrett County, Maryland's Smart Growth Priority Funding Area. This section was also found to be "of sufficient length to address environmental matters on a broad scope and does not restrict consideration of alternatives for other reasonably foreseeable transportation improvements" including the current study to complete the remaining four-lane US 219 section between the Meyersdale Interchange in Pennsylvania and the recently completed 1.4-mile section in Maryland.

After the PEL, MDOT SHA developed seven preliminary concepts for the 1.4-mile section and presented them at a public workshop on September 8, 2016, and an open house on September 9, 2016. A Joint Location/Design Public Hearing was held on February 6, 2017, to obtain public input on the alternatives under consideration. Based on the evaluation and comparison of the alternatives, including input from the public, Alternative 4 Modified was recommended as the MDOT SHA Preferred Alternative. This section received FHWA Preferred Alternative and Conceptual Mitigation Package/Categorical Exclusion approval on July 18, 2018, and was subsequently constructed. The new 1.4-mile section opened to traffic in May 2021.

The US 6219, Section 050 Transportation Improvement Project was re-initiated November 9, 2020, when the Secretary of Transportation announced the commitment of funds for this project.

The following information provided in the NOI is supplemented with more detail in the Supplemental NOI Document.

**(a) The Preliminary Purpose and Need for the Proposed Action**

The purpose of the US 6219, Section 050 Transportation Improvement Project is to complete Corridor N of the Appalachian Development Highway System, to improve the system linkage in the region, provide safe and efficient access for motorists traveling on US 219, and provide transportation infrastructure to support economic opportunities in existing and planned communities and employment/business centers and natural resource-based industries within the Appalachian Region.

The project needs identified for this project are that: (1) existing US 219 does not provide efficient mobility for trucks and freight, (2) there are numerous roadway and geometric deficiencies present along the existing US 219 alignment, and (3) the existing roadway infrastructure is a limiting factor in economic development opportunities in the Appalachian Region.

The preliminary Purpose and Need was developed with agency coordination and public input, as described in section e; see the Supplemental NOI Document for details on the development of the Purpose and Need. The project purpose and needs were presented to the Pennsylvania and Maryland resource agencies at an agency coordination meeting on September 22, 2021, a Community Advisory Committee on November 3, 2021, and to public officials and the general public at an open house meeting on June 23, 2022, and a virtual meeting on June 27, 2022. Resource agencies and the public were invited to comment on the Purpose and Need. The Purpose and Need statement and supporting documentation, including data and public input summary, will be available in the Draft EIS. No comments were received from either the resource agencies or public following the outreach. The Purpose and Need may be revised based on comments received during the comment period on this notice.

**(b) A Preliminary Description of the Proposed Action and Alternatives the Environmental Impact Statement Will Consider**

The proposed action is anticipated to include construction of a new 8.0-mile (6 miles in Pennsylvania and 2 miles in Maryland) 4-lane limited-access facility from the end of the Meyersdale Bypass in Pennsylvania to the newly constructed portion of US 219 in Maryland. Agencies and the public are invited to comment on the Range of Alternatives for the proposed action. Additional information on the Range of Alternatives is in the Supplementary NOI Document. The Range of Alternatives proposed to be considered in the EIS are the following:

*No Build Alternative*

The No Build Alternative involves taking no action, except routine maintenance along US 219. The existing two-lane alignment of US 219 between Meyersdale, Pennsylvania and Garrett County, Maryland would remain. No new alignments or additional roadway would be constructed.

*Alignment DA*

Alignment DA was delineated using suggestions by the study area farmers and Cooperating and Participating Agencies during former 2001 NEPA efforts to avoid natural resource impacts by staying closer to US 219 and avoiding the mountain slope/ridge. Alignment DA starts at the southern end of the Meyersdale Bypass, proceeding in a southerly direction to just south of the Mast farm, where it heads westward toward existing US 219. The alignment crosses between the Deal and Mast farms, then turns in a southwesterly direction, crossing existing US 219 just south of Salisbury, Pennsylvania. Alignment DA then travels in a southerly direction, crossing existing US 219 again just south of the Mason-Dixon Line and staying close to existing US 219, and ties into the newly constructed section of US 219.

*Alignment DA-Shift*

Alignment DA-Shift resulted from combining Alignment DA with Alignment E-Shift. Alignment E-Shift was suggested by residents during former 2001 NEPA efforts to move the alignment further away from residences along Old Salisbury Road. Alignment DA-Shift follows the same alignment as Alignment DA from Meyersdale until about one mile south of the Mason-Dixon Line, where the alignment is shifted eastward, away from Old Salisbury Road.

*Alignment DU*

Alignment DU resulted from combining suggestions from the US Fish and Wildlife Service (USFWS) with an alignment identified during former 2001 NEPA efforts. USFWS suggested an alternative to avoid the mountain slope/ridge in Pennsylvania and reduce potential impacts to terrestrial wildlife. Alignment DU follows Alignment DA until Greenville Road, where instead of continuing southwest towards existing US 219, the alignment travels south towards the Mason-Dixon Line. Alignment DU and Alignment DA coincide again south of the Mason-Dixon Line.

*Alignment DU-Shift*

Like Alignment DA Shift, Alignment DU-Shift resulted from combining Alignment DU with Alignment E-Shift to move the alignment further away from residences along Old Salisbury Road. Alignment DU-Shift mimics the alignment of Alignment DU from Meyersdale until south of the Mason-Dixon Line, where the alignment is shifted eastward and away from Old Salisbury Road.

*Alignment E*

Alignment E was suggested during former 2001 NEPA efforts to avoid farmland in Pennsylvania and avoid residential areas along existing US 219. Alignment E starts at the southern end of the Meyersdale Bypass and proceeds in a southerly direction along the face of Meadow Mountain. At the Pennsylvania/Maryland border, Alignment E would extend in a southwesterly direction, east of the existing US 219.

*Alignment E-Shift*

Alignment E-Shift was suggested by residents along Old Salisbury Road during former 2001 NEPA efforts and involves moving Alignment E further away from the residences on Old Salisbury Road. Alignment E-Shift follows Alignment E, with the exception of a small shift in Maryland, slightly eastward, away from the homes along Old Salisbury Road. Alignment E does not directly impact the homes along Old Salisbury Road; however, residents requested an evaluation of a slightly eastward shift to move the alignment further from their homes. The trade-off is that Alignment E-Shift bisects a farm field that is only slightly impacted by Alignment E. This shifted section is the same as the shifted section of Alignment DA-Shift and Alignment DU-Shift.

**(c) Brief Summary of Expected Impacts**

PennDOT and MDOT SHA have conducted scoping activities for the US 6219, Section 050 Transportation Improvement Project, such as secondary source data collection, agency coordination, and public outreach, to identify the types of environmental, cultural, and socio-economic resources present in the Study Area and those likely to be impacted. The following resources will be evaluated in the EIS and supporting technical studies: cultural resources (archaeology and historic architecture); hazardous materials; air quality; noise-sensitive areas; natural resources (wildlife and habitat; threatened, endangered, and special status species; waters of the US; water quality; groundwater; floodplains; and farmlands); visual resources; Section 4(f) resources (recreational facilities, historic properties, and State Game Lands); and socioeconomic, land use, and right-of-way (communities and community facilities, population and housing, economic resources, land use and right-of-way, and Environmental Justice).

Based on an analysis completed to date using both the EPA's EJScreen Tool and the Maryland EJScreen Mapper, EJ populations (low income) are present within the study area. However, there are no residential or non-residential EJ relocations anticipated.

The level of review of the identified resources for the EIS will be commensurate with the anticipated effects to each resource from the proposed project and will be governed by the statutory or regulatory requirements protecting those resources. The analyses and evaluations conducted for the EIS will identify the potential for effects, avoidance measures, whether the anticipated effects would be adverse, and mitigation measures for adverse effects. Additional information on the expected impacts is provided in the Supplementary NOI document available for review in the docket established for this project and on the project website as noted in the **ADDRESSES** section. Comments on the expected impacts to be analyzed in the DEIS are welcomed during the NOI comment period.

Agencies, stakeholders, and the public are invited to comment on the expected impacts. The environmental impact analysis will not begin until the Purpose and Need, Range of Alternatives, and impact categories are finalized based on public comment on this notice. The identification of impacts may be revised due to the consideration of public comments. See



the Supplementary NOI Document for a more detailed description of the Summary of Expected Impacts. The studies to identify the impacts, as well as the analyses of impacts from the retained alternatives, will be presented in the Draft EIS.

#### (d) Anticipated Permits and Other Authorizations

At the request of the sponsor, the permitting schedule includes the following timetable. A Clean Water Act Section 404 permit decision from the US Army Corps of Engineers is anticipated on September 17, 2027.<sup>1</sup> Other anticipated State authorizations include a Pennsylvania Department of Environmental Protection Section 401 Water Quality Certification/Chapter 105 Standard Permit on September 17, 2027, and a Maryland Department of the Environment Joint Federal/State Title 5 Permit Application for the Alteration of any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland on September 17, 2027. Section 7 consultation under the Endangered Species Act is expected to be concluded on June 27, 2023, and Section 106 consultation under the National Historic Preservation Act is anticipated to be concluded on December 13, 2023. See the Supplemental NOI Document for more detail on the anticipated permits and other authorizations.

#### (e) Scoping and Public Review

##### Agency Scoping

FHWA, PennDOT, and MDOT SHA have conducted agency coordination to inform the purpose and need and preliminary project alternatives, scoping meeting, and other elements outlined in this document. An Agency Coordination Plan was reviewed and agreed to by the Pennsylvania and Maryland resource agencies, including the Cooperating and Participating agencies. It is a living document that will be updated through the EIS process. The resource agency meetings in Pennsylvania are referred to as Agency Coordination Meetings (ACM) and the resource agency meetings in Maryland are referred to as Interagency Review Meeting (IRM). Since PennDOT is the lead agency for this project, the agency meetings are typically held on the ACM's regularly

scheduled meeting dates. Some variation does occur and, in that case, the same information is presented to both the ACM and the IRM. The list of agency coordination meetings held begins after November 9, 2020, the date Pennsylvania Transportation Secretary announced the commitment of funds for this project.

*April 28, 2021 (ACM-PA) and June 16, 2021 (IRM-MD)*

- US 219–050: Meyersdale, PA to Old Salisbury Rd., MD reintroduction
- Summary of the PEL Process
- Current Project Status
- Agency Involvement

*September 9, 2021—Joint ACM and IRM*

- Process to Move from PEL to NEPA
- ACM/IRM Role
- Cooperating and Participating Agencies
- Review Purpose and Need/Logical Termini
- Review PEL Alternatives Studied
- Agency PEL comments to be addressed in NEPA

*November 16, 2021—Joint Scoping Meeting*

- Scoping Meeting Overview
- Review Agency Questions from 9/22/21 Meeting
- Virtual Scoping using Google Earth
- Comparison of PennDOT & MDOT SHA NEPA Planning Processes
- Present Technical Methodologies Matrix
- Review Tentative Project Schedule

*May 25, 2022 (ACM-PA) and June 15, 2022 (IRM-MD)*

- Recent Activities
- Purpose and Need and Logical Termini Review
- Proposed NEPA Study Alternatives
- Public and Agency Coordination Plan Review
- Review agency input received following from the November 16, 2021, Virtual Field Scoping Meeting
- Review information to be presented at the June 2 Community Advisory Committee (CAC) and June 23 Public Meeting

*August 24, 2022—Joint ACM and IRM*

- Present results of the CAC meeting, Public Officials meeting, Open House meeting and Virtual meeting
- Reviewed secondary source impacts of Proposed NEPA Study Alternatives

##### Public Review

PennDOT and MDOT SHA conducted public outreach activities during the Pre-NOI phase of the US 6219, Section 050 Transportation Improvement Project

to present information and collect public input. However, for purposes of documenting activities in this NOI, the start date is November 9, 2020, which is when the Pennsylvania Transportation Secretary announced the commitment of funds for this project.

To date, PennDOT and MDOT SHA reconvened the CAC that had been previously established for this project and have held two CAC meetings. The purpose of the CAC is to provide an additional method of communication between PennDOT, MDOT SHA, FHWA, and the local communities, and to provide input into project development. The CAC serves as an advisory group to the Project Team to ensure that local interests and concerns are considered in a timely manner. These meetings allowed the CAC the opportunity to comment on any changes to the project study area since the 2016 PEL document and the revised Purpose and Need (November 2021), and to provide input on the preliminary range of NEPA alternatives (June 2022). Additionally, PennDOT and MDOT SHA offered a public officials meeting (June 23, 2022), an open house public meeting (June 23, 2022), and virtual meeting (June 27, 2022). These meetings allowed public officials and citizens the same opportunity to comment on the information presented at the CAC meetings and served as the public scoping meeting. The materials for these meetings are on the project website.

PennDOT and MDOT SHA will maintain and update the project website, as identified in the **ADDRESSES** section of this notice, to direct the public to the scoping meeting presentation and solicit public input. Additionally, PennDOT and MDOT SHA will continue to conduct targeted outreach to communities in and around the study area. A 30-day comment period is being held in association with the NOI. There will be at least three more public involvement opportunities for the US 6219, Section 050 Transportation Improvement Project from Meyersdale, Pennsylvania to Old Salisbury Road, Maryland. These will be public meetings/hearings to receive input on the detailed alternatives (public meeting), recommended preferred alternative and draft EIS (public hearing), and selected alternative/conceptual mitigation (public meeting).

#### (f) A Schedule for the Decision-Making Process

Following the issuance of this notice, FHWA, PennDOT, and MDOT SHA will coordinate with the Participating and

<sup>1</sup> 23 U.S.C. 139(d)(10) requires all authorization decisions necessary for the construction of a major project be completed no later than 90 days from the issuance of the ROD for the project. This deadline may be extended where Federal law prohibits granting the decision within this period of time, the project sponsor requests a different timeline, or if the extension would facilitate the completion of the environmental review and authorization process for the project.



Cooperating Agencies to develop study documentation and the Draft EIS.

- The Draft EIS is anticipated to be issued in March 2024.
- The combined Final EIS and Record of Decision is anticipated in February 2025.
- A Section 404 permit decision from the United States Army Corps of Engineers is expected in September 2027.

See the Supplemental NOI Document for additional schedule details.

**(g) Request for Identification of Potential Alternatives, Information, and Analyses Relevant to the Proposed Action**

To ensure that a full range of issues related to the study are addressed and all potential issues are identified, FHWA invites comments and suggestions from all interested parties. The project team requests comments and suggestions on purpose and need, potential alternatives and impacts, and the identification of any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment. Any information presented herein, including the preliminary purpose and need, preliminary range of alternatives, and identification of impacts may be revised after consideration of the comments. The purpose of this request is to bring relevant comments, information, and analyses to the agency's attention, as early in the process as possible, to enable the agency to make maximum use of this information in decision making. Comments may be submitted according to the instructions in the **ADDRESSES** section of this Notice.

**(h) Contact Information**

**FHWA:** Jon Crum, Team Leader—Planning and Environment, Federal Highway Administration, Pennsylvania Division Office, 30 North 3rd Street, Suite 700, Harrisburg, PA 17101–1720; email address: [Jonathan.Crum@dot.gov](mailto:Jonathan.Crum@dot.gov); 717–221–3735.

**PennDOT:** Nicki Donahoe, PE, Project Manager, Pennsylvania Department of Transportation, Engineering District 9–0, 1620 N Juniata Street, Hollidaysburg, PA 16648; email: [ndonahoe@pa.gov](mailto:ndonahoe@pa.gov); 814–317–1650.

**MDOT SHA:** Jeremy Beck, Senior Project Manager, Maryland Department of Transportation, State Highway Administration, Office of Planning and Preliminary Engineering, 707 North Calvert Street, Baltimore, MD 21202;

email: [JBeck@mdot.maryland.gov](mailto:JBeck@mdot.maryland.gov); 410–545–8518/800–548–5026.

**Alicia E. Nolan,**

*Pennsylvania Division Administrator, Federal Highway Administration.*

[FR Doc. 2023–11794 Filed 6–1–23; 8:45 am]

**BILLING CODE 4910–22–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

[Docket Number FRA–2007–28812]

**Petition for Extension of Waiver of Compliance**

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letters dated March 24, 2023, and April 27, 2023, BNSF Railway Company (BNSF) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 215 (Railroad Freight Car Safety Standards) and 232 (Brake System Safety Standards for Freight and Other Non-passenger Trains and Equipment; End of Train Devices). The relevant FRA Docket Number is FRA–2007–28812.

Specifically, BNSF requests a waiver extension from 49 CFR 232.205, *Class 1 brake test—initial terminal inspection*, and certain provisions of part 215 related to the inspection of trains entering the United States from Mexico at Eagle Pass, Texas. BNSF seeks to continue to move trains received in interchange from Ferrocarril Mexicano, S.A. (FXE), approximately 12 miles outside of the community of Eagle Pass, Texas, to the facilities at Ryan's Ruin, Texas, or Horan Siding, where the required inspections can be performed. BNSF states that the relief “has proven to create a more efficient and safer operating environment along the U.S. and Mexico border for over a decade.” In support of its request, BNSF explains that prior to the current relief, trains “would be blocking the international bridge and multiple crossings in Eagle Pass.”

A copy of the petition, as well as any written communications concerning the petition, is available for review online at [www.regulations.gov](http://www.regulations.gov).

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a

hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Communications are requested by August 1, 2023. Comments received after that date will be considered if practicable. FRA reserves the right to extend the existing relief subject to subsequent consideration of any comments submitted to the docket. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of [regulations.gov](http://www.regulations.gov).

Issued in Washington, DC.

**John Karl Alexy,**

*Associate Administrator for Railroad Safety, Chief Safety Officer.*

[FR Doc. 2023–11785 Filed 6–1–23; 8:45 am]

**BILLING CODE 4910–06–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

[Docket Number FRA–2002–11809]

**Petition for Extension of Waiver of Compliance**

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter received April 7, 2023, the North County Transit District (NCTD) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 210 (Railroad Noise Emission Compliance Regulations); 217 (Railroad

Operating Rules); 219 (Control of Alcohol and Drug Use); 221 (Rear End Marking Device—Passenger, Commuter and Freight Trains); 223 (Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses); 225 (Railroad Accidents/Incidents: Reports Classification, and Investigations); 228 (Passenger Train Employee Hours of Service; Recordkeeping and Reporting; Sleeping Quarters); 229 (Railroad Locomotive Safety Standards); 231 (Railroad Safety Appliance Standards); 238 (Passenger Equipment Safety Standards); 239 (Passenger Train Emergency Preparedness); 240 (Qualification and Certification of Locomotive Engineers); and 242 (Qualification and Certification of Conductors). The relevant Docket Number is FRA–2002–11809.

Specifically, NCTD requests to extend its relief from the above listed CFR parts, as pertaining to its 12 diesel multiple unit vehicles that comprise the Sprinter rail fixed-guideway urban rapid transit service. The Sprinter service runs on the Escondido Subdivision, a 22-mile right-of-way with temporal separation from freight service operated by BNSF Railway. In support of its request, NCTD states that the California Public Utilities Commission Rail Safety Division will continue to provide Federal Transit Administration Rail Fixed Guideway State Safety Oversight, as required by regulations.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at [www.regulations.gov](http://www.regulations.gov).

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Communications received by August 1, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual

submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of [www.regulations.gov](http://www.regulations.gov).

Issued in Washington, DC.

**John Karl Alexy,**

*Associate Administrator for Railroad Safety,  
Chief Safety Officer.*

[FR Doc. 2023–11784 Filed 6–1–23; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket Number FRA–2023–0032]

#### Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on April 6, 2023, Steamtown National Historic Site (SNCX) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 240 (Qualification and Certification of Locomotive Engineers) and part 242 (Qualification and Certification of Conductors). FRA assigned the petition Docket Number FRA–2023–0032.

Specifically, SNCX requests relief required to participate in FRA's Confidential Close Call Reporting System (C<sup>3</sup>RS) Program. SNCX seeks to shield reporting employees and the railroad from mandatory punitive sanctions that would otherwise arise as provided in §§ 240.117(e)(1)–(4); 240.305(a)(1)–(4) and (a)(6); 240.307; 242.403(b), (c), (e)(1)–(4), (e)(6)–(11), (f)(1)–(2); and 242.407. The C<sup>3</sup>RS Program encourages certified operating crew members to report close calls and protects the employees and the railroad from discipline or sanctions arising from the incidents reported per the C<sup>3</sup>RS Implementing Memorandum of Understanding.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at [www.regulations.gov](http://www.regulations.gov).

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Communications received by August 1, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of [www.regulations.gov](http://www.regulations.gov).

Issued in Washington, DC.

**John Karl Alexy,**

*Associate Administrator for Railroad Safety,  
Chief Safety Officer.*

[FR Doc. 2023–11787 Filed 6–1–23; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket Number FRA–2011–0101]

#### Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letters dated March 20, 2023, and May 11, 2023, the Northeast Illinois Regional Commuter Railroad Corporation (Metra) petitioned the Federal Railroad Administration (FRA)

for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 236 (Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances). The relevant FRA Docket Number is FRA-2011-0101.

Specifically, Metra requested an extension of relief from § 236.377, *Approach locking*; § 236.378, *Time locking*; § 236.379, *Route locking*; § 236.380, *Indication locking*; and § 236.281, *Traffic locking*, to extend the periodic testing schedules from “at least once every 2 years” to “at least once every 4 years” after initial testing has been performed. The relief applies at interlockings, control points, and other signal locations controlled by vital microprocessor-based equipment. In support of its request, Metra states that it will “remain in compliance with all conditions of the FRA extension approval letter dated September 24, 2018. Metra’s petition also included a list of locations that have been “tested under the waiver from 2022 to present with the results and baseline comparison.”

A copy of the petition, as well as any written communications concerning the petition, is available for review online at [www.regulations.gov](http://www.regulations.gov).

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Communications received by August 1, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments

from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of [regulations.gov](http://regulations.gov).

Issued in Washington, DC.

**John Karl Alexy,**

*Associate Administrator for Railroad Safety,  
Chief Safety Officer.*

[FR Doc. 2023-11786 Filed 6-1-23; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

[DOT-OST-2023-0080]

### National Travel and Tourism Infrastructure Strategic Plan; Request for Comment

**AGENCY:** Office of the Secretary, U.S. Department of Transportation (DOT).

**ACTION:** Notice; request for comment (RFC).

**SUMMARY:** The U.S. Department of Transportation is seeking public input to aid it in updating DOT’s National Travel and Tourism Infrastructure Strategic Plan (NTTISP). DOT will consider input and the comments received in the development of the NTTISP.

**DATES:** Comments must be received on or before July 17, 2023.

**ADDRESSES:** Submissions in response to this notice may be sent by either of the following two methods, although DOT prefers the first:

- Electronic comments may be sent to [nttisp@dot.gov](mailto:nttisp@dot.gov). Submissions should be machine-readable and not be copy-protected.
- Written comments may be sent to: The Office of International Transportation and Trade, ATTN: Nicole Bambas, NTTISP, RM W88-303, 1200 New Jersey Avenue SE, Washington, DC 20590.

Any submissions received after the deadline may not be accepted or considered.

• **Confidential Business Information (CBI):** CBI is commercial or financial information that is 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 in response to this RFC 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 RFC, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN” to indicate that it contains proprietary information. DOT will treat such marked submissions as confidential under FOIA and not place them in the public docket of this RFC. Submissions containing CBI should be sent to the name and physical or email address listed below.

**FOR FURTHER INFORMATION CONTACT:**

Nicole Bambas at [nttisp@dot.gov](mailto:nttisp@dot.gov) or 202-366-4398. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m. (ET) Monday through Friday.

**SUPPLEMENTARY INFORMATION:** In January 2021, DOT released its *National Travel and Tourism Infrastructure Strategic Plan for FY 2020-2024* (NTTISP 2020-2024), which can be found here: <https://www.transportation.gov/policy-initiatives/NTTISP>. DOT developed the NTTISP in response to the mandate in the 2015 Fixing America’s Surface Transportation Act (FAST ACT) that it assess the condition and performance of our national transportation network, identify issues that create congestion and barriers to travel and tourism, and develop strategies for improving vital travel infrastructure. While DOT was developing the NTTISP, the world began to experience the impact of the public health emergency created by the coronavirus disease 2019 (COVID-19) pandemic.

Given the consequences of COVID-19 to the travel and tourism industry, Congress has mandated that DOT revisit the NTTISP. In November 2021, President Biden signed the Infrastructure Investment and Jobs Act (Pub. L. 117-58, implemented as the Bipartisan Infrastructure Law or BIL). Section 25018 of the BIL directs DOT to update the NTTISP and include new matters such as immediate and long-term strategies, policy recommendations and infrastructure investments across all modes of transportation to revive the travel and tourism industry and the overall travel and tourism economy in the wake of the COVID-19 pandemic. The NTTISP must also identify possible infrastructure investments that create recovery opportunities for small, underserved, minority, and rural businesses in the travel and tourism industry, including efforts to preserve and protect scenic, but often less-traveled, roads that promote tourism

and economic development throughout the United States.

DOT's updated NTTISP will be complementary to the whole-of-government efforts of the Tourism Policy Council (TPC), led by the Department of Commerce, and its National Tourism Strategy, focusing on challenges and solutions over the immediate and longer term while also addressing DOT's strategic goals of safety, economic strength, climate resilience, equity, and organizational excellence in the transportation sector. DOT is a member of the TPC, which was established by Congress to ensure that the United States' national interest in travel and tourism is fully considered in Federal decision making.

DOT seeks public input to aid in updating the NTTISP. More specifically, it seeks input from the public, including State Departments of Transportation, public and private transportation stakeholders, academia, government, business, and industry groups of all sizes; entities directly performing travel and tourism research and development; and entities directly affected by such research and development.

Persons responding to this RFC are asked to include responses to the following questions in their comments:

1. How can transportation infrastructure better facilitate long-distance travel and tourism?
  - a. For this report, we anticipate long-distance travel and tourism trips to be defined as any trip greater than 50 miles using any mode of transportation or combination of modes of transportation. Is there a better definition for long-distance travel and tourism? Please explain.
  - b. What are the biggest opportunities for transportation infrastructure to support long-distance travel and tourism? Discuss any best practices.
  - c. What issues relating to the national transportation network create significant congestion problems and barriers to long-distance passenger travel and tourism?
  - d. What are best practices related to improving the performance of the national transportation network for long-distance travel and tourism?
  - e. What strategies should be considered to improve intermodal connectivity for long-distance travel and tourism?
  - f. Where and what are the most regionally and nationally significant transportation facilities and corridors for current and forecasted long-distance travel and tourism? Describe these facilities and corridors and explain how they were identified and why they are critical to our nation's long-distance

travel and tourism by providing any applicable research or data.

g. What are some of the emerging challenges to long-distance travel and tourism and what actions should the Department and other agencies consider in order to anticipate and mitigate their effects?

2. What statutory, regulatory, technological, institutional, financial, and other barriers should be considered to improve long distance travel and tourism?

3. What policy recommendations should DOT and other agencies consider for using infrastructure investments across all modes of transportation to address the challenges of the travel and tourism industry and the overall travel and tourism economy in the wake of the COVID-19 pandemic?

4. What data sources should DOT consider as it updates the NTTISP?

a. DOT recognizes the challenge of gathering information on trip purpose and long-distance travel. What sources of data and information exist that include trip purpose and long-distance travel?

b. What sources of demographic data and information on origins and destinations of long-distance travelers should DOT consider?

c. What data sources should DOT consider related to the impacts of COVID-19 on long-distance travel and tourism?

5. How can transportation infrastructure policymakers support small, underserved, minority, and rural businesses in the travel and tourism industry?

6. How can policymakers support travelers from underserved communities and improve transportation accessibility?

7. How can policymakers support travel that is sustainable and reduces greenhouse gas emissions?

8. What metrics can help identify scenic, but often less-traveled roads, cruises, and rail corridors that promote tourism and economic development throughout the United States?

9. How should DOT reflect new and future innovations in travel in the NTTISP?

Issued on May 30, 2023.

**Julie Abraham,**

*Director, Office of International Transportation and Trade, U.S. Department of Transportation.*

[FR Doc. 2023-11805 Filed 6-1-23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

#### Notice of OFAC Sanctions Actions

**AGENCY:** Office of Foreign Assets Control, Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons whose property and interests in property have been unblocked and who have been removed from the Specially Designated Nationals and Blocked Persons List.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

**FOR FURTHER INFORMATION CONTACT:** OFAC: Associate Director for Global Targeting, tel: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

#### **SUPPLEMENTARY INFORMATION:**

##### **Electronic Availability**

The Specially Designated Nationals and Blocked Persons List (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://ofac.treasury.gov>).

##### **Notice of OFAC Actions**

On May 25, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are unblocked and they have been removed from the SDN List.

##### **Individuals**

1. GONZALEZ BETANCUR, Angel Horacio, c/o FISHING ENTERPRISE HOLDING INC., Panama City, Panama; c/o AQUAMARINA ISLAND INTERNATIONAL CORPORATION, Panama City, Panama; c/o CORDES CIA. LIMITADA, Cali, Colombia; DOB 03 Feb 1966; POB Colombia; Cedula No. 6465085 (Colombia) (individual) [SDNT].

2. LOPEZ PERDIGON, Roberto Manuel; DOB 09 Sep 1971; POB Caracas, Venezuela; nationality Venezuela; citizen Venezuela; Passport C1771508 (Venezuela); alt. Passport 037325626 (Venezuela); National ID No. 10337667 (Venezuela) (individual) [SDNTK] (Linked To: CONSTRUCTORA FR DE VENEZUELA, C.A.).

3. VALENCIA TRUJILLO, Guillermo, Calle 93A No. 14-17 Ofc. 711, Bogota, Colombia; Calle 93N No. 14-20 Ofc. 601, Bogota, Colombia; Carrera 66 No. 7-31, Bogota, Colombia; Calle 67 Norte No. 8-85, Cali, Colombia; DOB 19 Oct 1947; POB Cali, Valle, Colombia; Cedula No. 14942909 (Colombia); Passport 14942909 (Colombia) (individual) [SDNT].

4. CASTILLO LONDONO, Claudia Jannet (Latin: CASTILLO LONDONO, Claudia Jannet); DOB 14 Apr 1963; POB Medellin, Antioquia, Colombia; Cedula No. 43056130 (Colombia); C.U.I.T. 27-60357111-3 (Argentina) (individual) [SDNTK] (Linked To: COMERCIALIZADORA TROPPO SOCIEDAD ANONIMA; Linked To: RECREO S.A.; Linked To: SUBASTA GANADERA DE CAUCASIA S.A.; Linked To: FRIGORIFICO DEL CAUCA S.A.S.; Linked To: DYSTRY PANAMA S.A.; Linked To: LA ALIANZA GANADERA LTDA.; Linked To: CONSTRUCTORA PIEDRA DEL CASTILLO S.A.S.).

5. GARCES GIRALDO, Duber Astrid; DOB 18 Jan 1971; POB Envigado, Antioquia, Colombia; Cedula No. 43732323 (Colombia) (individual) [SDNTK] (Linked To: COMERCIALIZADORA TROPPO SOCIEDAD ANONIMA; Linked To: RECREO S.A.).

6. JARAMILLO ESTRADA, Nelson Fernando; DOB 23 Jan 1962; POB Medellin, Antioquia, Colombia; Cedula No. 70554907 (Colombia) (individual) [SDNTK] (Linked To: COMERCIALIZADORA TROPPO SOCIEDAD ANONIMA; Linked To: SUBASTA GANADERA DE CAUCASIA S.A.; Linked To: FRIGORIFICO DEL CAUCA S.A.S.; Linked To: DYSTRY PANAMA S.A.; Linked To: RECREO S.A.; Linked To: GUMOBARO S.A.S.).

7. PIEDRAHITA CASTILLO, Andres; DOB 01 Aug 1991; POB Cali, Valle, Colombia; Cedula No. 1017194157 (Colombia) (individual) [SDNTK] (Linked To: COMERCIALIZADORA TROPPO SOCIEDAD ANONIMA; Linked To: SUBASTA GANADERA DE CAUCASIA S.A.; Linked To: FRIGORIFICO DEL CAUCA S.A.S.; Linked To: RECREO S.A.; Linked To: DYSTRY PANAMA S.A.).

8. RUIZ PEREZ, Leonardo; DOB 24 Jun 1973; POB Medellin, Antioquia, Colombia; Cedula No. 98563640 (Colombia) (individual) [SDNTK] (Linked To: COMERCIALIZADORA

TROPPO SOCIEDAD ANONIMA; Linked To: SUBASTA GANADERA DE CAUCASIA S.A.; Linked To: LA ALIANZA GANADERA LTDA.; Linked To: DYSTRY PANAMA S.A.).

9. PIEDRAHITA CASTILLO, Jose; DOB 23 May 1989; POB Cali, Valle, Colombia; Cedula No. 1136881315 (Colombia) (individual) [SDNTK] (Linked To: RECREO S.A.; Linked To: FRIGORIFICO DEL CAUCA S.A.S.; Linked To: GOODY PET S.A.S.; Linked To: GUMOBARO S.A.S.; Linked To: CONSTRUCTORA PIEDRA DEL CASTILLO S.A.S.; Linked To: SUBASTA GANADERA DE CAUCASIA S.A.).

**Entities**

1. CONSTRUCTORA FR DE VENEZUELA, C.A. (a.k.a. CONSTRUCTORA FR DE VENEZUELA, C.A.), Calle Paez, Edf. Gisage PB, Ofic 1, Chacao, Caracas, Venezuela; Sector los Montones, Galpon 2, Puerto La Cruz, Venezuela; RIF # J-31327555-7 (Venezuela) [SDNTK].

2. BOLSAK E.U. (a.k.a. BOLSAK S.A.), Calle 15 No. 25-400 Urbanizacion Industrial Acopi, Yumbo, Colombia; NIT # Provisional (Colombia) [SDNT].

3. CIA. ANDINA DE EMPAQUES LTDA. (a.k.a. COEMPAQUES LTDA.), Carrera 4 No. 11-45 Ofic. 503, Cali, Colombia; Carrera 17 G No. 25-72, Cali, Colombia; NIT # 800018562-9 (Colombia) [SDNT].

4. GEOPLASTICOS S.A. (f.k.a. COLOMBIANA DE BOLSAS S.A.), Calle 24 No. 4-31, Cali, Colombia; NIT # 890931876-9 (Colombia) [SDNT].

5. GESTORA MERCANTIL S.A., Avenida 7 Norte No. 23N-81, Cali, Colombia; Avenida 7 Norte No. 23-77, Cali, Colombia; NIT # 800154869-6 (Colombia) [SDNT].

6. TRINIDAD LTDA. Y CIA. S.C.S., Carrera 43 No. 4-47, Buenaventura, Colombia; NIT # 800009737-2 (Colombia) [SDNT].

7. UNIPAPEL S.A. (f.k.a. UNIPAPEL S.A. BOLSAS DE PAPEL PAPELES SOBRES), Calle 15 No. 26-400 Urbanizacion Industrial

Acopi, Yumbo, Colombia; Autopista Cali-Yumbo, No. 26-400, Cali, Colombia; Carrera 122 no. 20-02, Cali, Colombia; Carrera 66 No. 7-31, Bogota, Colombia; Carrera 52 No. 35-42, Medellin, Colombia; Carrera 49B No. 75-109 Ofc. 202, Barranquilla, Colombia; NIT # 890301701-6 (Colombia) [SDNT].

8. VALOR LTDA. S.C.S., Carrera 4 No. 17-20, Popayan, Colombia; NIT # 800009030-4 (Colombia) [SDNT].

9. GUMOBARO S.A.S., Cr. 27 Nro. 35 Sur 162, Of. 336, Envigado, Antioquia, Colombia; NIT # 811002414-7 (Colombia) [SDNTK].

Dated: May 25, 2023.

**Gregory T. Gatjanis,**

*Associate Director, Office of Foreign Assets Control, U.S. Department of the Treasury.*

[FR Doc. 2023-11793 Filed 6-1-23; 8:45 am]

**BILLING CODE 4810-AL-P**

**DEPARTMENT OF VETERANS AFFAIRS**

**Advisory Committee on Women Veterans, 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 Advisory Committee on Women Veterans will conduct a site visit on June 13-16, 2023. The Committee meeting is held with the Veterans Integrated Service Network (VISN) 5: VA Capitol Health Care Network; and with the VA Maryland Health Care System (VAMHCS), 10 North Greene Street, Baltimore, MD 21201-1524 (Room #3a-300) Baltimore, Maryland. The meeting sessions will begin and ends as follows:

Date	Time	Location
June 13, 2023 .....	8:30 a.m.-3:00 p.m. Eastern Standard Time (EST).	VAMHCS Facility/Microsoft TEAMS link and call-in information below.
June 14, 2023 .....	8:30 a.m.-3:00 p.m. (EST) .....	VAMHCS Facility/Microsoft TEAMS link and call-in information below.
June 15, 2023 .....	8:30 a.m.-2:30 p.m. (EST) .....	VAMHCS Facility/Microsoft TEAMS link and call-in information below.
June 16, 2023 .....	8:30 a.m.-10:00 a.m. (EST) .....	VAMHCS Facility/Microsoft TEAMS link and call-in information below.

The meeting sessions are open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women Veterans with respect to health care, rehabilitation, compensation, outreach and other programs and activities administered by VA designed to meet such needs. The Committee makes recommendations to the Secretary regarding such programs and activities.

On Tuesday, June 13, the agenda includes overviews of VISN 5's facilities and program; an overview of VISN 5 services for women Veterans; and an

overview of VAMHCS's facilities, programs and community partners.

On Wednesday, June 14, the agenda includes a continuation of briefings on VAMHCS's programs and services for women Veterans.

On Thursday, June 15, the agenda includes a continuation of briefings on VAMHCS's programs; an overview of Baltimore Regional Office's business lines and initiatives; and an overview of Baltimore National Cemetery Complex's services and programs.

On Friday, June 16, the Committee will conduct an out-briefing with leadership from VISN 5, VAMHCS, Baltimore Regional Office and Baltimore

National Cemetery Complex. The Committee meeting will adjourn at 10:00 a.m.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments for review by the Committee to Ms. Shannon L. Middleton at *00W@mail.va.gov* no later than June 7, 2023. Any member of the public who wishes to participate virtually, please click here: Join the meeting, Meeting ID: 232 290 448 094, Passcode: RknRoB; or call in (audio only) +1 205-235-3524, 38312534#, phone conference ID: 383 125 34#.

Dated: May 30, 2023.

**Jelessa M. Burney,**

*Federal Advisory Committee Management Officer.*

[FR Doc. 2023–11804 Filed 6–1–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF VETERANS AFFAIRS

### Solicitation of Nominations for Appointment to the Veterans' Family, Caregiver and Survivor Advisory Committee

**ACTION:** Notice.

**SUMMARY:** The Department of Veterans Affairs (VA) is seeking nominations of qualified candidates to be considered for appointment to the Veterans' Family, Caregiver and Survivor Advisory Committee (hereinafter in this section referred to as "the Committee").

**DATES:** Nominations for membership on the Committee must be received no later than 5:00 p.m. EST on June 30, 2023.

**ADDRESSES:** All nominations should be sent electronically to the Veterans' Family, Caregiver and Survivor email mailbox at [vha12cspfac@va.gov](mailto:vha12cspfac@va.gov) with a subject line: Nomination to VFCSAC.

**FOR FURTHER INFORMATION CONTACT:** Dr. Betty Moseley Brown, Designated Federal Officer, Department of Veterans Affairs, 210–392–2505 or at [Betty.MoseleyBrown@va.gov](mailto:Betty.MoseleyBrown@va.gov).

**SUPPLEMENTARY INFORMATION:** The Veterans' Family, Caregiver and Survivor Advisory Committee was established to provide advice to the Secretary of Veterans Affairs with respect to the administration of benefits by the Department of Veterans Affairs (VA) for services to Veterans' families, caregivers and survivors.

**Authority:** The Committee was established by the directive of the Secretary of VA, in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. ch. 10. The Committee responsibilities include providing a report to the Secretary not later than July 1 of each even-numbered year, which includes:

(1) An assessment of the needs, support and services for Veterans' families, caregivers and/or survivors across all generations and service eras;

(2) A review of the programs and activities of the Department designed to meet such needs;

(3) Find and provide opportunities to further integrate Veterans' families, caregivers and survivors into VA's systems of care, including recommendations on how VA can improve and/or expand delivery of

Veterans Health Administration, Veterans Benefits Administration and National Cemetery Administration services and benefits; and,

(4) Such recommendations (including recommendations for administrative and legislative action) as the Committee considers appropriate.

**Membership Criteria and Qualifications:** VA is requesting nominations for Committee membership. The Committee is composed of not more than 20 members and several ex-officio members. The members of the Committee are appointed by the Secretary of Veteran Affairs from the general public, from various sectors and organizations, including but not limited to:

- a. Veteran's family members, caregivers and survivors and stakeholders with an interest or expertise in these areas, and other subject matter experts;
- b. Caregivers;
- c. Veteran-focused organizations;
- d. Military history and academic communities;
- e. Veteran Service Organizations;
- f. Military Service Organizations;
- g. National Association of State Directors of Veterans Affairs;
- h. Non-profit, private and corporate partners;
- i. The Federal Executive Branch;
- j. Research experts and service providers; and
- k. Leaders of key stakeholder associations and organizations.

In accordance with the Committee Charter, the Secretary shall determine the number (up to 20), terms of service, and pay and allowances of Committee members, except that a term of service of any such member may not exceed two years. The Secretary may reappoint any Committee member for additional terms of service.

To the extent possible, the Secretary seeks members who have diverse professional and personal qualifications including but not limited to subject matter experts in the areas described above. We ask that nominations include any relevant experience information so that VA can ensure diverse Committee membership.

#### Requirements for Nomination Submission

Nominations should be typed (one nomination per nominator). Self nominations are acceptable. Nomination package should include:

- (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.*, specific attributes which qualify the nominee for service in this capacity)

and a statement from the nominee indicating a willingness to serve as a member of the Committee;

(2) The nominee's contact information, including name, mailing address, telephone numbers and email address;

(3) The nominee's curriculum vitae, not to exceed three pages and a one-page cover letter; and

(4) A summary of the nominee's experience and qualifications relative to the membership consideration described above.

Individuals selected for appointment to the Committee shall be invited to serve a two-year term. Committee members will receive per diem and reimbursement for eligible travel expenses incurred.

The Department makes every effort to ensure that the membership of VA Federal advisory committees is diverse in terms of points of view represented and the committee's capabilities. Appointments to this Committee shall be made without discrimination because of a person's race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability or genetic information. Nominations must state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee.

Dated: May 26, 2023.

**Jelessa M. Burney,**

*Federal Advisory Committee Management Officer.*

[FR Doc. 2023–11722 Filed 6–1–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF VETERANS AFFAIRS

### VA National Academic Affiliations Council, 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 VA National Academic Affiliations Council (Council) will meet via conference call on June 29, 2023, from 1 p.m. to 3 p.m. EST. The meeting session is open to the public.

The purpose of the Council is to advise the Secretary on matters affecting partnerships between VA and its academic affiliates.

On June 29, 2023, the Council will receive project updates and have discussions on actions affecting the educational mission of VA. The Council will receive public comments from 2:50 p.m. to 2:55 p.m. EST.

Interested persons may attend and/or present oral statements to the Council. The dial in number to attend the conference call is: 669-254-5252. At the prompt, enter meeting ID 161 502 3864, then press #. The meeting passcode is 842538, then press #. Individuals seeking to present oral statements are invited to submit a 1-2 page summary of their comments at the time of the meeting for inclusion in the official

meeting record. Oral presentations will be limited to five minutes or less, depending on the number of participants. Interested parties may also provide written comments for review by the Council prior to the meeting or at any time, by email to [nellie.mitchell@va.gov](mailto:nellie.mitchell@va.gov), or by mail to Nellie Mitchell, MS, RHIA, Designated Federal Officer, Office of Academic Affiliations (14AA), 810 Vermont Avenue NW, Washington,

DC 20420. Any member of the public wishing to participate or seeking additional information should contact Ms. Mitchell via email or by phone at (608) 358-9902.

Dated: May 30, 2023.

**Jelessa M. Burney,**  
*Federal Advisory Committee Management Officer.*

[FR Doc. 2023-11731 Filed 6-1-23; 8:45 am]

**BILLING CODE 8320-01-P**





# FEDERAL REGISTER

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Part II

## Department of Energy

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10 CFR Part 431

Energy Conservation Program: Energy Conservation Standards for Air Cooled, Three-Phase, Small Commercial Air Conditioners and Heat Pumps With a Cooling Capacity of Less Than 65,000 Btu/h and Air-Cooled, Three-Phase, Variable Refrigerant Flow Air Conditioners and Heat Pumps With a Cooling Capacity of Less Than 65,000 Btu/h; Final Rule

## DEPARTMENT OF ENERGY

## 10 CFR Part 431

[EERE–2022–BT–STD–0008]

RIN 1904–AF32

**Energy Conservation Program: Energy Conservation Standards for Air Cooled, Three-Phase, Small Commercial Air Conditioners and Heat Pumps With a Cooling Capacity of Less Than 65,000 Btu/h and Air-Cooled, Three-Phase, Variable Refrigerant Flow Air Conditioners and Heat Pumps With a Cooling Capacity of Less Than 65,000 Btu/h**

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

**ACTION:** Final rule.

**SUMMARY:** In this final rule, the U.S. Department of Energy (DOE or the Department) is adopting amended energy conservation standards for air cooled, three-phase, small commercial air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h and air-cooled, three-phase, variable refrigerant flow air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h that rely on new efficiency metrics and align with amended efficiency levels in the industry standard. For the relevant equipment classes, DOE has determined that it lacks clear and convincing evidence required by the statute to adopt standards more stringent than the levels specified in the industry standard.

**DATES:** The effective date of this rule is August 1, 2023. Compliance with the amended standards established for air cooled, three-phase, small commercial air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h and air-cooled, three-phase, variable refrigerant flow air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h in this final rule is required on and after January 1, 2025.

**ADDRESSES:** The docket for this rulemaking, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at [www.regulations.gov](http://www.regulations.gov). All documents in the docket are listed in the [www.regulations.gov](http://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 [2022-BT-STD-0008. The docket web page contains instructions on how to access all documents, including public comments, in the docket.](http://www.regulations.gov/docket/EERE-</a></p>
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For further information on how to review the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

**FOR FURTHER INFORMATION CONTACT:**

Ms. Catherine Rivest, 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) 586–7335. Email:

[ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

Ms. Kristin Koernig, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–3593. Email: [kristin.koernig@hq.doe.gov](mailto:kristin.koernig@hq.doe.gov).

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**I. Synopsis of the Final Rule**

The Energy Policy and Conservation Act, Public Law 94–163, as amended,<sup>1</sup> authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C of EPCA<sup>2</sup> established the Energy Conservation Program for Certain Industrial Equipment. (42 U.S.C. 6311–6317) Such equipment includes air cooled, three-phase, small commercial air conditioners and heat pumps (ACUACs and ACUHPs) with a cooling capacity of less than 65,000 Btu/h (three-phase, less than 65,000 Btu/h ACUACs and ACUHPs) and air-cooled, three-phase, variable refrigerant flow (VRF) air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h (three-phase, less than 65,000 Btu/h VRF), the subject of this rulemaking.

Pursuant to EPCA, DOE is required to consider amending the energy efficiency standards for certain types of covered commercial and industrial equipment, including the equipment at issue in this document, whenever the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) amends the standard levels or design requirements prescribed in ASHRAE 90.1, “*Energy Standard for Buildings Except Low-Rise Residential Buildings*,” (ASHRAE 90.1), and, at a minimum, every 6 years. (42 U.S.C. 6313(a)(6)(A)–(C)) For each type of equipment, EPCA directs that if ASHRAE 90.1 is amended, DOE must adopt amended energy conservation standards at the new

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

<sup>2</sup> For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

efficiency level in ASHRAE 90.1, unless clear and convincing evidence supports a determination that adoption of a more-stringent efficiency level would produce significant additional energy savings and be technologically feasible and economically justified (42 U.S.C. 6313(a)(6)(A)(ii) (referred to as the ASHRAE trigger)) If DOE adopts an amended uniform national standard at the efficiency level specified in the amended ASHRAE 90.1, DOE must establish such standard no later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(ii)(I) If DOE determines that a more-stringent standard is appropriate under the statutory criteria, DOE must establish such a more-stringent standard no later than 30 months after publication of the revised ASHRAE 90.1. (42 U.S.C. 6313(a)(6)(B)(i))

Under EPCA, DOE must also review its energy conservation standards for three-phase, less than 65,000 Btu/h ACUAC, ACUHP, and VRF equipment every six years and either: (1) issue a notice of determination that the standards do not need to be amended, as adoption of a more-stringent level under the relevant statutory criteria is not supported by clear and convincing evidence; or (2) issue a notice of proposed rulemaking including new proposed standards based on certain criteria and procedures in subparagraph (B).<sup>3</sup> (42 U.S.C. 6313(a)(6)(C)(ii))

ASHRAE officially released the 2019 version of Standard 90.1 (ASHRAE 90.1–2019) in October 2019, thereby triggering DOE's previously referenced obligations, pursuant to EPCA, to determine, for certain classes of three-phase, less than 65,000 Btu/h ACUAC, ACUHP, and VRF equipment, whether: (1) the amended industry standard should be adopted; or (2) clear and convincing evidence exists to justify more-stringent standard levels. For any classes where DOE was not triggered by ASHRAE 90.1–2019, the Department routinely considers those classes under EPCA's six-year-lookback provision at

<sup>3</sup> In relevant part, subparagraph (B) specifies that: (1) in making a determination of economic justification, DOE must consider, to the maximum extent practicable, the benefits and burdens of an amended standard based on the seven criteria described in EPCA; (2) DOE may not prescribe any standard that increases the energy use or decreases the energy efficiency of a covered equipment; and (3) DOE may not prescribe an amended standard that interested persons have established by a preponderance of evidence is likely to result in the unavailability in the United States of any product type (or class) of performance characteristics (including reliability, features, sizes, capacities, and volumes) that are substantially the same as those generally available in the United States. (42 U.S.C. 6313(a)(6)(B)(ii)–(iii))

the same time to address the subject equipment in a comprehensive fashion.

The Federal test procedures for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and for three-phase, less than 65,000 Btu/h VRF were most recently amended in a test procedure (TP) final rule published on December 16, 2022 (December 2022 Three-Phase TP final rule) and are currently prescribed at Title 10 of the Code of Federal Regulations (CFR) part 431, subpart F, appendix F1 (appendix F1). 87 FR 77298. The December 2022 Three-Phase TP final rule established amended test procedures for these equipment in appendix F1 and moved the test procedures referenced by the current Federal energy conservation standards into a new appendix at 10 CFR part 431, subpart F, appendix F (appendix F). The amended test procedures in appendix F1 reference American National Standards Institute (ANSI)/Air-Conditioning, Heating, and Refrigeration Institute (AHRI) 210/240, “2023 Standard for Performance Rating of Unitary Air-conditioning & Air-source Heat Pump Equipment” (AHRI 210/240–2023) and ANSI/ASHRAE Standard 37–2009, “Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment” (ANSI/ASHRAE 37–2009) for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and for three-phase, less than 65,000 Btu/h VRF. For three-phase, less than 65,000 Btu/h ACUACs and ACUHPs, the test procedure in appendix F references ANSI/AHRI Standard 210/240–2008, “Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment,” approved by ANSI on October 27, 2011, and updated by Addendum 1 in June 2011 and Addendum 2 in March 2012 (AHRI 210/240–2008). For three-phase, less than 65,000 Btu/h VRF, the test procedure in appendix F references ANSI/AHRI 1230–2010, “2010 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment,” approved August 2, 2010 and updated by Addendum 1 in March 2011 (AHRI 1230–2010).

As set forth in ASHRAE 90.1–2019, the efficiency levels for three-phase, less than 65,000 Btu/h ACUAC, ACUHP, and VRF equipment are specified in terms of seasonal energy efficiency ratio-2 (SEER2) for cooling mode and heating seasonal performance factor-2 (HSPF2) for heating mode. These efficiency levels are measured per AHRI 210/240–2023. Furthermore, ASHRAE 90.1–2019 and AHRI 210/240–2023 align the test procedures for three-phase, less than

65,000 Btu/h equipment with those of their single-phase counterparts (*i.e.*, measuring performance in terms of SEER2 and HSPF2), which, aside from the three-phase power supply, are otherwise identical.<sup>4</sup>

DOE published a notice of proposed rulemaking (NOPR) proposing amended energy conservation standards for three-phase, less than 65,000 Btu/h ACUAC, ACUHP, and VRF equipment in the **Federal Register** on March 30, 2022. 87 FR 18290 (March 2022 NOPR). In the time between the publications of the March 2022 NOPR and this final rule, ASHRAE officially released the 2022 version of Standard 90.1 (ASHRAE 90.1–2022) in January 2023, which updated the standard levels for three-phase, less than 65,000 Btu/h VRF. In the March 2022 NOPR, DOE requested comment on its proposal to adopt the more stringent efficiency levels for three-phase, less than 65,000 Btu/h VRF presented in the first public review draft of Addendum ‘ay’ to ASHRAE 90.1–2019, should such levels be incorporated into an updated version of ASHRAE 90.1 that publishes prior to DOE publishing this final rule. *Id.* at 87 FR 18304. As discussed in section V.A of this document, this proposal was supported by stakeholders. Accordingly, DOE is adopting more stringent efficiency level standards in this final rule for three-phase, less than 65,000 Btu/h VRF to align with the amended levels in the updated 2022 version of ASHRAE 90.1, ASHRAE 90.1–2022.

DOE is also adopting definitions for space-constrained (S–C) commercial package air conditioning and heating equipment (S–C ACUACs and ACUHPs) and for small-duct, high-velocity (SDHV) commercial package air conditioning and heating equipment (SDHV ACUACs and ACUHPs), as described in section V.D of this document. Additionally, DOE is separating equipment classes and corresponding energy conservation standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs that are (1) S–C split-system ACUACs; (2) S–C split-system ACUHPs; (3) S–C single-package ACUACs; (4) S–C single-package ACUHPs; (5) SDHV ACUACs; and (6) SDHV ACUHPs. These additional equipment classes for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs are included in both ASHRAE 90.1–2019 and ASHRAE 90.1–2022.

As described in detail in section III of this document, DOE conducted a

<sup>4</sup> See, *e.g.*, 80 FR 42614, 42622 (July 17, 2015), 83 FR 49501, 49504 (Oct. 2, 2018), and 87 FR 77298, 77300.

crosswalk analysis to translate the current SEER and HSPF standards (measured per the test procedures outlined in appendix F) to SEER2 and HSPF2 levels, respectively (measured per the latest version of AHRI Standard AHRI 210/240 (i.e., AHRI 210/240–2023)). DOE then compared these crosswalked metrics to those presented in ASHRAE 90.1–2019 to determine which equipment classes are triggered by the increased stringency in ASHRAE 90.1–2019.

In this document, DOE is updating the minimum energy conservation standard levels found at Tables 3, 4, and 13 of 10 CFR 431.97. The amended standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and for three-phase, less than 65,000 Btu/h VRF, which are expressed in SEER2 and HSPF2, are presented in Table I.1 and Table I.2.<sup>5</sup> The standards in Table I.1 apply to all three-phase, less than 65,000 Btu/h ACUACs and ACUHPs manufactured in or imported into the United States starting January 1, 2025. The standards in Table I.2 apply to all three-phase, less than 65,000 Btu/h VRF manufactured in or imported into the United States starting January 1, 2025.

As described in section V of this document, DOE has determined that insufficient data are available to determine, based on clear and convincing evidence, that more-stringent standards would result in significant additional energy savings

and be technologically feasible and economically justified. The clear and convincing threshold is a heightened standard, and would only be met where the Secretary of Energy (Secretary) has an abiding conviction, based on available facts, data, and DOE’s own analyses, that it is highly probable an amended standard would result in a significant additional amount of energy savings, and is technologically feasible and economically justified. See *American Public Gas Association v. U.S. Dep’t of Energy*, No. 20–1068, 2022 WL 151923, at \*4 (D.C. Cir. January 18, 2022) (citing *Colorado v. New Mexico*, 467 U.S. 310, 316, 104 S.Ct. 2433, 81 L.Ed.2d 247 (1984)).

DOE normally performs multiple in-depth analyses to determine whether there is clear and convincing evidence to support more stringent energy conservation standards (i.e., whether more stringent standards would produce significant additional conservation of energy and be technologically feasible and economically justified). However, as discussed in the section V of this final rule, due to the lack of available market and performance data, DOE could not conduct the analysis necessary to evaluate the potential energy savings or evaluate whether more stringent standards would be technologically feasible or economically justifiable, with sufficient certainty. As such, DOE is not adopting standards at levels more stringent than those

specified in ASHRAE Standard 90.1. Rather, DOE is adopting the levels specified in ASHRAE 90.1–2019 for three-phase, less than 65,000 Btu/h ACUAC and ACUHP equipment as well as the levels specified in ASHRAE 90.1–2022 for three-phase, less than 65,000 Btu/h VRF, as required by EPCA, except for S–C ACUACs and ACUHPs and SDHV ACUACs and ACUHPs, for which DOE is adopting crosswalked levels that maintain equivalent stringency to the currently applicable Federal standards but do not align with the levels in ASHRAE 90.1–2019.

For S–C ACUACs and ACUHPs and SDHV ACUACs and ACUHPs, DOE has concluded that the levels specified in ASHRAE 90.1–2019 are less stringent than the applicable current Federal standards. Therefore, to avoid backsliding (as required by EPCA),<sup>6</sup> DOE is adopting standards for S–C ACUACs and ACUHPs and SDHV ACUACs and ACUHPs in terms of SEER2 and HSPF2 that maintain equivalent stringency as that in the applicable current Federal standards (in terms of SEER and HSPF) for that equipment.

The adopted standards, which are expressed in SEER2 and HSPF2, are shown in Table I.1 and Table I.2, and apply to all products manufactured in, or imported into, the United States starting on January 1, 2025.

TABLE I.1—ENERGY CONSERVATION STANDARDS FOR AIR-COOLED, THREE-PHASE, SMALL COMMERCIAL PACKAGE AIR CONDITIONERS AND HEAT PUMPS WITH A COOLING CAPACITY OF LESS THAN 65,000 Btu/h

[Compliance starting January 1, 2025]

Equipment type	Size category (cooling)	Subcategory	Minimum efficiency
Air Conditioners	<65,000 Btu/h	Split System Single-Package	13.4 SEER2. 13.4 SEER2.
Heat Pumps	<65,000 Btu/h	Split System Single-Package	14.3 SEER2, 7.5 HSPF2. 13.4 SEER2, 6.7 HSPF2.
Space-Constrained Air Conditioners	≤30,000 Btu/h	Split System Single-Package	12.7 SEER2. <sup>1</sup> 13.9 SEER2.
Space-Constrained Heat Pumps	≤30,000 Btu/h	Split System Single-Package	13.9 SEER2, 7.0 HSPF2. 13.9 SEER2, 6.7 HSPF2.
Small-Duct, High-Velocity Air Conditioners	<65,000 Btu/h	Split System	13.0 SEER2.
Small-Duct, High-Velocity Heat Pumps	<65,000 Btu/h	Split System	14.0 SEER2, 6.9 HSPF2.

<sup>1</sup> In the March 2022 NOPR, DOE produced a typographical error in “Table I–1” that suggested a proposed energy conservation standard of 13.9 SEER2 for S–C, split-system ACUACs. See 87 FR 18290, 18293. The 13.9 SEER2 level was incorrectly presented in the March 2022 NOPR and has been corrected for this final rule to match the 12.7 SEER2 level presented by both the March 2022 NOPR’s crosswalk results in “Table III–1” and the March 2022 NOPR’s proposed regulatory text. *Id.* at 87 FR 18299, 18311.

<sup>5</sup> Energy conservation standards for air-cooled, three-phase, small, commercial packaged air conditioners and heat pumps with a cooling capacity of greater than 65,000 Btu/h and air-cooled, VRF, multi-split systems with a cooling capacity of greater than 65,000 Btu/h are not

addressed in this final rule. This equipment will instead be addressed in separate energy conservation standards rulemakings.

<sup>6</sup> EPCA’s anti-backsliding provision prevents the Secretary from prescribing any amended standard

that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6313(a)(6)(B)(iii)(I))

TABLE I.2—ENERGY CONSERVATION STANDARDS FOR AIR-COOLED, THREE-PHASE, VRF MULTI-SPLIT AIR CONDITIONERS AND HEAT PUMPS WITH A COOLING CAPACITY OF LESS THAN 65,000 Btu/h  
[Compliance starting January 1, 2025]

Equipment type	Size category (cooling)	Subcategory	Minimum efficiency <sup>1</sup>
VRF Air Conditioners .....	<65,000 Btu/h .....	Split System .....	13.4 SEER2.
VRF Heat Pumps .....	<65,000 Btu/h .....	Split System .....	13.4 SEER2, 7.5 HSPF2.

<sup>1</sup> The adopted standards for three-phase, less than 65,000 Btu/h VRF are more stringent than those standards proposed in “Table I–2” of the March 2022 NOPR, as to align with the minimum efficiency levels prescribed by ASHRAE 90.1–2022. See 87 FR 18290, 18293.

**II. Introduction**

The following section briefly discusses the statutory authority underlying this final rule, as well as some of the relevant historical background related to the establishment of energy conservation standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and three-phase, less than 65,000 Btu/h VRF.

**A. Authority**

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C of EPCA, added by Public Law 95–619, Title IV, section 441(a) (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency for covered equipment. This covered equipment includes three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and three-phase, less than 65,000 Btu/h VRF, the subject of this rulemaking. (42 U.S.C. 6311(1)(B)) Pursuant to EPCA, DOE is to consider amending the energy efficiency standards for certain types of commercial and industrial equipment, including the equipment at issue in this document, whenever ASHRAE amends the standard levels or design requirements prescribed in ASHRAE/IES Standard 90.1, and, at a minimum, every 6 years. (42 U.S.C. 6313(a)(6)(A)–(C))

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

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

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. Manufacturers of covered equipment must use the Federal test procedures as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. The current DOE test procedures for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and for three-phase, less than 65,000 Btu/h VRF appear at 10 CFR part 431, subpart F, appendix F1. The outdated test procedures for these equipment, referenced by the current energy conservation standards, appear at 10 CFR part 431, subpart F, appendix F.

ASHRAE Standard 90.1 sets industry energy efficiency levels for small, large, and very large commercial package air-conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks (collectively ASHRAE equipment). For each type of listed equipment, EPCA directs that if ASHRAE amends Standard 90.1, DOE must adopt amended standards at the new ASHRAE efficiency level, unless

DOE determines, supported by clear and convincing evidence, that adoption of a more stringent level would produce significant additional conservation of energy and would be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) Under EPCA, DOE must also review energy efficiency standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and for three-phase, less than 65,000 Btu/h VRF every six years and either: (1) issue a notice of determination that the standards do not need to be amended as adoption of a more stringent level is not supported by clear and convincing evidence; or (2) issue a notice of proposed rulemaking including new proposed standards based on certain criteria and procedures in subparagraph (B).<sup>7</sup> (42 U.S.C. 6313(a)(6)(C))

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

- (1) The economic impact of the standard on manufacturers and consumers of 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 equipment that are likely to result from the standard;

<sup>7</sup> In relevant part, subparagraph (B) specifies that: (1) in making a determination of economic justification, DOE must consider, to the maximum extent practicable, the benefits and burdens of an amended standard based on the seven criteria described in EPCA; (2) DOE may not prescribe any standard that increases the energy use or decreases the energy efficiency of a covered product; and (3) DOE may not prescribe any standard that interested persons have established by a preponderance of evidence is likely to result in the unavailability in the United States of any product type (or class) of performance characteristics (including reliability, features, sizes, capacities, and volumes) that are substantially the same as those generally available in the United States. (42 U.S.C. 6313(a)(6)(B)(ii)–(iii))

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

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

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

(6) The need for national energy conservation; and

(7) Other factors the Secretary of Energy considers relevant.

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

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

## B. Background

### 1. Current Standards

EPCA defines “commercial package air conditioning and heating equipment” as air-cooled, water-cooled, evaporatively-cooled, or water-source (not including ground water source) electrically operated, unitary central air conditioners and central air conditioning heat pumps for commercial application. (42 U.S.C. 6311(8)(A); 10 CFR 431.92) EPCA further classifies “commercial package air conditioning and heating equipment” into categories based on cooling capacity (*i.e.*, small, large, and very large categories). (42 U.S.C. 6311(8)(B)–(D); 10 CFR 431.92) “Small commercial package air conditioning and heating equipment” means equipment rated below 135,000 Btu per hour (cooling capacity). (42 U.S.C. 6311(8)(B); 10 CFR 431.92) “Large commercial package air conditioning and heating equipment” means equipment rated: (i) at or above 135,000 Btu per hour; and (ii) below 240,000 Btu

per hour (cooling capacity). (42 U.S.C. 6311(8)(C); 10 CFR 431.92) “Very large commercial package air conditioning and heating equipment” means equipment rated: (i) at or above 240,000 Btu per hour; and (ii) below 760,000 Btu per hour (cooling capacity). (42 U.S.C. 6311(8)(D); 10 CFR 431.92)

The energy conservation standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs were most recently amended through a final rule for energy conservation standards and test procedures for certain commercial heating, air-conditioning and water heating equipment published in the **Federal Register** on July 17, 2015. 80 FR 42614 (July 2015 final rule). For three of the four equipment classes of three-phase, less than 65,000 Btu/h ACUACs and ACUHPs (packaged air conditioners, packaged heat pumps, and split-system heat pumps), the July 2015 final rule adopted energy conservation standards that correspond to the levels in the 2013 revision of ASHRAE Standard 90.1. *Id.* at 80 FR 42616. For the remaining equipment class (split-system air conditioners), the July 2015 final rule did not amend the energy conservation standards. *Id.*

DOE’s current energy conservation standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs are codified at Tables 3 and 4 of 10 CFR 431.97. The current equipment classes are differentiated by configuration (split system or single package) and by heating capability (air conditioner or heat pump) and repeated in Table II.1 of this document.

Pursuant to its authority under EPCA (42 U.S.C. 6313(a)(6)(A)) and in response to updates to ASHRAE Standard 90.1, DOE has established the category of VRF multi-split systems, which meets the EPCA definition of “commercial package air conditioning and heating equipment,” but which EPCA did not expressly identify. *See* 10 CFR 431.92; 10 CFR 431.97.

DOE defines “variable refrigerant flow air conditioner” as a unit of commercial package air-conditioning and heating equipment that is configured as a split system air conditioner incorporating a single refrigerant circuit, with one or more outdoor units, at least one variable-speed compressor or an alternate compressor combination for varying the capacity of the system by three or more steps, and multiple indoor fan coil units, each of which is individually metered and individually

controlled by an integral control device and common communications network and which can operate independently in response to multiple indoor thermostats. Variable refrigerant flow implies three or more steps of capacity control on common, inter-connecting piping. 10 CFR 431.92.

DOE defines “variable refrigerant flow multi-split heat pump” as a unit of commercial package air-conditioning and heating equipment that is configured as a split system heat pump that uses reverse cycle refrigeration as its primary heating source and which may include secondary supplemental heating by means of electrical resistance, steam, hot water, or gas. The equipment incorporates a single refrigerant circuit, with one or more outdoor units, at least one variable-speed compressor or an alternate compressor combination for varying the capacity of the system by three or more steps, and multiple indoor fan coil units, each of which is individually metered and individually controlled by a control device and common communications network and which can operate independently in response to multiple indoor thermostats. Variable refrigerant flow implies three or more steps of capacity control on common, inter-connecting piping. 10 CFR 431.92.

DOE adopted energy conservation standards specific to VRF multi-split systems in a final rule published on May 16, 2012. 77 FR 28928 (May 2012 final rule). When determining the appropriate standard levels, DOE considered updates to the 2010 edition of ASHRAE Standard 90.1 (ASHRAE 90.1–2010), which designated separate equipment classes for VRF multi-split systems for the first time. *Id.* at 77 FR 28934. For three-phase, less than 65,000 Btu/h VRF, DOE maintained the standards from the equipment class under which the corresponding VRF multi-split system equipment class was previously regulated (*i.e.*, three-phase, less than 65,000 Btu/h VRF had previously been covered as three-phase, less than 65,000 Btu/h ACUACs and ACUHPs). *Id.* at 77 FR 28938.

DOE’s current equipment classes for three-phase, less than 65,000 Btu/h VRF are differentiated only by refrigeration cycle (air conditioners or heat pumps). DOE’s current standards for VRF multi-split systems are set forth at Table 13 to 10 CFR 431.97 and repeated in Table II.2 of this document.

TABLE II.1—CURRENT FEDERAL ENERGY CONSERVATION STANDARDS FOR AIR-COOLED, THREE-PHASE, SMALL COMMERCIAL PACKAGE AIR CONDITIONERS AND HEATING EQUIPMENT WITH A COOLING CAPACITY OF LESS THAN 65,000 Btu/h

Equipment type	Cooling capacity	Sub-category	Heating type	Efficiency level	Compliance date
Small Commercial Package Air Conditioner and Heating Equipment (Air-Cooled, 3-Phase, Split-System).	<65,000 Btu/h	AC HP	All All	13 SEER 14 SEER, 8.2 HSPF	June 16, 2008. January 1, 2017.
Small Commercial Package Air Conditioning and Heating Equipment (Air-Cooled, 3-Phase, Single-Package).	<65,000 Btu/h	AC HP	All All	14 SEER 14 SEER, 8.0 HSPF	January 1, 2017. January 1, 2017.

TABLE II.2—CURRENT FEDERAL ENERGY CONSERVATION STANDARDS FOR AIR-COOLED, THREE-PHASE, VARIABLE REFRIGERANT FLOW AIR CONDITIONERS AND HEAT PUMPS WITH A COOLING CAPACITY OF LESS THAN 65,000 Btu/h

Equipment type	Cooling capacity	Heating type	Efficiency level	Compliance date
VRF Multi-Split Air Conditioners (Air-Cooled)	<65,000 Btu/h	All	13 SEER	June 16, 2008.
VRF Multi-Split Heat Pumps (Air-Cooled)	<65,000 Btu/h	All	13 SEER, 7.7 HSPF	June 16, 2008.

2. ASHRAE 90.1

As previously discussed, ASHRAE released ASHRAE 90.1–2019 in October 2019, which updated the test procedure references, efficiency metrics, and efficiency levels for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs. ASHRAE later released ASHRAE 90.1–2022 in January 2023, which also updated the test procedure references, efficiency metrics, and efficiency levels for three-phase, less than 65,000 Btu/h VRF. ASHRAE 90.1–2022 incorporates the more stringent SEER2/HSPF2 efficiency levels for three-phase, less than 65,000 Btu/h VRF found in Addendum ‘ay’ to ASHRAE 90.1–2019. As the test procedures, efficiency metrics, and efficiency levels prescribed in ASHRAE 90.1–2022 for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs did not change from ASHRAE 90.1–2019, new analysis of three-phase, less than 65,000 Btu/h ACUACs and ACUHPs was not required for this final rule by the release of ASHRAE 90.1–2022.

For three-phase, less than 65,000 Btu/h ACUACs and ACUHPs, the current DOE energy conservation standards reference the outdated test procedure in appendix F, which, in turn, reference the industry test procedure, AHRI 210/240–2008, and measures performance in terms of SEER and HSPF. ASHRAE 90.1–2019 references the updated industry test procedure AHRI 210/240–2023, which measures performance in terms of SEER2 and HSPF2. As discussed in section III of this document, DOE conducted a crosswalk analysis to determine whether the new metrics and efficiency levels in

ASHRAE 90.1–2019 represent at least equivalent stringency as compared to the existing DOE standards in terms of SEER and HSPF. DOE’s crosswalk analysis determined that ASHRAE 90.1–2019 increased the stringency of cooling and heating mode efficiency levels for the two DOE equipment classes of three-phase, split-system, less than 65,000 Btu/h ACUAC and ACUHP equipment while leaving unchanged the stringency of single-packaged, three-phase equipment.

Regarding three-phase, less than 65,000 Btu/h VRF, ASHRAE 90.1–2022 also updates the relevant industry test procedure. The outdated test procedure in appendix F, referenced by the current DOE energy conservation standards, reference the industry test procedure, AHRI 1230–2010. ASHRAE 90.1–2022 updates this reference to the updated industry test procedure AHRI 210/240–2023, which measures performance in terms of SEER2 and HSPF2. As discussed in section III of this document, DOE conducted a crosswalk analysis to determine whether the new metrics and efficiency levels in ASHRAE 90.1–2022 represent at least equivalent stringency as compared to the existing DOE standards in terms of SEER and HSPF for three-phase, less than 65,000 Btu/h VRF. DOE’s crosswalk analysis determined that ASHRAE 90.1–2022 increased the stringency of both cooling and heating mode efficiency levels for air-cooled, three-phase, less than 65,000 Btu/h VRF.

3. September 2020 NODA/RFI

DOE published a notice of data availability and request for information

(NODA/RFI) in response to the amendments to ASHRAE 90.1–2019 in the **Federal Register** on September 25, 2020. 85 FR 60642 (September 2020 NODA/RFI). In the September 2020 NODA/RFI, DOE compared the current Federal standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs (in terms of SEER and HSPF) to the levels in ASHRAE 90.1–2019 (in terms of SEER2 and HSPF2) and requested comment on its preliminary findings. *Id.* at 85 FR 60662–60666. The September 2020 NODA/RFI did not address standards for three-phase, less than 65,000 Btu/h VRF.

4. March 2022 NOPR

In the March 2022 NOPR, DOE proposed amended energy conservation standards for both three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and for three-phase, less than 65,000 Btu/h VRF. 87 FR 18290, 18293. The proposed amended standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs were based on the preliminary crosswalk analysis first presented in the September 2020 NODA/RFI and extended into the March 2022 NOPR. *Id.* at 87 FR 18296–18298. The proposed amended standards for three-phase, less than 65,000 Btu/h VRF utilized additional crosswalk analysis conducted for and found only in the March 2022 NOPR. *Id.* at 87 FR 18298–18299. DOE received six comments in response to the issues raised in the March 2022 NOPR from the interested parties listed in Table II.3.



TABLE II.3—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS TO THE MARCH 2022 NOPR

Commenter(s)	Abbreviation	Comment No. in the docket	Commenter type
Air-Conditioning, Heating and Refrigeration Institute .....	AHRI .....	10	Manufacturer Trade Group.
Lennox International Inc .....	Lennox .....	07	Manufacturer.
Carrier Corporation .....	Carrier .....	06	Manufacturer.
California Investor-Owned Utilities .....	CA IOUs .....	08	Advocacy Group.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Northwest Energy Efficiency Alliance.	Joint Advocates .....	09	Advocacy Group.
National Institute of Standards and Technology .....	NIST .....	02	Government Agency.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.<sup>8</sup> To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the May 16, 2022, public meeting, DOE cites the written comments throughout this final rule. DOE did not receive any oral comments during the webinar that substantively differ from written comments; therefore, oral comments are not summarized in this final rule.

DOE notes that the standards proposed for three-phase, less than 65,000 Btu/h VRF in the March 2022 NOPR are less stringent than those adopted in this final rule. The March 2022 NOPR crosswalked current Federal standards from SEER and HSPF metrics to the newer SEER2 and HSPF2 metrics for these systems as the March 2022 NOPR was published prior to publication of ASHRAE 90.1–2022. In the March 2022 NOPR, DOE also proposed, however, that standard levels of equivalent stringency to those in Addendum ‘ay’ to ASHRAE 90.1–2019 would be adopted should those standard levels be incorporated into an updated version of ASHRAE 90.1 before publication of this final rule. 87 FR 18290, 18304. As previously mentioned, an updated version of ASHRAE 90.1, ASHRAE 90.1–2022, was published in January 2023 and includes updated standard levels for three-phase, less than 65,000 Btu/h VRF. Thus, standards for three-phase, less than 65,000 Btu/h VRF adopted in this final rule are of equivalent stringency to those in ASHRAE 90.1–2022 and are more

stringent than the current Federal standards.

**III. Discussion of Crosswalk Analysis**

*A. Crosswalk Background*

The energy conservation standards adopted in this document were developed in response to updates to the relevant industry test standard (*i.e.*, AHRI 210/240–2023), as well as updates to the minimum efficiency levels specified in ASHRAE 90.1–2019. As stated in section II.A of this document, DOE must consider amending the energy efficiency standards for certain types of commercial and industrial equipment, including the equipment at issue in this document, whenever ASHRAE amends the standard levels or design requirements prescribed in ASHRAE Standard 90.1, and at a minimum, every 6 years. (42 U.S.C. 6313(a)(6)(A)–(C)) EPCA also prohibits DOE from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6313(a)(6)(B)(iii)(I)); commonly referred to as EPCA’s anti-backsliding provision) DOE conducted separate crosswalk analyses for each equipment class to ensure that EPCA’s anti-backsliding provision is not violated by the amended standards in this final rule.

As described in the following sections, DOE’s crosswalk analysis for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs is consistent with the preliminary crosswalk analysis first presented in the September 2020 NODA/RFI and extended into the March 2022 NOPR. *See* 85 FR 60642, 60662–60663 and 87 FR 18290, 18296–18298. The crosswalk in the March 2022 NOPR qualitatively evaluated whether the minimum efficiency levels for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs presented in ASHRAE 90.1–2019 were of higher, lower, or equivalent stringency to the existing Federal standard levels. 87 FR 18290, 18296–18300.

With regards to three-phase, less than 65,000 Btu/h VRF, DOE’s crosswalk, described further in the following sections, is consistent with the crosswalk presented for these equipment classes in the March 2022 NOPR, with one exception. For the March 2022 NOPR, DOE’s crosswalk qualitatively evaluated whether the minimum efficiency levels for three-phase, less than 65,000 Btu/h VRF presented in ASHRAE 90.1–2019 were of higher, lower, or equivalent stringency to the existing Federal standard levels. *Id.* For this final rule, DOE’s crosswalk instead considered the minimum efficiency levels presented in ASHRAE 90.1–2022, rather than ASHRAE 90.1–2019, when evaluating whether the minimum efficiency levels for three-phase, less than 65,000 Btu/h VRF were of higher, lower, or equivalent stringency to the existing Federal standard levels. DOE did not present crosswalk analysis for these equipment classes in any notices (*i.e.*, the September 2020 NODA/RFI) prior to the March 2022 NOPR.

On January 6, 2017, DOE published a direct final rule (DFR) amending energy conservation standards for residential central air conditioners (CACs) and heat pumps (HPs) (collectively CAC/HPs) (January 2017 CAC/HP ECS DFR). 82 FR 1786. The January 2017 CAC/HP ECS DFR established crosswalk translations for CAC/HPs from SEER and HSPF (measured per 10 CFR part 430, subpart B, appendix M (appendix M)) to SEER2 and HSPF2 (measured per 10 CFR part 430, subpart B, appendix M1 (appendix M1)). Specifically, in the January 2017 CAC/HP ECS DFR DOE established multiple SEER-to-SEER2 translations that were unique to the test conditions for each product class. *Id.* at 82 FR 1849. In the January 2017 CAC/HP ECS DFR, DOE also established an HSPF-to-HSPF2 translation and concluded that the 15 percent reduction from HSPF to HSPF2 that was observed in an earlier rule for split-system and single-package heat pumps was appropriate also for S–C and SDHV heat pumps. *Id.* at 82 FR 1850.

<sup>8</sup> The parenthetical reference provides a reference for information located in the docket of DOE’s rulemaking to develop energy conservation standards for three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h. (Docket No. EERE–2022–BT–STD–0008, which is maintained at [www.regulations.gov](http://www.regulations.gov)). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

As described in the September 2020 NODA/RFI, AHRI 210/240–2023 aligns test methods and ratings to be consistent with DOE's test procedure for single-phase CACs at appendix M1. 85 FR 60642, 60647. Given that three-phase equipment are generally identical to their single-phase counterparts, aside for three-phase power input, DOE presented a preliminary metric translation for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs based on the metric translation used for single-phase CAC/HPs presented in the January 2017 CAC/HP ECS DFR in the September 2020 NODA/RFI. *Id.* at 85 FR 60662. For three-phase equipment classes with Federal standards matching SEER and HSPF standards in Table V–29 of the January 2017 CAC/HP ECS DFR, DOE used the corresponding SEER2 and HSPF2 values from Table V–30 of the January 2017 CAC/HP ECS DFR. For three-phase equipment classes that did not having matching SEER and/or HSPF values in Table V–29 of the January 2017 CAC/HP ECS DFR, DOE evaluated the stringency of the ASHRAE 90.1–2019 SEER2 and HSPF2 levels relative to the Federal SEER and HSPF standards by qualitatively assessing how the testing method changes made for single phase switching from SEER/HSPF to SEER2/HSPF2 would impact three-phase equipment. *See Id.* at 85 FR 60662–60663.

#### B. Crosswalk Methodology

##### 1. Three-Phase, Less Than 65,000 Btu/h, Single-Package and Split-System ACUACs and ACUHPs

Because three-phase, less than 65,000 Btu/h single-package air conditioners and heat pumps have directly comparable single-phase product classes, DOE was able to utilize the same crosswalk as described in the January 2017 CAC/HP ECS DFR when evaluating the relative stringency of ASHRAE 90.1–2019 levels. *See* 82 FR 1786, 1848–1851. In the September 2020 NODA/RFI, DOE determined that the ASHRAE 90.1–2019 efficiency standards are equivalent to the translated Federal efficiency standards for three-phase, single-package, less than 65,000 Btu/h ACUACs and ACUHPs. 85 FR 60642, 60662–60663. However, for three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs, DOE's crosswalk analysis determined that the levels in ASHRAE 90.1–2019 are more stringent than current Federal standards. *Id.* In the March 2022 NOPR, DOE tentatively determined that it was unnecessary to provide specific crosswalk values for the two equipment classes of three-

phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs for which ASHRAE 90.1–2019 increased stringency as compared to the current Federal standards. 87 FR 18290, 18297.

In response to the March 2022 NOPR, the Joint Advocates, AHRI, Carrier, and Lennox all supported DOE's crosswalk for three-phase, less than 65,000 Btu/h, single-package and split-system ACUACs and ACUHPs. (Joint Advocates, No. 9 at p. 1; AHRI, No. 10 at p. 2; Carrier, No. 6 at p.2; Lennox, No. 7 at p. 2) DOE received no comments opposing DOE's crosswalk methodologies or results. Therefore, in this final rule, DOE is using the same crosswalk methodology for these equipment as proposed in the March 2022 NOPR.

##### 2. Three-Phase, Less Than 65,000 Btu/h, Space-Constrained and Small-Duct, High-Velocity ACUACs and ACUHPs

In its preliminary crosswalk analysis in the September 2020 NODA/RFI, DOE determined that the standards levels for S–C and SDHV equipment found in ASHRAE 90.1–2019 are less stringent than the current Federal standards for the following six equipment classes: (1) S–C, split-system ACUAC; (2) S–C, split-system ACUHP; (3) S–C, single-package ACUAC; (4) S–C, single-package ACUHP; (5) SDHV split-system ACUAC; and (6) SDHV split-system ACUHP. 85 FR 60642, 60663. DOE's crosswalk showed that the crosswalked Federal standard levels for these equipment classes are qualitatively higher than the SEER2 and/or HSPF2 levels found in ASHRAE 90.1–2019; however DOE did not determine specific values for an appropriate crosswalk. *Id.* Specific values for crosswalked standards were later presented in the March 2022 NOPR. 87 FR 18290, 18299–18300. In the March 2022 NOPR, DOE reiterated that although the standard levels for S–C and SDHV equipment found in ASHRAE 90.1–2019 are less stringent than current Federal standards, it still intends to consider these ASHRAE classes separately in this rulemaking as part of the six-year-lookback review. *Id.* at 87 FR 18297.

In a NOPR published in the **Federal Register** on January 8, 2015, which covered energy conservation standards for commercial HVAC equipment, including three-phase, less than 65,000 Btu/h air conditioners and heat pumps (January 2015 ASHRAE 90.1 NOPR), DOE stated that EPCA does not separate these six additional equipment classes from other types of small commercial package air conditioning and heating equipment in its definitions, and,

therefore, EPCA's definition of "small commercial package air conditioning and heating equipment" includes SDHV and S–C air conditioners and heat pumps. 80 FR 1172, 1184. DOE reiterated this position in both the September 2020 NODA/RFI and March 2022 NOPR. *See* 85 FR 60642, 60662; 87 FR 18290, 18297. EPCA generally directs DOE to establish amended uniform national standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs at the minimum levels specified in ASHRAE Standard 90.1. (43 U.S.C. 6313(a)(6)(A)(ii)(I)) As DOE has previously stated, when considering the ASHRAE trigger, DOE evaluates ASHRAE amendments at the class level. Because the six equipment classes of three-phase S–C and SDHV equipment prescribed in ASHRAE 90.1–2019 are covered as small commercial package air conditioning and heating equipment, DOE cannot adopt standard levels that are any lower than the current Federal standards. However, to distinguish S–C and SDHV equipment from the three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs equipment for which DOE was triggered by more stringent levels in ASHRAE 90.1–2019, DOE proposed to establish separate equipment classes of three-phase S–C and SDHV equipment with separate standard levels in the March 2022 NOPR. 87 FR 18290, 18297. Consistent with EPCA, the levels that DOE proposed for these S–C and SDHV equipment classes maintained equivalent stringency to the current applicable Federal standards and are therefore more stringent than the corresponding levels set forth in ASHRAE 90.1–2019. *Id.*

The Joint Advocates and Lennox both supported DOE's crosswalk for three-phase S–C and SDHV equipment (Joint Advocates, No. 9 at p. 1; Lennox, No. 7 at p. 2) No comments were received in opposition to DOE's crosswalk methodologies or results. However, while no opposition to the crosswalk analysis was received, AHRI, CA IOUs, and Carrier all commented in opposition of adopting the crosswalk results for S–C and SDHV equipment as energy conservation standards because these are not aligned with efficiency levels specified in ASHRAE 90.1–2019. (AHRI, No. 10 at p. 2; CA IOUs, No. 8 at pp. 2–3; Carrier, No. 6 at p. 2)

In particular, AHRI urged DOE to set levels for three-phase, less than 65,000 Btu/h, S–C and SDHV ACUACs and ACUHPs consistent with the levels specified in ASHRAE 90.1, which are harmonized with the single-phase equivalents for these equipment. (AHRI, No. 10 at p. 2) AHRI noted that there is

little difference in operation, function, and performance between these three-phase equipment classes and their single-phase counterparts (at less than 65,000 Btu/h capacities), and stated that this is why ASHRAE 90.1 minimum levels for three-phase equipment have always been harmonized with their single-phase counterparts. (*Id.*) Further, with no publicly available data for three-phase S-C and SDHV equipment (because there are no known commercially available equipment of these types), AHRI contended that DOE has no basis for developing an alternate market baseline (*i.e.* at conventional single-phase systems) for these equipment. (*Id.* at p. 3) AHRI asserted that commercial three-phase outdoor units that match to SDHV indoor units are single stage, and that variable stage or even two stage units, which do not yet exist, would be required to meet the Federal energy conservation standards at issue. (*Id.*) AHRI asked how three-phase S-C and SDHV equipment manufacturers would proceed to comply with unachievable levels. (*Id.*) Additionally, AHRI commented that the S-C and SDHV commercial market size is unknown although estimated to be small. (*Id.*) Because commercial applications that should be using three-phase commercial equipment are using single-phase residential products, AHRI explained that it is impossible for manufacturers to know the size of those markets for their equipment. (*Id.*) AHRI suggested that giving the end-user the option to install three-phase commercial versions of S-C and SDHV equipment will allow building owners to better balance the power from each leg, which improves power factor, efficiency, and reduces their costs. (*Id.*)

CA IOUs also encouraged DOE to consider adopting the efficiency levels specified in ASHRAE 90.1–2019 for three-phase, less than 65,000 Btu/h S-C and SDHV ACUACs and ACUHPs. (CA IOUs, No. 8 at p. 2) In their comment, CA IOUs highlighted that there are only negligible differences in performance between these three-phase equipment and their single-phase counterparts, and also observed that there are no models of three-phase S-C and SDHV ACUACs and ACUHPs currently on the market, consistent with DOE's tentative conclusion in the March 2022 NOPR. (*Id.* at pp. 2–3) In their analysis of DOE's Compliance Certification Management System (CCMS), CA IOUs approximated that over 90 percent of basic single-phase S-C and SDHV consumer products would fall below the standards for three-phase S-C and SDHV ACUACs and ACUHPs

proposed in the March 2022 NOPR. (*Id.* at p. 3) With these observations in mind, CA IOUs warned that setting an overly stringent standard for equipment not yet on the market may preclude the future introduction of such equipment and potentially deprive consumers of any potential consumer utility offered by such equipment. (*Id.*) In addition, CA IOUs cautioned that the lack of available three-phase S-C and SDHV equipment makes it challenging to assess if the proposed standards in the March 2022 NOPR are technologically feasible and economically justified. (*Id.* at p. 3)

Carrier also supported aligning standards for three-phase, less than 65,000 Btu/h S-C and SDHV equipment with their single-phase counterparts, as they are aligned in ASHRAE 90.1. (Carrier, No. 6 at p. 2) Carrier noted that manufacturers typically have one design for S-C and SDHV equipment, with options for different power supplies, which do not affect energy efficiency. (*Id.*) As a result, Carrier cautioned that requiring different minimum efficiency levels for products that are essentially the same design creates undue burden for the industry. (*Id.*)

In response to AHRI, DOE notes that it is obligated to conduct a crosswalk regardless of whether there is any equipment on the market. DOE also notes that it conducted its crosswalk using what it considered the most appropriate data from similar classes of equipment, and no negative comments were received on the crosswalk analysis presented in the March 2022 NOPR.

In response to concerns regarding alignment with ASHRAE 90.1–2019, DOE notes that EPCA, as codified, contains what is known as an “anti-backsliding” provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6313(a)(6)(B)(iii)(I)) DOE understands that this final rule creates a discrepancy between the standards of three-phase, less than 65,000 Btu/h S-C and SDHV equipment and their single-phase counterparts, but DOE is unable to adopt standards lower than current Federal standards, as this would violate EPCA's anti-back-sliding provision.

In the March 2022 NOPR, DOE developed a crosswalk for S-C, split-system, and single-package ACUACs and ACUHPs and SDHV ACUACs and ACUHPs by applying similar translations as observed in the January 2017 CAC/HP ECS DFR for single-phase S-C and SDHV equipment to the existing Federal standards for small

commercial package air conditioners and heat pumps. 87 FR 18290, 18297–18298. In this final rule, DOE is utilizing the same crosswalk as presented in both the March 2022 NOPR and September 2020 NODA/RFI. *See* 87 FR 18290, 18299–18300; 85 FR 60642, 60662–60663. DOE reiterates that it is not aware of any models of three-phase, less than 65,000 Btu/h S-C or SDHV equipment currently on the market, and comments received in response to the March 2022 NOPR support this observation.

#### a. Space-Constrained Equipment

Single-phase S-C air conditioners, for which energy conservation standards are not further separated into split-systems and single-package systems, have a DOE minimum SEER of 12 that was translated to 11.7 SEER2. 82 FR 1786, 1848–1849. Single-phase S-C heat pumps also have a minimum SEER of 12, but the January 2017 CAC/HP ECS DFR established a different translated SEER2 of 11.9. *Id.* This difference in the SEER2 requirement between S-C air conditioners and S-C heat pumps is due to differences in the requirements for determination of represented values codified at Table 1 to paragraph (a)(1) of 10 CFR 429.16. In the December 2022 Three-Phase TP final rule, DOE aligned the representation requirements for three-phase, less than 65,000 Btu/h equipment with the representation requirements for single-phase CAC/HPs. 87 FR 77298, 77312.

Accordingly, in this document, DOE is using the same cooling-metric translations for three-phase, space-constrained equipment as the translations present for single-phase, space-constrained equipment (*i.e.*, applying a 0.3 point SEER2 decrement for space-constrained air conditioners and a 0.1 point SEER2 decrement for space-constrained heat pumps). DOE notes that split-system S-C ACUACs are currently covered under the Federal standard of 13.0 SEER for three-phase, split-system, less than 65,000 Btu/h ACUACs, whereas S-C split-system ACUHPs and S-C single-package ACUACs and ACUHPs are each covered under corresponding DOE equipment classes with a standard of 14 SEER.<sup>9</sup>

With regards to the translation from HSPF to HSPF2 for S-C ACUACs and ACUHPs, DOE used the same 15 percent reduction from the January 2017 CAC/HP ECS DFR when translating from HSPF to HSPF2 at an equivalent stringency. Because the changes to the heating load line between AHRI 210/

<sup>9</sup> See table in paragraph (c)(1) of 10 CFR 430.32 for current standards.

240–2008 and AHRI 210/240–2023 are equivalent to the changes in the heating load line between appendix M and appendix M1, DOE has concluded that utilizing the same HSPF2 translation from single-phase CAC/HPs is appropriate for S–C ACUACs and ACUHPs.

b. Small-Duct, High-Velocity Equipment

For single-phase SDHV CAC/HPs, there is no increase in external static pressure requirements in appendix M1 as compared to appendix M. Consequently, in the January 2017 CAC/HP ECS DFR, there was no decrease in numerical value when translating standards from SEER to SEER2. 82 FR 1786, 1848–1849. Given that the test procedures for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs are aligned with the test procedures for single-phase CAC/HPs, there are also no increases in external static pressure requirements for SDHV ACUACs and ACUHPs in AHRI 210/240–2023. Therefore, DOE did not use a decrement when translating from SEER to SEER2 for SDHV ACUACs and ACUHPs.

For the heating mode for SDHV ACUHPs, DOE used the same 15 percent reduction from the January 2017 CAC/HP ECS DFR when translating from HSPF to HSPF2. *Id.* at 82 FR 1850. Because the changes to the heating load line between AHRI 210/240–2008 and AHRI 210/240–2023 are equivalent to the changes in the heating load line between appendix M and appendix M1, DOE has concluded that utilizing the same HSPF2 translation from single-phase CAC/HPs is appropriate for SDHV ACUACs and ACUHPs.

3. Three-Phase, Less Than 65,000 Btu/h VRF

The outdated test procedure in appendix F for VRF multi-split systems (including three-phase, less than 65,000 Btu/h VRF) references AHRI 1230–2010 with addendum 1. For three-phase, less than 65,000 Btu/h VRF, AHRI 1230–

2010 is used to calculate cooling and heating efficiency in terms of the SEER and HSPF metrics, respectively. In May 2021, AHRI published AHRI 1230–2021, which excludes from its scope three-phase, less than 65,000 Btu/h VRF. Accordingly, in the December 2022 Three-Phase TP final rule, DOE removed its reference to AHRI 1230–2010 and instead referenced AHRI 210/240–2023 in the test procedure for three-phase, less than 65,000 Btu/h VRF. 87 FR 77298, 77301–77302. In that final rule, DOE noted that AHRI 210/240–2023 includes in its scope three-phase, less than 65,000 Btu/h VRF and harmonizes with the updated Federal test method for single-phase central air conditioners and central air conditioning heat pumps with rated cooling capacities of less than 65,000 Btu/h (*i.e.*, appendix M1, which became effective January 1, 2023), which includes single-phase, air-cooled, VRF systems with a cooling capacity of less than 65,000 Btu/h. 87 FR 77298, 77304. Like appendix M1, AHRI 210/240–2023 is used to calculate cooling and heating efficiency in terms of updated metrics, SEER2 and HSPF2, respectively. As discussed in section II.B.2 of this document, ASHRAE 90.1–2022 established SEER2 and HSPF2 levels for three-phase, less than 65,000 Btu/h VRF.

To translate the existing SEER and HSPF levels to SEER2 and HSPF2 levels of equivalent stringency, DOE conducted a crosswalk analysis for three-phase, less than 65,000 Btu/h VRF in the March 2022 NOPR. Unlike the other equipment classes addressed in sections III.B.1 and III.B.2 of this document, DOE could not rely on existing analysis specific to multi-split systems from the January 2017 CAC/HP ECS DFR and instead conducted an analytical crosswalk for this equipment by evaluating changes in the test procedure between AHRI 1230–2010 and AHRI 210/240–2023. 87 FR 18290, 18298–18299. When deciding how to translate SEER to SEER2, DOE

concluded no change in the numerical value of SEER2 standards is needed to crosswalk from existing SEER standards. *Id.* at 87 FR 18299. With regards to the translation from HSPF to HSPF2, DOE determined that the same 15 percent reduction from the January 2017 CAC/HP ECS DFR when translating from HSPF to HSPF2 at an equivalent stringency was appropriate. *Id.* DOE did not receive any comments in opposition to this crosswalk methodology in response to the March 2022 NOPR.

As mentioned earlier, ASHRAE officially released ASHRAE 90.1–2022 prior to publication of this final rule. Thus, unlike the March 2022 NOPR, which compared standard levels for three-phase, less than 65,000 Btu/h VRF to those standards specified in ASHRAE 90.1–2019, this crosswalk analysis compares standards to those specified in ASHRAE 90.1–2022.

C. Crosswalk Results

DOE utilized the crosswalk discussed in section III.B of this document to translate the current Federal standards to the SEER2 and HSPF2 metrics and determine whether the levels specified in ASHRAE 90.1–2019 (or ASHRAE 90.1–2022, as applicable) represent more, less, or equivalent stringency as compared to the current Federal standards. DOE’s crosswalk results for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and for three-phase, less than 65,000 Btu/h VRF are presented in Table III.1 of this document. Results for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs are consistent with the results presented in the March 2022 NOPR. *Id.* at 87 FR 18299. Results for the two equipment classes of three-phase, less than 65,000 Btu/h VRF have changed, as their current Federal standards are compared to the more stringent standard levels specified in ASHRAE 90.1–2022, rather than those specified in ASHRAE 90.1–2019.

TABLE III.1—CROSSWALK RESULTS FOR AIR-COOLED, THREE-PHASE, LESS THAN 65,000 Btu/h ACUAC, ACUHP, AND VRF EQUIPMENT

ASHRAE 90.1–2019 equipment class	Current federal equipment class	Federal energy conservation standard(s)	Crosswalk of current federal standard(s)	Energy efficiency levels in ASHRAE 90.1–2019	Comparison of ASHRAE 90.1–2019 to crosswalk <sup>1</sup>
Air-cooled Air Conditioner, Three-Phase, Single-Package, <65,000 Btu/h.	Air-cooled Air Conditioner, Three-Phase, Single-Package, <65,000 Btu/h.	14.0 SEER .....	13.4 SEER2 .....	14.0 SEER before 1/1/2023, 13.4 SEER2 on and after 1/1/2023.	Equivalent.
Air-cooled Air Conditioner, Three-Phase, Split-System, <65,000 Btu/h.	Air-cooled Air Conditioner, Three-Phase, Split-System, <65,000 Btu/h.	13.0 SEER .....	<13.0 SEER2 <sup>2</sup> ...	13.0 SEER before 1/1/2023, 13.4 SEER2 on and after 1/1/2023.	More Stringent.

TABLE III.1—CROSSWALK RESULTS FOR AIR-COOLED, THREE-PHASE, LESS THAN 65,000 Btu/h ACUAC, ACUHP, AND VRF EQUIPMENT—Continued

ASHRAE 90.1–2019 equipment class	Current federal equipment class	Federal energy conservation standard(s)	Crosswalk of current federal standard(s)	Energy efficiency levels in ASHRAE 90.1–2019	Comparison of ASHRAE 90.1–2019 to crosswalk <sup>1</sup>
Air-cooled Heat Pump, Three-Phase, Single-Package, <65,000 Btu/h.	Air-cooled Heat Pump, Three-Phase, Single-Package, <65,000 Btu/h.	14.0 SEER, 8.0 HSPF.	13.4 SEER2, 6.7 HSPF2.	14.0 SEER/8.0 HSPF before 1/1/2023, 13.4 SEER2/6.7 HSPF on and after 1/1/2023.	Equivalent.
Air-cooled Heat Pump, Three-Phase, Split-System, <65,000 Btu/h.	Air-cooled Heat Pump, Three-Phase, Split-System, <65,000 Btu/h.	14.0 SEER, 8.2 HSPF.	13.4 SEER2, <7.5 HSPF2 <sup>3</sup> .	14.0 SEER/8.2 HSPF before 1/1/2023, 14.3 SEER2/7.5 HSPF2 on and after 1/1/2023.	More Stringent.
Space-Constrained, Air-cooled Air Conditioner, Three-Phase, Single-Package, ≤30,000 Btu/h.	Air-cooled Air Conditioner, Three-Phase, Single-Package, <65,000 Btu/h.	14.0 SEER .....	13.9 SEER2 .....	12.0 SEER before 1/1/2023, 11.7 SEER2 on and after 1/1/2023.	Less Stringent. <sup>3</sup>
Space-Constrained, Air-cooled Air Conditioner, Three-Phase, Split-System, ≤30,000 Btu/h.	Air-cooled Air Conditioner, Three-Phase, Split-System, <65,000 Btu/h.	13.0 SEER .....	12.7 SEER2 .....	12.0 SEER before 1/1/2023, 11.7 SEER2 on and after 1/1/2023.	Less Stringent. <sup>3</sup>
Space-Constrained, Air-cooled Heat Pump, Three-Phase, Single-Package, ≤30,000 Btu/h.	Air-cooled Heat Pump, Three-Phase, Single-Package, <65,000 Btu/h.	14.0 SEER, 8.0 HSPF.	13.9 SEER2, 6.7 HSPF2.	12.0 SEER/7.4 HSPF before 1/1/2023, 11.7 SEER2/6.3 HSPF2 on and after 1/1/2023.	Less Stringent. <sup>3</sup>
Space-Constrained, Air-cooled Heat Pump, Three-Phase, Split-System, ≤30,000 Btu/h.	Air-cooled Heat Pump, three-phase, Split-System, <65,000 Btu/h.	14.0 SEER, 8.2 HSPF.	13.9 SEER2, 7.0 HSPF2.	12.0 SEER/7.4 HSPF before 1/1/2023, 11.7 SEER2/6.3 HSPF2 on and after 1/1/2023.	Less Stringent. <sup>3</sup>
Small Duct High Velocity, Air-cooled Air Conditioner, Three-Phase, Split-System, <65,000 Btu/h.	Air-cooled Air Conditioner, Three-Phase, Split-System, <65,000 Btu/h.	13.0 SEER .....	13.0 SEER2 .....	12.0 SEER before 1/1/2023, 12.0 SEER2 on and after 1/1/2023.	Less Stringent. <sup>3</sup>
Small Duct, High Velocity, Air-cooled Heat Pump, Three-Phase, Split-System, <65,000 Btu/h.	Air-cooled Heat Pump, Three-Phase, Split-Package, <65,000 Btu/h.	14.0 SEER, 8.2 HSPF.	14.0 SEER2, 6.9 HSPF2.	12.0 SEER/7.2 HSPF before 1/1/2023, 12.0 SEER2/6.1 HSPF2 on and after 1/1/2023.	Less Stringent. <sup>3</sup>
VRF, Air-Cooled, Air Conditioner.	Air-cooled VRF Multi-Split Air Conditioners, <65,000 Btu/h.	13.0 SEER .....	12.9 SEER2 .....	13.0 SEER before 1/1/2023, 13.4 SEER2 on and after 1/1/2023 <sup>4</sup> .	More Stringent.
VRF, Air-Cooled, Heat Pump.	Air-cooled VRF Multi-Split Heat Pumps, <65,000 Btu/h.	13.0 SEER, 7.7 HSPF.	12.9 SEER2, 6.5 HSPF2.	13.0 SEER/7.7 HSPF before 1/1/2023, 13.4 SEER2/7.5 HSPF2 on and after 1/1/2023 <sup>4</sup> .	More Stringent.

<sup>1</sup> Column indicates whether the ASHRAE 90.1–2019 standard levels (or ASHRAE 90.1–2022 standards, as applicable) are less stringent, equivalent to, or more stringent than the crosswalked Federal standards.

<sup>2</sup> The Federal SEER standard is lower than the ASHRAE 90.1–2019 SEER2 level indicating that the crosswalked Federal SEER2 standard will also be lower than the ASHRAE 90.1–2019 SEER2 level.

<sup>3</sup> For S–C and SDHV equipment, the ASHRAE 90.1 levels are less stringent than the crosswalked Federal efficiency levels because these classes are split off from split-system and single-package, respectively.

<sup>4</sup> Standard levels for the two equipment classes of three-phase, less than 65,000 Btu/h VRF are compared to levels specified by ASHRAE 90.1–2022, not ASHRAE 90.1–2019.

**IV. Estimates of Potential Energy Savings**

As required under 42 U.S.C. 6313(a)(6)(A)(i), for three-phase, less than 65,000 Btu/h CUAC equipment classes for which ASHRAE 90.1–2019 set more stringent levels than the current Federal standards, DOE performed an assessment to determine the energy-savings potential of amending Federal standard levels to reflect the efficiency levels specified in ASHRAE 90.1–2019. The two equipment classes analyzed in the September 2020 NODA/RFI were air-

cooled, three-phase, split-system, less than 65,000 Btu/h air conditioners and air-cooled, three-phase, split-system, less than 65,000 Btu/h heat pumps. In the September 2020 NODA/RFI, DOE presented the methodology to determine energy savings along with the findings of the energy savings potential for the two equipment classes and sought comment on the analysis. 85 FR 60642, 60666–60673.

In its analysis for the March 2022 NOPR and this final rule, DOE did not make any changes to the inputs into the energy savings analysis that was presented in the September 2020

NODA/RFI. In the September 2020 NODA/RFI, DOE estimated the potential site, primary, and full-fuel-cycle (FFC) energy savings in quads (*i.e.*, 10<sup>15</sup> Btu) for adopting ASHRAE 90.1–2019 for the two equipment classes analyzed. 85 FR 60642, 60672–60673. The potential energy savings of adopting ASHRAE 90.1–2019 levels are measured relative to the current Federal standards. Table IV.1 displays the energy savings at the ASHRAE level for air-cooled, three-phase, split-system air conditioners less than 65,000 Btu/h and air-cooled, three-phase, split-system heat pumps less than 65,000 Btu/h. The values in the

table below are identical to the values presented in both the September 2020 NODA/RFI and March 2022 NOPR. 85 FR 60642, 60673; 87 FR 18290, 18300.

TABLE IV.1—POTENTIAL ENERGY SAVINGS FOR AIR-COOLED, THREE-PHASE, SPLIT-SYSTEM, LESS THAN 65,000 Btu/h AIR CONDITIONERS AND HEAT PUMPS

	Split-system, air conditioner		Split system, heat pump	
	ASHRAE efficiency level	Quads	ASHRAE efficiency level	Quads
<b>Site Energy Savings Estimate</b>				
Level 0—ASHRAE .....	13.4 SEER2 .....	0.0007	14.3 SEER2, 7.5 HSPF2 .....	0.0017
<b>Primary Energy Savings Estimate</b>				
Level 0—ASHRAE .....	13.4 SEER2 .....	0.0017	14.3 SEER2, 7.5 HSPF2 .....	0.0044
<b>FFC Energy Savings Estimate</b>				
Level 0—ASHRAE .....	13.4 SEER2 .....	0.0018	14.3 SEER2, 7.5 HSPF2 .....	0.0047

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. 86 FR 70892, 70901 (Dec. 13, 2021). Additionally, 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. In evaluating the significance of energy savings, DOE considers differences in primary energy and FFC effects for different covered products and

equipment when determining whether energy savings are significant. Primary energy and FFC effects include the energy consumed in electricity production (depending on load shape), in distribution and transmission, and in extracting, processing, and transporting primary fuels (i.e., coal, natural gas, petroleum fuels), and thus present a more complete picture of the impacts of energy conservation standards.

DOE conducted an analysis of the emissions reductions at the ASHRAE efficiency level for air-cooled, three-phase, split-system, less than 65,000 Btu/h air conditioners and air-cooled, three-phase, split-system, less than 65,000 Btu/h heat pumps. This emissions analysis consists of two

components. The first component estimates the effect of potential energy conservation standards on power sector combustion emissions of CO<sub>2</sub>, NO<sub>x</sub>, SO<sub>2</sub>, and Hg. The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, CH<sub>4</sub> and N<sub>2</sub>O, 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. Table IV.2 displays the emissions reductions estimates for the power sector, the upstream sector, and the full-fuel-cycle.

TABLE IV.2—POTENTIAL EMISSIONS SAVINGS FOR AIR-COOLED, THREE-PHASE, SPLIT-SYSTEM, LESS THAN 65,000 Btu/h AIR CONDITIONERS AND HEAT PUMPS

	Split system, air conditioner	Split system, heat pump
	ASHRAE efficiency level	ASHRAE efficiency level
<b>Power Sector Emissions:</b>		
CO <sub>2</sub> (million metric tons) .....	0.1	0.2
CH <sub>4</sub> (thousand tons) .....	0.0	0.0
N <sub>2</sub> O (thousand tons) .....	0.0	0.0
SO <sub>2</sub> (thousand tons) .....	0.0	0.1
NO <sub>x</sub> (thousand tons) .....	0.0	0.1
Hg (tons) .....	0.0	0.0
<b>Upstream Emissions:</b>		
CO <sub>2</sub> (million metric tons) .....	0.0	0.0
CH <sub>4</sub> (thousand tons) .....	0.5	1.2
N <sub>2</sub> O (thousand tons) .....	0.0	0.0
SO <sub>2</sub> (thousand tons) .....	0.0	0.0
NO <sub>x</sub> (thousand tons) .....	0.1	0.2
Hg (tons) .....	0.0	0.0
<b>Total FFC Emissions:</b>		
CO <sub>2</sub> (million metric tons) .....	0.1	0.2
CH <sub>4</sub> (thousand tons) .....	0.5	1.2
N <sub>2</sub> O (thousand tons) .....	0.0	0.0
SO <sub>2</sub> (thousand tons) .....	0.0	0.1
NO <sub>x</sub> (thousand tons) .....	0.1	0.3
Hg (tons) .....	0.0	0.0

In January 2023, ASHRAE published ASHRAE 90.1–2022, which updates the efficiency metrics for three-phase, less than 65,000 Btu/h VRF to be in terms of SEER2 and HSPF2. ASHRAE 90.1–2022 also updates the test procedure for three-phase, less than 65,000 Btu/h VRF to reference AHRI 210/240–2023. ASHRAE 90.1–2022 includes SEER2/HSPF2 levels for three-phase, less than 65,000 Btu/h VRF that are more stringent than the existing Federal standards.

With the release of ASHRAE 90.1–2022, DOE is triggered by the EPCA requirement to adopt amended standards at the new ASHRAE efficiency level. (42 U.S.C. 6313(a)(6)(A)(ii)) Because there are no models of three-phase, less than 65,000 Btu/h VRF currently on the market, DOE finds that there would be no potential energy savings associated with adopting those efficiency levels in ASHRAE 90.1–2022, and thus no energy savings analysis was conducted.

## V. Conclusions

### A. More Stringent Efficiency Levels

As discussed, ASHRAE 90.1–2019 includes efficiency levels more stringent than the current Federal standards for three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs, and ASHRAE 90.1–2022 includes efficiency levels more stringent than the current Federal standards for three-phase, less than 65,000 Btu/h VRF. When triggered by an update to ASHRAE Standard 90.1, EPCA requires DOE to establish an amended uniform national standard for equipment classes at the minimum level specified in the amended ASHRAE Standard 90.1 unless DOE determines, by rule published in the **Federal Register**, and supported by clear and convincing evidence, that adoption of a uniform national standard more stringent than the amended ASHRAE Standard 90.1 for the equipment class would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(I)–(II)) As noted previously, clear and convincing evidence is a heightened standard, and would only be met where the Secretary has an abiding conviction, based on available facts, data, and DOE's own analyses, that it is highly probable an amended standard would result in a significant additional amount of energy savings, and is technologically feasible and economically justified. See *American Public Gas Association v. U.S. Dep't of Energy*, No. 20–1068, 2022

WL 151923, at \*4 (D.C. Cir. January 18, 2022) (citing *Colorado v. New Mexico*, 467 U.S. 310, 316, 104 S.Ct. 2433, 81 L.Ed.2d 247 (1984)).

In the March 2022 NOPR, DOE did not consider more stringent efficiency levels than those in ASHRAE 90.1–2019, as this would require DOE to crosswalk the entire market for this equipment. 87 FR 18290, 18301–18303. The amended levels in ASHRAE 90.1–2019 rely on updated metrics (SEER2 and HSPF2), which were not applicable until 2023. Furthermore, the single-phase market, which is nearly identical to three-phase equipment, did not begin to use SEER2 and HSPF2 until 2023. Single-phase and three-phase models generally are manufactured on the same production lines and are physically identical to their corresponding single-phase central air conditioner and central air conditioning heat pump models except the former have three-phase electrical systems and use components, primarily motors and compressors, that are designed for three-phase power input. 87 FR 77298, 77303. The amended levels for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs in ASHRAE 90.1–2019 are the same efficiency levels that will be required for single-phase air conditioners and heat pumps in 2023. (See 10 CFR 430.32(c)(5)). Given that the standard levels of three-phase, less than 65,000 Btu/h ACUACs and ACUHPs are in terms of updated SEER2 and HSPF2 metrics for the first time, public databases that encompass the full range of efficiency ratings in terms of the updated metrics for these three-phase, less than 65,000 Btu/h equipment do not exist yet.

As previously stated, EPCA asserts that for DOE to adopt a standard more stringent than an amended ASHRAE 90.1 standard, DOE must support its decision with clear and convincing evidence. In the March 2022 NOPR, DOE determined that the lack of market data for the amended efficiency metric creates substantial doubt in any analysis of energy savings that would result from efficiency levels more stringent than those in ASHRAE 90.1–2019. 87 FR 18290, 18302. Therefore, DOE did not conduct any analysis of energy savings from more stringent standards for the two triggered classes of three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs. DOE did not receive any comments in response to the March 2022 NOPR suggesting that DOE conduct such an analysis.

ASHRAE 90.1–2022 includes SEER2/HSPF2 levels for three-phase, less than

65,000 Btu/h VRF that are more stringent than the existing Federal standards, as stated previously. In the March 2022 NOPR, DOE noted that if ASHRAE finalized a future version of ASHRAE 90.1 that (1) publishes prior to DOE publishing a final rule for amended energy conservation standards for three-phase, less than 65,000 Btu/h VRF and (2) includes SEER2/HSPF2 levels for three-phase, less than 65,000 Btu/h VRF that are more stringent than the existing federal standards, DOE would adopt those levels in a final rule. *Id.* at 87 FR 18304. DOE requested comment on this proposal.

CA IOUs, Carrier, and Lennox all commented in support of adopting the more stringent SEER2/HSPF2 efficiency levels for three-phase, less than 65,000 Btu/h VRF as proposed in the ASHRAE 90.1–2019 Addendum 'ay', should such levels be incorporated into an updated version of ASHRAE 90.1. (CA IOUs, No. 8, p. 3; Carrier, No. 6, p. 2; Lennox, No. 7, p. 2)

Because there are no models of three-phase, less than 65,000 Btu/h VRF currently on the market, DOE finds that there would be no potential energy savings associated with adopting even more stringent efficiency levels than those in ASHRAE 90.1–2022, and thus DOE did not consider more stringent efficiency levels.

### B. Review Under Six Year Lookback

As discussed, DOE is required to conduct an evaluation of each class of covered equipment in ASHRAE Standard 90.1 every six years. (42 U.S.C. 6313(a)(6)(C)(i)) Accordingly, in this document, DOE has also evaluated the three-phase, less than 65,000 Btu/h equipment for which ASHRAE 90.1–2019 did not increase the stringency of the standards: (1) three-phase, single-package, less than 65,000 Btu/h ACUACs and ACUHPs; (2) S–C, three-phase, less than 65,000 Btu/h ACUACs and ACUHPs; and (3) SDHV, three-phase, less than 65,000 Btu/h ACUACs and ACUHPs.

As discussed in section III.B.2 of this final rule, DOE has concluded that there are no models on the market in the equipment classes of: (1) S–C, three-phase, less than 65,000 Btu/h ACUACs and ACUHPs; and (2) SDHV, three-phase, less than 65,000 Btu/h ACUACs and ACUHPs. Therefore, there would be no potential energy savings associated with more stringent standards for these classes, and DOE did not conduct further analyses of more stringent standards for these classes.



For three-phase, single package, less than 65,000 Btu/h ACUACs and ACUHPs, similar to the triggered classes discussed in sections V.A and V.B of this document (*i.e.*, three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs and three-phase, less than 65,000 Btu/h VRF), there are limited SEER2 and HSPF2 data for models of varying efficiencies, and there is not a comparable industry analysis (*i.e.*, translating ratings to the updated metric for these models on the market) for comparison. The market-wide analysis necessary to evaluate whether amended standards would result in significant energy savings and be technologically feasible and economically justified under the “clear and convincing” threshold would require more than baseline data.

Therefore, in line with the same reasoning presented in the March 2022 NOPR (*See* 87 FR 18290), DOE determines that the “clear and convincing” threshold is not met for three-phase, single-package, less than 65,000 Btu/h ACUACs and ACUHPs. As such, DOE did not conduct an energy savings analysis of standard levels more stringent than the current Federal standard levels for three-phase, single package, less than 65,000 Btu/h ACUACs and ACUHPs not triggered by ASHRAE 90.1–2019.

### C. Definitions for Space-Constrained and Small-Duct, High-Velocity Equipment

ASHRAE 90.1–2019 includes S–C and SDHV equipment classes for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs. In the March 2022 NOPR, DOE proposed to adopt separate standards for S–C, split-system, and single-package ACUACs and ACUHPs and SDHV ACUACs and ACUHPs. 87 FR 18290, 18304. Along with the proposed standards, DOE proposed the following definitions for “small-duct, high-velocity commercial package air conditioning and heating equipment” and “space-constrained commercial package and heating equipment” at 10 CFR 431.92. *Id.* The two definitions proposed in the March 2022 NOPR align with the definitions specified in 10 CFR 430.2 for single-phase CAC/HPs, which, as discussed in section V.A of this document, are identical to three-phase products except for the power input.

*Small-duct, High-velocity Commercial Package Air Conditioning and Heating Equipment* means a basic model of commercial package, split-system air conditioning and heating equipment that: has a rated cooling capacity no greater than 65,000 Btu/h; is air-cooled; and is paired with an indoor unit that

(1) includes an indoor blower housed with the coil; (2) is designed for, and produces, at least 1.2 inches of external static pressure when operated at the certified air volume rate of 220–350 CFM per rated ton cooling in the highest default cooling airflow-controls setting; and (3) when applied in the field, uses high velocity room outlets generally greater than 1,000 fpm that have less than 6.0 square inches of free area.

*Space-constrained Commercial Package Air Conditioning and Heating Equipment* means a basic model of commercial package air conditioning and heating equipment (packaged or split) that: (1) is air-cooled; (2) has a rated cooling capacity no greater than 30,000 Btu/h; (3) has an outdoor or indoor unit having at least two overall exterior dimensions or an overall displacement that: (i) is substantially smaller than those of other units that are: (A) currently usually installed in site-built single-family homes; and (B) of a similar cooling, and, if a heat pump, heating capacity; and (ii) if increased, would certainly result in a considerable increase in the usual cost of installation or would certainly result in a significant loss in the utility of the product to the consumer; and (3) of a product type that was available for purchase in the United States as of December 1, 2000.

In its response to the March 2022 NOPR, CA IOUs suggested clarifying modifications to the definitions of S–C and SDHV ACUACs and ACUHPs. (CA IOUs, No. 8 at pp. 1–2) CA IOUs’ first suggestion proposed adding “is powered by three-phase current” to definitions for both S–C and SDHV ACUACs and ACUHPs. (*Id.* at p. 2) CA IOUs’ second suggestion proposed adding “is not a single package vertical air conditioner (SPVAC) or a single package vertical heat pump (SPVHP)” from the definition for S–C ACUACs and ACUHPs. (*Id.*)

In this final rule, DOE has decided to include the clarification suggestions made in the CA IOUs’ response to the March 2022 NOPR to prevent confusion about applicable equipment. As a result, DOE is adopting the following definitions for “small-duct, high-velocity commercial package air conditioning and heating equipment” and “space-constrained commercial package and heating equipment” at 10 CFR 431.92 in this final rule.

*Small-duct, High-velocity Commercial Package Air Conditioning and Heating Equipment* means a basic model of commercial package, split-system air conditioning and heating equipment that: (1) has a rated cooling capacity no greater than 65,000 Btu/h; (2) is powered by three-phase current; (3) is

air-cooled; and (4) is paired with an indoor unit that (i) includes an indoor blower housed with the coil; (ii) is designed for, and produces, at least 1.2 inches of external static pressure when operated at the certified air volume rate of 220–350 CFM per rated ton cooling in the highest default cooling airflow-controls setting; and (iii) when applied in the field, uses high velocity room outlets generally greater than 1,000 fpm that have less than 6.0 square inches of free area.

*Space-constrained Commercial Package Air Conditioning and Heating Equipment* means a basic model of commercial package air conditioning and heating equipment (packaged or split) that: (1) is air-cooled; (2) is powered by three-phase current; (3) is not a single package vertical air conditioner or a single package vertical heat pump; (4) has a rated cooling capacity no greater than 30,000 Btu/h; (5) has an outdoor or indoor unit having at least two overall exterior dimensions or an overall displacement that: (i) is substantially smaller than those of other units that are: (A) currently usually installed in site-built single-family homes; and (B) of a similar cooling, and, if a heat pump, heating capacity; and (ii) if increased, would certainly result in a considerable increase in the usual cost of installation or would certainly result in a significant loss in the utility of the product to the consumer; and (6) of a product type that was available for purchase in the United States as of December 1, 2000.

### D. Energy Conservation Standards

#### 1. Standard Levels

In this final rule, DOE is amending energy conservation standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and for three-phase, less than 65,000 Btu/h VRF. The amended energy conservation standards are in terms of SEER2 and HSPF2, which would align with the efficiency metrics specified in ASHRAE 90.1–2019 for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and ASHRAE 90.1–2022 for three-phase, less than 65,000 Btu/h VRF and with the updated industry test procedure AHRI 210/240–2023.

DOE is amending energy conservation standards to be in terms of SEER2 and HSPF2 that generally align with the standard levels in ASHRAE 90.1 for three-phase equipment with some exceptions. For three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs, DOE is amending standards to align with the more stringent levels in ASHRAE 90.1–2019.



For three-phase, less than 65,000 Btu/h VRF, DOE is amending standards to align with the more stringent levels in ASHRAE 90.1–2022. For three-phase, single-package, less than 65,000 Btu/h ACUACs and ACUHPs, DOE is amending standards to align with the levels in ASHRAE 90.1–2019, which maintain equivalent stringency to the current Federal standards. For S–C split-system and single-package ACUACs and ACUHPs and SDHV ACUACs and ACUHPs, DOE is adopting standards that differ from the values specified in ASHRAE 90.1–2019. These standards are equivalent stringency to the current Federal standards but are translated to the new metrics SEER2 and HSPF2. The adopted standards are presented in Table I.1 and Table I.2 of this document.

## 2. Compliance Date

In the March 2022 NOPR, DOE proposed a standards compliance date of January 1, 2025, for all classes of three-phase, less than 65,000 Btu/h equipment. 87 FR 18290, 18304–18305. DOE understands that this compliance date is unaligned with the January 1, 2023 compliance date of amended SEER2 and HSPF2 standards for corresponding single-phase products. As discussed in the March 2022 NOPR, DOE reiterates that, while there may be benefits to aligning the compliance dates for SEER2 and HSPF2 standards between single-phase products and three-phase equipment, DOE cannot prescribe a compliance date for amended standards that would violate its obligations under EPCA. *Id.* at 87 FR 18305. EPCA requires that DOE specify a compliance date no earlier than 2 years after the compliance date specified in ASHRAE Standard 90.1 for triggered classes of three-phase, less than 65,000 Btu/h ACUAC, ACUHP, and VRF equipment. *Id.* As a result, to provide a consistent compliance date for standards in terms of SEER2 and HSPF2 for all three-phase, less than 65,000 Btu/h equipment, the amended standards in this final rule apply to all three-phase, less than 65,000 Btu/h equipment that is manufactured on or after January 1, 2025.

## VI. Procedural Issues and Regulatory Review

### A. Review Under Executive Orders 12866 and 13563

Executive Order (E.O.) 12866, “Regulatory Planning and Review,” as supplemented and reaffirmed by E.O. 13563, “Improving Regulation and Regulatory Review,” 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or

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

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

### B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (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](http://www.energy.gov/gc/office-general-counsel)). DOE has prepared the following FRFA for the products that are the subject of this rulemaking.

The following sections detail DOE’s FRFA for this energy conservation standards rulemaking.

### 1. Description of Reasons Why Action Is Being Considered

DOE is amending the existing Federal energy conservation standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and three-phase, less than 65,000 Btu/h VRF. EPCA requires DOE to consider amending the existing Federal energy conservation standards for certain types of listed commercial and industrial equipment (generally, commercial water heaters, commercial packaged boilers, commercial air conditioning and heating equipment, and packaged terminal air conditioners and heat pumps) each time ASHRAE Standard 90.1 is amended with respect to such equipment. (42 U.S.C. 6313(a)(6)(A)) For each type of equipment, EPCA directs that if ASHRAE Standard 90.1 is amended, DOE must adopt amended energy conservation standards at the new efficiency level in ASHRAE Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more stringent efficiency level as a national standard would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) This is referred to as “the ASHRAE trigger.” DOE must also review and determine whether to amend standards of each class of covered equipment in ASHRAE Standard 90.1 every 6 years. (42 U.S.C. 6313(a)(6)(C)(i)).

### 2. Objectives of, and Legal Basis for, Rule

EPCA requires DOE to consider amending the existing Federal energy conservation standards each time ASHRAE Standard 90.1 is amended with respect to such equipment. (42 U.S.C. 6313(a)(6)(A)) ASHRAE officially released ASHRAE 90.1–2019 in October 2019, thereby triggering DOE’s previously referenced obligations to determine, for certain classes of three-phase, less than 65,000 Btu/h ACUAC, ACUHP, and VRF equipment, whether:

(1) the amended industry standard levels should be adopted; or (2) clear and convincing evidence exists to justify more-stringent standard levels. For any class where DOE was not triggered, the Department routinely considers those classes under EPCA's 6-year-lookback provision at the same time, to address the subject equipment in a comprehensive fashion.

### 3. Description on Estimated Number of Small Entities Regulated

For manufacturers of three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and three-phase, less than 65,000 Btu/h VRF, the Small Business Administration (SBA) has set a size threshold. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the proposed rule. See 13 CFR part 121. The equipment covered by this proposed rule is classified under North American Industry Classification System (NAICS) code 333415,<sup>10</sup> "Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing." In 13 CFR 121.201, the SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category.

DOE reviewed the energy conservation standards adopted in this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE relied on the Compliance Certification Database<sup>11</sup> in identifying manufacturers. For three-phase, less than 65,000 Btu/h ACUACs and ACUHPs, DOE identified seventeen original equipment manufacturers (OEMs) covered by this rulemaking. DOE did not identify any manufacturers of three-phase, less than 65,000 Btu/h VRF. Of those seventeen OEMs, DOE screened out companies that do not meet the definition of a "small business" or are foreign-owned and operated. DOE identified four small, domestic OEMs for consideration. DOE used publicly available information and subscription-based market research tools (e.g., reports from Dun & Bradstreet)<sup>12</sup> to determine headcount, revenue, and geographic presence of the small businesses. Of those four small

OEMs, one is an AHRI member and three are not AHRI members.

In the March 2022 NOPR, DOE requested comment on its understanding of the current market accounted for by small manufacturers, as well as its understanding of the efficiency of the equipment offered by such manufacturers. 87 FR 18290, 18307. In its response, Carrier indicated that it did not have this requested information at the time. (Carrier, No. 6, p. 3) No other comments were received on this topic.

### 4. Description and Estimate of Compliance Requirements Including Differences in Cost, if Any, for Different Groups of Small Entities

In this final rule, DOE:

- Adopts amended energy conservation standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs corresponding to the minimum efficiency levels in ASHRAE 90.1–2019. The levels are in terms of new metrics seasonal energy efficiency ratio–2 (SEER2) and heating seasonal performance factor–2 (HSPF2);

- Separates energy conservation standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs further into: (1) three-phase, S–C, commercial split-system air conditioners (S–C ACUACs); (2) three-phase, S–C, commercial split-system heat pumps (S–C ACUHPs); (3) S–C single-package ACUACs; (4) S–C single-package ACUHPs; (5) three-phase, SDHV commercial air conditioners (SDHV ACUACs); and (6) three-phase, SDHV commercial heat pumps (SDHV ACUHPs). These additional equipment classes are included in ASHRAE 90.1–2019 for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs; and

- Adopts amended energy conservation standards for three-phase, less than 65,000 Btu/h VRF corresponding to the minimum efficiency levels in ASHRAE 90.1–2022. The levels are in terms of new metrics seasonal energy efficiency ratio–2 (SEER2) and heating seasonal performance factor–2 (HSPF2)

For S–C ACUACs and ACUHPs and SDHV ACUACs and ACUHPs, the current applicable Federal standards are more stringent than the ASHRAE 90.1–2019 levels. To avoid backsliding (as required by EPCA), DOE cannot adopt the ASHRAE 90.1–2019 levels for these classes and is therefore adopting standards for S–C ACUACs and ACUHPs and SDHV ACUACs and ACUHPs equipment in terms of SEER2 and HSPF2 that maintain equivalent stringency to the applicable current Federal standards (in terms of SEER and

HSPF). Of note, DOE has concluded that there are no models of S–C ACUACs and ACUHPs and SDHV ACUACs and ACUHPs on the market.

For three-phase, single-package, less than 65,000 Btu/h ACUACs and ACUHPs, the ASHRAE 90.1–2019 levels are of equivalent stringency to the current Federal standards. Therefore, DOE's adoption of standards in terms of the new metrics SEER2 and HSPF2 that are crosswalked from the current Federal standards would not increase the stringency of standards.

ASHRAE 90.1–2022 includes minimum efficiency levels for three-phase, less than 65,000 Btu/h VRF that are more stringent than the current Federal standards. DOE must adopt amended standards at the amended ASHRAE efficiency levels unless DOE determines, supported by clear and convincing evidence, that adoption of a more stringent standard would produce significant additional conservation of energy and would be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)). Because DOE has made no such determination, this final rule adopts amended standards at the amended ASHRAE efficiency levels for three-phase, less than 65,000 Btu/h VRF.

ASHRAE 90.1–2019 includes minimum efficiency levels for three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs that are more stringent than the current Federal standards. DOE must adopt amended standards at the amended ASHRAE efficiency levels unless DOE determines, supported by clear and convincing evidence, that adoption of a more stringent standard would produce significant additional conservation of energy and would be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)). Because DOE has made no such determination, this final rule adopts amended standards at the amended ASHRAE efficiency levels for three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs.

In estimating the impact to small manufacturers, DOE recognizes that manufacturers may incur conversion costs as a result of the amended standards for three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs. In reviewing all commercially available models of three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs in DOE's Compliance Certification Database, the four small manufacturers account for 30 percent of model offerings. For each of the four small manufacturers, approximately 58 percent of the companies' current models would meet the adopted levels.

<sup>10</sup> The size standards are listed by NAICS code and industry description and are available at: [www.sba.gov/document/support-table-size-standards](http://www.sba.gov/document/support-table-size-standards) (Last accessed on December 12, 2022).

<sup>11</sup> DOE's Compliance Certification Database is available at: [www.regulations.doe.gov/ccms](http://www.regulations.doe.gov/ccms).

<sup>12</sup> Dun & Bradstreet reports are available at [app.dnbhoovers.com](http://app.dnbhoovers.com).

For the current models that do not meet the adopted levels, the small manufacturers would need to either discontinue or redesign non-compliant models. However, adoption of standards at least as stringent as the ASHRAE levels is required under EPCA; furthermore, adopting standards above ASHRAE levels (DOE's only other option under 42 U.S.C. 6313(a)(6)(A)(ii)) would lead to an even greater portion of small manufacturer models requiring redesign. Therefore, DOE has determined that the adopted efficiency level provides the least cost option for small manufacturers.

#### 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 final rule.

#### 6. Significant Alternatives to the Rule

As EPCA requires DOE to either adopt the ASHRAE levels or to adopt higher standards, DOE is limited in options to mitigate impacts to small businesses from the more stringent ASHRAE Standard 90.1 levels. DOE's adoption of the more stringent levels in ASHRAE 90.1–2019 for three-phase, split-system, less than 65,000 Btu/h ACUACs and ACUHPs is the least cost option to industry.

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 1003 for additional details.

#### C. Review Under the Paperwork Reduction Act

Manufacturers of three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and three-phase, less than 65,000 Btu/h VRF must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and three-phase, less than 65,000 Btu/h VRF, 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 three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and three-phase, less than 65,000 Btu/h VRF. (See generally 10 CFR part 429). The collection-of-information requirement for the certification and recordkeeping is

subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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

Pursuant to the National Environmental Policy Act of 1969 (NEPA), DOE has analyzed this proposed action rule in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE has determined that this rule qualifies for categorical exclusion under 10 CFR part 1021, subpart D, appendix B5.1 because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, none of the exceptions identified in B5.1(b) apply, no extraordinary circumstances exist that require further environmental analysis, and it meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. Therefore, DOE has determined that promulgation of this final rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA and does not require an environmental assessment or an environmental impact statement.

#### 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 final rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that are the subject of this final 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 Executive Order 13132.

#### F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, "Civil Justice Reform," imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final 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. Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE’s policy statement is also available at [www.energy.gov/sites/prod/files/gcprod/documents/umra\\_97.pdf](http://www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf).

This final 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 final 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 (March 18, 1988), DOE has determined that this final 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](http://www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

#### *K. Review Under Executive Order 13211*

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 significant energy action. A “significant energy action” is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor 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 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 concluded that this regulatory action, which sets forth amended energy conservation standards for three-phase, less than 65,000 Btu/h ACUACs and ACUHPs and three-phase, less than 65,000 Btu/h VRF, is not a significant energy action because the 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 final 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 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 prepared a report describing that peer review.<sup>13</sup> Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences to review DOE’s analytical methodologies to ascertain whether modifications are needed to improve the Department’s analyses. DOE is in the process of evaluating the resulting report.<sup>14</sup>

#### *M. Congressional Notification*

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

<sup>13</sup> The 2007 “Energy Conservation Standards Rulemaking Peer Review Report” is available at: [www.energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0](http://www.energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0) (last accessed January 3, 2023).

<sup>14</sup> The report is available at [www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards](http://www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards).

determined that the rule is not a “major rule” as defined by 5 U.S.C. 804(2).

**VII. Approval of the Office of the Secretary**

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

**List of Subjects in 10 CFR Part 431**

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, and Reporting and recordkeeping requirements.

**Signing Authority**

This document of the Department of Energy was signed on March 21, 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 9, 2023.  
**Treena V. Garrett,**  
*Federal Register Liaison Officer, U.S. Department of Energy.*

For the reasons set forth in the preamble, DOE amends 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. Section 431.92 is amended by adding, in alphabetical order, definitions for “Small-duct, high-velocity commercial package air conditioning and heating equipment” and “Space-constrained commercial package air conditioning and heating equipment” to read as follows:

**§ 431.92 Definitions concerning commercial air conditioners and heat pumps.**

\* \* \* \* \*

*Small-duct, high-velocity commercial package air conditioning and heating equipment* means a basic model of commercial package, split-system air conditioning and heating equipment that:

- (1) Has a rated cooling capacity no greater than 65,000 Btu/h;
- (2) Is powered by three-phase current;
- (3) Is air-cooled; and
- (4) Is paired with an indoor unit that:
  - (i) Includes an indoor blower housed with the coil;
  - (ii) Is designed for, and produces, at least 1.2 inches of external static pressure when operated at the certified air volume rate of 220–350 CFM per rated ton cooling in the highest default cooling airflow-controls setting; and
  - (iii) When applied in the field, uses high velocity room outlets generally greater than 1,000 fpm that have less than 6.0 square inches of free area.

\* \* \* \* \*

*Space-constrained commercial package air conditioning and heating*

*equipment* means a basic model of commercial package air conditioning and heating equipment (packaged or split) that:

- (1) Is air-cooled;
- (2) Is powered by three-phase current;
- (3) Is not a single package vertical air conditioner or a single package vertical heat pump;
- (4) Has a rated cooling capacity no greater than 30,000 Btu/h;
- (5) Has an outdoor or indoor unit having at least two overall exterior dimensions or an overall displacement that:
  - (i) Is substantially smaller than those of other units that are:
    - (A) Currently usually installed in site-built single-family homes; and
    - (B) Of a similar cooling, and, if a heat pump, heating capacity; and
  - (ii) If increased, would certainly result in a considerable increase in the usual cost of installation or would certainly result in a significant loss in the utility of the product to the consumer; and
- (6) Of a product type that was available for purchase in the United States as of December 1, 2000.

\* \* \* \* \*

■ 3. Section 431.97 is amended by:

- a. In paragraph (a), removing the text “(f)” and adding, in its place the text “(h)”;
- b. In paragraph (b) revising tables 1 through 4;
- c. In paragraph (f), revising table 13; and
- d. Adding paragraph (h).

The revisions and addition read as follows:

**§ 431.97 Energy efficiency standards and their compliance dates.**

\* \* \* \* \*

(b) \* \* \*

**TABLE 1 TO § 431.97(b)—MINIMUM COOLING EFFICIENCY STANDARDS FOR AIR CONDITIONING AND HEATING EQUIPMENT**  
 [Not including single package vertical air conditioners and single package vertical heat pumps, packaged terminal air conditioners and packaged terminal heat pumps, computer room air conditioners, variable refrigerant flow multi-split air conditioners and heat pumps, and double-duct air-cooled commercial package air conditioning and heating equipment]

Equipment type	Cooling capacity	Subcategory	Heating type	Efficiency level	Compliance date: equipment manufactured starting on . . .
Small Commercial Package Air Conditioning and Heating Equipment (Air-Cooled).	≥65,000 Btu/h and <135,000 Btu/h.	AC	No Heating or Electric Resistance Heating. All Other Types of Heating .....	EER = 11.2 .....	January 1, 2010. <sup>1</sup>
		HP	No Heating or Electric Resistance Heating. All Other Types of Heating .....	EER = 11.0. EER = 11.0 .....	January 1, 2010. <sup>1</sup> January 1, 2010. <sup>1</sup>
Large Commercial Package Air Conditioning and Heating Equipment (Air-Cooled).	≥135,000 Btu/h and <240,000 Btu/h.	AC	No Heating or Electric Resistance Heating. All Other Types of Heating .....	EER = 10.8 .....	January 1, 2010. <sup>1</sup>
		HP	No Heating or Electric Resistance Heating. All Other Types of Heating .....	EER = 11.0 .....	January 1, 2010. <sup>1</sup>
Very Large Commercial Package Air Conditioning and Heating Equipment (Air-Cooled).	≥240,000 Btu/h and <760,000 Btu/h.	AC	No Heating or Electric Resistance Heating. All Other Types of Heating .....	EER = 10.8 .....	January 1, 2010. <sup>1</sup>
			No Heating or Electric Resistance Heating. All Other Types of Heating .....	EER = 10.6 .....	January 1, 2010. <sup>1</sup>
			No Heating or Electric Resistance Heating. All Other Types of Heating .....	EER = 10.4 .....	January 1, 2010. <sup>1</sup>
			No Heating or Electric Resistance Heating. All Other Types of Heating .....	EER = 10.0 .....	January 1, 2010. <sup>1</sup>
			All Other Types of Heating .....	EER = 9.8 .....	January 1, 2010. <sup>1</sup>

TABLE 1 TO § 431.97(b)—MINIMUM COOLING EFFICIENCY STANDARDS FOR AIR CONDITIONING AND HEATING EQUIPMENT—Continued

[Not including single package vertical air conditioners and single package vertical heat pumps, packaged terminal air conditioners and packaged terminal heat pumps, computer room air conditioners, variable refrigerant flow multi-split air conditioners and heat pumps, and double-duct air-cooled commercial package air conditioning and heating equipment]

Equipment type	Cooling capacity	Subcategory	Heating type	Efficiency level	Compliance date: equipment manufactured starting on . . .
Small Commercial Package Air Conditioning and Heating Equipment (Water-Cooled).	<65,000 Btu/h ..... ≥65,000 Btu/h and <135,000 Btu/h.	HP	No Heating or Electric Resistance Heating.	EER = 9.5 .....	January 1, 2010. <sup>1</sup>
		AC	All Other Types of Heating .....	EER = 9.3 .....	January 1, 2010. <sup>1</sup>
		AC	No Heating or Electric Resistance Heating.	EER = 12.1 .....	October 29, 2003.
Large Commercial Package Air Conditioning and Heating Equipment (Water-Cooled).	≥135,000 Btu/h and <240,000 Btu/h.	AC	All Other Types of Heating .....	EER = 11.9 .....	June 1, 2013.
			No Heating or Electric Resistance Heating.	EER = 12.5 .....	June 1, 2014.
Very Large Commercial Package Air Conditioning and Heating Equipment (Water-Cooled).	≥240,000 Btu/h and <760,000 Btu/h.	AC	All Other Types of Heating .....	EER = 12.3 .....	June 1, 2014.
			No Heating or Electric Resistance Heating.	EER = 12.4 .....	June 1, 2014.
Small Commercial Package Air Conditioning and Heating Equipment (Evaporatively-Cooled).	<65,000 Btu/h ..... ≥65,000 Btu/h and <135,000 Btu/h.	AC	All Other Types of Heating .....	EER = 12.2 .....	June 1, 2014.
		AC	All .....	EER = 12.1 .....	October 29, 2003.
		AC	No Heating or Electric Resistance Heating.	EER = 12.1 .....	June 1, 2013.
Large Commercial Package Air Conditioning and Heating Equipment (Evaporatively-Cooled).	≥135,000 Btu/h and <240,000 Btu/h.	AC	All Other Types of Heating .....	EER = 11.9 .....	June 1, 2013.
			No Heating or Electric Resistance Heating.	EER = 12.0 .....	June 1, 2014.
Very Large Commercial Package Air Conditioning and Heating Equipment (Evaporatively-Cooled).	≥240,000 Btu/h and <760,000 Btu/h.	AC	All Other Types of Heating .....	EER = 11.8 .....	June 1, 2014.
			No Heating or Electric Resistance Heating.	EER = 11.9 .....	June 1, 2014.
Small Commercial Package Air-Conditioning and Heating Equipment (Water-Source: Water-to-Air, Water-Loop).	<17,000 Btu/h ..... ≥17,000 Btu/h and <65,000 Btu/h. ≥65,000 Btu/h and <135,000 Btu/h.	HP	All Other Types of Heating .....	EER = 11.7 .....	June 1, 2014.
		HP	All .....	EER = 11.2 .....	October 29, 2003. <sup>2</sup>
		HP	All .....	EER = 12.0 .....	October 29, 2003. <sup>2</sup>

<sup>1</sup> And manufactured before January 1, 2018. See Table 3 of this section for updated efficiency standards.  
<sup>2</sup> And manufactured before October 9, 2015. See Table 3 of this section for updated efficiency standards.

TABLE 2 TO § 431.97(b)—MINIMUM HEATING EFFICIENCY STANDARDS FOR AIR CONDITIONING AND HEATING EQUIPMENT [Heat pumps]

[Not including single package vertical air conditioners and single package vertical heat pumps, packaged terminal air conditioners and packaged terminal heat pumps, computer room air conditioners, variable refrigerant flow multi-split air conditioners and heat pumps, and double-duct air-cooled commercial package air conditioning and heating equipment]

Equipment type	Cooling capacity	Efficiency level	Compliance date: equipment manufactured starting on . . .
Small Commercial Package Air Conditioning and Heating Equipment (Air-Cooled)	≥65,000 Btu/h and <135,000 Btu/h .....	COP = 3.3 .....	January 1, 2010. <sup>1</sup>
Large Commercial Packaged Air Conditioning and Heating Equipment (Air-Cooled)	≥135,000 Btu/h and <240,000 Btu/h .....	COP = 3.2 .....	January 1, 2010. <sup>1</sup>
Very Large Commercial Packaged Air Conditioning and Heating Equipment (Air-Cooled).	≥240,000 Btu/h and <760,000 Btu/h .....	COP = 3.2 .....	January 1, 2010. <sup>1</sup>
Small Commercial Package Air Conditioning and Heating Equipment (Water-Source: Water-to-Air, Water-Loop).	<135,000 Btu/h .....	COP = 4.2 .....	October 29, 2003. <sup>2</sup>

<sup>1</sup> And manufactured before January 1, 2018. See Table 4 of this section for updated efficiency standards.  
<sup>2</sup> And manufactured before October 9, 2015. See Table 4 of this section for updated efficiency standards.

TABLE 3 TO § 431.97(b)—UPDATES TO THE MINIMUM COOLING EFFICIENCY STANDARDS FOR AIR CONDITIONING AND HEATING EQUIPMENT

[Not including single package vertical air conditioners and single package vertical heat pumps, packaged terminal air conditioners and packaged terminal heat pumps, computer room air conditioners, variable refrigerant flow multi-split air conditioners and heat pumps, and double-duct air-cooled commercial package air conditioning and heating equipment]

Equipment type	Cooling capacity	Subcategory	Heating type	Efficiency level	Compliance date: equipment manufactured starting on . . .
Small Commercial Packaged Air Conditioning and Heating Equipment (Air-Cooled).	≥65,000 Btu/h and <135,000 Btu/h.	AC	Electric Resistance Heating or No Heating.	IEER = 12.9 ....	January 1, 2018. <sup>1</sup>
			All Other Types of Heating .....	IEER = 14.8 ....	January 1, 2023.
			All Other Types of Heating .....	IEER = 12.7 ....	January 1, 2018. <sup>1</sup>
		HP	Electric Resistance Heating or No Heating.	IEER = 14.6 ....	January 1, 2023.
			All Other Types of Heating .....	IEER = 12.2 ....	January 1, 2018. <sup>1</sup>
			All Other Types of Heating .....	IEER = 14.1 ....	January 1, 2023.
All Other Types of Heating .....	IEER = 12.0 ....	January 1, 2018. <sup>1</sup>			
All Other Types of Heating .....	IEER = 13.9 ....	January 1, 2023.			

TABLE 3 TO § 431.97(b)—UPDATES TO THE MINIMUM COOLING EFFICIENCY STANDARDS FOR AIR CONDITIONING AND HEATING EQUIPMENT—Continued

[Not including single package vertical air conditioners and single package vertical heat pumps, packaged terminal air conditioners and packaged terminal heat pumps, computer room air conditioners, variable refrigerant flow multi-split air conditioners and heat pumps, and double-duct air-cooled commercial package air conditioning and heating equipment]

Equipment type	Cooling capacity	Subcategory	Heating type	Efficiency level	Compliance date: equipment manufactured starting on . . .
Large Commercial Packaged Air Conditioning and Heating Equipment (Air-Cooled).	≥135,000 Btu/h and <240,000 Btu/h.	AC	Electric Resistance Heating or No Heating.	IEER = 12.4	January 1, 2018. <sup>1</sup>
			All Other Types of Heating	IEER = 14.2	January 1, 2023.
			All Other Types of Heating	IEER = 12.2	January 1, 2018. <sup>1</sup>
		HP	Electric Resistance Heating or No Heating.	IEER = 14.0	January 1, 2023.
			All Other Types of Heating	IEER = 11.6	January 1, 2018. <sup>1</sup>
			All Other Types of Heating	IEER = 13.5	January 1, 2023.
Very Large Commercial Packaged Air Conditioning and Heating Equipment (Air-Cooled).	≥240,000 Btu/h and <760,000 Btu/h.	AC	Electric Resistance Heating or No Heating.	IEER = 11.4	January 1, 2018. <sup>1</sup>
			All Other Types of Heating	IEER = 13.3	January 1, 2023.
			All Other Types of Heating	IEER = 11.6	January 1, 2018. <sup>1</sup>
		HP	Electric Resistance Heating or No Heating.	IEER = 13.2	January 1, 2023.
			All Other Types of Heating	IEER = 11.4	January 1, 2018. <sup>1</sup>
			All Other Types of Heating	IEER = 13.0	January 1, 2023.
Small Commercial Packaged Air-Conditioning and Heating Equipment (Water-Source: Water-to-Air, Water-Loop).	<17,000 Btu/h ..... ≥17,000 Btu/h and <65,000 Btu/h. ≥65,000 Btu/h and <135,000 Btu/h.	HP	All	EER = 10.6	January 1, 2018. <sup>1</sup>
		HP	All	EER = 12.5	January 1, 2023.
		HP	All	EER = 10.4	January 1, 2018. <sup>1</sup>
		HP	All	EER = 12.3	January 1, 2023.
		HP	All	EER = 12.2	October 9, 2015.
		HP	All	EER = 13.0	October 9, 2015.

<sup>1</sup> And manufactured before January 1, 2023.

TABLE 4 TO § 431.97(b)—UPDATES TO THE MINIMUM HEATING EFFICIENCY STANDARDS FOR AIR CONDITIONING AND HEATING EQUIPMENT

[Heat pumps]

[Not including single package vertical air conditioners and single package vertical heat pumps, packaged terminal air conditioners and packaged terminal heat pumps, computer room air conditioners, variable refrigerant flow multi-split air conditioners and heat pumps, and double-duct air-cooled commercial package air conditioning and heating equipment]

Equipment type	Cooling capacity	Efficiency level <sup>1</sup>	Compliance date: equipment manufactured starting on . . .
Small Commercial Package Air Conditioning and Heating Equipment (Water-Source: Water-to-Air, Water-Loop).	<135,000 Btu/h	COP = 4.3	October 9, 2015.
Small Commercial Packaged Air Conditioning and Heating Equipment (Air-Cooled).	≥65,000 Btu/h and <135,000 Btu/h	COP = 3.3	January 1, 2018. <sup>2</sup>
Large Commercial Packaged Air Conditioning and Heating Equipment (Air-Cooled).	≥135,000 Btu/h and <240,000 Btu/h	COP = 3.4	January 1, 2023.
		COP = 3.2	January 1, 2018. <sup>2</sup>
Very Large Commercial Packaged Air Conditioning and Heating Equipment (Air-Cooled).	≥240,000 Btu/h and <760,000 Btu/h	COP = 3.3	January 1, 2023.
		COP = 3.2	January 1, 2018

<sup>1</sup> For units tested using the relevant AHRI Standards, all COP values must be rated at 47 °F outdoor dry-bulb temperature for air-cooled equipment.

<sup>2</sup> And manufactured before January 1, 2023.

\* \* \* \* \*  
(f) \* \* \*

(1) \* \* \*

TABLE 13 TO § 431.97(f)(1)—MINIMUM EFFICIENCY STANDARDS FOR VARIABLE REFRIGERANT FLOW MULTI-SPLIT AIR CONDITIONERS AND HEAT PUMPS

Equipment type	Cooling capacity	Heating type <sup>1</sup>	Efficiency level	Compliance date: equipment manufactured on and after . . .
VRF Multi-Split Air Conditioners (Air-Cooled)	≥65,000 Btu/h and <135,000 Btu/h.	No Heating or Electric Resistance Heating.	11.2 EER	January 1, 2010.
		All Other Types of Heating	11.0 EER	January 1, 2010.
	≥135,000 Btu/h and <240,000 Btu/h.	No Heating or Electric Resistance Heating.	11.0 EER	January 1, 2010.
		All Other Types of Heating	10.8 EER	January 1, 2010.
	≥240,000 Btu/h and <760,000 Btu/h.	No Heating or Electric Resistance Heating.	10.0 EER	January 1, 2010.
		All Other Types of Heating	9.8 EER	January 1, 2010.
VRF Multi-Split Heat Pumps (Air-Cooled)	≥65,000 Btu/h and <135,000 Btu/h.	No Heating or Electric Resistance Heating.	11.0 EER, 3.3 COP	January 1, 2010.
		All Other Types of Heating	10.8 EER, 3.3 COP	January 1, 2010.
		All Other Types of Heating	10.8 EER, 3.3 COP	January 1, 2010.

TABLE 13 TO § 431.97(f)(1)—MINIMUM EFFICIENCY STANDARDS FOR VARIABLE REFRIGERANT FLOW MULTI-SPLIT AIR CONDITIONERS AND HEAT PUMPS—Continued

Equipment type	Cooling capacity	Heating type <sup>1</sup>	Efficiency level	Compliance date: equipment manufactured on and after . . .
VRF Multi-Split Heat Pumps (Water-Source) .....	≥135,000 Btu/h and <240,000 Btu/h.	No Heating or Electric Resistance Heating.	10.6 EER, 3.2 COP .....	January 1, 2010.
	≥240,000 Btu/h and <760,000 Btu/h.	All Other Types of Heating .....	10.4 EER, 3.2 COP .....	January 1, 2010.
		No Heating or Electric Resistance Heating.	9.5 EER, 3.2 COP .....	January 1, 2010.
	<17,000 Btu/h .....	All Other Types of Heating .....	9.3 EER, 3.2 COP .....	January 1, 2010.
		Without Heat Recovery .....	12.0 EER .....	October 29, 2012.
	≥17,000 Btu/h and <65,000 Btu/h.	All .....	4.2 COP .....	October 29, 2003.
			With Heat Recovery .....	11.8 EER .....
		All .....	4.2 COP .....	October 29, 2003.
			Without Heat Recovery .....	12.0 EER, 4.2 COP .....
	≥65,000 Btu/h and <135,000 Btu/h.	Without Heat Recovery .....	10.0 EER, 3.9 COP .....	October 29, 2013.
With Heat Recovery .....			9.8 EER, 3.9 COP .....	October 29, 2013.

<sup>1</sup> VRF multi-split heat pumps (air-cooled) with heat recovery fall under the category of “All Other Types of Heating” unless they also have electric resistance heating, in which case it falls under the category for “No Heating or Electric Resistance Heating.”

\* \* \* \* \*

(h) Each air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h and air-cooled, three-phase variable refrigerant flow multi-split air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h manufactured on or after the compliance date listed in the corresponding table must meet the applicable minimum energy efficiency standard level(s) set forth in tables 16 and 17 of this paragraph (h).

TABLE 16 TO § 431.97(h)—MINIMUM EFFICIENCY STANDARDS FOR AIR-COOLED, THREE-PHASE, SMALL COMMERCIAL PACKAGE AIR CONDITIONING AND HEATING EQUIPMENT WITH A COOLING CAPACITY OF LESS THAN 65,000 Btu/h AND AIR-COOLED, THREE-PHASE, SMALL VARIABLE REFRIGERANT FLOW MULTI-SPLIT AIR CONDITIONING AND HEATING EQUIPMENT WITH A COOLING CAPACITY OF LESS THAN 65,000 Btu/h

Equipment type	Size category (cooling)	Subcategory	Minimum efficiency	Compliance date: equipment manufactured starting on . . .
Air Conditioners .....	<65,000 Btu/h .....	Split-System .....	13.0 SEER .....	June 16, 2008. <sup>1</sup>
		Single-Package .....	14.0 SEER .....	January 1, 2017. <sup>1</sup>
Heat Pumps .....	<65,000 Btu/h .....	Split-System .....	14.0 SEER, 8.2 HSPF .....	January 1, 2017. <sup>1</sup>
		Single-Package .....	14.0 SEER, 8.2 HSPF .....	January 1, 2017. <sup>1</sup>
VRF Air Conditioners .....	<65,000 Btu/h .....	.....	13.0 SEER .....	June 16, 2008. <sup>1</sup>
VRF Heat Pumps .....	<65,000 Btu/h .....	.....	13.0 SEER, 7.7 HSPF .....	June 16, 2008. <sup>1</sup>

<sup>1</sup> And manufactured before January 1, 2025. For equipment manufactured on or after January 1, 2025, see Table 17 to paragraph (h) of this section for updated efficiency standards.

TABLE 17 TO § 431.97(h)—UPDATED MINIMUM EFFICIENCY STANDARDS FOR AIR-COOLED, THREE-PHASE, SMALL COMMERCIAL PACKAGE AIR CONDITIONING AND HEATING EQUIPMENT WITH A COOLING CAPACITY OF LESS THAN 65,000 Btu/h AND AIR-COOLED, THREE-PHASE, SMALL VARIABLE REFRIGERANT FLOW MULTI-SPLIT AIR CONDITIONING AND HEATING EQUIPMENT WITH A COOLING CAPACITY OF LESS THAN 65,000 Btu/h

Equipment type	Size category (cooling)	Subcategory	Minimum efficiency	Compliance date: equipment manufactured starting on . . .
Air Conditioners .....	<65,000 Btu/h .....	Split-System .....	13.4 SEER2 .....	January 1, 2025.
		Single-Package .....	13.4 SEER2 .....	January 1, 2025.
Heat Pumps .....	<65,000 Btu/h .....	Split-System .....	14.3 SEER2, 7.5 HSPF2 .....	January 1, 2025.
		Single-Package .....	13.4 SEER2, 6.7 HSPF2 .....	January 1, 2025.
Space-Constrained Air Conditioners .....	≤30,000 Btu/h .....	Split-System .....	12.7 SEER2 .....	January 1, 2025.
		Single-Package .....	13.9 SEER2 .....	January 1, 2025.
Space-Constrained Heat Pumps .....	≤30,000 Btu/h .....	Split-System .....	13.9 SEER2, 7.0 HSPF2 .....	January 1, 2025.
		Single-Package .....	13.9 SEER2, 6.7 HSPF2 .....	January 1, 2025.
Small-Duct, High-Velocity Air Conditioners ...	<65,000 Btu/h .....	Split-System .....	13.0 SEER2 .....	January 1, 2025.
Small-Duct, High-Velocity Heat Pumps .....	<65,000 Btu/h .....	Split-System .....	14.0 SEER2, 6.9 HSPF2 .....	January 1, 2025.
VRF Air Conditioners .....	<65,000 Btu/h .....	.....	13.4 SEER2 .....	January 1, 2025.
VRF Heat Pumps .....	<65,000 Btu/h .....	.....	13.4 SEER2, 7.5 HSPF2 .....	January 1, 2025.





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Part III

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10 CFR Part 431

Energy Conservation Program: Energy Conservation Standards for  
Computer Room Air Conditioners; Final Rule

## DEPARTMENT OF ENERGY

## 10 CFR Part 431

[EERE–2020–BT–STD–0008]

RIN 1904–AF01

**Energy Conservation Program: Energy Conservation Standards for Computer Room Air Conditioners**

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

**ACTION:** Final rule.

**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 small, large, and very large commercial package air conditioning and heating equipment, of which computer room air conditioners (CRACs) are a category. EPCA requires the U.S. Department of Energy (DOE or the Department) to consider the need for amended standards each time American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) Standard 90.1 is amended with respect to the standard levels or design requirements applicable to that equipment, or periodically under a six-year-lookback review provision. In this final rule, DOE is adopting amended energy conservation standards for CRACs that rely on a new efficiency metric and are equivalent to those levels specified in ASHRAE Standard 90.1–2019. DOE has determined that it lacks the clear and convincing evidence required by the statute to adopt standards more stringent than the levels specified in the industry standard.

**DATES:** The effective date of this rule is August 1, 2023. Compliance with the amended standards established for computer room air conditioners in this final rule is required on and after May 28, 2024.

**ADDRESSES:** The docket for this rulemaking, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at [www.regulations.gov](http://www.regulations.gov). All documents in the docket are listed in the [www.regulations.gov](http://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-0008](http://www.regulations.gov/docket/EERE-2020-BT-STD-0008). The docket web

page contains instructions on how to access all documents, including public comments, in the docket.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Catherine Rivest, 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) 586–7335. Email: [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–5827. Email: [Eric.Stas@hq.doe.gov](mailto:Eric.Stas@hq.doe.gov).

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

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**I. Synopsis of the Final Rule**

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

Pursuant to EPCA, DOE is triggered to consider amending the energy conservation standards for certain types of commercial and industrial equipment, including CRACs, whenever ASHRAE amends the standard levels or design requirements prescribed in ASHRAE Standard 90.1, “*Energy Standard for Buildings Except Low-Rise Residential Buildings*” (ASHRAE Standard 90.1). Under a separate provision of EPCA, DOE is required to review the existing energy conservation standards for those types of covered equipment subject to ASHRAE Standard 90.1 every six years to determine whether those standards need to be amended. (42 U.S.C. 6313(a)(6)(A)–(C)) For each type of equipment, EPCA

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

<sup>2</sup> For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

directs that if ASHRAE Standard 90.1 is amended, DOE must adopt amended energy conservation standards at the new efficiency level in ASHRAE Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more-stringent efficiency level would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) If DOE adopts as a uniform national standard the efficiency level specified in the amended ASHRAE Standard 90.1, DOE must establish such standard not later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(i)(I)) If DOE determines that a more-stringent standard is appropriate under the statutory criteria, DOE must establish such more-stringent standard not later than 30 months after publication of the revised ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(B)(i)) ASHRAE updated ASHRAE Standard 90.1 on October 24, 2019 (ASHRAE Standard 90.1–2019), thereby triggering DOE’s previously referenced obligations pursuant to EPCA to determine for CRACs, whether: (1) the amended industry standard should be adopted; or (2) clear and convincing evidence exists to justify more-stringent standard levels. An update to ASHRAE Standard 90.1, ASHRAE Standard 90.1–2022, published in January 2023 and retained the same standards levels for CRACs as those in ASHRAE Standard 90.1–2019.

The current Federal energy conservation standards for CRACs are set forth at title 10 of the Code of Federal Regulations (CFR), 10 CFR 431.97 and, as specified in 10 CFR 431.96, those standards are denominated in terms of Sensible Coefficient of Performance (SCOP) and based on the rating conditions in American National Standards Institute

(ANSI)/ASHRAE 127–2007, “*Method of Testing for Rating Computer and Data Processing Room Unitary Air Conditioners*” (ANSI/ASHRAE 127–2007). However, the efficiency levels for CRACs set forth in ASHRAE Standard 90.1–2019 are specified in terms of Net Sensible Coefficient of Performance (NSenCOP) and based on rating conditions in Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Standard 1360–2017, “*Performance Rating of Computer and Data Processing Room Air Conditioners*” (AHRI 1360–2017), which differ from the rating conditions specified in ANSI/ASHRAE 127–2007 for most configurations of CRACs. Therefore, while SCOP and NSenCOP are both ratios of the net sensible cooling capacity (NSCC) to the power consumed by the unit, they are measured at different rating conditions for most configurations of CRACs<sup>3</sup> and correspondingly provide different representations of efficiency. DOE has compared the stringency of standards in ASHRAE Standard 90.1–2019 (in terms of NSenCOP) to the corresponding current Federal energy conservation standards (in terms of SCOP) by conducting a crosswalk analysis. Based on the results of that analysis, DOE has concluded that the ASHRAE Standard 90.1–2019 levels are equivalent in stringency to the current Federal standards for six equipment classes and are more stringent than the current Federal standards for the remaining 46 equipment classes of CRACs.

For all CRAC equipment classes, DOE has determined that there is not clear and convincing evidence of significant additional energy savings to justify amended standards for CRACs that are more stringent than the ASHRAE Standard 90.1–2019 levels. Clear and convincing evidence would exist only where the specific facts and data made available to DOE regarding a particular

ASHRAE amendment demonstrate that there is no substantial doubt that a standard more stringent than that contained in the ASHRAE Standard 90.1 amendment is permitted because it would result in a significant additional amount of energy savings, and it is technologically feasible and economically justified.

DOE normally performs multiple in-depth analyses to determine whether there is clear and convincing evidence to support more-stringent energy conservation standards (*i.e.*, whether more-stringent standards would produce significant additional conservation of energy and be technologically feasible and economically justified). However, as discussed in section V.A of this document, due to the lack of available market and performance data, DOE is unable to conduct the analysis necessary to evaluate the potential energy savings or evaluate whether more-stringent standards would be technologically feasible or economically justified, with sufficient certainty. Therefore, in accordance with the statutory provisions discussed in this section and elsewhere in this document, DOE is amending the energy conservation standards for CRACs so as to correspond to the efficiency levels specified for CRACs in ASHRAE Standard 90.1–2019. The amended standards, which are expressed in terms of NSenCOP, are presented in Table I–1 and Table I–2. These standards will apply to all CRACs listed in Table I–1 and Table I–2 manufactured in, or imported into, the United States starting on the compliance date 360 days after the publication date of this final rule. See section IV.D of this final rule for a discussion on the applicable lead times considered to determine this compliance date.

TABLE I–1—AMENDED ENERGY CONSERVATION STANDARDS FOR FLOOR-MOUNTED CRACs

Equipment type	Net sensible cooling capacity <sup>1</sup>	Minimum NSenCOP efficiency		Net sensible cooling capacity	Minimum NSenCOP efficiency	
		Downflow	Upflow ducted		Upflow non-ducted	Horizontal flow
Air-Cooled .....	<80,000 Btu/h <sup>2</sup> .....	2.70	2.67	<65,000 Btu/h .....	2.16	2.65
	≥80,000 Btu/h and <295,000 Btu/h .....	2.58	<sup>3</sup> 2.55	≥65,000 Btu/h and <240,000 Btu/h .....	2.04	2.55
	≥295,000 Btu/h and <930,000 Btu/h .....	2.36	2.33	≥240,000 Btu/h and <760,000 Btu/h .....	1.89	2.47
Air-Cooled with Fluid Economizer.	<80,000 Btu/h .....	2.70	2.67	<65,000 Btu/h .....	<sup>3</sup> 2.09	2.65
	≥80,000 Btu/h and <295,000 Btu/h .....	2.58	<sup>3</sup> 2.55	≥65,000 Btu/h and <240,000 Btu/h .....	<sup>3</sup> 1.99	2.55
	≥295,000 Btu/h and <930,000 Btu/h .....	2.36	2.33	≥240,000 Btu/h and <760,000 Btu/h .....	1.81	2.47
Water-Cooled .....	<80,000 Btu/h .....	2.82	2.79	<65,000 Btu/h .....	2.43	2.79
	≥80,000 Btu/h and <295,000 Btu/h .....	2.73	<sup>3</sup> 2.70	≥65,000 Btu/h and <240,000 Btu/h .....	2.32	2.68
	≥295,000 Btu/h and <930,000 Btu/h .....	2.67	2.64	≥240,000 Btu/h and <760,000 Btu/h .....	2.20	2.60
Water-Cooled with Fluid Economizer.	<80,000 Btu/h .....	2.77	2.74	<65,000 Btu/h .....	2.35	2.71
	≥80,000 Btu/h and <295,000 Btu/h .....	2.68	<sup>3</sup> 2.65	≥65,000 Btu/h and <240,000 Btu/h .....	2.24	2.60

<sup>3</sup> Additionally, for water-cooled and glycol-cooled CRACs, NSenCOP includes power adders to account for power that would be consumed in field

installations by pumps and heat rejection component (*e.g.*, cooling tower or dry cooler) fans. See section III.C of this final rule for further

discussion of the evaluation of differences between SCOP and NSenCOP.

TABLE I-1—AMENDED ENERGY CONSERVATION STANDARDS FOR FLOOR-MOUNTED CRACs—Continued

Equipment type	Net sensible cooling capacity <sup>1</sup>	Minimum NSenCOP efficiency		Net sensible cooling capacity	Minimum NSenCOP efficiency	
		Downflow	Upflow ducted		Upflow non-ducted	Horizontal flow
Glycol-Cooled .....	≥295,000 Btu/h and <930,000 Btu/h .....	2.61	2.58	≥240,000 Btu/h and <760,000 Btu/h .....	2.12	2.54
	<80,000 Btu/h .....	2.56	2.53	<65,000 Btu/h .....	2.08	2.48
	≥80,000 Btu/h and <295,000 Btu/h .....	2.24	2.21	≥65,000 Btu/h and <240,000 Btu/h .....	1.90	2.18
Glycol-Cooled with Fluid Economizer.	≥295,000 Btu/h and <930,000 Btu/h .....	2.21	2.18	≥240,000 Btu/h and <760,000 Btu/h .....	1.81	2.18
	<80,000 Btu/h .....	2.51	2.48	<65,000 Btu/h .....	2.00	2.44
	≥80,000 Btu/h and <295,000 Btu/h .....	2.19	2.16	≥65,000 Btu/h and <240,000 Btu/h .....	1.82	2.10
	≥295,000 Btu/h and <930,000 Btu/h .....	2.15	2.12	≥240,000 Btu/h and <760,000 Btu/h .....	1.73	2.10

<sup>1</sup> For downflow and upflow-ducted CRACs, the NSCC measured per AHRI 1360–2017 and the latest update to the standard, AHRI 1360–2022, is higher than the NSCC measured per the current Federal test procedure (which references ANSI/ASHRAE 127–2007). Therefore, to ensure equipment currently covered by Federal standards is not removed from coverage, DOE translated the currently applicable upper capacity limit for these classes (760,000 Btu/h) to NSCC as measured per AHRI 1360–2017 and AHRI 1360–2022, resulting in a crosswalked upper capacity boundary of 930,000 Btu/h. Consequently, DOE has used 930,000 Btu/h as the translated upper capacity limit for downflow and upflow-ducted CRACs in the analysis presented in this notice. For up-flow non-ducted CRACs, because there is no change in return air temperature conditions between ANSI/ASHRAE 127–2007 and AHRI 1360–2022, the capacity boundaries in ASHRAE Standard 90.1–2019 remain the same as those specified in the current Federal standards, and DOE correspondingly retains the current capacity boundaries. For horizontal-flow CRACs, DOE does not currently prescribe standards; therefore, a crosswalk of current capacity boundaries is not applicable. See section III.C.5 of this final rule for further discussion of DOE’s crosswalk analysis of capacity boundaries for CRACs.

<sup>2</sup> Btu/h refers to “British thermal units per hour.”

<sup>3</sup> The amended standard for this equipment class is of equivalent stringency to the currently applicable Federal standard—the adopted level is a translation from the current metric (SCOP) to the adopted metric (NSenCOP) and aligns with the corresponding level in ASHRAE Standard 90.1.

TABLE I-2—AMENDED ENERGY CONSERVATION STANDARDS FOR CEILING-MOUNTED CRACs

Equipment type	Net sensible cooling capacity	Minimum NSenCOP efficiency	
		Ducted	Non-ducted
Air-Cooled with Free Air Discharge Condenser .....	<29,000 Btu/h .....	2.05	2.08
	≥29,000 Btu/h and <65,000 Btu/h .....	2.02	2.05
	≥65,000 Btu/h and <760,000 Btu/h .....	1.92	1.94
Air-Cooled with Free Air Discharge Condenser and Fluid Economizer.	<29,000 Btu/h .....	2.01	2.04
	≥29,000 Btu/h and <65,000 Btu/h .....	1.97	2.00
	≥65,000 Btu/h and <760,000 Btu/h .....	1.87	1.89
Air-Cooled with Ducted Condenser .....	<29,000 Btu/h .....	1.86	1.89
	≥29,000 Btu/h and <65,000 Btu/h .....	1.83	1.86
	≥65,000 Btu/h and <760,000 Btu/h .....	1.73	1.75
Air-Cooled with Ducted Condenser and Fluid Economizer.	<29,000 Btu/h .....	1.82	1.85
	≥29,000 Btu/h and <65,000 Btu/h .....	1.78	1.81
	≥65,000 Btu/h and <760,000 Btu/h .....	1.68	1.70
Water-Cooled .....	<29,000 Btu/h .....	2.38	2.41
	≥29,000 Btu/h and <65,000 Btu/h .....	2.28	2.31
	≥65,000 Btu/h and <760,000 Btu/h .....	2.18	2.20
Water-Cooled with Fluid Economizer .....	<29,000 Btu/h .....	2.33	2.36
	≥29,000 Btu/h and <65,000 Btu/h .....	2.23	2.26
	≥65,000 Btu/h and <760,000 Btu/h .....	2.13	2.16
Glycol-Cooled .....	<29,000 Btu/h .....	1.97	2.00
	≥29,000 Btu/h and <65,000 Btu/h .....	1.93	1.98
	≥65,000 Btu/h and <760,000 Btu/h .....	1.78	1.81
Glycol-Cooled with Fluid Economizer .....	<29,000 Btu/h .....	1.92	1.95
	≥29,000 Btu/h and <65,000 Btu/h .....	1.88	1.93
	≥65,000 Btu/h and <760,000 Btu/h .....	1.73	1.76

**II. Introduction**

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

**A. Authority**

EPCA, Public Law 94–163 (42 U.S.C. 6291–6317, as codified), among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C of EPCA, added by Public Law 95–619,

Title IV, section 441(a), (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes small, large, and very large commercial package air conditioning and heating equipment, which includes CRACs, the subject of this rulemaking. (42 U.S.C. 6311(1)(B)–(D)) Pursuant to EPCA, DOE is required to consider amending the energy conservation standards for certain types of commercial and industrial equipment, including the

equipment at issue in this document, whenever ASHRAE amends the standard levels or design requirements prescribed in ASHRAE/IES Standard 90.1, and under a separate statutory provision, DOE must consider amendments to the standards for such equipment, at a minimum, every six years, regardless of ASHRAE action. (42 U.S.C. 6313(a)(6)(A)–(C))

Under EPCA, the energy conservation program 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. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and 42 U.S.C. 6316(b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption in limited circumstances for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (42 U.S.C. 6297(d); 42 U.S.C. 6316(a); 42 U.S.C. 6316(b)(2)(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 equipment during a representative average use cycle and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) Manufacturers of covered equipment must use the Federal test procedures as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making representations about the energy use or efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. The DOE test procedures for CRACs appear at 10 CFR part 431, subpart F.

ASHRAE Standard 90.1 sets industry energy efficiency levels for small, large, and very large commercial package air-conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks (collectively referred to as “ASHRAE equipment”). For each type of listed equipment, EPCA directs that if ASHRAE amends ASHRAE Standard 90.1 with respect to the standard levels or design requirements applicable under that standard, DOE must adopt amended standards at the new ASHRAE efficiency level, unless DOE determines, supported by clear and convincing

evidence,<sup>4</sup> that adoption of a more-stringent level would produce significant additional conservation of energy and would be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) If DOE makes such a determination, it must publish a final rule to establish the more-stringent standards. (42 U.S.C. 6313(a)(6)(B)(i))

Although EPCA does not explicitly define the term “amended” in the context of what type of revision to ASHRAE Standard 90.1 would trigger DOE’s obligation, DOE’s longstanding interpretation has been that the statutory trigger is an amendment to the standard applicable to that equipment under ASHRAE Standard 90.1 that increases the energy efficiency level for that equipment. *See* 72 FR 10038, 10042 (March 7, 2007). If the revised ASHRAE Standard 90.1 leaves the energy efficiency level unchanged (or lowers the energy efficiency level) as compared to the energy efficiency level specified by the uniform national standard adopted pursuant to EPCA, regardless of the other amendments made to the ASHRAE Standard 90.1 requirement (e.g., the inclusion of an additional metric), DOE has stated that it does not have authority to conduct a rulemaking pursuant to 42 U.S.C. 6313(a)(6)(A) to consider a higher standard for that equipment, although this does not limit DOE’s authority to consider higher standards as part of a six-year-lookback rulemaking analysis (pursuant to 42 U.S.C. 6313(a)(6)(C); see discussion in the following paragraphs). *See* 74 FR 36312, 36313 (July 22, 2009) and 77 FR 28928, 28937 (May 16, 2012). If an amendment to ASHRAE Standard 90.1 changes the metric for the standard on which the Federal requirement was based, DOE performs a crosswalk analysis to determine whether the amended metric under ASHRAE Standard 90.1 results in an energy efficiency level more stringent than the current DOE standard.

Under EPCA, DOE must also review its energy conservation standards for CRACs every six years and either: (1) issue a notice of determination that the standards do not need to be amended, as adoption of a more stringent level is not supported by clear and convincing

evidence; or (2) issue a notice of proposed rulemaking including new proposed standards based on certain criteria and procedures in subparagraph (B).<sup>5</sup> (42 U.S.C. 6313(a)(6)(C))

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

- (1) The economic impact of the standard on manufacturers and consumers of products subject to the standard;
- (2) The savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered equipment that are likely to result from the standard;
- (3) The total projected amount of energy savings likely to result directly from the standard;
- (4) Any lessening of the utility or the performance of the covered equipment likely to result from the standard;
- (5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;
- (6) The need for national energy conservation; and
- (7) Other factors the Secretary of Energy considers relevant.

(42 U.S.C. 6313(a)(6)(B)(ii)(I)–(VII)) Further, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product that complies with the standard will be less than three times the value of the energy (and, as applicable, water) savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42

<sup>5</sup> In relevant part, subparagraph (B) specifies that: (1) in making a determination of economic justification, DOE must consider, to the maximum extent practicable, the benefits and burdens of an amended standard based on the seven criteria described in EPCA; (2) DOE may not prescribe any standard that increases the energy use or decreases the energy efficiency of covered equipment; and (3) DOE may not prescribe any standard that interested persons have established by a preponderance of evidence is likely to result in the unavailability in the United States of any product type (or class) of performance characteristics (including reliability, features, sizes, capacities, and volumes) that are substantially the same as those generally available in the United States. (42 U.S.C. 6313(a)(6)(B)(ii)–(iii))

<sup>4</sup> The clear and convincing threshold is a heightened standard, and would only be met where the Secretary has an abiding conviction, based on available facts, data, and DOE’s own analyses, that it is highly probable an amended standard would result in a significant additional amount of energy savings, and is technologically feasible and economically justified. *American Public Gas Association v. U.S. Dep’t of Energy*, No. 20–1068, 2022 WL 151923, at \*4 (D.C. Cir. January 18, 2022) (citing *Colorado v. New Mexico*, 467 U.S. 310, 316, 104 S.Ct. 2433, 81 L.Ed.2d 247 (1984)).

U.S.C. 6295(o)(2)(B)(iii)) However, while this rebuttable presumption analysis applies to most commercial and industrial equipment (42 U.S.C. 6316(a)), it is not a required analysis for ASHRAE equipment (42 U.S.C. 6316(b)(1)).

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

*B. Background*

1. Current Standards

EPCA defines “commercial package air conditioning and heating equipment” as air-cooled, water-cooled, evaporatively-cooled, or water-source (not including ground-water-source) electrically operated, unitary central air

conditioners and central air conditioning heat pumps for commercial application. (42 U.S.C. 6311(8)(A); 10 CFR 431.92) EPCA further classifies “commercial package air conditioning and heating equipment” into categories based on cooling capacity (*i.e.*, small, large, and very large categories). (42 U.S.C. 6311(8)(B)–(D); 10 CFR 431.92) “Small commercial package air conditioning and heating equipment” means equipment rated below 135,000 Btu/h (cooling capacity). (42 U.S.C. 6311(8)(B); 10 CFR 431.92) “Large commercial package air conditioning and heating equipment” means equipment rated: (i) At or above 135,000 Btu/h; and (ii) below 240,000 Btu/h (cooling capacity). (42 U.S.C. 6311(8)(C); 10 CFR 431.92) “Very large commercial package air conditioning and heating equipment” means equipment rated: (i) At or above 240,000 Btu/h; and (ii) below 760,000 Btu/h (cooling capacity). (42 U.S.C. 6311(8)(D); 10 CFR 431.92)

Pursuant to its authority under EPCA (42 U.S.C. 6313(a)(6)(A)) and in response to updates to ASHRAE Standard 90.1, DOE has established the category of CRAC, which meets the EPCA definition of “commercial package air conditioning and heating equipment,” but which EPCA did not expressly identify. *See* 10 CFR 431.92 and 10 CFR 431.97. Within this equipment category, further distinctions

are made at the equipment class level based on capacity and other equipment attributes.

DOE has recently amended the definition of CRAC in a test procedure final rule issued in March 2023 (March 2023 TP final rule). *See* EERE–2021–BT–TP–0017. Specifically, DOE has revised the definition to include how the manufacturer markets a model for use, consistent with the definition in the industry standard, AHRI 1360–2022, which also defines CRACs based on marketing. *Id.* The amended definition notes that CRACs include, but are not limited to, the following configurations as defined in 10 CFR 431.92: down-flow, horizontal-flow, up-flow ducted, up-flow non-ducted, ceiling-mounted ducted, ceiling mounted non-ducted, roof-mounted, and wall-mounted. *Id.*

In a final rule published in the **Federal Register** on May 16, 2012 (May 2012 final rule), DOE established energy conservation standards for CRACs. Compliance with standards was required for units manufactured: (1) on and after October 29, 2012, for equipment classes with NSCC less than 65,000 Btu/h and (2) on or after October 29, 2013, for equipment classes with NSCC greater than or equal to 65,000 Btu/h and less than 760,000 Btu/h. 77 FR 28929, 28995. These standards are set forth in DOE’s regulations at 10 CFR 431.97 and are repeated in Table II–1.

TABLE II–1—CURRENT FEDERAL ENERGY CONSERVATION STANDARDS

Equipment type	Net sensible cooling capacity	Minimum SCOP efficiency	
		Downflow	Upflow
Air-Cooled	<65,000 Btu/h	2.20	2.09
	≥65,000 Btu/h and <240,000 Btu/h	2.10	1.99
	≥240,000 Btu/h and <760,000 Btu/h	1.90	1.79
Water-Cooled	<65,000 Btu/h	2.60	2.49
	≥65,000 Btu/h and <240,000 Btu/h	2.50	2.39
	≥240,000 Btu/h and <760,000 Btu/h	2.40	2.29
Water-Cooled with a Fluid Economizer	<65,000 Btu/h	2.55	2.44
	≥65,000 Btu/h and <240,000 Btu/h	2.45	2.34
	≥240,000 Btu/h and <760,000 Btu/h	2.35	2.24
Glycol-Cooled	<65,000 Btu/h	2.50	2.39
	≥65,000 Btu/h and <240,000 Btu/h	2.15	2.04
	≥240,000 Btu/h and <760,000 Btu/h	2.10	1.99
Glycol-Cooled with a Fluid Economizer	<65,000 Btu/h	2.45	2.34
	≥65,000 Btu/h and <240,000 Btu/h	2.10	1.99
	≥240,000 Btu/h and <760,000 Btu/h	2.05	1.94

DOE’s current equipment classes for CRACs are differentiated by condenser heat rejection medium (air-cooled, water-cooled, water-cooled with fluid economizer, glycol-cooled, or glycol-cooled with fluid economizer), NSCC (less than 65,000 Btu/h, greater than or equal to 65,000 Btu/h and less than 240,000 Btu/h, or greater than or equal

to 240,000 Btu/h and less than 760,000 Btu/h), and direction of conditioned air over the cooling coil (upflow or downflow). 10 CFR 431.97.

As noted previously, DOE’s test procedure for CRACs was last amended in the March 2023 TP final rule, and is set forth at appendix E1 to Subpart F of 10 CFR part 431. *See* EERE–2021–BT–

TP–0017. The amended test procedure incorporates by reference AHRI Standard 1360–2022, “Performance Rating of Computer and Data Processing Room Air Conditioners” (AHRI 1360–2022) and uses the energy efficiency metric, NSenCOP, for all CRAC equipment classes. *Id.* Testing in accordance with the amended test

procedure is not required until such time as compliance is required with amended energy conservation standards for CRACs that rely on NSenCOP. *Id.* In parallel, DOE also established appendix E, which continues to reference ANSI/ASHRAE 127–2007 and provide instructions for determining SCOP. *Id.* CRACs are required to be tested according to appendix E until such time as compliance is required with amended energy conservation standards that rely on the NSenCOP metric. *Id.*

2. History of Standards Rulemaking for CRACs

As discussed, the energy conservation standards for CRACs were most recently amended in the May 2012 final rule. 77 FR 28928 (May 16, 2012). The May 2012 final rule established equipment classes for CRACs and adopted energy conservation standards that correspond to the levels in the 2010 revision of ASHRAE Standard 90.1 (ASHRAE Standard 90.1–2010).

ASHRAE released the 2016 version of ASHRAE Standard 90.1 (ASHRAE Standard 90.1–2016) on October 26, 2016, which updated its test procedure reference for CRACs from ANSI/ASHRAE 127–2007 to AHRI Standard 1360–2016, “Performance Rating of Computer and Data Processing Room Air Conditioners” (AHRI 1360–2016), which in turn references ANSI/ASHRAE 127–2012, “Method of Testing for Rating Computer and Data Processing Room Unitary Air Conditioners” (ANSI/ASHRAE 127–2012). The energy efficiency metric for CRACs in AHRI 1360–2016 is NSenCOP. ASHRAE Standard 90.1–2016 established new equipment classes and added efficiency levels for horizontal-flow CRACs,

disaggregated the upflow CRAC equipment classes into upflow ducted and upflow non-ducted equipment classes, and established different sets of efficiency levels for upflow ducted and upflow non-ducted equipment classes based on the corresponding rating conditions specified in AHRI 1360–2016.

DOE published a notice of data availability and request for information (NODA/RFI) in response to the amendments to the industry consensus standard contained in ASHRAE Standard 90.1–2016 in the **Federal Register** on September 11, 2019 (September 2019 NODA/RFI). 84 FR 48006. In the September 2019 NODA/RFI, DOE explained its methodology and assumptions to compare the current Federal standards for CRACs (in terms of SCOP as measured per ANSI/ASHRAE 127–2007) to the levels in ASHRAE Standard 90.1–2016 (in terms of NSenCOP and measured per AHRI 1360–2016) and requested comment on its methodology and results. 84 FR 48006, 48014–48019 (Sept. 11, 2019).

On October 24, 2019, ASHRAE officially released for distribution and made public ASHRAE Standard 90.1–2019. ASHRAE Standard 90.1–2019 updated its test procedure reference for CRACs from AHRI 1360–2016 to AHRI 1360–2017, which also references ANSI/ASHRAE 127–2012. ASHRAE Standard 90.1–2019 maintained the equipment class structure for floor-mounted CRACs as established in ASHRAE Standard 90.1–2016 and updated the efficiency levels in ASHRAE Standard 90.1–2016 for all but three of those equipment classes. ASHRAE Standard 90.1–2019 also added classes for air-cooled CRACs with fluid economizers and a new table

with new efficiency levels for ceiling-mounted CRAC equipment classes. The equipment in the horizontal-flow and ceiling-mounted classes is currently not subject to Federal standards set forth in 10 CFR 431.97.<sup>6</sup> In contrast, upflow and downflow air-cooled CRACs with fluid economizers are currently subject to the Federal standards in 10 CFR 431.97 for air-cooled equipment classes.

DOE also published a NODA/RFI in response to the amendments in ASHRAE Standard 90.1–2019 and the comments received in response to the September 2019 NODA/RFI, in the **Federal Register** on September 25, 2020 (September 2020 NODA/RFI). 85 FR 60642. In the September 2020 NODA/RFI, DOE conducted a crosswalk analysis (similar to the September 2019 NODA/RFI) to compare the current Federal standards for CRACs (in terms of SCOP as measured per ANSI/ASHRAE 127–2007) to the levels in ASHRAE Standard 90.1–2019 (in terms of NSenCOP as measured per AHRI 1360–2017) and requested comment on its methodology and results. 85 FR 60642, 60653–60660 (Sept. 25, 2020).

Subsequently, on March 7, 2022, DOE published in the **Federal Register** a NOPR proposing amended CRAC standards in alignment with ASHRAE Standard 90.1–2019 (March 2022 ECS NOPR). 87 FR 12802. In the March 2022 ECS NOPR, DOE outlined the plan to crosswalk the existing CRAC energy conservation standards (denominated in terms of SCOP) to the standards in ASHRAE Standard 90.1–2019 (denominated in terms of NSenCOP) and requested comment. DOE received comments in response to the March 2022 ECS NOPR from the interested parties listed in Table II–2.

TABLE II–2—MARCH 2022 ECS NOPR WRITTEN COMMENTS

Commenter(s)	Abbreviation	Comment number in the docket	Commenter type
Air-Conditioning, Heating & Refrigeration Institute .....	AHRI .....	0012	Industry Trade Association. State Agency. Utilities.
New York State Energy Research and Development Authority	NYSERDA <sup>7</sup> .....	0014	
Pacific Gas and Electric Company, San Diego Gas & Electric, Southern California Edison (collectively referred to as the California Investor-owned Utilities or CA IOUs).	CA IOUs .....	0013	

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.<sup>8</sup> To the extent that

interested parties have provided written comments that are substantively consistent with any oral comments provided during the April 13, 2022,

public meeting webinar for the CRACs ECS NOPR, DOE cites the written comments throughout this final rule. In this case, there were no relevant

<sup>6</sup> DOE issued a draft guidance document on October 7, 2015, to clarify that horizontal-flow and ceiling-mounted CRACs are covered equipment and are required to be tested under the current DOE test procedure for purposes of making representations of

energy consumption. (Docket No. EERE–2014–BT–GUID–0022, No. 3, pp. 1–2)

<sup>7</sup> NYSERDA’s comment was received three days after the comment deadline.

<sup>8</sup> The parenthetical reference provides a reference for information located in the docket of DOE’s

rulemaking to develop energy conservation standards for CRACs. (Docket No. EERE–2020–BT–STD–0008, which is maintained at [www.regulations.gov](http://www.regulations.gov)). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

webinar comments that were not reflected in written comments.

Additionally, on February 7, 2022, DOE published in the **Federal Register** a test procedure NOPR (February 2022 TP NOPR), in which DOE proposed an amended test procedure for CRACs that would incorporate by reference the substance of a draft version of AHRI 1360 standard, AHRI Standard 1360–202X, *Performance Rating of Computer and Data Processing Room Air Conditioners* (AHRI 1360–202X Draft) and adopts NSenCOP as the test metric for CRACs. 87 FR 6948. At the time of the publication of the February 2022 TP NOPR, AHRI Standard 1360–202X Draft was in draft form, and its text was provided to the Department for the purposes of review. As stated in the February 2022 TP NOPR, DOE intended to update the reference to the final published version of AHRI 1360–202X Draft. 87 FR 6948, 6951 (Feb. 7, 2022). In November 2022, AHRI finalized AHRI 1360–202X Draft by publishing AHRI 1360–2022. AHRI 1360–2022 did not include any substantial changes from the AHRI–1360–202X Draft that was referenced in the February 2022 TP NOPR.

Subsequently, in March 2023, DOE issued the March 2023 TP final rule updating the reference to AHRI 1360–2022. See EERE–2021–BT–TP–0017.

**III. General Discussion**

DOE developed this final rule 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.

This final rule covers commercial equipment that meet the definition of CRACs, as codified at 10 CFR 431.92.

*A. Background*

As mentioned, DOE presented an efficiency crosswalk analysis in the September 2020 NODA/RFI to compare the stringency of the current Federal standards (represented in terms of SCOP based on the current DOE test procedure) for CRACs to the stringency of the efficiency levels for this equipment in ASHRAE Standard 90.1–2019 (represented in terms of NSenCOP and based on AHRI 1360–2017). 85 FR 60642, 60648 (Sept. 25, 2020). In the February 2022 TP NOPR, DOE proposed to incorporate by reference the then latest draft version of AHRI Standard 1360, AHRI 1360–202X Draft, and to adopt NSenCOP as the test metric in the DOE test procedure for CRACs. 87 FR 6948 (Feb. 7, 2022). In the March 2022 ECS NOPR, DOE noted that because the rating conditions specified in AHRI 1360–2017 and AHRI 1360–202X Draft are the same for the classes covered by DOE’s crosswalk analysis (upflow ducted, upflow non-ducted, and downflow), the same crosswalk as described in the September 2020 NODA/RFI can be used to compare DOE’s current SCOP-based CRAC standards to relevant NSenCOP values determined according to AHRI 1360–202X Draft. 87 FR 12802, 12808 (March 7, 2022).

In November 2022, AHRI finalized AHRI 1360–202X Draft and published AHRI 1360–2022. Subsequently, in the March 2023 TP final rule, DOE adopted AHRI 1360–2022. See EERE–2021–BT–TP–0017. The rating conditions specified in AHRI 1360–2022 and AHRI 1360–202X Draft are unchanged for the classes covered by DOE’s crosswalk analysis, so accordingly, DOE has concluded that the crosswalk as described in the September 2020 NODA/RFI can be used to compare DOE’s current SCOP-based CRAC

standards to relevant NSenCOP values determined according to AHRI 1360–2022.

In the September 2020 NODA/RFI, DOE’s analysis focused on whether DOE had been triggered by ASHRAE Standard 90.1–2019 updates to minimum efficiency levels for CRACs and whether more-stringent standards were warranted. As discussed in detail in section III.C of this final rule, DOE conducted a crosswalk analysis of the ASHRAE Standard 90.1–2019 standard levels (in terms of NSenCOP) and the corresponding current Federal energy conservation standards (in terms of SCOP) to compare the stringencies. DOE has determined that the updates in ASHRAE Standard 90.1–2019 increased the stringency of efficiency levels for 48 equipment classes and maintained equivalent levels for 6 equipment classes of CRACs relative to the current Federal standard. In addition, ASHRAE Standard 90.1–2019 includes efficiency levels for 18 classes of horizontal-flow CRACs and 48 classes of ceiling-mounted CRACs which are not currently subject to Federal standards and, therefore, require no crosswalk. As discussed in section V of this document, DOE is adopting standards for horizontal-flow CRACs and ceiling-mounted CRACs.

Table III–1 shows the equipment classes and efficiency levels for CRACs provided in ASHRAE Standard 90.1–2019 alongside the current Federal energy conservation standards. Table III–1 also displays the corresponding existing Federal equipment classes for clarity and indicates whether the updated levels in ASHRAE Standard 90.1–2019 trigger DOE’s evaluation pursuant to 42 U.S.C. 6313(a)(6)(A) (*i.e.*, whether the update results in a standard level more stringent than the current Federal level).

**TABLE III–1—ENERGY EFFICIENCY LEVELS FOR CRACs IN ASHRAE STANDARD 90.1–2019 AND THE CORRESPONDING FEDERAL ENERGY CONSERVATION STANDARDS**

ASHRAE standard 90.1–2019 equipment class <sup>1</sup>	Current federal equipment class <sup>1</sup>	Energy efficiency levels in ASHRAE standard 90.1–2019 <sup>2</sup>	Federal energy conservation standards <sup>2</sup>	DOE triggered by ASHRAE standard 90.1–2019 amendment?
Air-Cooled, <80,000 Btu/h, Downflow	Air-Cooled, <65,000 Btu/h, Downflow	2.70 NSenCOP ....	2.20 SCOP .....	Yes
Air-Cooled, <65,000 Btu/h, Horizontal-flow.	N/A .....	2.65 NSenCOP ....	N/A .....	Yes <sup>3</sup>
Air-Cooled, <80,000 Btu/h, Upflow Ducted.	Air-Cooled, <65,000 Btu/h, Upflow ....	2.67 NSenCOP ....	2.09 SCOP .....	Yes
Air-Cooled, <65,000 Btu/h, Upflow Non-Ducted.	Air-Cooled, <65,000 Btu/h, Upflow ....	2.16 NSenCOP ....	2.09 SCOP .....	Yes
Air-Cooled, ≥80,000 and <295,000 Btu/h, Downflow.	Air-Cooled, ≥65,000 and <240,000 Btu/h, Downflow.	2.58 NSenCOP ....	2.10 SCOP .....	Yes
Air-Cooled, ≥65,000 and <240,000 Btu/h, Horizontal-flow.	N/A .....	2.55 NSenCOP ....	N/A .....	Yes <sup>3</sup>
Air-Cooled, ≥80,000 and <295,000 Btu/h, Upflow Ducted.	Air-Cooled, ≥65,000 and <240,000 Btu/h, Upflow.	2.55 NSenCOP ....	1.99 SCOP .....	No <sup>4</sup>



TABLE III-1—ENERGY EFFICIENCY LEVELS FOR CRACs IN ASHRAE STANDARD 90.1-2019 AND THE CORRESPONDING FEDERAL ENERGY CONSERVATION STANDARDS—Continued

ASHRAE standard 90.1-2019 equipment class <sup>1</sup>	Current federal equipment class <sup>1</sup>	Energy efficiency levels in ASHRAE standard 90.1-2019 <sup>2</sup>	Federal energy conservation standards <sup>2</sup>	DOE triggered by ASHRAE standard 90.1-2019 amendment?
Air-Cooled, ≥65,000 and <240,000 Btu/h, Upflow Non-Ducted.	Air-Cooled, ≥65,000 and <240,000 Btu/h, Upflow.	2.04 NSenCOP ....	1.99 SCOP .....	Yes
Air-Cooled, ≥295,000 Btu/h, Downflow	Air-Cooled, ≥240,000 Btu/h and <760,000 Btu/h, Downflow.	2.36 NSenCOP ....	1.90 SCOP .....	Yes
Air-Cooled, ≥240,000 Btu/h, Horizontal-flow.	N/A .....	2.47 NSenCOP ....	N/A .....	Yes <sup>3</sup>
Air-Cooled, ≥295,000 Btu/h, Upflow Ducted.	Air-Cooled, ≥240,000 Btu/h and <760,000 Btu/h, Upflow.	2.33 NSenCOP ....	1.79 SCOP .....	Yes
Air-Cooled, ≥240,000 Btu/h, Upflow Non-ducted.	Air-Cooled, ≥240,000 Btu/h and <760,000 Btu/h, Upflow.	1.89 NSenCOP ....	1.79 SCOP .....	Yes
Air-Cooled with fluid economizer, <80,000 Btu/h, Downflow.	Air-Cooled, <65,000 Btu/h, Downflow	2.70 NSenCOP ....	2.20 SCOP .....	Yes <sup>5</sup>
Air-Cooled with fluid economizer, <65,000 Btu/h, Horizontal-flow.	N/A .....	2.65 NSenCOP ....	N/A .....	Yes <sup>3</sup>
Air-Cooled with fluid economizer, <80,000 Btu/h, Upflow Ducted.	Air-Cooled, <65,000 Btu/h, Upflow .....	2.67 NSenCOP ....	2.09 SCOP .....	Yes <sup>5</sup>
Air-Cooled with fluid economizer, <65,000 Btu/h, Upflow Non-Ducted.	Air-Cooled, <65,000 Btu/h, Upflow .....	2.09 NSenCOP ....	2.09 SCOP .....	No <sup>4</sup>
Air-Cooled with fluid economizer, ≥80,000 and <295,000 Btu/h, Downflow.	Air-Cooled, ≥65,000 and <240,000 Btu/h, Downflow.	2.58 NSenCOP ....	2.10 SCOP .....	Yes <sup>5</sup>
Air-Cooled with fluid economizer, ≥65,000 and <240,000 Btu/h, Horizontal-flow.	N/A .....	2.55 NSenCOP ....	N/A .....	Yes <sup>3</sup>
Air-Cooled with fluid economizer, ≥80,000 and <295,000 Btu/h, Upflow Ducted.	Air-Cooled, ≥65,000 and <240,000 Btu/h, Upflow.	2.55 NSenCOP ....	1.99 SCOP .....	No <sup>4</sup>
Air-Cooled with fluid economizer, ≥65,000 and <240,000 Btu/h, Upflow Non-Ducted.	Air-Cooled, ≥65,000 and <240,000 Btu/h, Upflow.	1.99 NSenCOP ....	1.99 SCOP .....	No <sup>4</sup>
Air-Cooled with fluid economizer, ≥295,000 Btu/h, Downflow.	Air-Cooled, ≥240,000 Btu/h and <760,000 Btu/h, Downflow.	2.36 NSenCOP ....	1.90 SCOP .....	Yes <sup>5</sup>
Air-Cooled with fluid economizer, ≥240,000 Btu/h, Horizontal-flow.	N/A .....	2.47 NSenCOP ....	N/A .....	Yes <sup>3</sup>
Air-Cooled with fluid economizer, ≥295,000 Btu/h, Upflow Ducted.	Air-Cooled, ≥240,000 Btu/h and <760,000 Btu/h, Upflow.	2.33 NSenCOP ....	1.79 SCOP .....	Yes <sup>5</sup>
Air-Cooled with fluid economizer, ≥240,000 Btu/h, Upflow Non-ducted.	Air-Cooled, ≥240,000 Btu/h and <760,000 Btu/h, Upflow.	1.81 NSenCOP ....	1.79 SCOP .....	Yes <sup>5</sup>
Water-Cooled, <80,000 Btu/h, Downflow.	Water-Cooled, <65,000 Btu/h, Downflow.	2.82 NSenCOP ....	2.60 SCOP .....	Yes
Water-Cooled, <65,000 Btu/h, Horizontal-flow.	N/A .....	2.79 NSenCOP ....	N/A .....	Yes <sup>3</sup>
Water-Cooled, <80,000 Btu/h, Upflow Ducted.	Water-Cooled, <65,000 Btu/h, Upflow	2.79 NSenCOP ....	2.49 SCOP .....	Yes
Water-Cooled, <65,000 Btu/h, Upflow Non-ducted.	Water-Cooled, <65,000 Btu/h, Upflow	2.43 NSenCOP ....	2.49 SCOP .....	Yes
Water-Cooled, ≥80,000 and <295,000 Btu/h, Downflow.	Water-Cooled, ≥65,000 and <240,000 Btu/h, Downflow.	2.73 NSenCOP ....	2.50 SCOP .....	Yes
Water-Cooled, ≥65,000 and <240,000 Btu/h, Horizontal-flow.	N/A .....	2.68 NSenCOP ....	N/A .....	Yes <sup>3</sup>
Water-Cooled, ≥80,000 and <295,000 Btu/h, Upflow Ducted.	Water-Cooled, ≥65,000 and <240,000 Btu/h, Upflow.	2.70 NSenCOP ....	2.39 SCOP .....	No <sup>4</sup>
Water-Cooled, ≥65,000 and <240,000 Btu/h, Upflow Non-ducted.	Water-Cooled, ≥65,000 and <240,000 Btu/h, Upflow.	2.32 NSenCOP ....	2.39 SCOP .....	Yes
Water-Cooled, ≥295,000 Btu/h, Downflow.	Water-Cooled, ≥240,000 Btu/h and <760,000 Btu/h, Downflow.	2.67 NSenCOP ....	2.40 SCOP .....	Yes
Water-Cooled, ≥240,000 Btu/h, Horizontal-flow.	N/A .....	2.60 NSenCOP ....	N/A .....	Yes <sup>3</sup>
Water-Cooled, ≥295,000 Btu/h, Upflow Ducted.	Water-Cooled, ≥240,000 Btu/h and <760,000 Btu/h, Upflow.	2.64 NSenCOP ....	2.29 SCOP .....	Yes
Water-Cooled, ≥240,000 Btu/h, Upflow Non-ducted.	Water-Cooled, ≥240,000 Btu/h and <760,000 Btu/h, Upflow.	2.20 NSenCOP ....	2.29 SCOP .....	Yes
Water-Cooled with fluid economizer, <80,000 Btu/h, Downflow.	Water-Cooled with fluid economizer, <65,000 Btu/h, Downflow.	2.77 NSenCOP ....	2.55 SCOP .....	Yes
Water-Cooled with fluid economizer, <65,000 Btu/h, Horizontal-flow.	N/A .....	2.71 NSenCOP ....	N/A .....	Yes <sup>3</sup>
Water-Cooled with fluid economizer, <80,000 Btu/h, Upflow Ducted.	Water-Cooled with fluid economizer, <65,000 Btu/h, Upflow.	2.74 NSenCOP ....	2.44 SCOP .....	Yes

TABLE III-1—ENERGY EFFICIENCY LEVELS FOR CRACs IN ASHRAE STANDARD 90.1-2019 AND THE CORRESPONDING FEDERAL ENERGY CONSERVATION STANDARDS—Continued

ASHRAE standard 90.1-2019 equipment class <sup>1</sup>	Current federal equipment class <sup>1</sup>	Energy efficiency levels in ASHRAE standard 90.1-2019 <sup>2</sup>	Federal energy conservation standards <sup>2</sup>	DOE triggered by ASHRAE standard 90.1-2019 amendment?
Water-Cooled with fluid economizer, <65,000 Btu/h, Upflow Non-ducted.	Water-Cooled with fluid economizer, <65,000 Btu/h, Upflow.	2.35 NSenCOP ....	2.44 SCOP .....	Yes
Water-Cooled with fluid economizer, ≥80,000 and <295,000 Btu/h, Downflow.	Water-Cooled with fluid economizer, ≥65,000 and <240,000 Btu/h, Downflow.	2.68 NSenCOP ....	2.45 SCOP .....	Yes
Water-Cooled with fluid economizer, ≥65,000 and <240,000 Btu/h, Horizontal-flow.	N/A .....	2.60 NSenCOP ....	N/A .....	Yes <sup>3</sup>
Water-Cooled with fluid economizer, ≥80,000 and <295,000 Btu/h, Upflow Ducted.	Water-Cooled with fluid economizer, ≥65,000 and <240,000 Btu/h, Upflow.	2.65 NSenCOP ....	2.34 SCOP .....	No <sup>4</sup>
Water-Cooled with fluid economizer, ≥65,000 and <240,000 Btu/h, Upflow Non-ducted.	Water-Cooled with fluid economizer, ≥65,000 and <240,000 Btu/h, Upflow.	2.24 NSenCOP ....	2.34 SCOP .....	Yes
Water-Cooled with fluid economizer, ≥295,000 Btu/h, Downflow.	Water-Cooled with fluid economizer, ≥240,000 Btu/h and <760,000 Btu/h, Downflow.	2.61 NSenCOP ....	2.35 SCOP .....	Yes
Water-Cooled with fluid economizer, ≥240,000 Btu/h, Horizontal-flow.	N/A .....	2.54 NSenCOP ....	N/A .....	Yes <sup>3</sup>
Water-Cooled with fluid economizer, ≥295,000 Btu/h, Upflow Ducted.	Water-Cooled with fluid economizer, ≥240,000 Btu/h and <760,000 Btu/h, Upflow.	2.58 NSenCOP ....	2.24 SCOP .....	Yes
Water-Cooled with fluid economizer, ≥240,000 Btu/h, Upflow Non-ducted.	Water-Cooled with fluid economizer, ≥240,000 Btu/h and <760,000 Btu/h, Upflow.	2.12 NSenCOP ....	2.24 SCOP .....	Yes
Glycol-Cooled, <80,000 Btu/h, Downflow.	Glycol-Cooled, <65,000 Btu/h, Downflow.	2.56 NSenCOP ....	2.50 SCOP .....	Yes
Glycol-Cooled, <65,000 Btu/h, Horizontal-flow.	N/A .....	2.48 NSenCOP ....	N/A .....	Yes <sup>3</sup>
Glycol-Cooled, <80,000 Btu/h, Upflow Ducted.	Glycol-Cooled, <65,000 Btu/h, Upflow Ducted.	2.53 NSenCOP ....	2.39 SCOP .....	Yes
Glycol-Cooled, <65,000 Btu/h, Upflow Non-ducted.	Glycol-Cooled, <65,000 Btu/h, Upflow Non-ducted.	2.08 NSenCOP ....	2.39 SCOP .....	Yes
Glycol-Cooled, ≥80,000 and <295,000 Btu/h, Downflow.	Glycol-Cooled, ≥65,000 and <240,000 Btu/h, Downflow.	2.24 NSenCOP ....	2.15 SCOP .....	Yes
Glycol-Cooled, ≥65,000 and <240,000 Btu/h, Horizontal-flow.	N/A .....	2.18 NSenCOP ....	N/A .....	Yes <sup>3</sup>
Glycol-Cooled, ≥80,000 and <295,000 Btu/h, Upflow Ducted.	Glycol-Cooled, ≥65,000 and <240,000 Btu/h, Upflow.	2.21 NSenCOP ....	2.04 SCOP .....	Yes
Glycol-Cooled, ≥65,000 and <240,000 Btu/h, Upflow Non-ducted.	Glycol-Cooled, ≥65,000 and <240,000 Btu/h, Upflow.	1.90 NSenCOP ....	2.04 SCOP .....	Yes
Glycol-Cooled, ≥295,000 Btu/h, Downflow.	Glycol-Cooled, ≥240,000 Btu/h and <760,000 Btu/h, Downflow.	2.21 NSenCOP ....	2.10 SCOP .....	Yes
Glycol-Cooled, ≥240,000 Btu/h, Horizontal-flow.	N/A .....	2.18 NSenCOP ....	N/A .....	Yes <sup>3</sup>
Glycol-Cooled, ≥295,000 Btu/h, Upflow Ducted.	Glycol-Cooled, ≥240,000 Btu/h and <760,000 Btu/h, Upflow Ducted.	2.18 NSenCOP ....	1.99 SCOP .....	Yes
Glycol-Cooled, ≥240,000 Btu/h, Upflow Non-ducted.	Glycol-Cooled, ≥240,000 Btu/h and <760,000 Btu/h, Upflow Non-ducted.	1.81 NSenCOP ....	1.99 SCOP .....	Yes
Glycol-Cooled with fluid economizer, <80,000 Btu/h, Downflow.	Glycol-Cooled with fluid economizer, <65,000 Btu/h, Downflow.	2.51 NSenCOP ....	2.45 SCOP .....	Yes
Glycol-Cooled with fluid economizer, <65,000 Btu/h, Horizontal-flow.	N/A .....	2.44 NSenCOP ....	N/A .....	Yes <sup>3</sup>
Glycol-Cooled with fluid economizer, <80,000 Btu/h, Upflow Ducted.	Glycol-Cooled with fluid economizer, <65,000 Btu/h, Upflow Ducted.	2.48 NSenCOP ....	2.34 SCOP .....	Yes
Glycol-Cooled with fluid economizer, <65,000 Btu/h, Upflow Non-ducted.	Glycol-Cooled with fluid economizer, <65,000 Btu/h, Upflow Non-ducted.	2.00 NSenCOP ....	2.34 SCOP .....	Yes
Glycol-Cooled with fluid economizer, ≥80,000 and <295,000 Btu/h, Downflow.	Glycol-Cooled with fluid economizer, ≥65,000 and <240,000 Btu/h, Downflow.	2.19 NSenCOP ....	2.10 SCOP .....	Yes
Glycol-Cooled with fluid economizer, ≥65,000 and <240,000 Btu/h, Horizontal-flow.	N/A .....	2.10 NSenCOP ....	N/A .....	Yes <sup>3</sup>
Glycol-Cooled with fluid economizer, ≥80,000 and <295,000 Btu/h, Upflow Ducted.	Glycol-Cooled with fluid economizer, ≥65,000 and <240,000 Btu/h, Upflow.	2.16 NSenCOP ....	1.99 SCOP .....	Yes

TABLE III-1—ENERGY EFFICIENCY LEVELS FOR CRACs IN ASHRAE STANDARD 90.1-2019 AND THE CORRESPONDING FEDERAL ENERGY CONSERVATION STANDARDS—Continued

ASHRAE standard 90.1-2019 equipment class <sup>1</sup>	Current federal equipment class <sup>1</sup>	Energy efficiency levels in ASHRAE standard 90.1-2019 <sup>2</sup>	Federal energy conservation standards <sup>2</sup>	DOE triggered by ASHRAE standard 90.1-2019 amendment?
Glycol-Cooled with fluid economizer, ≥65,000 and <240,000 Btu/h, Upflow Non-ducted.	Glycol-Cooled with fluid economizer, ≥65,000 and <240,000 Btu/h, Upflow.	1.82 NSenCOP ....	1.99 SCOP .....	Yes
Glycol-Cooled with fluid economizer, ≥295,000 Btu/h, Downflow.	Glycol-Cooled with fluid economizer, ≥240,000 Btu/h and <760,000 Btu/h, Downflow.	2.15 NSenCOP ....	2.05 SCOP .....	Yes
Glycol-Cooled with fluid economizer, ≥240,000 Btu/h, Horizontal-flow.	N/A .....	2.10 NSenCOP ....	N/A .....	Yes <sup>3</sup>
Glycol-Cooled with fluid economizer, ≥295,000 Btu/h, Upflow Ducted.	Glycol-Cooled with fluid economizer, ≥240,000 Btu/h and <760,000 Btu/h, Upflow Ducted.	2.12 NSenCOP ....	1.94 SCOP .....	Yes
Glycol-Cooled with fluid economizer, ≥240,000 Btu/h, Upflow Non-ducted.	Glycol-Cooled with fluid economizer, ≥240,000 Btu/h and <760,000 Btu/h, Upflow Non-ducted.	1.73 NSenCOP ....	1.94 SCOP .....	Yes
Ceiling-mounted, Air-cooled with free air discharge condenser, Ducted, <29,000 Btu/h.	N/A .....	2.05 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Air-cooled with free air discharge condenser, Ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A .....	2.02 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Air-cooled with free air discharge condenser, Ducted, ≥65,000 Btu/h.	N/A .....	1.92 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Air-cooled with free air discharge condenser, Non-ducted, <29,000 Btu/h.	N/A .....	2.08 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Air-cooled with free air discharge condenser, Non-ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A .....	2.05 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Air-cooled with free air discharge condenser, Non-ducted, ≥65,000 Btu/h.	N/A .....	1.94 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Air-cooled with free air discharge condenser with fluid economizer, Ducted, <29,000 Btu/h.	N/A .....	2.01 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Air-cooled with free air discharge condenser with fluid economizer, Ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A .....	1.97 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Air-cooled with free air discharge condenser with fluid economizer, Ducted, ≥65,000 Btu/h.	N/A .....	1.87 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Air-cooled with free air discharge condenser with fluid economizer, Non-ducted, <29,000 Btu/h.	N/A .....	2.04 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Air-cooled with free air discharge condenser with fluid economizer, Non-ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A .....	2.00 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Air-cooled with free air discharge condenser with fluid economizer, Non-ducted, ≥65,000 Btu/h.	N/A .....	1.89 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Air-cooled with ducted condenser, Ducted, <29,000 Btu/h.	N/A .....	1.86 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Air-cooled with ducted condenser, Ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A .....	1.83 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Air-cooled with ducted condenser, Ducted, ≥65,000 Btu/h.	N/A .....	1.73 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Air-cooled with ducted condenser, Non-ducted, <29,000 Btu/h.	N/A .....	1.89 NSenCOP ....	N/A .....	Yes <sup>6</sup>

TABLE III-1—ENERGY EFFICIENCY LEVELS FOR CRACs IN ASHRAE STANDARD 90.1-2019 AND THE CORRESPONDING FEDERAL ENERGY CONSERVATION STANDARDS—Continued

ASHRAE standard 90.1-2019 equipment class <sup>1</sup>	Current federal equipment class <sup>1</sup>	Energy efficiency levels in ASHRAE standard 90.1-2019 <sup>2</sup>	Federal energy conservation standards <sup>2</sup>	DOE triggered by ASHRAE standard 90.1-2019 amendment?
Ceiling-mounted, Air-cooled with ducted condenser, Non-ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A .....	1.86 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Air-cooled with ducted condenser, Non-ducted, ≥65,000 Btu/h.	N/A .....	1.75 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Air-cooled with ducted condenser with fluid economizer, Ducted, <29,000 Btu/h.	N/A .....	1.82 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Air-cooled with ducted condenser with fluid economizer, Ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A .....	1.78 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Air-cooled with ducted condenser with fluid economizer, Ducted, ≥65,000 Btu/h.	N/A .....	1.68 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Air-cooled with ducted condenser with fluid economizer, Non-ducted, <29,000 Btu/h.	N/A .....	1.85 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Air-cooled with ducted condenser with fluid economizer, Non-ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A .....	1.81 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Air-cooled with ducted condenser with fluid economizer, Non-ducted, ≥65,000 Btu/h.	N/A .....	1.70 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Water-cooled, Ducted, <29,000 Btu/h.	N/A .....	2.38 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Water-cooled, Ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A .....	2.28 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Water-cooled, Ducted, ≥65,000 Btu/h.	N/A .....	2.18 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Water-cooled, Non-ducted, <29,000 Btu/h.	N/A .....	2.41 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Water-cooled, Non-ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A .....	2.31 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Water-cooled, Non-ducted, ≥65,000 Btu/h.	N/A .....	2.20 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Water-cooled with fluid economizer, Ducted, <29,000 Btu/h.	N/A .....	2.33 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Water-cooled with fluid economizer, Ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A .....	2.23 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Water-cooled with fluid economizer, Ducted, ≥65,000 Btu/h.	N/A .....	2.13 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Water-cooled with fluid economizer, Non-ducted, <29,000 Btu/h.	N/A .....	2.36 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Water-cooled with fluid economizer, Non-ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A .....	2.26 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Water-cooled with fluid economizer, Non-ducted, ≥65,000 Btu/h.	N/A .....	2.16 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Glycol-cooled, Ducted, <29,000 Btu/h.	N/A .....	1.97 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Glycol-cooled, Ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A .....	1.93 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Glycol-cooled, Ducted, ≥65,000 Btu/h.	N/A .....	1.78 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Glycol-cooled, Non-ducted, <29,000 Btu/h.	N/A .....	2.00 NSenCOP ....	N/A .....	Yes <sup>6</sup>

TABLE III-1—ENERGY EFFICIENCY LEVELS FOR CRACs IN ASHRAE STANDARD 90.1-2019 AND THE CORRESPONDING FEDERAL ENERGY CONSERVATION STANDARDS—Continued

ASHRAE standard 90.1-2019 equipment class <sup>1</sup>	Current federal equipment class <sup>1</sup>	Energy efficiency levels in ASHRAE standard 90.1-2019 <sup>2</sup>	Federal energy conservation standards <sup>2</sup>	DOE triggered by ASHRAE standard 90.1-2019 amendment?
Ceiling-mounted, Glycol-cooled, Non-ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A .....	1.98 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Glycol-cooled, Non-ducted, ≥65,000 Btu/h.	N/A .....	1.81 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Glycol-cooled with fluid economizer, Ducted, <29,000 Btu/h.	N/A .....	1.92 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Glycol-cooled with fluid economizer, Ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A .....	1.88 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Glycol-cooled with fluid economizer, Ducted, ≥65,000 Btu/h.	N/A .....	1.73 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Glycol-cooled with fluid economizer, Non-ducted, <29,000 Btu/h.	N/A .....	1.95 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Glycol-cooled with fluid economizer, Non-ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A .....	1.93 NSenCOP ....	N/A .....	Yes <sup>6</sup>
Ceiling-mounted, Glycol-cooled with fluid economizer, Non-ducted, ≥65,000 Btu/h.	N/A .....	1.76 NSenCOP ....	N/A .....	Yes <sup>6</sup>

<sup>1</sup> Note that equipment classes specified in ASHRAE Standard 90.1-2019 do not necessarily correspond to the equipment classes defined in DOE's regulations. Capacity ranges in ASHRAE Standard 90.1-2019 are specified in terms of NSCC, as measured according to AHRI 1360-2017 (which, as discussed, would produce the same results for the crosswalked classes as AHRI 1360-2022). Capacity ranges in current Federal equipment classes are specified in terms of NSCC, as measured according to ANSI/ASHRAE 127-2007. As discussed in section III.C of this document, for certain equipment classes AHRI 1360-2017 (and AHRI 1360-2022) results in increased NSCC measurements as compared to the NSCC measured in accordance with ANSI/ASHRAE 127-2007. Therefore, some CRACs would switch classes (*i.e.*, move into a higher capacity equipment class) if the equipment class boundaries are not changed accordingly. Consequently, DOE performed a "capacity crosswalk" analysis to translate the capacity boundaries for certain equipment classes.

<sup>2</sup> For CRACs, ASHRAE Standard 90.1-2019 adopted efficiency levels in terms of NSenCOP based on test procedures in AHRI 1360-2017, while DOE's current standards are in terms of SCOP based on the test procedures in ANSI/ASHRAE 127-2007. DOE performed a crosswalk analysis to compare the stringency of the ASHRAE Standard 90.1-2019 efficiency levels with the current Federal standards. See section III.C of this final rule for further discussion on the crosswalk analysis performed for CRACs.

<sup>3</sup> Horizontal-flow CRACs are new equipment classes included in ASHRAE Standard 90.1-2016 and ASHRAE Standard 90.1-2019 (and not subject to current Federal standards), but DOE does not have any data to indicate the market share of horizontal-flow units. In the absence of data regarding market share and efficiency distribution, DOE is unable to estimate potential savings for horizontal-flow equipment classes.

<sup>4</sup> The crosswalk analysis indicates that there is no difference in stringency of efficiency levels for this class between ASHRAE Standard 90.1-2019 and the current Federal standard.

<sup>5</sup> Air-cooled CRACs with fluid economizers are new equipment classes included in ASHRAE Standard 90.1-2019 and are currently subject to the Federal standard for air-cooled CRACs. DOE does not have data regarding market share for air-cooled CRACs with fluid economizers. Although DOE is unable to disaggregate the estimated potential savings for these equipment classes, energy savings for these equipment classes are included in the savings presented for air-cooled CRACs.

<sup>6</sup> Ceiling-mounted CRACs are new equipment classes in ASHRAE Standard 90.1-2019 (and not subject to current Federal standards), and DOE does not have any data to indicate the market share of ceiling-mounted units. In the absence of data regarding market share and efficiency distribution, DOE is unable to estimate potential savings for ceiling-mounted equipment classes.

The remainder of this section explains DOE's methodology for evaluating the updated levels in ASHRAE Standard 90.1-2019 and addresses comments received regarding CRAC efficiency levels and associated analyses discussed in the March 2022 ECS NOPR.

**B. Test Procedure**

As noted in section III.A of this document, ASHRAE adopted efficiency levels for all CRAC equipment classes denominated in terms of NSenCOP in ASHRAE Standard 90.1-2019 (measured per AHRI 1360-2017), whereas DOE's current standards are denominated in terms of SCOP (measured per ANSI/ASHRAE 127-

2007). ASHRAE Standard 90.1-2019 incorporates by references AHRI 1360-2017. In the February 2022 TP NOPR, DOE proposed to adopt an amended test procedure for CRACs that incorporates by reference the substance of the updated draft version of the AHRI 1360 Standard, AHRI 1360-202X Draft. 87 FR 6948 (Feb. 7, 2022). DOE has since adopted the finalized version of that standard, AHRI 1360-2022, in the March 2023 TP final rule. See EERE-2021-BT-TP-0017. Because the rating conditions specified in AHRI 1360-2022 and AHRI 1360-2017 are the same for the classes for which DOE requires a crosswalk (upflow ducted, upflow non-ducted, and downflow), DOE has

concluded that the NSenCOP levels specified for equipment classes in ASHRAE Standard 90.1-2019 as measured per AHRI 1360-2017 would remain unchanged if measured per AHRI 1360-2022. Therefore, in the crosswalk analysis presented in the following sections, DOE considers that the ASHRAE Standard 90.1-2019 NSenCOP levels are measured per AHRI 1360-2022.

On this topic, AHRI expressed concern with DOE proposing to adopt a test procedure, still in draft form, that is not yet cited by ASHRAE Standard 90.1, and the commenter urged DOE to follow its understanding of the statutorily-mandated process and to only adopt a

revised industry test method after it has been published by AHRI and adopted into ASHRAE Standard 90.1 by the consensus standards writing body. (AHRI, No. 12 at pp. 1–2) In particular, AHRI commented that manufacturers, particularly of upflow CRACs, will experience significant impact if the proposed draft test procedure is adopted by DOE, rather than AHRI 1360–2017. More specifically, AHRI stated that as the draft procedure includes an external static pressure (ESP) adjustment for upflow CRACs tested in limited height chambers, which could result in up-flow ducted products not achieving ASHRAE Standard 90.1–2019 efficiency values during test, thereby substantially impacting all upflow unit CRAC manufacturers. *Id.* AHRI commented that there is only one modification to AHRI 1360–2017 required to support the minimum energy levels included in ASHRAE Standard 90.1–2019, and that DOE should immediately adopt that test procedure. (AHRI, No. 12 at p. 3)

As discussed in the March 2023 TP final rule, AHRI's concern regarding the draft status of AHRI 1360–202X Draft no longer applies, given the subsequent finalization of the draft and publication of AHRI 1360–2022. *See* EERE–2021–BT–TP–0017. DOE notes that AHRI 1360–2022 represents an industry consensus update to AHRI 1360–2017.

Regarding AHRI's challenge to DOE's authority, the Department disagrees with AHRI's argument that it lacks statutory authority for the adoption of AHRI 1360–2022, rather than AHRI 1360–2017. Although DOE's rationale was explained in the March 2023 TP final rule (*see* EERE–2021–BT–TP–0017), because issues related to the test procedure and energy conservation standards for CRACs are somewhat linked, the Department will explain again here its understanding of the relevant statutory requirements, as presented in the paragraphs that follow.

With respect to small, large, and very large commercial package air conditioning and heating equipment (of which CRACs are a category), EPCA directs that when the generally accepted industry testing procedure or rating procedure developed or recognized by AHRI or by ASHRAE, as referenced in ASHRAE Standard 90.1, is amended, the Secretary shall amend the DOE test procedure consistent with the amended industry test procedure or rating procedure unless the Secretary determines, by clear and convincing evidence, that to do so would not meet the requirements for test procedures to produce results representative of an average use cycle and is not unduly

burdensome to conduct. (42 U.S.C. 6314(a)(4)(B))

As noted, DOE has a duty under the statute to adopt a test procedure that produces results representative of the covered equipment's average use cycle. In this case, DOE has concluded, supported by clear and convincing evidence, that AHRI 1360–2022 would better meet that criterion of EPCA than AHRI 1360–2017. First, AHRI 1360–2022 includes test provisions for measuring performance of roof-mounted and wall-mounted CRACs, configurations which are not considered in AHRI 1360–2017. Were DOE to adopt AHRI 1360–2017 instead of AHRI 1360–2022, the DOE test procedure would not address representations for these configurations in terms of NSenCOP. Second, AHRI 1360–2022 provides clarifications and additional test requirements on several test procedure elements, including test tolerances, enclosure for CRACs with compressors in indoor units, secondary verification of capacity, ducted condensers, and refrigerant charging instructions. These elements were discussed in detail in the February 2022 NOPR (*see* 87 FR 6948, 6960–6963 (Feb. 7, 2022)). These additional test requirements improve the representativeness of the CRACs test procedure. For these reasons, DOE considers AHRI 1360–2022 to be more representative of CRAC operation than AHRI 1360–2017. With this finding made, DOE does not read EPCA as requiring the Department to dissect the industry standard and surgically transplant individual provisions of the new industry standard into the prior industry standard. DOE views the industry test standard as a functioning whole, so the approach AHRI suggests could insert errors and inconsistencies into the industry standard, as would prevent its proper functioning in practice as part of the DOE test procedure. Further, even if AHRI's approach were possible, it would be largely unnecessary; adoption of all the major provisions of the latest industry test standard would arguably result in the remaining provisions being uncontroversial. Again, DOE would point out that the test procedure in question is the most current version of the industry's own approved test procedure, even if ASHRAE Standard 90.1 has not yet caught up with such change. DOE considered AHRI 1360–2017, as EPCA requires, but it ultimately determined that it would not produce results that reflect an average use cycle, in light of the availability of AHRI 1360–2022, which would be expected to do so. DOE has concluded that EPCA

does not allow the Department to turn a blind eye to such real world developments, as would be the implication of following AHRI's suggested approach.

Furthermore, DOE believes that Congress foresaw the practical benefits of a statutory reading consistent with DOE's interpretation. To wit, although DOE recognizes that adopting AHRI 1360–2022 as the Federal test procedure for CRACs may create some disharmony between the Federal test procedure and the test procedure currently specified in ASHRAE Standard 90.1 for a period of time, such situation is arguably preferable to the alternative in which DOE and stakeholders would need to waste significant resources to reinstate another rulemaking in short order to once again amend the Federal test procedure for CRACs to update the reference therein from AHRI 1360–2017 to AHRI 1360–2022—the very same testing standard already available for consideration.

Therefore, for the reasons previously stated, the Department decided in the March 2023TP final rule to incorporate by reference AHRI 1360–2022 into the CRACs test procedure (*see* EERE–2021–BT–TP–0017).

Regarding AHRI's substantive test concerns, DOE notes that the current Federal test procedure, which references ANSI/ASHRAE 127–2007, does not have any provisions that allow for testing up-flow CRAC units in a limited-height set-up. As such, the crosswalk analysis conducted to translate standards from SCOP to NSenCOP (as presented in the March 2022 ECS NOPR; *see* 87 FR 12802, 12817–12822 (March 7, 2022)) compared SCOP as measured per ANSI/ASHRAE 127–2007 to NSenCOP as measured per AHRI 1360–202X Draft (which is the test procedure DOE proposed to adopt in the February 2022 TP NOPR). DOE's original crosswalk, conducted in the September 2020 NODA/RFI, also did not consider the limited height approach included in AHRI 1360–2017. Therefore, the limited height test approaches in any intermediate CRAC industry test procedures released between ANSI/ASHRAE 127–2007 and AHRI 1360–202X Draft (*e.g.*, AHRI 1360–2017 as mentioned by AHRI) are not relevant for DOE's crosswalk analysis, as such intermediate industry test procedures were never proposed or adopted as part of the Federal test procedure. DOE's crosswalk analysis in this final rule would only consider test procedures in AHRI 1360–2017 if DOE's amended CRAC test procedure adopted test provisions from AHRI 1360–2017. However, as stated previously, since the

time of AHRI’s comment, DOE has finalized its test procedure for CRACs, adopting AHRI 1360–2022 in the March 2023 TP final rule. See EERE–2021–BT–TP–0017. The amended test procedure adopted in the March 2023 TP final rule does not impose any additional ducting provisions beyond those included in the amended industry consensus test procedure, AHRI 1360–2022. Additionally, DOE notes that the test provision for up-flow CRACs highlighted by AHRI is an alternate ducting methodology to be used when there is limited chamber height to meet the ducting requirements of ANSI/ASHRAE Standard 37, which are referenced in both ANSI/ASHRAE 127–2007 and AHRI 1360–2022. For most up-flow CRAC units (i.e., all CRACs except for tall units with large discharge duct dimensions), manufacturers can still choose to test their units in taller test chambers using the ducting requirements of ANSI/ASHRAE Standard 37, which comply with both the current CRAC test procedure and the amended test procedure adopted in this final rule. Further, DOE notes that the AEDM provision in 10 CFR 429.70 allow the use of AEDMs to develop ratings for CRACs, and, thus, manufacturers would not be required to test their very tall up-flow CRACs. AHRI provided extensive additional comments regarding industry-wide regulatory burdens that support the adoption of the test procedure and minimum efficiencies in ASHRAE Standard 90.1. (AHRI, No. 12 at pp. 3–5) These comments are identical to those AHRI provided on the February 2022 TP NOPR, and DOE responded to

the test procedure-related comments in detail in the March 2023 TP final rule. See EERE–2021–BT–TP–0017. Furthermore, as discussed in section V.D. of this document, DOE is adopting the minimum efficiencies in ASHRAE Standard 90.1.

*C. Efficiency and Capacity Crosswalk Analyses*

In the March 2022 ECS NOPR, DOE explained the efficiency and capacity crosswalk it had performed to translate SCOP levels as measured per ANSI/ASHRAE 127–2007 to NSenCOP levels as measured per AHRI 1360–202X Draft. 87 FR 12802, 12808–12826 (March 7, 2022). As previously mentioned, AHRI 1360–202X Draft has now been finalized as AHRI 1360–2022 but retains the same rating conditions as AHRI 1360–202X Draft (and AHRI 1360–2017), such that the crosswalk initially presented in the September 2020 NODA/RFI can be extended without change. The following paragraphs present a brief summary of the crosswalk methodology.

For the efficiency crosswalk, DOE analyzed the CRAC equipment classes in ASHRAE Standard 90.1–2019 that are currently subject to Federal standards (i.e., all upflow and downflow classes).<sup>9</sup> As discussed in the subsequent paragraphs, for certain CRAC classes, ASHRAE Standard 90.1–2019 specifies classes that disaggregate the current Federal equipment classes into additional classes.

For upflow CRACs, ASHRAE Standard 90.1–2019 and AHRI 1360–2022 include separate efficiency levels and rating conditions, respectively, for ducted and non-ducted units. However,

the current Federal test procedure and standards do not specify different rating conditions for upflow non-ducted and upflow ducted units; thus, in this crosswalk, DOE converted the single set of SCOP standards for upflow units to two “crosswalked” NSenCOP levels for ducted and non-ducted unit classes.

Similarly, for air-cooled CRACs, ASHRAE Standard 90.1–2019 includes separate sets of efficiency levels for equipment with and without fluid economizers, while the current DOE standards set forth do not distinguish air-cooled CRACs based on the presence of fluid economizers. Thus, in this crosswalk, DOE converted the single set of current Federal standards for air-cooled classes (in terms of SCOP) to two sets of standards in terms of NSenCOP for air-cooled classes distinguishing CRACs with and without fluid economizers. The crosswalk analysis also found no difference between air-cooled CRACs with and without fluid economizers, so the NSenCOP standards are identical for the two classes.

The efficiency levels for CRACs in ASHRAE Standard 90.1–2019 rely on a different metric (NSenCOP) and test procedure (AHRI 1360–2017, and now by extension AHRI 1360–2022) than the metric and test procedure required under the current Federal standards (relying on SCOP and ANSI/ASHRAE 127–2007, respectively). AHRI 1360–2022 and ANSI/ASHRAE 127–2007 notably also specify different rating conditions. These differences are listed in Table III–2, and are discussed in detail in sections III.C.1 through III.C.4 of this document.

TABLE III–2—DIFFERENCES IN RATING CONDITIONS BETWEEN DOE’S CURRENT TEST PROCEDURE AND AHRI STANDARD 1360–2022

Test parameter	Affected equipment categories	Current DOE test procedure (referencing ANSI/ASHRAE 127–2007)		AHRI 1360–2022	
Return air dry-bulb temperature (RAT).	Upflow ducted and downflow.	75 °F dry-bulb temperature		85 °F dry-bulb temperature.	
Entering water temperature (EWT).	Water-cooled .....	86 °F		83 °F	
ESP (varies with NSCC) .....	Upflow ducted .....	<20 kW .....	0.8 in H <sub>2</sub> O .....	<80 kBtu/h .....	0.3 in H <sub>2</sub> O.
		≥20 kW .....	1.0 in H <sub>2</sub> O .....	≥80 kBtu/h and <295 kBtu/h.	0.4 in H <sub>2</sub> O.
				≥295 kBtu/h and <760 kBtu/h.	0.5 in H <sub>2</sub> O.
Adder for heat rejection fan and pump power (add to total power consumption).	Water-cooled and glycol-cooled.	No added power consumption for heat rejection fan and pump		5 percent of NSCC for water-cooled CRACs.	

<sup>9</sup> ASHRAE Standard 90.1–2019 includes efficiency levels for horizontal-flow and ceiling-

mounted classes of CRACs. DOE does not currently prescribe standards for horizontal-flow or ceiling-

mounted classes, so these classes were not included in the crosswalk analysis.

TABLE III-2—DIFFERENCES IN RATING CONDITIONS BETWEEN DOE'S CURRENT TEST PROCEDURE AND AHRI STANDARD 1360-2022

Test parameter	Affected equipment categories	Current DOE test procedure (referencing ANSI/ASHRAE 127-2007)	AHRI 1360-2022
			7.5 percent of NSCC for glycol-cooled CRACs.

The differences between these specified rating conditions impact the capacity boundaries for CRAC equipment classes. The capacity values that bound the CRAC equipment classes are in terms of NSCC. For certain equipment classes, NSCC values determined according to AHRI 1360-2022's different rating conditions are higher than the NSCC values determined according to ANSI/ASHRAE 127-2007. Therefore, the test conditions in AHRI 1360-2022 result in an increased NSCC value for certain equipment classes, as compared to the NSCC measured in accordance with the current Federal test procedure requirement. This means that some CRACs would switch classes (*i.e.*, move into a higher capacity equipment class) if the test conditions in AHRI 1360-2022 are used without shifting current equipment class boundaries to match the impact of the changes in rating conditions.

Class switching would subject some CRAC models to an efficiency level under ASHRAE Standard 90.1-2019 that is less stringent than the standard level that is applicable to that model under the current Federal requirements. Lowering the stringency of the efficiency level in the Federal requirements is impermissible under EPCA's anti-backsliding provision at 42 U.S.C. 6313(a)(6)(B)(iii)(I).

Therefore, a capacity crosswalk was conducted to translate the NSCC boundaries that separate equipment classes in the Federal efficiency standards to account for the expected increase in measured NSCC values for affected equipment classes (*i.e.*, equipment classes with test procedure changes that increase NSCC). DOE's capacity crosswalk calculated the increases in the capacity boundaries of affected equipment classes from the Federal efficiency standards if ASHRAE Standard 90.1-2019 were adopted, to evaluate this equipment class switching issue and to avoid backsliding that would occur from class switching. Updated SCOP levels and NSCC equipment class boundaries were calculated for each class (as applicable) by combining the percentage changes

for every test procedure change applicable to that class.

Both efficiency and capacity crosswalk analyses have similar structure, and the data for both were gathered across numerous sources including DOE testing, manufacturer performance data gathered through non-disclosure agreements (NDAs), and public manufacturer literature, among others. DOE conducted analysis across each test procedure change independently and determined an aggregated percentage by which that change impacted efficiency and/or NSCC.

The following sub-sections describe the approaches used to analyze the impacts on the measured efficiency and capacity of each difference in rating conditions between DOE's current test procedure and AHRI 1360-2022. As discussed, the crosswalk analysis methodology described in the following sub-sections is the same as presented in the March 2022 ECS NOPR. 87 FR 12802, 12817-12822 (March 7, 2022). No additional data sources were added to the analysis for this final rule.

#### 1. Increase in Return Air Dry-Bulb Temperature From 75 °F to 85 °F

ANSI/ASHRAE 127-2007, which is referenced by DOE's current test procedure, specifies a return air dry-bulb temperature (RAT) of 75 °F for testing all CRACs. AHRI 1360-2022 specifies a RAT of 85 °F for upflow ducted and downflow CRACs, but specifies a RAT for upflow non-ducted units of 75 °F.

SCOP and NSCC both increase with increasing RAT for two reasons. First, a higher RAT increases the cooling that must be done for the air to approach its dew point temperature (*i.e.*, the temperature at which water vapor will condense if there is any additional cooling). Second, a higher RAT will tend to raise the evaporating temperature of the refrigerant, which in turn raises the temperature of fin and tube surfaces in contact with the air—the resulting reduction in the portion of the heat exchanger surface that is below the air's dew point temperature reduces the potential for water vapor to condense on these surfaces. This is seen in product specifications which show

that the sensible heat ratio<sup>10</sup> is consistently higher at a RAT of 85 °F than at 75 °F. Because increasing RAT increases the fraction of total cooling capacity that is sensible cooling (rather than latent cooling), the NSCC increases. Further, because SCOP is calculated with NSCC in the numerator of the calculation, an increase in NSCC also inherently increases SCOP.

To analyze the magnitude of the impacts of increasing RAT for upflow ducted and downflow CRACs on SCOP and NSCC, DOE gathered data from three separate sources and aggregated the results for each crosswalk analysis. First, DOE used product specifications for several CRAC models that provide SCOP and NSCC ratings for RATs ranging from 75 °F to 95 °F. Second, DOE analyzed manufacturer performance data obtained under NDAs that showed the performance impact of individual test condition changes, including the increase in RAT. Third, DOE used results from testing two CRAC units: one air-cooled upflow ducted and one air-cooled downflow unit. DOE combined the results of these sources to find the aggregated increases in SCOP and NSCC due to the increase in RAT. The increase in SCOP due to the change in RAT was found to be approximately 19 percent, and the increase in NSCC was found to be approximately 22 percent.

#### 2. Decrease in Entering Water Temperature for Water-Cooled CRACs

ANSI/ASHRAE 127-2007, which is referenced by DOE's current test procedure, specifies an entering water temperature (EWT) of 86 °F for water-cooled CRACs, while AHRI 1360-2022 specifies an entering water temperature of 83 °F. A decrease in the EWT for water-cooled CRACs increases the temperature difference between the water and hot refrigerant in the condenser coil, thus increasing cooling capacity and decreasing compressor power. To analyze the impact of this decrease in EWT on SCOP and NSCC,

<sup>10</sup> "Sensible heat ratio" is the ratio of sensible cooling capacity to the total cooling capacity. The total cooling capacity includes both sensible cooling capacity (cooling associated with reduction in temperature) and latent cooling capacity (cooling associated with dehumidification).



DOE analyzed manufacturer data obtained through NDAs and a publicly-available presentation from a major CRAC manufacturer and calculated a SCOP increase of approximately 2 percent and an NSCC increase of approximately 1 percent.

3. Changes in External Static Pressure Requirements for Upflow Ducted CRACs

For upflow ducted CRACs, AHRI 1360–2022 specifies lower ESP requirements than ANSI/ASHRAE 127–2007, which is referenced in DOE’s current test procedure. The ESP requirements in all CRAC industry test standards vary with NSCC; however, the capacity bins (*i.e.*, capacity ranges over which each ESP requirement applies) in ANSI/ASHRAE 127–2007 are different from those in AHRI 1360–2022. Testing with a lower ESP decreases the indoor fan power input without a corresponding decrease in NSCC, thus increasing the measured SCOP. Additionally, the reduction in fan heat entering the indoor air stream that results from lower fan power also slightly increases NSCC, further increasing SCOP.

To analyze the impacts on measured SCOP and NSCC of the changes in ESP requirements between DOE’s current test procedure and AHRI 1360–2022, DOE aggregated data from its analysis of fan power consumption changes, manufacturer data obtained through NDAs, and results from DOE testing. Notably, the impact of changes in ESP

requirements on SCOP and NSCC was calculated separately in DOE’s analysis for each capacity range specified in AHRI 1360–2022 (*i.e.*, <80 kBtu/h, ≥80 and <295 kBtu/h, and ≥295 kBtu/h). As discussed in section III.C of this document, NSCC values determined according to ANSI/ASHRAE 127–2007 are lower than NSCC values determined according to AHRI 1360–2022 for certain CRAC classes, including upflow-ducted classes. The increase in NSCC in AHRI 1360–2022 also impacts the ESP requirements in AHRI 1360–2022 for upflow-ducted units, because the ESP requirements are specified based on NSCC. Different ESP requirements impact the stringency of the test—as discussed, testing with a lower ESP increases the measured SCOP. AHRI 1360–2022 addresses this issue by updating the NSCC capacity bin boundaries associated with the applicable ESP. For the purposes of the efficiency and capacity crosswalk analyses in this final rule, DOE used the adjusted capacity boundaries in AHRI 1360–2022 for upflow ducted classes presented in Table III–4 (as discussed in section III.C.5 of this document) to specify the applicable ESP requirement.

DOE conducted an analysis to estimate the change in fan power consumption due to the changes in ESP requirements using performance data and product specifications for 77 upflow CRAC models with certified SCOP ratings at or near the current applicable SCOP standard level in

DOE’s Compliance Certification Database.<sup>11</sup> Using the certified SCOP and NSCC values, DOE determined each model’s total power consumption for operation at the rating conditions specified in DOE’s current test procedure. DOE then used fan performance data for each model to estimate the change in indoor fan power that would result from the lower ESP requirements in AHRI 1360–2022 and modified the total power consumption for each model by the calculated value. For several models, detailed fan performance data were not available, so DOE used fan performance data for comparable air conditioning units with similar cooling capacity, fan drive, and fan motor horsepower.

DOE also received manufacturer data (obtained through NDAs) showing the impact on efficiency and NSCC of the change in ESP requirements. Additionally, DOE conducted tests on an upflow-ducted CRAC at ESPs of 1 in. H<sub>2</sub>O and 0.4 in. H<sub>2</sub>O (the applicable ESP requirements specified in ANSI/ASHRAE 127–2007 and AHRI 1360–2022, respectively), and included the results of those tests in this analysis.

For each of the three capacity ranges for which ESP requirements are specified in AHRI 1360–2022, Table III–3 shows the approximate aggregated percentage increases in SCOP and NSCC associated with the decreased ESP requirements specified in AHRI 1360–2022 for upflow ducted units.

TABLE III–3—PERCENTAGE INCREASE IN SCOP AND NSCC FROM DECREASES IN EXTERNAL STATIC PRESSURE REQUIREMENTS FOR UPFLOW DUCTED UNITS BETWEEN DOE’S CURRENT TEST PROCEDURE AND AHRI 1360–2022

Net sensible cooling capacity range (kBtu/h) *		ESP requirements in DOE’s current test procedure (referencing ANSI/ASHRAE 127–2007) (in H <sub>2</sub> O)	ESP requirements in AHRI 1360–2022 (in H <sub>2</sub> O)	Approx. average percentage increase in SCOP	Approx. average percentage increase in NSCC
<65 .....		0.8	0.3	7	2
≥65 to <240 .....	≥65 to <68.2 ** .....	0.8	0.4	*** 8	*** 2
	≥68.2 to <240 ** .....	1			
≥240 to <760 .....		1	0.5	6	2

\* These boundaries are consistent with the boundaries in ANSI/ASHRAE 127–2007 and differ from the boundaries in AHRI 1360–2022, which reflect the expected capacity increases for upflow-ducted and downflow equipment classes at the AHRI 1360–2022 return air temperature test conditions.

\*\* 68.2 kBtu/h is equivalent to 20 kW, which is the capacity value that separates ESP requirements in ANSI/ASHRAE 127–2007, which is referenced in DOE’s current test procedure.

\*\*\* This average percentage increase is an average across upflow ducted CRACs with net sensible cooling capacity ≥65 and <240 kBtu/h, including models with capacity <20 kW and ≥20 kW. DOE’s Compliance Certification Database shows that most of the upflow CRACs with a net sensible cooling capacity ≥65 kBtu/h and <240 kBtu/h have a net sensible cooling capacity ≥20 kW.

<sup>11</sup> DOE’s Compliance Certification Database can be accessed at: [www.regulations.doe.gov/ccms](http://www.regulations.doe.gov/ccms) (Last accessed Jan. 3, 2023).

#### 4. Power Adder To Account for Pump and Heat Rejection Fan Power in NSenCOP Calculation for Water-Cooled and Glycol-Cooled CRACs

Energy consumption for heat rejection components for air-cooled CRACs (*i.e.*, condenser fan motor(s)) is measured in the current DOE test procedure for CRACs; however, for water-cooled and glycol-cooled CRACs, energy consumption for heat rejection components is not measured because

these components (*i.e.*, water/glycol pump, dry cooler/cooling tower fan(s)) are not considered to be part of the CRAC unit. ANSI/ASHRAE 127–2007, which is referenced in DOE’s current test procedure, does not include any factor in the calculation of SCOP to account for the power consumption of heat rejection components for water-cooled and glycol-cooled CRACs.

In contrast, AHRI 1360–2022 specifies to increase the measured total power

input for CRACs to account for the power consumption of fluid pumps and heat rejection fans. Specifically, sections 6.3.3 and 6.3.4 of AHRI 1360–2022 specify to add a percentage of the measured NSCC (5 percent for water-cooled CRACs and 7.5 percent for glycol-cooled CRACs) in kW to the total power input used to calculate NSenCOP. DOE calculated the impact of these additions on SCOP using Equation 1:

$$SCOP_1 = \frac{SCOP}{1 + (\chi * SCOP)}$$

Equation 1

Where,  $\chi$  is equal to 5 percent for water-cooled CRACs and 7.5 percent for glycol-cooled CRACs, and  $SCOP_1$  is the SCOP value adjusted for the energy consumption of heat rejection pumps and fans.

#### 5. Calculating Overall Changes in Measured Efficiency and Capacity From Test Procedure Changes

Different CRAC equipment classes are subject to different combinations of the test procedure changes between DOE’s current test procedure and AHRI 1360–2022 analyzed in the crosswalk analyses. To combine the impact of the changes in rating conditions, DOE

calculated the crosswalked NSenCOP levels and translated NSCC boundaries as detailed in the following sections.

##### a. Calculation of Crosswalked NSenCOP Levels

To combine the impact on SCOP of the changes to rating conditions (*i.e.*, increase in RAT, decrease in condenser EWT for water-cooled units, and decrease of the ESP requirements for upflow ducted units), DOE multiplied together the calculated adjustment factors representing the measurement changes corresponding to each individual rating condition change, as applicable, as shown in Equation 2.

These adjustment factors are equal to 100 percent (which represents SCOP measured per the current Federal test procedure) plus the calculated percentage change in measured efficiency.

To account for the impact of the adder for heat rejection pump and fan power for water-cooled and glycol-cooled units, DOE used Equation 3. Hence, DOE determined crosswalked NSenCOP levels corresponding to the current Federal SCOP standards for each CRAC equipment class using the following two equations.

$$NSenCOP_1 = SCOP * (1 + x_1) * (1 + x_2) * (1 + x_3)$$

Equation 2

$$NSenCOP = \frac{NSenCOP_1}{1 + (x_4 * NSenCOP_1)}$$

Equation 3

In these equations,  $NSenCOP_1$  refers to a partially-crosswalked NSenCOP level that incorporates the impacts of changes in RAT, condenser EWT, and indoor fan ESP (as applicable), but not the impact of adding the heat rejection pump and fan power;  $x_1$ ,  $x_2$ ,  $x_3$ , and represent the percentage change in SCOP due to changes in RAT, condenser EWT, and indoor fan ESP requirements, respectively; and is equal to 5 percent for water-cooled equipment classes and 7.5 percent for glycol-cooled equipment classes. For air-cooled classes,  $x_4$  is equal to 0 percent; therefore, for these

classes, NSenCOP is equal to  $NSenCOP_1$ .

##### b. Calculation of Translated NSCC Boundaries

To combine the impact on NSCC of the changes to rating conditions, DOE used a methodology similar to that used for determining the impact on SCOP. To determine adjusted NSCC equipment class boundaries, DOE multiplied together the calculated adjustment factors representing the measurement changes corresponding to each individual rating condition change, as applicable, as shown in Equation 4. These adjustment factors are equal to

100 percent (which represents NSCC measured per the current Federal test procedure) plus the calculated percentage change in measured NSCC. In this equation, *Boundary* refers to the original NSCC boundaries (*i.e.*, 65,000 Btu/h, 240,000 Btu/h, or 760,000 Btu/h as determined according to ANSI/ASHRAE 127–2007), *Boundary*<sub>1</sub> refers to the updated NSCC boundaries as determined according to AHRI 1360–2022, and  $y_1$ ,  $y_2$ , and  $y_3$  represent the percentage changes in NSCC due to changes in RAT, condenser EWT, and indoor fan ESP requirements, respectively.

$$Boundary_1 = Boundary * (1 + y_1) * (1 + y_2) * (1 + y_3)$$

Equation 4

As mentioned, ASHRAE Standard 90.1–2019 and AHRI 1360–2022 include updated equipment class capacity boundaries for only upflow-ducted and downflow equipment classes. The updated class ranges for these categories are <80,000 Btu/h, ≥80,000 Btu/h and <295,000 Btu/h, and ≥295,000 Btu/h. In previous versions of ASHRAE Standard 90.1, these ranges are <65,000 Btu/h, ≥65,000 Btu/h and <240,000 Btu/h, and ≥240,000 Btu/h. The capacity range boundaries for upflow non-ducted classes were left unchanged at 65,000 Btu/h and 240,000 Btu/h in ASHRAE Standard 90.1–2019.

DOE's capacity crosswalk analysis indicates that the primary driver for increasing NSCC is increasing RAT. The increases in RAT in AHRI 1360–2022, as compared to ANSI/ASHRAE 127–2007, only apply to upflow ducted and downflow equipment classes. Based on the analysis performed for this document, DOE found that all the equipment class boundaries in ASHRAE Standard 90.1–2019, which are in increments of 5,000 Btu/h, vary by no more than 1.4 percent of the boundary translations calculated from DOE's capacity crosswalk. DOE considers this 1.4 percent variance to be *de minimis* because the only difference appears to be rounding. When rounded to increments of 5,000 Btu/h, DOE's crosswalk boundary translations are equivalent to the equipment class boundaries in ASHRAE Standard 90.1–2019. As such, to align DOE's analysis more closely with ASHRAE Standard 90.1–2019, DOE has used the equipment class boundaries in ASHRAE Standard 90.1–2019 as the translated boundaries for the crosswalk analysis. Use of the equipment class boundaries from ASHRAE Standard 90.1–2019 allows for an appropriate comparison between the energy efficiency levels and equipment classes specified in ASHRAE Standard 90.1 and those in the current DOE standards, while addressing the backsliding potential from class switching discussed previously.

ASHRAE Standard 90.1–2019 does not include an upper capacity limit for coverage of CRACs. DOE's current standards are applicable only to CRACs with an NSCC less than 760,000 Btu/h, which is the upper boundary for very

large commercial package air conditioning and heating equipment, the statutory limits on DOE's authority.<sup>12</sup> 10 CFR 431.97(e). However, the change in the ratings conditions in AHRI 1360–2022 means this boundary (calculated according to the current Federal test procedure, which references ANSI/ASHRAE 127–2007) must be expressed in its calculated equivalent for AHRI 1360–2022 under the crosswalk analysis. Otherwise, equipment currently covered and subject to the Federal standards may be removed from coverage, thereby violating EPCA's anti-backsliding provision.

In order to account for all equipment currently subject to the Federal standards, DOE calculated the AHRI 1360–2022 equivalent of the 760,000 Btu/h equipment class boundary for certain equipment classes as part of its capacity crosswalk analysis. This translation of the upper boundary of the equipment classes applies only for downflow and upflow-ducted classes (the classes for which the RAT increase applies). Consistent with the adjustments made in ASHRAE Standard 90.1–2019, DOE averaged the crosswalked capacity results across the affected equipment classes, and rounded to the nearest 5,000 Btu/h. Following this approach, DOE has derived 930,000 Btu/h as the translated upper capacity limit for downflow and upflow-ducted CRACs in the analysis presented in this document. The 930,000 Btu/h upper capacity limit (as measured per AHRI 1360–2022) used in the crosswalk analysis is equivalent to the 760,000 Btu/h upper capacity limit

(as measured per ANSI/ASHRAE 127–2007) established in the current DOE standards.

As discussed, in the March 2023 TP final rule, DOE amended its test procedures for CRACs to: (1) relocate the current test procedure for measuring SCOP to appendix E to subpart F of 10 CFR part 431; and (2) adopt an amended test procedure for measuring NSenCOP in appendix E1 to subpart F of 10 CFR part 431. See EERE–2021–BT–TP–0017. As amended, the scope of the CRAC test procedures at appendices E and E1 are limited to CRACs with cooling capacity below 760,000 Btu/h. However, to reflect the translation of 760,000 Btu/h to 930,000 Btu/h as the upper capacity limit for downflow and upflow-ducted CRACs (as measured per AHRI 1360–2022 and discussed previously in this subsection), DOE is correspondingly amending the upper capacity limit for the scope of Appendix E1. Specifically, DOE is amending Table 1 to paragraph (b) at 10 CFR 431.96 to specify the following: for upflow ducted and downflow floor-mounted computer room air conditioners, the test procedure in appendix E1 of this subpart applies to equipment with net sensible cooling capacity less than 930,000 Btu/h. For all other configurations of computer room air conditioners, the test procedure in appendix E1 applies to equipment with net sensible cooling capacity less than 760,000 Btu/h.

## 6. Crosswalk Results

The “crosswalked” DOE efficiency levels (expressed in terms of NSenCOP) and equipment class capacity boundaries (adjusted to account for changes in rating conditions) were compared with the NSenCOP efficiency levels and capacity boundaries specified in ASHRAE Standard 90.1–2019 to determine the stringency of ASHRAE Standard 90.1–2019 requirements relative to current Federal standards.

Table III–4 presents the results for the crosswalk analyses. The last column in the table, labeled “Crosswalk Comparison,” indicates whether the ASHRAE Standard 90.1–2019 levels are less stringent, equivalent to, or more stringent than the current Federal standards, based on DOE's analysis.

<sup>12</sup> At the time EPCA was amended to include the definition for “very large commercial package air conditioning and heating equipment,” equipment covered by ASHRAE that met the statutory definition of “commercial package air conditioning and heating equipment” was generally comfort cooling equipment, which was rated according to the corresponding test procedures at 80 °F/67 °F indoor air. The upper boundary of 760,000 Btu/h specified by EPCA (42 U.S.C. 6311(8)(D)) reflects a capacity rating at 80 °F/67 °F indoor air. As discussed, DOE has translated the 760,000 Btu/h limit to an equivalent rating that is based on testing according to the conditions specified in the updated industry test procedure for CRACs. Consequently, DOE does not have authority to set standards for models with a capacity beyond the 760,000 Btu/h limit specified by EPCA, as translated to a rating measured per AHRI 1360–2022.

TABLE III-4—CROSSWALK RESULTS

Condenser system type	Airflow configuration	Current NSCC range (kBtu/h)	Current federal standard (SCOP)	Test procedure changes affecting efficiency	Cross-walked NSCC range (kBtu/h)	Cross-walked current federal standard (NSenCOP)	ASHRAE standard 90.1-2019 NSenCOP level	Crosswalk comparison
Air-cooled	Downflow	<65	2.20	Return air dry-bulb temperature.	<80	2.62	2.70	More Stringent
Air-cooled	Downflow	≥65 and <240	2.10		≥80 and <295	2.50	2.58	More Stringent
Air-cooled	Downflow	≥240 and <760	1.90		≥295 and <930	2.26	2.36	More Stringent
Air-cooled with fluid economizer.	Downflow	<65	2.20		<80	2.62	2.70	More Stringent
Air-cooled with fluid economizer.	Downflow	≥65 and <240	2.10		≥80 and <295	2.50	2.58	More Stringent
Air-cooled with fluid economizer.	Downflow	≥240 and <760	1.90		≥295 and <930	2.26	2.36	More Stringent
Water-cooled	Downflow	<65	2.60	Return air dry-bulb temperature.	<80	2.73	2.82	More Stringent
Water-cooled	Downflow	≥65 and <240	2.50		≥80 and <295	2.63	2.73	More Stringent
Water-cooled	Downflow	≥240 and <760	2.40		≥295 and <930	2.54	2.67	More Stringent
Water-cooled with fluid economizer.	Downflow	<65	2.55	Condenser entering water temperature.	<80	2.68	2.77	More Stringent
Water-cooled with fluid economizer.	Downflow	≥65 and <240	2.45	Add allowance for heat rejection components to total power input.	≥80 and <295	2.59	2.68	More Stringent
Water-cooled with fluid economizer.	Downflow	≥240 and <760	2.35		≥295 and <930	2.50	2.61	More Stringent
Glycol-cooled	Downflow	<65	2.50	Add allowance for heat rejection components to total power input.	<80	2.43	2.56	More Stringent
Glycol-cooled	Downflow	≥65 and <240	2.15		≥80 and <295	2.15	2.24	More Stringent
Glycol-cooled	Downflow	≥240 and <760	2.10		≥295 and <930	2.11	2.21	More Stringent
Glycol-cooled with fluid economizer.	Downflow	<65	2.45		<80	2.39	2.51	More Stringent
Glycol-cooled with fluid economizer.	Downflow	≥65 and <240	2.10		≥80 and <295	2.11	2.19	More Stringent
Glycol-cooled with fluid economizer.	Downflow	≥240 and <760	2.05		≥295 and <930	2.06	2.15	More Stringent
Air-cooled	Upflow Ducted	<65	2.09	Return air dry-bulb temperature.	<80	2.65	2.67	More Stringent
Air-cooled	Upflow Ducted	≥65 and <240	1.99		≥80 and <295	2.55	2.55	Equivalent
Air-cooled	Upflow Ducted	≥240 and <760	1.79		≥295 and <930	2.26	2.33	More Stringent
Air-cooled with fluid economizer.	Upflow Ducted	<65	2.09	ESP requirements	<80	2.65	2.67	More Stringent
Air-cooled with fluid economizer.	Upflow Ducted	≥65 and <240	1.99		≥80 and <295	2.55	2.55	Equivalent
Air-cooled with fluid economizer.	Upflow Ducted	≥240 and <760	1.79		≥295 and <930	2.26	2.33	More Stringent
Water-cooled	Upflow Ducted	<65	2.49	Return air dry-bulb temperature.	<80	2.77	2.79	More Stringent
Water-cooled	Upflow Ducted	≥65 and <240	2.39		≥80 and <295	2.70	2.70	Equivalent
Water-cooled	Upflow Ducted	≥240 and <760	2.29	Condenser entering water temperature.	≥295 and <930	2.56	2.64	More Stringent
Water-cooled with fluid economizer.	Upflow Ducted	<65	2.44	ESP requirements	<80	2.72	2.74	More Stringent
Water-cooled with fluid economizer.	Upflow Ducted	≥65 and <240	2.34	Add allowance for heat rejection components to total power input.	≥80 and <295	2.65	2.65	Equivalent
Water-cooled with fluid economizer.	Upflow Ducted	≥240 and <760	2.24		≥295 and <930	2.51	2.58	More Stringent
Glycol-cooled	Upflow Ducted	<65	2.39	Return air dry-bulb temperature.	<80	2.47	2.53	More Stringent
Glycol-cooled	Upflow Ducted	≥65 and <240	2.04		≥80 and <295	2.19	2.21	More Stringent

Glycol-cooled with fluid economizer.	Upflow Ducted	≥240 and <760	1.99	ESP requirements	≥295 and <930	2.11	2.18	More Stringent
Glycol-cooled with fluid economizer.	Upflow Ducted	<65	2.34	Add allowance for heat rejection components to total power input.	<80	2.43	2.48	More Stringent
Glycol-cooled with fluid economizer.	Upflow Ducted	≥65 and <240	1.99		≥80 and <295	2.14	2.16	More Stringent
Glycol-cooled with fluid economizer.	Upflow Ducted	≥240 and <760	1.94		≥295 and <930	2.07	2.12	More Stringent
Air-cooled	Upflow Non-Ducted	<65	2.09	No changes	<65	2.09	2.16	More Stringent
Air-cooled	Upflow Non-Ducted	≥65 and <240	1.99		≥65 and <240	1.99	2.04	More Stringent
Air-cooled	Upflow Non-Ducted	≥240 and <760	1.79		≥240 and <760	1.79	1.89	More Stringent
Air-cooled with fluid economizer.	Upflow Non-Ducted	<65	2.09		<65	2.09	2.09	Equivalent
Air-cooled with fluid economizer.	Upflow Non-Ducted	≥65 and <240	1.99		≥65 and <240	1.99	1.99	Equivalent
Air-cooled with fluid economizer.	Upflow Non-Ducted	≥240 and <760	1.79		≥240 and <760	1.79	1.81	More Stringent
Water-cooled	Upflow Non-Ducted	<65	2.49	Condenser entering water temperature.	<65	2.25	2.43	More Stringent
Water-cooled	Upflow Non-Ducted	≥65 and <240	2.39		≥65 and <240	2.17	2.32	More Stringent
Water-cooled	Upflow Non-Ducted	≥240 and <760	2.29		≥240 and <760	2.09	2.20	More Stringent
Water-cooled with fluid economizer.	Upflow Non-Ducted	<65	2.44	Add allowance for heat rejection components to total power input.	<65	2.21	2.35	More Stringent
Water-cooled with fluid economizer.	Upflow Non-Ducted	≥65 and <240	2.34		≥65 and <240	2.13	2.24	More Stringent
Water-cooled with fluid economizer.	Upflow Non-Ducted	≥240 and <760	2.24		≥240 and <760	2.05	2.12	More Stringent
Glycol-cooled	Upflow Non-Ducted	<65	2.39		<65	2.03	2.08	More Stringent
Glycol-cooled	Upflow Non-Ducted	≥65 and <240	2.04		≥65 and <240	1.77	1.90	More Stringent
Glycol-cooled	Upflow Non-Ducted	≥240 and <760	1.99	Add allowance for heat rejection components to total power input.	≥240 and <760	1.73	1.81	More Stringent
Glycol-cooled with fluid economizer.	Upflow Non-Ducted	<65	2.34		<65	1.99	2.00	More Stringent
Glycol-cooled with fluid economizer.	Upflow Non-Ducted	≥65 and <240	1.99		≥65 and <240	1.73	1.82	More Stringent
Glycol-cooled with fluid economizer.	Upflow Non-Ducted	≥240 and <760	1.94		≥240 and <760	1.69	1.73	More Stringent

As indicated by the crosswalk, the standard levels established for CRACs in ASHRAE Standard 90.1–2019 are equivalent to the current Federal standards for six equipment classes and are more stringent than the current Federal standards for 48 equipment classes of CRACs. ASHRAE Standard 90.1–2019 also added 66 equipment classes of ceiling-mounted and horizontal-flow CRACs that did not require a crosswalk because there are currently no Federal standards for those classes. As discussed in section III.A of this final rule, DOE is adopting standards for horizontal-flow CRACs and ceiling-mounted CRACs. ASHRAE Standard 90.1–2019 also incorporates shifted capacity bin boundaries for upflow ducted and downflow CRAC equipment classes. DOE's crosswalk analysis indicates that these updated boundaries appropriately reflect the increase in NSCC that results from the changes in test procedure adopted under ASHRAE Standard 90.1–2019 and are equivalent to the capacity boundaries in the current Federal standards once those changes are accounted for (as discussed in previous sections of this document).

#### 7. Comments Received Regarding DOE's Crosswalk

AHRI agreed with DOE's crosswalk methodology and noted that AHRI members, DOE staff, and consultants met extensively in 2018 to develop the crosswalk analysis in order to ensure that new NSenCOP values developed for ASHRAE Standard 90.1–2019 addressed all of the shortcomings from the previous edition's efficiency levels. (AHRI, No. 12 at p. 1) AHRI expressed support for the direct adoption of all NSenCOP values, and associated capacities in ASHRAE Standard 90.1 and agreed that the efficiencies proposed in the NOPR will save energy. *Id.*

DOE did not receive any other comments regarding its crosswalk methodology. Therefore, for this final rule, DOE relies on the crosswalk analysis and results as originally presented in the September 2020 NODA/RFI, in which DOE identifies 48 equipment classes for which the ASHRAE Standard 90.1–2019 efficiency levels are more stringent than current DOE efficiency levels (expressed in NSenCOP), six equipment classes for which the ASHRAE Standard 90.1–2019 efficiency levels are equal to the current DOE efficiency levels, and 66 classes of CRACs that are not currently subject to DOE's standards but for which standards are specified in ASHRAE

Standard 90.1–2019 (*i.e.*, horizontal-flow and ceiling-mounted classes).

#### IV. Methodology for Estimates of Potential Energy Savings From ASHRAE Standard 90.1–2019 Levels

In the September 2020 NODA/RFI, DOE performed an analysis to determine the energy-savings potential of amending Federal standards to the amended ASHRAE levels for CRACs for which ASHRAE Standard 90.1–2019 specifies amended energy efficiency levels more stringent than the corresponding Federal energy conservation standards, as required under 42 U.S.C. 6313(a)(6)(A). 85 FR 60642, 60663 (Sept. 25, 2020). DOE's energy savings analysis was limited to equipment classes for which a market exists and for which sufficient data were available.

For the equipment classes where ASHRAE Standard 90.1–2019 specifies more-stringent levels than the corresponding Federal energy conservation standard, DOE calculated the potential energy savings to the Nation associated with adopting ASHRAE Standard 90.1–2019 as the difference between a no-new-standards case projection (*i.e.*, without amended standards) and the ASHRAE Standard 90.1–2019 standards-case projection (*i.e.*, with adoption of ASHRAE Standard 90.1–2019 levels).

The national energy savings (NES) refers to cumulative lifetime energy savings for equipment purchased in a 30-year period that differs by equipment (*i.e.*, the compliance date differs by equipment class (*i.e.*, capacity) depending upon whether DOE is acting under the ASHRAE trigger or the 6-year-lookback (*see* 42 U.S.C. 6313(a)(6)(D)). In the standards case, equipment that is more efficient gradually replaces less-efficient equipment over time. This affects the calculation of the potential energy savings, which are a function of the total number of units in use and their efficiencies. Savings depend on annual shipments and equipment lifetime. Inputs to the energy savings analysis are presented in the following sections.

##### A. Annual Energy Use

The purpose of the energy use analysis is to assess the energy savings potential of different equipment efficiencies in the building types that utilize the equipment. The Federal standard and ASHRAE Standard 90.1–2019 levels are expressed in terms of an efficiency metric. For each equipment class, the description of how DOE developed estimates of annual energy consumption at the Federal baseline

efficiency level and the ASHRAE Standard 90.1–2019 level can be found in section III.A.1 of the September 2020 NODA/RFI. 85 FR 60642, 60664–60666 (Sept. 25, 2020). In the March 2022 ECS NOPR, DOE briefly summarized that analysis and responded to stakeholder comments. 87 FR 12802, 12827–12830 (March 7, 2022). However, DOE did not change its analysis in response to those comments. DOE did not receive any comments specific to this analysis in response to the March 2022 ECS NOPR, and continues to rely on the analysis from the September 2020 NODA/RFI in this final rule. The annual unit energy consumption (UEC) estimates are displayed in Table IV–1 and form the basis of the national energy savings estimates discussed in section IV.E of this document.

##### 1. Equipment Classes and Analytical Scope

In the September 2020 NODA/RFI, DOE conducted an energy savings analysis for the 42 CRAC classes that currently have both DOE standards and more-stringent standards under ASHRAE Standard 90.1–2019. 85 FR 60642, 60664 (Sept. 25, 2020). DOE was unable to identify market data that would allow for disaggregating results for the six equipment classes of air-cooled CRACs with fluid economizers that have ASHRAE Standard 90.1–2019 levels more stringent than current Federal standards. Furthermore, although ASHRAE Standard 90.1–2019 included levels for the 66 horizontal flow and ceiling-mounted equipment classes which currently are not subject to Federal standards, DOE was unable to identify market data that could be used to establish a market baseline for these classes in order to estimate energy savings at the time the September 2020 NODA/RFI was published. 85 FR 60642, 60663–60664 (Sept. 25, 2020). DOE did not receive any efficiency data in response to the March 2022 ECS NOPR and is unaware of any publicly available data. Therefore, DOE was unable to develop a market baseline and estimate energy savings for the horizontal-flow and ceiling-mounted equipment classes for this final rule. The UEC estimates (provided in Table IV–1 of this document) were only developed for equipment classes for which DOE could develop a market baseline; therefore, they do not include the horizontal-flow and ceiling-mounted classes.

##### 2. Efficiency Levels

DOE analyzed the energy savings potential of adopting ASHRAE Standard 90.1–2019 levels for CRAC equipment classes that currently have a Federal

standard and have an ASHRAE Standard 90.1–2019 efficiency level more stringent than the current Federal standard. For each equipment class, energy savings are measured relative to the baseline (*i.e.*, the current Federal standard for that class). 85 FR 60642, 60664 (Sept. 25, 2020).

3. Analysis Method and Annual Energy Use Results

In the September 2020 NODA/RFI, to derive UECs for the equipment classes analyzed in this document, DOE started with the UECs based on the current DOE standards for downflow equipment classes as analyzed in the May 2012 final rule. DOE assumed that these UECs correspond to the NSenCOP that was derived through the crosswalk analysis (*i.e.*, “Cross-walked Current Federal Standard” column in Table III–4). DOE

determined the UEC for the ASHRAE Standard 90.1–2019 level by dividing the baseline NSenCOP level by the NSenCOP for the ASHRAE Standard 90.1–2019 level and multiplied the resulting percentage by the baseline UEC. 85 FR 60642, 60664 (Sept. 25, 2020).

In the May 2012 final rule, DOE assumed that energy savings estimates derived for downflow equipment classes would be representative of upflow equipment classes, which differed by a fixed 0.11 SCOP. 77 FR 28928, 28954 (May 16, 2012). Because of the fixed 0.11 SCOP difference between upflow and downflow CRAC units in ASHRAE Standard 90.1–2013, DOE determined that the per-unit energy savings benefits for corresponding CRACs at higher efficiency levels could be represented using the 15 downflow equipment

classes. *Id.* However, in this analysis, the efficiency levels for the upflow non-ducted equipment classes do not differ from the downflow equipment class by a fixed amount. For the September 2020 NODA/RFI, DOE assumed that the fractional increase/decrease in NSenCOP between upflow and downflow units corresponds to a proportional decrease/increase in the baseline UEC within a given equipment class grouping of condenser system and capacity. 85 FR 60642, 60665 (Sept. 25, 2020).

Table IV–1 shows UEC estimates for the equipment classes triggered by ASHRAE Standard 90.1–2019 (*i.e.*, equipment classes for which the ASHRAE Standard 90.1–2019 energy efficiency level is more stringent than the currently applicable Federal standard).

TABLE IV–1—NATIONAL UEC ESTIMATES (kWh/YEAR) FOR CRAC SYSTEMS <sup>1</sup>

Condenser system type	Airflow configuration	Current net sensible cooling capacity	Current federal standard		ASHRAE standard 90.1–2019	
			NSenCOP	UEC (kwh)	NSenCOP	UEC (kwh)
Air-cooled	Downflow	<65,000 Btu/h	2.62	27,411	2.70	26,599
		≥65,000 Btu/h and <240,000 Btu/h	2.50	102,762	2.58	99,575
		≥240,000 Btu/h and <760,000 Btu/h	2.26	246,011	2.36	235,587
	Upflow, ducted	<65,000 Btu/h	2.65	27,100	2.67	26,897
		≥240,000 Btu/h and <760,000 Btu/h	2.26	247,104	2.33	238,620
		≥65,000 Btu/h	2.09	34,362	2.16	33,248
Upflow, non-ducted	≥65,000 Btu/h and <240,000 Btu/h	1.99	129,097	2.04	125,933	
	≥240,000 Btu/h and <760,000 Btu/h	1.79	310,606	1.89	294,172	
	<65,000 Btu/h	2.73	24,726	2.82	23,850	
Water-cooled	Downflow	≥65,000 Btu/h and <240,000 Btu/h	2.63	92,123	2.73	88,749
		≥240,000 Btu/h and <760,000 Btu/h	2.54	208,727	2.67	198,564
		<65,000 Btu/h	2.77	24,280	2.79	24,106
	Upflow, ducted	≥240,000 Btu/h and <760,000 Btu/h	2.56	207,096	2.64	200,821
		<65,000 Btu/h	2.25	29,891	2.43	27,677
		≥65,000 Btu/h and <240,000 Btu/h	2.17	112,169	2.32	104,433
Upflow, non-ducted	≥240,000 Btu/h and <760,000 Btu/h	2.09	254,888	2.20	240,985	
	<65,000 Btu/h	2.68	15,443	2.77	14,885	
	≥65,000 Btu/h and <240,000 Btu/h	2.59	57,537	2.68	55,390	
Water-cooled with fluid economizer.	Downflow	≥240,000 Btu/h and <760,000 Btu/h	2.50	129,787	2.61	123,819
		<65,000 Btu/h	2.72	15,159	2.74	15,048
		≥240,000 Btu/h and <760,000 Btu/h	2.51	128,753	2.58	125,259
	Upflow, ducted	<65,000 Btu/h	2.21	18,657	2.35	17,546
		≥65,000 Btu/h and <240,000 Btu/h	2.13	70,022	2.24	66,271
		≥240,000 Btu/h and <760,000 Btu/h	2.05	158,416	2.12	152,438
Upflow, non-ducted	<65,000 Btu/h	2.43	24,671	2.56	23,419	
	≥65,000 Btu/h and <240,000 Btu/h	2.15	101,844	2.24	97,297	
	≥240,000 Btu/h and <760,000 Btu/h	2.11	227,098	2.21	215,794	
Glycol-cooled	Downflow	<65,000 Btu/h	2.47	24,272	2.53	23,696
		≥65,000 Btu/h and <240,000 Btu/h	2.19	99,975	2.21	98,618
		≥240,000 Btu/h and <760,000 Btu/h	2.11	226,021	2.18	218,764
	Upflow, ducted	<65,000 Btu/h	2.03	29,679	2.08	28,823
		≥65,000 Btu/h and <240,000 Btu/h	1.77	123,833	1.90	114,708
		≥240,000 Btu/h and <760,000 Btu/h	1.73	275,668	1.81	263,483
Upflow, non-ducted	<65,000 Btu/h	2.39	19,813	2.51	18,866	
	≥65,000 Btu/h and <240,000 Btu/h	2.11	81,668	2.19	78,312	
	≥240,000 Btu/h and <760,000 Btu/h	2.06	182,034	2.15	174,414	
Glycol-cooled with fluid economizer.	Downflow	<65,000 Btu/h	2.43	19,567	2.48	19,094
		≥65,000 Btu/h and <240,000 Btu/h	2.14	80,142	2.16	79,400
		≥240,000 Btu/h and <760,000 Btu/h	2.07	182,034	2.12	176,882
	Upflow, ducted	<65,000 Btu/h	1.99	23,796	2.00	23,677
		≥65,000 Btu/h and <240,000 Btu/h	1.73	99,135	1.82	94,232
		≥240,000 Btu/h and <760,000 Btu/h	1.69	221,888	1.73	216,757

<sup>1</sup> The air-cooled, upflow ducted, >65,000 Btu/h and <240,000 Btu/h; water-cooled, upflow ducted, >65,000 Btu/h and <240,000 Btu/h; and water-cooled with fluid economizer, upflow ducted, >65,000 Btu/h and <240,000 Btu/h equipment classes are not included in the table, as the ASHRAE Standard 90.1–2019 levels for these classes are equivalent to the current Federal standard.

**B. Shipments Analysis**

DOE uses shipment projections by equipment class to calculate the national impacts of standards on energy consumption, as well as net present value and future manufacturer cash flows. DOE shipments projections typically are based on available historical data broken out by equipment classes. Current sales estimates allow for a more accurate model that captures recent trends in the market.

In the analysis conducted in the September 2020 NODA/RFI, DOE used confidential shipments data provided by AHRI to calibrate its shipment model to produce a breakdown by equipment class. DOE then used a stock turnover model to project shipments over the 30-year shipments analysis period. The stock turnover model was broken into three cooling capacities (<65,000 Btu/h,

≥65,000 Btu/h and <240,000 Btu/h, and ≥240,000 Btu/h and <760,000 Btu/h), and stock projections for each cooling capacity grew at a constant rate through the 30-year analysis period. 85 FR 60642, 60668–60669 (Sept. 25, 2020). Total shipments are projected to grow slightly over the analysis period, as shown in Table IV–2 of this document. The analysis in the September 2020 NODA/RFI relied in part on the 2012 Commercial Buildings Energy Consumption Survey (CBECS 2012).<sup>13</sup> In response to the September 2020 NODA/RFI, AHRI stated that DOE should rely on CBECS 2018 when it was published. (AHRI No. 2 at p. 3)<sup>14</sup> In the March 2022 ECS NOPR, DOE stated that the full dataset from CBECS 2018 was not available at the time of the NOPR. 87 FR 12802, 12830–12831 (March 7, 2022). DOE added that CBECS 2012 was used to develop a stock of CRACs that

would match the shipments provided by AHRI in 2012, so the main driver of shipments analysis was the shipments time series and not CBECS 2012. *Id.* However, DOE stated that to the extent that updated CBECS data become available, DOE will consider such data in the evaluation of a final rule. *Id.* CBECS 2018 data is now available;<sup>15</sup> however as stated previously, using CBECS 2018 would not be expected to significantly change the shipments analysis, as it would be calibrated to confidential shipments data provided by AHRI, just as is done with the CBECS 2012 data. For this reason, and because DOE is not making other analytical updates in this final rule, DOE continues to rely on the shipments data and methodology from the September 2020 NODA/RFI and March 2022 ECS NOPR.

TABLE IV–2—PROJECTED SHIPMENTS

	<65,000 Btu/h	≥65,000 Btu/h and <240,000 Btu/h	≥240,000 Btu/h and <760,000 Btu/h	Total shipments
2020 Shipments .....	3,208	2,132	3,190	8,530
2052 Shipments .....	2,634	3,650	3,178	9,462

**C. No-New-Standards-Case Efficiency Distribution**

The no-new-standards case efficiency distribution is used to establish the market share of each efficiency level in the case where there is no new or amended standard. DOE is unaware of available market data that reports CRAC

efficiency in terms of NSenCOP that can be used to determine the no-new-standards case efficiency distribution. DOE estimated the no-new-standards case efficiency distribution for each CRAC equipment class using model counts from DOE’s Compliance Certification Database. DOE calculated the fraction of models that are above the

current Federal baseline and below the ASHRAE Standard 90.1–2019 level and assigned this to the Federal baseline. All models that are at or above that ASHRAE Standard 90.1–2019 level are assigned to the ASHRAE level. The no-new-standard case distribution for CRACs are presented in Table IV–3.

TABLE IV–3—NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR CRACs<sup>1</sup>

Condenser system type	Airflow configuration	Current net sensible cooling capacity	Federal baseline market share (%)	ASHRAE standard 90.1–2019 level market share (%)
Air-cooled .....	Downflow .....	<65,000 Btu/h .....	2	98
		≥65,000 Btu/h and <240,000 Btu/h .....	22	78
		≥240,000 Btu/h and <760,000 Btu/h .....	20	80
	Upflow, ducted .....	<65,000 Btu/h .....	0	100
		≥240,000 Btu/h and <760,000 Btu/h .....	4	96
		Upflow, non-ducted .....	<65,000 Btu/h .....	4
Water-cooled .....	Downflow .....	≥65,000 Btu/h and <240,000 Btu/h .....	11	89
		≥240,000 Btu/h and <760,000 Btu/h .....	23	77
		<65,000 Btu/h .....	11	89
	Upflow, ducted .....	≥65,000 Btu/h and <240,000 Btu/h .....	15	85
		≥240,000 Btu/h and <760,000 Btu/h .....	24	76
		<65,000 Btu/h .....	0	100
	Upflow, non-ducted .....	≥240,000 Btu/h and <760,000 Btu/h .....	13	87
		<65,000 Btu/h .....	11	89
		≥65,000 Btu/h and <240,000 Btu/h .....	21	79
		≥240,000 Btu/h and <760,000 Btu/h .....	27	73

<sup>13</sup> U.S. Department of Energy—Energy Information Administration, 2012 CBECS Survey Data (Available at: [www.eia.gov/consumption/](http://www.eia.gov/consumption/))

[commercial/data/2012/](http://commercial/data/2012/)) (Last accessed March 9, 2020).

<sup>14</sup> Comment received in response to September 2020 NODA/RFI (Available at: <https://>)

[www.regulations.gov/document/EERE-2020-BT-STD-0008-0001](http://www.regulations.gov/document/EERE-2020-BT-STD-0008-0001)).

<sup>15</sup> Available at: [www.eia.gov/consumption/commercial/data/2018/](http://www.eia.gov/consumption/commercial/data/2018/).



TABLE IV-3—NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR CRACs<sup>1</sup>—Continued

Condenser system type	Airflow configuration	Current net sensible cooling capacity	Federal baseline market share (%)	ASHRAE standard 90.1-2019 level market share (%)
Water-cooled with fluid economizer.	Downflow .....	<65,000 Btu/h .....	2	98
		≥65,000 Btu/h and <240,000 Btu/h .....	13	87
	Upflow, ducted .....	≥240,000 Btu/h and <760,000 Btu/h .....	38	62
		<65,000 Btu/h .....	2	98
	Upflow, non-ducted .....	≥240,000 Btu/h and <760,000 Btu/h .....	13	87
		<65,000 Btu/h .....	8	92
Glycol-cooled .....	Downflow .....	≥65,000 Btu/h and <240,000 Btu/h .....	16	84
		≥240,000 Btu/h and <760,000 Btu/h .....	20	80
	Upflow, ducted .....	<65,000 Btu/h .....	57	43
		≥65,000 Btu/h and <240,000 Btu/h .....	31	69
	Upflow, non-ducted .....	≥240,000 Btu/h and <760,000 Btu/h .....	36	64
		<65,000 Btu/h .....	20	80
Glycol-cooled with fluid economizer.	Downflow .....	≥65,000 Btu/h and <240,000 Btu/h .....	6	94
		≥240,000 Btu/h and <760,000 Btu/h .....	30	70
	Upflow, ducted .....	<65,000 Btu/h .....	20	80
		≥65,000 Btu/h and <240,000 Btu/h .....	38	62
	Upflow, non-ducted .....	≥240,000 Btu/h and <760,000 Btu/h .....	30	70
		<65,000 Btu/h .....	57	43
Glycol-cooled with fluid economizer.	Downflow .....	≥65,000 Btu/h and <240,000 Btu/h .....	31	69
		≥240,000 Btu/h and <760,000 Btu/h .....	31	69
	Upflow, ducted .....	<65,000 Btu/h .....	10	90
		≥65,000 Btu/h and <240,000 Btu/h .....	8	92
	Upflow, non-ducted .....	≥240,000 Btu/h and <760,000 Btu/h .....	33	67
		<65,000 Btu/h .....	2	98
		≥65,000 Btu/h and <240,000 Btu/h .....	30	70
		≥240,000 Btu/h and <760,000 Btu/h .....	27	73

<sup>1</sup> The air-cooled, upflow ducted, >65,000 Btu/h and <240,000 Btu/h; water-cooled, upflow ducted, >65,000 Btu/h and <240,000 Btu/h; and water-cooled with fluid economizer, upflow ducted, >65,000 Btu/h and <240,000 Btu/h equipment classes are not included in the table, as the ASHRAE Standard 90.1-2019 levels for these equipment classes are equivalent to the current Federal standards.

*D. Compliance Dates and Analysis Period*

If DOE were to prescribe energy conservation standards at the efficiency levels contained in ASHRAE Standard 90.1-2019, EPCA provides that the compliance date shall be on or after a date that is two or three years (depending on the equipment type or size) after the effective date of the applicable minimum energy efficiency requirement in the amended ASHRAE standard. (42 U.S.C. 6313(a)(6)(D)). If ASHRAE Standard 90.1 does not specify an effective date, then the compliance date specified by statute would be dependent upon the publication date of ASHRAE Standard 90.1-2019.

In this case, ASHRAE Standard 90.1-2019 does not specify an effective date for CRAC levels, so, therefore, the publication date of October 23, 2019, was used to determine the compliance dates for estimating the energy savings potential of adopting ASHRAE Standard 90.1-levels.

For equipment classes for which the ASHRAE Standard 90.1 levels are more stringent than the current Federal standards (i.e., classes for which DOE is triggered), if DOE were to prescribe standards more stringent than the efficiency levels contained in ASHRAE

Standard 90.1-2019, EPCA dictates that the compliance date must be on or after a date which is four years after the date of publication of a final rule in the **Federal Register**. (42 U.S.C. 6313(a)(6)(D)) For equipment classes for which DOE is acting under its 6-year lookback authority, if DOE were to adopt more-stringent standards, EPCA states that the compliance date for any such standard shall be after a date that is the later of the date three years after publication of the final rule establishing a new standard or the date six years after the effective date for the current standard. (42 U.S.C. 6313(a)(6)(C)(iv)) As discussed in Section V of this document, DOE is not establishing standards for CRACs that are more stringent than the levels contained in ASHRAE Standard 90.1-2019. For purposes of calculating the NES for the equipment in this evaluation, DOE used a 30-year analysis period starting with the assumed year of compliance listed in Table IV-4 for equipment analyzed in the September 2020 NODA/RFI. This is the standard analysis period of 30 years that DOE typically uses in its NES analysis. For equipment classes with a compliance date in the last six months of the year, DOE starts its analysis period in the first full year after compliance. For example, if CRACs less

than 65,000 Btu/h were to have a compliance date of October 23, 2021, the analysis period for calculating NES would begin in 2022 and extend to 2051.

TABLE IV-4—ANALYZED COMPLIANCE DATES OF AMENDED ENERGY CONSERVATION STANDARDS FOR TRIGGERED EQUIPMENT CLASSES

Equipment class	Analyzed compliance dates for efficiency levels in ASHRAE standard 90.1-2019
<b>Computer Room Air Conditioners</b>	
Equipment with current NSCC <65,000 Btu/h.	10/23/2021
Equipment with current NSCC ≥65,000 and <240,000 Btu/h.	10/23/2022
Equipment with current NSCC ≥240,000 Btu/h and <760,000 Btu/h.	10/23/2022

The analysis presented in this final rule relies on the minimum compliance dates provided under EPCA for the energy conservation standards. In the March 2022 ECS NOPR and in this final

rule, DOE considered the various applicable lead times required by EPCA and has determined that the compliance date for amended standards for all CRAC equipment classes will be 360 days after the publication date of the final rule adopting amended energy conservation standards. 87 FR 12802, 12834 (March 7, 2022). Comments received on the compliance date are

discussed in section V.D of this document.

*E. Estimates of Potential Energy Savings*

DOE estimated the potential site, primary, and FFC energy savings in quads (*i.e.*, 10<sup>15</sup> Btu) for adopting ASHRAE Standard 90.1–2019 efficiency levels for CRACs within each equipment class analyzed. The potential energy savings of adopting ASHRAE Standard 90.1–2019 levels are measured relative

to the current Federal standards. Table IV–5 shows the potential energy savings resulting from the analyses conducted for CRACs. The reported energy savings are cumulative over the period in which equipment shipped in the 30-year analysis continues to operate. The national energy savings estimates are identical to those provided in the September 2020 NODA/RFI. *See* 85 FR 60642, 60672 (Sep. 25, 2020).

TABLE IV–5—POTENTIAL ENERGY SAVINGS OF ADOPTING ASHRAE STANDARD 90.1–2019 FOR CRACs<sup>1</sup>

Condenser system type	Airflow configuration	Current net sensible cooling capacity	ASHRAE efficiency level	Site savings	Primary savings	FFC savings
			NSenCOP	Quads	Quads	Quads
Air-cooled	Downflow	<65,000 Btu/h	2.70	0.0000	0.0000	0.0000
		≥65,000 Btu/h and <240,000 Btu/h.	2.58	0.0011	0.0029	0.0030
		≥240,000 Btu/h and <760,000 Btu/h.	2.36	0.0071	0.0185	0.0193
	Upflow, ducted	<65,000 Btu/h	2.67	0.0000	0.0000	0.0000
		≥240,000 Btu/h and <760,000 Btu/h.	2.33	0.0001	0.0003	0.0003
		<65,000 Btu/h	2.16	0.0000	0.0001	0.0001
Upflow, non-ducted	≥65,000 Btu/h and <240,000 Btu/h.	2.04	0.0003	0.0007	0.0008	
	≥240,000 Btu/h and <760,000 Btu/h.	1.89	0.0014	0.0037	0.0039	
	<65,000 Btu/h	2.82	0.0000	0.0000	0.0000	
Water-cooled	Downflow	≥65,000 Btu/h and <240,000 Btu/h.	2.73	0.0001	0.0003	0.0003
		≥240,000 Btu/h and <760,000 Btu/h.	2.67	0.0003	0.0007	0.0008
		<65,000 Btu/h	2.79	0.0000	0.0000	0.0000
	Upflow, ducted	≥240,000 Btu/h and <760,000 Btu/h.	2.64	0.0000	0.0001	0.0001
		<65,000 Btu/h	2.43	0.0001	0.0004	0.0004
		≥65,000 Btu/h and <240,000 Btu/h.	2.32	0.0002	0.0005	0.0006
	Upflow, non-ducted	≥240,000 Btu/h and <760,000 Btu/h.	2.20	0.0001	0.0003	0.0003
		<65,000 Btu/h	2.77	0.0000	0.0000	0.0000
		≥65,000 Btu/h and <240,000 Btu/h.	2.68	0.0000	0.0000	0.0000
Water-cooled with fluid economizer.	Downflow	≥240,000 Btu/h and <760,000 Btu/h.	2.61	0.0001	0.0002	0.0002
		<65,000 Btu/h	2.74	0.0000	0.0000	0.0000
		≥240,000 Btu/h and <760,000 Btu/h.	2.58	0.0000	0.0000	0.0000
	Upflow, ducted	<65,000 Btu/h	2.35	0.0000	0.0000	0.0000
		≥65,000 Btu/h and <240,000 Btu/h.	2.24	0.0000	0.0000	0.0000
		≥240,000 Btu/h and <760,000 Btu/h.	2.12	0.0000	0.0000	0.0000
	Upflow, non-ducted	<65,000 Btu/h	2.56	0.0000	0.0000	0.0000
		≥65,000 Btu/h and <240,000 Btu/h.	2.24	0.0001	0.0002	0.0002
		≥240,000 Btu/h and <760,000 Btu/h.	2.21	0.0001	0.0003	0.0003
Glycol-cooled	Downflow	<65,000 Btu/h	2.53	0.0000	0.0000	0.0000
		≥65,000 Btu/h and <240,000 Btu/h.	2.21	0.0000	0.0000	0.0000
		≥240,000 Btu/h and <760,000 Btu/h.	2.18	0.0000	0.0000	0.0000
	Upflow, ducted	<65,000 Btu/h	2.08	0.0000	0.0000	0.0000
		≥65,000 Btu/h and <240,000 Btu/h.	1.90	0.0001	0.0003	0.0003
		≥240,000 Btu/h and <760,000 Btu/h.	1.81	0.0000	0.0001	0.0001

TABLE IV-5—POTENTIAL ENERGY SAVINGS OF ADOPTING ASHRAE STANDARD 90.1-2019 FOR CRACs <sup>1</sup>—Continued

Condenser system type	Airflow configuration	Current net sensible cooling capacity	ASHRAE efficiency level	Site savings	Primary savings	FFC savings
			NSenCOP	Quads	Quads	Quads
Glycol-cooled with fluid economizer.	Downflow .....	<65,000 Btu/h .....	2.51	0.0000	0.0001	0.0001
		≥65,000 Btu/h and <240,000 Btu/h.	2.19	0.0003	0.0007	0.0007
		≥240,000 Btu/h and <760,000 Btu/h.	2.15	0.0009	0.0022	0.0023
	Upflow, ducted .....	<65,000 Btu/h .....	2.48	0.0000	0.0000	0.0000
		≥65,000 Btu/h and <240,000 Btu/h.	2.16	0.0000	0.0000	0.0000
		≥240,000 Btu/h and <760,000 Btu/h.	2.12	0.0002	0.0004	0.0004
	Upflow, non-ducted .....	<65,000 Btu/h .....	2.00	0.0000	0.0000	0.0000
		≥65,000 Btu/h and <240,000 Btu/h.	1.82	0.0003	0.0007	0.0008
		≥240,000 Btu/h and <760,000 Btu/h.	1.73	0.0001	0.0003	0.0003

<sup>1</sup> The air-cooled, upflow ducted, >65,000 Btu/h and <240,000 Btu/h; water-cooled, upflow ducted, >65,000 Btu/h and <240,000 Btu/h; and water-cooled with fluid economizer, upflow ducted, >65,000 Btu/h and <240,000 Btu/h equipment classes are not included in the table, as the ASHRAE Standard 90.1-2019 levels for these equipment classes are equivalent to the current Federal standard.

**V. Conclusions**

*A. Consideration of More-Stringent Efficiency Levels*

EPCA requires DOE to establish an amended uniform national standard for equipment classes at the minimum level specified in the amended ASHRAE Standard 90.1 unless DOE determines, by rule published in the **Federal Register**, and supported by clear and convincing evidence, that adoption of a uniform national standard more stringent than the amended ASHRAE Standard 90.1 for the equipment class would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(I)-(II))

In the March 2022 ECS NOPR, DOE tentatively determined that due to the lack of market data in terms of the NSenCOP metric and the test metric change, DOE was unable to determine via clear and convincing evidence that a more-stringent CRAC standard level than that contained in ASHRAE Standard 90.1-2019 would result in significant additional conservation of energy and is technologically feasible and economically justified. 87 FR 12802, 12837-12838 (March 7, 2022). DOE noted that to obtain NSenCOP market data for purposes of analysis of standard levels more stringent than ASHRAE Standard 90.1-2019, DOE would be required to translate the individual SCOP ratings to NSenCOP ratings for all CRAC models certified in DOE's CCMS Database. As the range of model efficiencies increases, so does the number of different technologies used to

achieve such efficiencies. With this increase in variation, there is an increase in the potential for variation in the crosswalk results from the actual performance under the new metric of the analyzed models. DOE decided not to conduct further analysis for this particular rulemaking because DOE lacked the data to assess potential energy conservation. *Id.*

AHRI stated that it supports the direct adoption of all NSenCOP values and associated capacities in ASHRAE Standard 90.1, and the commenter agreed that the efficiencies proposed in the NOPR will save energy. (AHRI, No.12 at p. 1)

NYSERDA recognized that the new NSenCOP metric presented difficulty in obtaining accurate market data but commented that changing ASHRAE metrics does not preclude DOE from its obligations to conduct a thorough analysis of the market to determine if there is clear and convincing evidence to set standards above the ASHRAE levels. (NYSERDA, No. 14 at p. 2) NYSERDA urged DOE to conduct further analysis and reassess this determination as more manufacturers adhere to the NSenCOP standards and demonstrate their equipment performance. *Id.* NYSERDA further asserted that, based on their observations of CRAC equipment on the DOE CCMS database, some equipment already have efficiency levels higher than required in ASHRAE Standard 90.1-2019 indicating a potential for more-stringent energy conservation standards, and recommended that DOE re-evaluate CRAC standards sooner than

mandated by the six-year-lookback requirement. *Id.*

The CA IOUs encouraged DOE to adopt higher minimum efficiencies than ASHRAE Standard 90.1-2019 for three CRAC classes: (1) Air-cooled Downflow ≥295 kBtu/h and <930 kBtu/h; (2) Air-cooled Upflow Ducted ≥295 kBtu/h and <930 kBtu/h, and (3) Air-cooled Upflow Non-Ducted ≥295 kBtu/h and <930 kBtu/h. (CA IOUs, No. 13 at p. 2) The CA IOUs asserted that based on their analysis, all CRACs sold in the U.S. in these classes are already more efficient than the efficiency levels in ASHRAE 90.1-2019. *Id.* The CA IOUs stated that there are also several CRAC classes where most of the CRACs exceed ASHRAE Standard 90.1-2019 minimum efficiency levels, and the commenter suggested that those classes should be considered for higher levels. *Id.* The CA IOUs added that based on their findings, they would suggest more-stringent standards for this equipment to the governing body of ASHRAE Standard 90.1, and they encouraged DOE participation in the ASHRAE Standard 90.1 process. *Id.*

In response to NYSERDA, DOE notes that it makes determinations pursuant to the ASHRAE trigger (and the six-year look back review) by evaluating the information and data available specific to the equipment under review that is present at that time. DOE is not making a general determination that the clear and convincing evidence threshold cannot be met in all instances in which there is a metric change. Nonetheless, as acknowledged by NYSERDA, the lack of market data in terms of the new metric prevents DOE from comprehensively

assessing the potential for energy conservation at the current time. However, in a future rulemaking when more market data are available in terms of the NSenCOP metric, DOE may be in a better position to conduct a full economic analysis.

In response to NYSERDA’s and the CA IOU’s comment regarding equipment classes with rated equipment efficiencies that are already higher than the minimum efficiency levels in ASHRAE Standard 90.1–2019, DOE notes that it cannot make such a determination without a significant number of manufacturers certifying with the NSenCOP metric. DOE identified NSenCOP market data for less than three percent of the CRAC models certified in DOE’s Certification Compliance Database. Even if the analysis presented by the CA IOUs is deemed accurate, DOE does not have enough information to evaluate what an appropriate more-stringent standard would be for the equipment classes which the CA IOUs have identified. In response to the CA IOUs’ request that DOE participate in the ASHRAE Standard 90.1 process, the Department notes that as of the time of this final rule, it is an active participant in the ASHRAE Standard 90.1 process.

After considering these stakeholder comments, and the lack of sufficient NSenCOP market data available following the March 2022 ECS NOPR, DOE maintains its preliminary decision not to conduct additional analysis of more-stringent CRAC standards as part of this rulemaking. The lack of market and performance data in terms of the new metric limits the analysis of energy savings that would result from efficiency levels more stringent than the amended ASHRAE Standard 90.1–2019 levels for this equipment. Accordingly, given the limits of any energy use analysis resulting from the lack of data, DOE has concluded that it lacks clear and convincing evidence that more-stringent standards for CRACs would result in a significant additional amount of energy savings as required for DOE to establish such more-stringent standards.

*B. Review Under Six-Year Lookback Provision*

As discussed, DOE is required to conduct an evaluation of each class of covered equipment in ASHRAE Standard 90.1 every six years. (42 U.S.C. 6313(a)(6)(C)(i)) DOE may only adopt more-stringent standards pursuant to the six-year-lookback review if the Secretary determines, supported by clear and convincing evidence, that the adoption of more-stringent standards would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(A)(ii)(II)) The analysis under the six-year-lookback provision incorporates the same standards and factors as the analysis for whether DOE should adopt a standard more stringent than an amended ASHRAE Standard 90.1 standard. *Id.* Accordingly, DOE is evaluating the six CRAC equipment classes for which ASHRAE Standard 90.1–2019 did not increase the stringency of the standards.

Similar to the triggered classes discussed in section V.A of this document, there are limited NSenCOP data for CRACs within each of these six classes, and there is not a comparable industry analysis (*i.e.*, translating ratings to the updated metric for all models on the market) for comparison. While the crosswalk analysis required only that DOE translate the efficiency levels at the baseline levels, the analysis needed to evaluate whether amended standards more stringent than ASHRAE Standard 90.1–2019 would result in significant energy savings and be technologically feasible and economically justified under the clear and convincing threshold would require more than baseline data—it would require NSenCOP data across all efficiency levels on the market.

Therefore, in line with the same initial reasoning presented in DOE’s evaluation of more-stringent standards for those classes of CRAC for which ASHRAE updated the industry

standards, DOE determines that the clear and convincing evidence threshold is not met for these six classes. As such, DOE did not conduct an energy savings analysis of standard levels more stringent than the current Federal standard levels for the classes of CRACs not triggered by ASHRAE Standard 90.1–2019 (*i.e.*, the six classes of CRAC for which ASHRAE Standard 90.1–2019 does not specify more-stringent minimum efficiency levels).

*C. Definition for Ducted Condenser*

As indicated, ASHRAE Standard 90.1–2019 includes separate equipment classes for ceiling-mounted CRACs with ducted condensers. The current definitions at 10 CFR 431.92 do not include a definition of “ducted condenser.” In the March 2022 ECS NOPR, DOE proposed the following definition of “ducted condenser” at 10 CFR 431.92, consistent with the definition specified in section 3.2.11.1 of AHRI 1360–2022. 87 FR 12802, 12839 (March 7, 2022).

*Ducted Condenser* means a configuration of computer room air conditioner for which the condenser or condensing unit that manufacturer’s installation instructions indicate is intended to exhaust condenser air through a duct(s).

DOE did not receive any comments on this definition, and for the reasons previously explained, the Department is finalizing it as proposed.

*D. Amended Energy Conservation Standards*

DOE is amending the energy conservation standards for CRACs by adopting the efficiency levels specified for CRACs in ASHRAE Standard 90.1–2019. The standards, which are expressed in terms of NSenCOP, are shown in Table V–1 and Table V–2 of this document. These standards apply to all CRACs listed in Table V–1 and Table V–2 of this document manufactured in, or imported into, the United States starting on the compliance date as discussed in the following paragraphs.

TABLE V–1—AMENDED STANDARDS FOR FLOOR-MOUNTED CRACs

Equipment type	Net sensible cooling capacity <sup>16</sup>	Minimum NSenCOP efficiency		Net sensible cooling capacity	Minimum NSenCOP efficiency	
		Downflow	Upflow ducted		Upflow non-ducted	Horizontal flow
Air-Cooled .....	<80,000 Btu/h .....	2.70	2.67	<65,000 Btu/h .....	2.16	2.65
	≥80,000 Btu/h and <295,000 Btu/h.	2.58	2.55	≥65,000 Btu/h and <240,000 Btu/h.	2.04	2.55
	≥295,000 Btu/h and <930,000 Btu/h.	2.36	2.33	≥240,000 Btu/h and <760,000 Btu/h.	1.89	2.47
Air-Cooled with Fluid Economizer.	<80,000 Btu/h .....	2.70	2.67	<65,000 Btu/h .....	2.09	2.65

TABLE V-1—AMENDED STANDARDS FOR FLOOR-MOUNTED CRACS—Continued

Equipment type	Net sensible cooling capacity <sup>16</sup>	Minimum NSenCOP efficiency		Net sensible cooling capacity	Minimum NSenCOP efficiency	
		Downflow	Upflow ducted		Upflow non-ducted	Horizontal flow
Water-Cooled .....	≥80,000 Btu/h and <295,000 Btu/h.	2.58	2.55	≥65,000 Btu/h and <240,000 Btu/h.	1.99	2.55
	≥295,000 Btu/h and <930,000 Btu/h.	2.36	2.33	≥240,000 Btu/h and <760,000 Btu/h.	1.81	2.47
	<80,000 Btu/h .....	2.82	2.79	<65,000 Btu/h .....	2.43	2.79
	≥80,000 Btu/h and <295,000 Btu/h.	2.73	2.70	≥65,000 Btu/h and <240,000 Btu/h.	2.32	2.68
Water-Cooled with Fluid Economizer.	≥295,000 Btu/h and <930,000 Btu/h.	2.67	2.64	≥240,000 Btu/h and <760,000 Btu/h.	2.20	2.60
	<80,000 Btu/h .....	2.77	2.74	<65,000 Btu/h .....	2.35	2.71
Glycol-Cooled .....	≥80,000 Btu/h and <295,000 Btu/h.	2.68	2.65	≥65,000 Btu/h and <240,000 Btu/h.	2.24	2.60
	≥295,000 Btu/h and <930,000 Btu/h.	2.61	2.58	≥240,000 Btu/h and <760,000 Btu/h.	2.12	2.54
	<80,000 Btu/h .....	2.56	2.53	<65,000 Btu/h .....	2.08	2.48
	≥80,000 Btu/h and <295,000 Btu/h.	2.24	2.21	≥65,000 Btu/h and <240,000 Btu/h.	1.90	2.18
Glycol-Cooled with Fluid Economizer.	≥295,000 Btu/h and <930,000 Btu/h.	2.21	2.18	≥240,000 Btu/h and <760,000 Btu/h.	1.81	2.18
	<80,000 Btu/h .....	2.51	2.48	<65,000 Btu/h .....	2.00	2.44
	≥80,000 Btu/h and <295,000 Btu/h.	2.19	2.16	≥65,000 Btu/h and <240,000 Btu/h.	1.82	2.10
	≥295,000 Btu/h and <930,000 Btu/h.	2.15	2.12	≥240,000 Btu/h and <760,000 Btu/h.	1.73	2.10

TABLE V-2—AMENDED STANDARDS FOR CEILING-MOUNTED CRACS

Equipment type	Net sensible cooling capacity	Minimum NSenCOP efficiency	
		Ducted	Non-ducted
Air-Cooled with Free Air Discharge Condenser .....	<29,000 Btu/h .....	2.05	2.08
	≥29,000 Btu/h and <65,000 Btu/h .....	2.02	2.05
	≥65,000 Btu/h and <760,000 Btu/h .....	1.92	1.94
Air-Cooled with Free Air Discharge Condenser and Fluid Economizer.	<29,000 Btu/h .....	2.01	2.04
	≥29,000 Btu/h and <65,000 Btu/h .....	1.97	2.00
Air-Cooled with Ducted Condenser .....	≥65,000 Btu/h and <760,000 Btu/h .....	1.87	1.89
	<29,000 Btu/h .....	1.86	1.89
	≥29,000 Btu/h and <65,000 Btu/h .....	1.83	1.86
Air-Cooled with Fluid Economizer and Ducted Condenser.	≥65,000 Btu/h and <760,000 Btu/h .....	1.73	1.75
	<29,000 Btu/h .....	1.82	1.85
	≥29,000 Btu/h and <65,000 Btu/h .....	1.78	1.81
Water-Cooled .....	≥65,000 Btu/h and <760,000 Btu/h .....	1.68	1.70
	<29,000 Btu/h .....	2.38	2.41
	≥29,000 Btu/h and <65,000 Btu/h .....	2.28	2.31
Water-Cooled with Fluid Economizer .....	≥65,000 Btu/h and <760,000 Btu/h .....	2.18	2.20
	<29,000 Btu/h .....	2.33	2.36
	≥29,000 Btu/h and <65,000 Btu/h .....	2.23	2.26
Glycol-Cooled .....	≥65,000 Btu/h and <760,000 Btu/h .....	2.13	2.16
	<29,000 Btu/h .....	1.97	2.00
	≥29,000 Btu/h and <65,000 Btu/h .....	1.93	1.98
Glycol-Cooled with Fluid Economizer .....	≥65,000 Btu/h and <760,000 Btu/h .....	1.78	1.81
	<29,000 Btu/h .....	1.92	1.95
	≥29,000 Btu/h and <65,000 Btu/h .....	1.88	1.93
	≥65,000 Btu/h and <760,000 Btu/h .....	1.73	1.76

<sup>16</sup>DOE has used 930,000 Btu/h as the adjusted upper capacity limit for downflow and upflow ducted CRACs in its analysis (see section III.C of

this document). The 930,000 Btu/h upper capacity limit (as measured per AHRI 1360-2022) used in the crosswalk analysis is equivalent to the 760,000

Btu/h upper capacity limit (as measured per ANSI/ASHRAE 127-2007) established in the current DOE standards.

As noted, in instances in which DOE is amending an energy conservation standard for CRACs in response to updates to ASHRAE Standard 90.1, EPCA specifies certain compliance lead times based on equipment capacity. If DOE were to prescribe energy conservation standards at the efficiency levels contained in the updated ASHRAE Standard 90.1, EPCA states that any such standard shall become effective on or after a date that is two or three years (depending on the equipment type or size) after the effective date of the applicable minimum energy efficiency requirement in the amended ASHRAE standard. (42 U.S.C. 6313(a)(6)(D)) In the present case, were DOE to adopt amended standards for “small” CRACs (*i.e.*, CRACs with a capacity of less than 65,000 Btu/h) at the levels specified in ASHRAE Standard 90.1, EPCA provides that the compliance date must be on or after a date which is two years after the effective date of the level specified in the updated ASHRAE Standard 90.1 (*i.e.*, October 23, 2021). Were DOE to adopt amended standards for “large” and “very large” CRACs (*i.e.*, CRACs with a capacity equal to or greater than 65,000 Btu/h) at the levels specified in ASHRAE Standard 90.1, EPCA provides that the compliance date must be on or after a date which is three years after the effective date of the level specified in the updated ASHRAE Standard 90.1 (*i.e.*, October 23, 2022).

If DOE were to prescribe standards more stringent than the efficiency levels contained in ASHRAE Standard 90.1–2019, EPCA dictates that any such standard will become effective for equipment manufactured on or after a date which is four years after the date of publication of a final rule in the **Federal Register**. (42 U.S.C. 6313(a)(6)(D)) For equipment classes for which DOE is acting under its 6-year-lookback authority, if DOE were to adopt more-stringent standards, EPCA states that any such standard shall apply to equipment manufactured after a date that is the latter of the date three years after publication of the final rule establishing such standard or six years after the effective date for the current standard. (42 U.S.C. 6313(a)(6)(C)(iv))

Moreover, the amended energy conservation standards are based on a new metric (*i.e.*, NSenCOP), and DOE has amended the test procedure to rely on NSenCOP in the March 2023 TP final rule. *See* EERE–2021–BT–TP–0017. As adopted in the March 2023TP final rule, the compliance date of the amended test procedure for CRACs using the NSenCOP metric will be the compliance

date of amended standards in terms of NSenCOP.

In the March 2022 ECS NOPR, DOE considered these various applicable lead times relevant under EPCA to standards (*i.e.*, October 23, 2021, for “small” CRACs and October 23, 2022, for “large” and “very large” CRACs) and the 360-day lead time relevant to a test procedure update addressing NSenCOP. 87 FR 12802, 12843 (March 7, 2022). In order to align the compliance dates across equipment classes and account for an updated test procedure, should one be finalized, DOE proposed that the compliance date for amended standards for all CRAC equipment classes would be 360 days after the publication date of the final rule adopting amended energy conservation standards. *Id.*

The CA IOUs supported DOE’s proposal to align compliance dates across equipment classes and noted that this approach will reduce the compliance burden for manufacturers and streamline future rulemakings for this equipment for all stakeholders. (CA IOUs, No. 13 at p. 2)

AHRI agreed with DOE’s assessment that proposed standards, if adopted, would apply to all CRACs listed in Table I–1 and Table I–2 manufactured in, or imported into, the United States on the same date. (AHRI, No. 12 at p. 3) However, AHRI commented that given the proposed expansion of the covered equipment, and the change in Federal metric being considered, DOE should cover all equipment classes included in ASHRAE Standard 90.1–2019 on one of the two compliance dates options presented by EPCA rather than the “arbitrary” 360-day compliance period proposed. *Id.*

In response, DOE notes that both the compliance date options presented by EPCA (and suggested by AHRI) are dates certain tied to the effective date of the amended ASHRAE Standard 90.1 which have already passed (*i.e.*, October 23, 2021 and October 23, 2022). Following the statutory scheme, an argument could be made for requiring immediate compliance with the amended standards, since the adopted ASHRAE Standard 90.1 levels were promulgated and known in late 2019. However, DOE nevertheless concludes that some reasonable lead time would be needed for all CRAC manufacturers to come into compliance with the amended Federal standards. Therefore, given that EPCA’s specified timelines are no longer feasible, and that DOE has now finalized a test procedure adopting NSenCOP as the metric, DOE has decided to adopt a compliance date for the amended standards for all CRAC equipment classes that is 360 days after the

publication date in the **Federal Register** of this final rule adopting amended energy conservation standards. DOE has determined that lead time of 360 days would be adequate for manufacturers to come into compliance with the amended CRAC standards.

#### 1. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a standard. (*See* 42 U.S.C. 6313(a)(6)(B)(ii)(V)) To assist the Department of Justice (DOJ) in making such a determination, DOE transmitted copies of its proposed rule to the Attorney General for review, with a request that the DOJ provide its determination on this issue. In its assessment letter responding to DOE, DOJ concluded that the proposed energy conservation standards for CRACs are unlikely to have a significant adverse impact on competition. DOE is publishing the Attorney General’s assessment at the end of this final rule. DOE did not receive any public comments on this issue.

## VI. Procedural Issues and Regulatory Review

### A. Review Under Executive Orders 12866 and 13563

Executive Order (E.O.) 12866, “Regulatory Planning and Review,” 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, “Improving Regulation and Regulatory Review,” 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing

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

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

#### B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published procedures and policies 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](http://www.energy.gov/gc/office-general-counsel)). DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003.

DOE has prepared the following FRFA for the equipment that is the subject of this energy conservation standards rulemaking.

#### 1. Description of Reasons Why Action Is Being Considered

DOE is amending the existing DOE minimum efficiency standards for CRACs as is required under EPCA’s

ASHRAE trigger requirement and the six-year-lookback provision. DOE must update the Federal minimum efficiency standards to be consistent with levels published in ASHRAE Standard 90.1, unless DOE determines, supported by clear and convincing evidence, that adoption of a more-stringent level would produce significant additional conservation of energy and would be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) DOE must also review and determine whether to amend standards of each class of covered equipment in ASHRAE Standard 90.1 every six years. (42 U.S.C. 6313(a)(6)(C)(i))

#### 2. Objectives of, and Legal Basis for, Rule

EPCA directs that if ASHRAE amends ASHRAE Standard 90.1, DOE must adopt amended standards at the new ASHRAE efficiency level, unless DOE determines, supported by clear and convincing evidence, that adoption of a more-stringent level would produce significant additional conservation of energy and would be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) Under a separate provision of EPCA, DOE must also review energy efficiency standards for CRACs every six years and either: (1) issue a notice of determination that the standards do not need to be amended as adoption of a more-stringent level is not supported by clear and convincing evidence; or (2) issue a notice of proposed rulemaking including new proposed standards based on certain criteria and procedures in subparagraph (B). (42 U.S.C. 6313(a)(6)(C))

#### 3. Description on Estimated Number of Small Entities Regulated

For manufacturers of CRACs, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as “small businesses” for the purposes of the statute. DOE used the SBA’s small business size standards to determine whether any small entities would be subject to the requirements of the rule. (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](http://www.sba.gov/document/support-table-size-standards). Manufacturing of CRACs is classified under NAICS 333415, “Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.” In 13 CFR 121.201, the SBA sets a threshold of 1,250 employees

or fewer for an entity to be considered as a small business for this category.

DOE used publicly-available information to identify potential small businesses that manufacture equipment covered by this final rule. DOE identified ten manufacturers of equipment covered by this final rule. Of the ten, nine manufacturers are original equipment manufacturers (OEM). DOE screened out companies that do not meet the definition of a “small business” or are foreign-owned and operated. DOE used subscription-based business information tools to determine head count and revenue of the small businesses. Of these nine OEMs, DOE identified three companies that are small, domestic OEMs.

In the March 2022 ECS NOPR, DOE requested comment on the number of small manufacturers producing covered CRACs, DOE’s understanding of the current market, and DOE’s assessment of the efficiency of the equipment offered by the identified small manufacturers. 87 FR 12802, 12844 (March 7, 2022).

AHRI commented that it represents the following single package vertical units (SPVU) companies that likely meet the criteria of small businesses that could be disproportionately impacted by amended energy conservation standards: Bard Manufacturing Company, Marvair, Systemair, Temspec, and United CoolAir. (AHRI, No. 12 at p. 5) AHRI commented that it was not aware of any traditional CRAC manufacturers that would be considered by DOE as a small business, but that if DOE adopts AHRI 1360–202X Draft, SPVU and RTU<sup>17</sup> manufacturers would be impacted. *Id.*

In response, DOE notes that the manufacturers highlighted by AHRI do not manufacture floor-mounted or ceiling-mounted CRACs, which are the equipment for which DOE is adopting amended standards in this rulemaking. While these manufacturers primarily manufacture SPVUs, which are not the subject of this rulemaking, DOE’s review found that two of these manufacturers also offer products that meet the definition of wall-mounted CRAC. One of the two manufacturers qualifies as a small business under the applicable NAICS code (NAICS code 333415). However, DOE notes that there are currently no energy conservation standards for wall-mounted CRACs, and DOE is not adopting standards for wall-mounted or roof-mounted CRACs in this final rule. Therefore, there is no associated impact to these

<sup>17</sup> DOE understand RTU to mean “roof-top units” and a reference to roof-mounted CRACs.

manufacturers from this rulemaking. Consequently, DOE has retained its count of small manufacturers from the March 2022 ECS NOPR.

#### 4. Description and Estimate of Compliance Requirements Including Differences in Cost, if Any, for Different Groups of Small Entities

As noted in the section 2 of the Review under the Regulatory Flexibility Act, DOE must adopt amended standards at the new ASHRAE efficiency level unless DOE determines, supported by clear and convincing evidence, that adoption of a more-stringent standard would produce significant additional conservation of energy and would be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) Because DOE had made no such determination, this final rule adopts amended standards at the new ASHRAE efficiency level rather than impose more-stringent standards. This is required by EPCA, but is also less burdensome for small manufacturers than a more-stringent standard.

In reviewing all commercially-available models in DOE's Compliance Certification Database, the three small manufacturers account for 13 percent of industry model offerings. For each of the three small manufacturers, approximately 90 percent of current models would meet the adopted levels. The small manufacturers will need to either discontinue or redesign non-compliant models. DOE recognizes that small manufacturers may need to spread redesign costs over lower shipment volumes than the industry-at-large. However, adoption of standards at least as stringent as the ASHRAE levels is required under EPCA; furthermore, adopting standards above ASHRAE levels (DOE's only other option under 42 U.S.C. 6313(a)(6)(A)(ii)) would lead to an even greater portion of models requiring redesign.

#### 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 rule.

#### 6. Significant Alternatives to the Rule

As EPCA requires DOE to either adopt the ASHRAE Standard 90.1 levels or to adopt higher standards, DOE lacks discretion to mitigate impacts to small businesses from the ASHRAE Standard 90.1 levels. In this rulemaking, DOE is adopting the ASHRAE Standard 90.1–2019 levels.

Additional compliance flexibilities may be available through other means.

Section 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, provides authority for the Secretary to adjust a rule issued under EPCA in order to prevent “special hardship, inequity, or unfair distribution of burdens” that may be imposed on that manufacturer as a result of such rule. Manufacturers should refer to 10 CFR part 1003 for additional detail.

#### C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of CRACs must certify to DOE that their equipment complies with any applicable energy conservation standards. In certifying compliance, manufacturers must test their equipment according to the DOE test procedures for CRACs, 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 CRACs. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

DOE is not amending the certification or reporting requirements for CRACs in this final rule. Instead, DOE may consider proposals to amend the certification requirements and reporting for CRACs under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

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

Pursuant to the National Environmental Policy Act of 1969 (NEPA), DOE has analyzed this final rule in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE has determined

that this rule qualifies for categorical exclusion under 10 CFR part 1021, subpart D, appendix 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. Therefore, DOE has determined that promulgation of this final rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an environmental assessment or an environmental impact statement.

#### E. Review Under Executive Order 13132

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

#### F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O.



12988, “Civil Justice Reform,” imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final 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, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On

March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE’s policy statement is also available at: [www.energy.gov/sites/prod/files/gcprod/documents/umra\\_97.pdf](http://www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf).

DOE examined this final rule according to UMRA and its statement of policy and determined that 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 State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

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

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final 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 (March 18, 1988), DOE has determined that this 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](http://www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec)

[%202019.pdf](http://www.energy.gov/sites/prod/files/2020/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%20202019.pdf). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

#### *K. Review Under Executive Order 13211*

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 significant energy action. A “significant energy action” is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor 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 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 concluded that this regulatory action, which sets forth amended and new energy conservation standards for CRACs, is not a significant energy action because it is not a significant regulatory action under Executive Order 12866. Moreover, the 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.

#### *L. Review Under the Information Quality Bulletin for Peer Review*

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government’s scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are “influential scientific information,”

which the Bulletin defines as “scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.” *Id.* at 70 FR 2667.

In response to OMB’s Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared a Peer Review report pertaining to the energy conservation standards rulemaking analyses.<sup>18</sup> Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences to review DOE’s analytical methodologies to ascertain whether modifications are needed to improve the Department’s analyses. DOE is in the process of evaluating the resulting December 2021 NAS report.<sup>19</sup>

The following standards were previously approved for incorporation by reference into the provisions where they appear in this rulemaking and no change to the standards are being made: AHRI 210/240–2008, AHRI 340/360–2007, and ISO Standard 13256–1.

*M. Congressional Notification*

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

determined that the rule is not a “major rule” as defined by 5 U.S.C. 804(2).

**VII. Approval of the Office of the Secretary**

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

**List of Subjects in 10 CFR Part 431**

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Laboratories, Reporting and recordkeeping requirements, Small businesses.

**Signing Authority**

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

Signed in Washington, DC, on May 17, 2023.

**Treena V. Garrett,**  
*Federal Register Liaison Officer, U.S. Department of Energy.*

For the reasons set forth in the preamble, DOE amends 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 § 431.92 by adding in alphabetical order a definition for “Ducted Condenser” to read as follows:

**§ 431.92 Definitions concerning commercial air conditioners and heat pumps.**

\* \* \* \* \*

*Ducted Condenser* means a configuration of *computer room air conditioner* for which the condenser or condensing unit that manufacturer’s installation instructions indicate is intended to exhaust condenser air through a duct(s).

\* \* \* \* \*

■ 3. Amend § 431.96 by revising table 1 to paragraph (b) to read as follows:

**§ 431.96 Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps.**

\* \* \* \* \*

(b) \* \* \*

TABLE 1 TO PARAGRAPH (b)—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS

Equipment type	Category	Cooling capacity or moisture removal capacity <sup>2</sup>	Energy efficiency descriptor	Use tests, conditions, and procedures <sup>1</sup> in	Additional test procedure provisions as indicated in the listed paragraphs of this section
Small Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled, 3-Phase, AC and HP.	<65,000 Btu/h .....	SEER and HSPF.	Appendix F to this subpart <sup>3</sup> .	None.
	Air-Cooled AC and HP	≥65,000 Btu/h and <135,000 Btu/h.	SEER2 and HSPF2. EER, IEER, and COP.	Appendix F1 to this subpart <sup>3</sup> . Appendix A of this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	<65,000 Btu/h .....	EER .....	AHRI 210/240–2008 (omit section 6.5).	Paragraphs (c) and (e).

<sup>18</sup>The 2007 “Energy Conservation Standards Rulemaking Peer Review Report” is available at [energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0](http://energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0) (Last accessed Nov. 8, 2022).

<sup>19</sup>The December 2021 NAS report is available at [www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards](http://www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards).

TABLE 1 TO PARAGRAPH (b)—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS—Continued

Equipment type	Category	Cooling capacity or moisture removal capacity <sup>2</sup>	Energy efficiency descriptor	Use tests, conditions, and procedures <sup>1</sup> in	Additional test procedure provisions as indicated in the listed paragraphs of this section
Large Commercial Package Air-Conditioning and Heating Equipment.	Water-Source HP ..... Air-Cooled AC and HP	≥65,000 Btu/h and <135,000 Btu/h. <135,000 Btu/h ..... ≥135,000 Btu/h and <240,000 Btu/h.	EER ..... EER and COP EER, IEER and COP.	AHRI 340/360–2007 (omit section 6.3). ISO Standard 13256–1 Appendix A to this subpart.	Paragraphs (c) and (e). Paragraph (e). None.
	Water-Cooled and Evaporatively-Cooled AC.	≥135,000 Btu/h and <240,000 Btu/h.	EER .....	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
Very Large Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP	≥240,000 Btu/h and <760,000 Btu/h.	EER, IEER and COP.	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	≥240,000 Btu/h and <760,000 Btu/h.	EER .....	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
Packaged Terminal Air Conditioners and Heat Pumps.	AC and HP .....	<760,000 Btu/h .....	EER and COP	Paragraph (g) of this section.	Paragraphs (c), (e), and (g).
Computer Room Air Conditioners.	AC .....	<760,000 Btu/h .....	SCOP .....	Appendix E to this subpart <sup>3</sup> .	None.
Variable Refrigerant Flow Multi-split Systems.	AC .....	<760,000 Btu/h or <930,000 Btu/h <sup>4</sup> . <65,000 Btu/h (3-phase).	NSenCOP .....	Appendix E1 to this subpart <sup>3</sup> .	None.
			SEER .....	Appendix F to this subpart <sup>3</sup> .	None.
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	HP .....	<65,000 Btu/h (3-phase).	SEER2 .....	Appendix F1 to this subpart <sup>3</sup> .	None.
			SEER and HSPF. SEER2 and HSPF2.	Appendix F to this subpart <sup>3</sup> .	None.
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	AC and HP .....	≥65,000 Btu/h and <760,000 Btu/h. ≥65,000 Btu/h and <760,000 Btu/h.	EER and COP	Appendix D of this subpart <sup>3</sup> .	None.
			IEER and COP	Appendix D1 of this subpart <sup>3</sup> .	None.
Variable Refrigerant Flow Multi-split Systems, Water-source.	HP .....	<760,000 Btu/h .....	EER and COP	Appendix D of this subpart <sup>3</sup> .	None.
			IEER and COP	Appendix D1 of this subpart <sup>3</sup> .	None.
Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps.	AC and HP .....	<760,000 Btu/h .....	EER and COP	Appendix G to this subpart <sup>3</sup> .	None.
			EER, IEER, and COP. ISMRE2 and IS COP2.	Appendix G1 to this subpart <sup>3</sup> .	None.
Direct Expansion-Dedicated Outdoor Air Systems.	All .....	<324 lbs. of moisture removal/hr.	ISMRE2 and IS COP2.	Appendix B of this subpart.	None.

<sup>1</sup> Incorporated by reference; see § 431.95.

<sup>2</sup> Moisture removal capacity applies only to direct expansion-dedicated outdoor air systems.

<sup>3</sup> For equipment with multiple appendices listed in this table, consult the notes at the beginning of those appendices to determine the applicable appendix to use for testing.

<sup>4</sup> For upflow ducted and downflow floor-mounted computer room air conditioners, the test procedure in appendix E1 of this subpart applies to equipment with net sensible cooling capacity less than 930,000 Btu/h. For all other configurations of computer room air conditioners, the test procedure in appendix E1 applies to equipment with net sensible cooling capacity less than 760,000 Btu/h.

\* \* \* \* \*

- 4. Section 431.97 is amended by:
  - a. Removing the words “Tables 1 through 6 of this section” and adding in their place the words “tables 1 through 6 to this paragraph (b)” in paragraph (b) introductory text;
  - b. Revising the headings to tables 5 and 6 in paragraph (b);
  - c. Removing the words “Table 7 of this section” and adding in their place

- the words “tables 7 to this paragraph (c)” and removing the words “Table 8 of this section” and adding in their place the words “table 8 to this paragraph (c)” in paragraph (c) introductory text;
- d. Revising the headings to tables 7 and 8 in paragraph (c);
- e. Revising the headings to tables 9, 10, and 11 in paragraphs (d)(1), (2), and (3), respectively;

- f. Revising paragraph (e);
- g. Removing the words “table 13 this section” and adding in their place the words “table 15 to this paragraph (f)(1)” in paragraph (f)(1) introductory text;
- h. Redesignating table 13 to § 431.97(f)(1) as table 15 to § 431.97(f)(1);
- i. Removing the words “table 14 of this section” and adding in their place the words “table 16 to this paragraph

(f)(2)” in paragraph (f)(2) introductory text;  
 ■ j. Redesignating table 14 to Paragraph (f)(2) to § 431.97 as table 16 and revising the heading;  
 ■ k. Removing the words “table 14 of this section” and adding in their place the words “table 17 to this paragraph (g)” in paragraph (g) introductory text;  
 ■ l. Redesignating table 15 as table 17 in paragraph (g) and revising the heading;  
 ■ m. Removing the words “tables 16 and 17 to this paragraph (h)” and adding in their place the words “tables 18 and 19 to this paragraph (h)” in paragraph (h) introductory text; and  
 ■ n. Redesignating tables 16 and 17 as tables 18 and 19 in paragraph (h).  
 The revisions read as follows:

**§ 431.97 Energy efficiency standards and their compliance dates.**  
 \* \* \* \* \*  
 (b) \* \* \*

**Table 5 to § 431.97(b)—Minimum Cooling Efficiency Standards for Double-Duct Air-Conditioning and Heating Equipment**  
 \* \* \* \* \*

**Table 6 to § 431.97(b)—Minimum Heating Efficiency Standards for Double-Duct Air-Cooled Air Conditioning and Heating Equipment**  
 \* \* \* \* \*  
 (c) \* \* \*

**Table 7 to § 431.97(c)—Minimum Efficiency Standards for PTAC and PTHP**  
 \* \* \* \* \*

**Table 8 to § 431.97(c)—Updated Minimum Efficiency Standards for PTAC**  
 \* \* \* \* \*  
 (d)(1) \* \* \*

**Table 9 to § 431.97(d)(1)—Minimum Efficiency Standards for Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps**  
 \* \* \* \* \*  
 (2) \* \* \*

**Table 10 to § 431.97(d)(2)—Minimum Efficiency Standards for Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps**  
 \* \* \* \* \*  
 (3) \* \* \*

**Table 11 to § 431.97(d)(3)—Updated Minimum Efficiency Standards for Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps**  
 \* \* \* \* \*

(e)(1) Each computer room air conditioner with a net sensible cooling capacity less than 65,000 Btu/h manufactured on or after October 29, 2012, and before May 28, 2024 and each computer room air conditioner with a net sensible cooling capacity greater than or equal to 65,000 Btu/h and less than 760,000 Btu/h manufactured on or after October 29, 2013, and before May 28, 2024 must meet the applicable minimum energy efficiency standard level(s) set forth in table 12 to this paragraph (e)(1).

TABLE 12 TO § 431.97(e)(1)—MINIMUM EFFICIENCY STANDARDS FOR COMPUTER ROOM AIR CONDITIONERS

Equipment type	Net sensible cooling capacity	Minimum SCOP efficiency	
		Downflow	Upflow
Air-Cooled .....	<65,000 Btu/h .....	2.20	2.09
	≥65,000 Btu/h and <240,000 Btu/h .....	2.10	1.99
	≥240,000 Btu/h and <760,000 Btu/h .....	1.90	1.79
Water-Cooled .....	<65,000 Btu/h .....	2.60	2.49
	≥65,000 Btu/h and <240,000 Btu/h .....	2.50	2.39
	≥240,000 Btu/h and <760,000 Btu/h .....	2.40	2.29
Water-Cooled with Fluid Economizer .....	<65,000 Btu/h .....	2.55	2.44
	≥65,000 Btu/h and <240,000 Btu/h .....	2.45	2.34
	≥240,000 Btu/h and <760,000 Btu/h .....	2.35	2.24
Glycol-Cooled .....	<65,000 Btu/h .....	2.50	2.39
	≥65,000 Btu/h and <240,000 Btu/h .....	2.15	2.04
	≥240,000 Btu/h and <760,000 Btu/h .....	2.10	1.99
Glycol-Cooled with Fluid Economizer .....	<65,000 Btu/h .....	2.45	2.34
	≥65,000 Btu/h and <240,000 Btu/h .....	2.10	1.99
	≥240,000 Btu/h and <760,000 Btu/h .....	2.05	1.94

(2) Each computer room air conditioner manufactured on or after May 28, 2024 must meet the applicable minimum energy efficiency standard level(s) set forth in tables 13 and 14 to this paragraph (e)(2).

TABLE 13 TO § 431.97(e)(2)—UPDATED MINIMUM EFFICIENCY STANDARDS FOR FLOOR-MOUNTED COMPUTER ROOM AIR CONDITIONERS

Equipment type	Downflow and upflow ducted			Upflow non-ducted and horizontal flow		
	Net sensible cooling capacity	Minimum NSenCOP efficiency		Net sensible cooling capacity	Minimum NSenCOP efficiency	
		Downflow	Upflow ducted		Upflow non-ducted	Horizontal flow
Air-Cooled .....	<80,000 Btu/h .....	2.70	2.67	<65,000 Btu/h .....	2.16	2.65
	≥80,000 Btu/h and <295,000 Btu/h.	2.58	2.55	≥65,000 Btu/h and <240,000 Btu/h.	2.04	2.55
	≥295,000 Btu/h and <930,000 Btu/h.	2.36	2.33	≥240,000 Btu/h and <760,000 Btu/h.	1.89	2.47
Air-Cooled with Fluid Economizer.	<80,000 Btu/h .....	2.70	2.67	<65,000 Btu/h .....	2.09	2.65

TABLE 13 TO § 431.97(e)(2)—UPDATED MINIMUM EFFICIENCY STANDARDS FOR FLOOR-MOUNTED COMPUTER ROOM AIR CONDITIONERS—Continued

Equipment type	Downflow and upflow ducted			Upflow non-ducted and horizontal flow		
	Net sensible cooling capacity	Minimum NSenCOP efficiency		Net sensible cooling capacity	Minimum NSenCOP efficiency	
		Downflow	Upflow ducted		Upflow non-ducted	Horizontal flow
Water-Cooled .....	≥80,000 Btu/h and <295,000 Btu/h.	2.58	2.55	≥65,000 Btu/h and <240,000 Btu/h.	1.99	2.55
	≥295,000 Btu/h and <930,000 Btu/h.	2.36	2.33	≥240,000 Btu/h and <760,000 Btu/h.	1.81	2.47
	<80,000 Btu/h .....	2.82	2.79	<65,000 Btu/h .....	2.43	2.79
	≥80,000 Btu/h and <295,000 Btu/h.	2.73	2.70	≥65,000 Btu/h and <240,000 Btu/h.	2.32	2.68
Water-Cooled with Fluid Economizer.	≥295,000 Btu/h and <930,000 Btu/h.	2.67	2.64	≥240,000 Btu/h and <760,000 Btu/h.	2.20	2.60
	<80,000 Btu/h .....	2.77	2.74	<65,000 Btu/h .....	2.35	2.71
Glycol-Cooled .....	≥80,000 Btu/h and <295,000 Btu/h.	2.68	2.65	≥65,000 Btu/h and <240,000 Btu/h.	2.24	2.60
	≥295,000 Btu/h and <930,000 Btu/h.	2.61	2.58	≥240,000 Btu/h and <760,000 Btu/h.	2.12	2.54
	<80,000 Btu/h .....	2.56	2.53	<65,000 Btu/h .....	2.08	2.48
	≥80,000 Btu/h and <295,000 Btu/h.	2.24	2.21	≥65,000 Btu/h and <240,000 Btu/h.	1.90	2.18
Glycol-Cooled with Fluid Economizer.	≥295,000 Btu/h and <930,000 Btu/h.	2.21	2.18	≥240,000 Btu/h and <760,000 Btu/h.	1.81	2.18
	<80,000 Btu/h .....	2.51	2.48	<65,000 Btu/h .....	2.00	2.44
	≥80,000 Btu/h and <295,000 Btu/h.	2.19	2.16	≥65,000 Btu/h and <240,000 Btu/h.	1.82	2.10
	≥295,000 Btu/h and <930,000 Btu/h.	2.15	2.12	≥240,000 Btu/h and <760,000 Btu/h.	1.73	2.10

TABLE 14 TO § 431.97(e)(2)—MINIMUM EFFICIENCY STANDARDS FOR CEILING-MOUNTED COMPUTER ROOM AIR CONDITIONERS

Equipment type	Net sensible cooling capacity	Minimum NSenCOP efficiency	
		Ducted	Non-ducted
Air-Cooled with Free Air Discharge Condenser .....	<29,000 Btu/h .....	2.05	2.08
	≥29,000 Btu/h and <65,000 Btu/h .....	2.02	2.05
	≥65,000 Btu/h and <760,000 Btu/h .....	1.92	1.94
Air-Cooled with Free Air Discharge Condenser and Fluid Economizer.	<29,000 Btu/h .....	2.01	2.04
	≥29,000 Btu/h and <65,000 Btu/h .....	1.97	2
Air-Cooled with Ducted Condenser .....	≥65,000 Btu/h and <760,000 Btu/h .....	1.87	1.89
	<29,000 Btu/h .....	1.86	1.89
Air-Cooled with Fluid Economizer and Ducted Condenser.	≥29,000 Btu/h and <65,000 Btu/h .....	1.83	1.86
	≥65,000 Btu/h and <760,000 Btu/h .....	1.73	1.75
	<29,000 Btu/h .....	1.82	1.85
Water-Cooled .....	≥29,000 Btu/h and <65,000 Btu/h .....	1.78	1.81
	≥65,000 Btu/h and <760,000 Btu/h .....	1.68	1.7
	<29,000 Btu/h .....	2.38	2.41
Water-Cooled with Fluid Economizer .....	≥29,000 Btu/h and <65,000 Btu/h .....	2.28	2.31
	≥65,000 Btu/h and <760,000 Btu/h .....	2.18	2.2
	<29,000 Btu/h .....	2.33	2.36
Glycol-Cooled .....	≥29,000 Btu/h and <65,000 Btu/h .....	2.23	2.26
	≥65,000 Btu/h and <760,000 Btu/h .....	2.13	2.16
	<29,000 Btu/h .....	1.97	2
Glycol-Cooled with Fluid Economizer .....	≥29,000 Btu/h and <65,000 Btu/h .....	1.93	1.98
	≥65,000 Btu/h and <760,000 Btu/h .....	1.78	1.81
	<29,000 Btu/h .....	1.92	1.95
	≥29,000 Btu/h and <65,000 Btu/h .....	1.88	1.93
	≥65,000 Btu/h and <760,000 Btu/h .....	1.73	1.76

(f) \* \* \*  
(2) \* \* \*

**Table 16 to § 497.31(f)(2)—Updated Minimum Efficiency Standards for Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps**

\* \* \* \* \*  
(g) \* \* \*

**Table 17 to § 497.31(g)—Minimum Efficiency Standards for Direct Expansion-Dedicated Outdoor Air Systems**

\* \* \* \* \*

**Note:** The following letter will not appear in the Code of Federal Regulations.

U.S. Department of Justice, Antitrust Division, Jonathan S. Kanter, Assistant Attorney General, Main Justice Building, 950 Pennsylvania Avenue NW, Washington, DC 20530-0001, (202) 514-2401/(202) 616-2645 (Fax).

May 6, 2022

Ami Grace-Tardy, Assistant General Counsel for Litigation, Regulation

and Energy Efficiency, U.S. Department of Energy, Washington, DC 20585.

Re: Amended standards for computer room air conditioners (CRACs). DOE Docket No. EERE-2018-BT-STD-0008

Dear Assistant General Counsel Grace-Tardy: I am responding to your March 7, 2022, letter seeking the views of the Attorney General about the potential impact on competition of the DOE's proposed amended standards for computer room air conditioners (CRACs).

The Attorney General must determine the impact, if any, of any lessening of competition likely to result from a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V); 42 U.S.C. 313(a)(6)(B)(ii)(V); 42 U.S.C. 6316(a)). The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR 0.40(g).

In conducting its analysis, the Antitrust Division examines whether a proposed standard may lessen competition, for example, by substantially limiting consumer choice or increasing industry concentration. A lessening of competition could result in higher prices to manufacturers and consumers.

We have reviewed the proposed standards contained in the Notice of Proposed Rulemaking (87 FR 12,802, Mar. 7, 2022). We have also reviewed information presented at the public meeting held via webinar on Wednesday, April 13, 2022.

While industry participants may still be evaluating the impact of the new standards, the Division has not identified any issues to date that suggest the standards are likely to lessen competition.

Sincerely,

Jonathan S. Kanter

[FR Doc. 2023-10859 Filed 6-1-23; 8:45 am]

**BILLING CODE 6450-01-P**



# FEDERAL REGISTER

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Part IV

Department of Defense

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General Services Administration

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National Aeronautics and Space Administration

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48 CFR Chapter 1

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Federal Acquisition Regulations; Interim and Final Rules

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Chapter 1**

[Docket No. FAR–2023–0051, Sequence No. 3]

**Federal Acquisition Regulation;  
Federal Acquisition Circular 2023–04;  
Introduction**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Summary presentation of an interim rule.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2023–04. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

**DATES:** For effective dates see the separate documents, which follow.

**FOR FURTHER INFORMATION CONTACT:** *Farpolicy@gsa.gov* or call 202–969–4075 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov*. Please cite FAC 2023–04, FAR Case 2023–010.

**Rule Listed in FAC 2023–04**

*Subject:* Prohibition on a ByteDance Covered Application.

*Far Case:* 2023–010.

**ADDRESSES:** The FAC, including the SECG, is available at <https://www.regulations.gov>.

**SUPPLEMENTARY INFORMATION:** A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR rule, refer to the specific subject set forth in the document following this summary. FAC 2023–04 amends the FAR as follows:

**Prohibition on a ByteDance Covered Application (FAR Case 2023–010)**

This interim rule amends the Federal Acquisition Regulation to implement the prohibition on having or using the social networking service TikTok or any successor application or service developed or provided by ByteDance

Limited or an entity owned by ByteDance Limited (“covered application”). The rule prohibits the presence or use of a covered application on information technology, including certain equipment used by Federal contractors. This prohibition applies to devices regardless of whether the device is owned by the Government, the contractor, or the contractor’s employees (e.g., employee-owned devices that are used as part of an employer bring your own device (BYOD) program). A personally-owned cell phone that is not used in the performance of the contract is not subject to the prohibition.

This rule implements section 102 of Division R of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), the No TikTok on Government Devices Act, and its implementing guidance under Office of Management and Budget Memorandum M–23–13, “No TikTok on Government Devices” Implementation Guidance. This rule applies to all contracts, including contracts at or below the simplified acquisition threshold, contracts for commercial products (including commercially available off-the-shelf items), and for commercial services. The change is not expected to have a significant economic impact on a substantial number of small entities. This interim rule is being implemented as a national security measure to protect Government information and communication technology systems.

**Janet Fry,**

*Deputy Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.*

Federal Acquisition Circular (FAC) 2023–04 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2023–04 is effective June 2, 2023.

John M. Tenaglia,  
*Principal Director, Defense Pricing and Contracting, Department of Defense.*

Jeffrey A. Koses,  
*Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.*

Marvin L. Home,  
*Deputy Assistant Administrator for Procurement, Agency Procurement Ombudsman/Competition Advocate,*

*National Aeronautics and Space Administration.*

[FR Doc. 2023–11755 Filed 6–1–23; 8:45 am]

**BILLING CODE 6820–EP–P**

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 4, 13, 39 and 52**

[FAC 2023–04; FAR Case 2023–010; Docket No. 2023–0010, Sequence No. 1]

**RIN 9000–AO58**

**Federal Acquisition Regulation:  
Prohibition on a ByteDance Covered  
Application**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule.

**SUMMARY:** DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement a section of the Consolidated Appropriations Act, 2023, and its implementing guidance.

**DATES:** Effective June 2, 2023.

**Applicability:**

- Contracting officers shall include the clause at FAR 52.204–27, Prohibition on a ByteDance Covered Application—
    - In solicitations issued on or after June 2, 2023; and
    - In solicitations issued before the effective date, provided award of the resulting contract(s) occurs on or after the effective date. The amendment of the solicitation must be accomplished by July 3, 2023.
  - For existing indefinite-delivery contracts only, contracting officers shall modify them, in accordance with FAR 1.108(d)(3), to include the FAR clause at 52.204–27, Prohibition on a ByteDance Covered Application, by July 3, 2023, to apply to future orders.
  - If exercising an option or modifying an existing contract or task or delivery order to extend the period of performance, contracting officers shall include the clause. When exercising an option, agencies should consider modifying the existing contract to add the clause in a sufficient amount of time before exercising the option and to provide contractors with adequate time to comply with the clause.
- Agencies whose mission or operational posture prevents



compliance with the timelines above must notify the Federal Chief Information Officer by sending a message to [ofcio@omb.eop.gov](mailto:ofcio@omb.eop.gov) prior to July 3, 2023.

*Comment Date:* Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before August 1, 2023 to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to FAC 2023–04, FAR Case 2023–010 to the Federal eRulemaking portal at <https://www.regulations.gov> by searching for “FAR Case 2023–010”. Select the link “Comment Now” that corresponds with “FAR Case 2023–010”. Follow the instructions provided on the “Comment Now” screen. Please include your name, company name (if any), and “FAR Case 2023–010” on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

*Instructions:* Please submit comments only and cite “FAR Case 2023–010” in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at <https://www.regulations.gov/faq>). To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

**FOR FURTHER INFORMATION CONTACT:** [Farpolicy@gsa.gov](mailto:Farpolicy@gsa.gov) or call 202–969–4075. Please cite FAR Case 2023–010. For information pertaining to status, publication schedules, or alternate instructions for submitting comments if <https://www.regulations.gov> cannot be used, contact the Regulatory Secretariat Division at 202–501–4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). Please cite FAC 2023–04, FAR Case 2023–010.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

This interim rule implements section 102 of Division R of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), the No TikTok on Government Devices Act, and its implementing guidance under OMB Memorandum M–23–13, dated February 27, 2023, “No TikTok on Government Devices” Implementation Guidance. The rule revises the FAR to implement the

prohibition on having or using the social networking service TikTok or any successor application or service developed or provided by ByteDance Limited or an entity owned by ByteDance Limited (“covered application”). This prohibition applies to the presence or use of any covered application on any information technology owned or managed by the Government, or on any information technology used or provided by the contractor under a contract, including equipment provided by the contractor’s employees, unless an exception is granted in accordance with Office of Management and Budget (OMB) Memorandum M–23–13.

TikTok is a software application owned and operated by ByteDance Limited, a privately held company headquartered in Beijing, China. The Consolidated Appropriations Act, 2023, enacted the No TikTok on Government Devices Act, which instructs the Director of OMB, in consultation with the Administrator of General Services, the Director of the Cybersecurity and Infrastructure Security Agency, the Director of National Intelligence, and the Secretary of Defense, to develop standards and guidelines for agencies requiring the removal of TikTok from Federal information technology.

OMB Memorandum M–23–13 fulfills the requirement of section 102 of Division R of Public Law 117–328 by directing agencies to remove any covered application (“TikTok”) from Federal devices and providing instructions and deadlines for that removal.

##### **II. Discussion and Analysis**

This rule amends FAR part 4, adding a new subpart 4.22, Prohibition on a ByteDance Covered Application, with a corresponding new contract clause at 52.204–27, Prohibition on a ByteDance Covered Application.

This rule uses the statutory definition of “information technology” because Public Law 117–328 does so. This is different from the FAR definition of “information technology” at 2.101, which excludes imbedded information technology.

This rule adds text in subpart 13.2, Actions at or Below the Micro-Purchase Threshold, to address the prohibition with regard to micro-purchases.

This rule adds a cross-reference in part 39, Acquisition of Information Technology, to call the attention of contracting officers to the new prohibition.

The FAR clause at 52.204–27 prohibits contractors from having or using a covered application on any

information technology owned or managed by the Government, or on any information technology used or provided by the contractor under a contract, including equipment provided by the contractor’s employees.

This prohibition applies to devices regardless of whether the device is owned by the Government, the contractor, or the contractor’s employees (e.g., employee-owned devices that are used as part of an employer bring your own device (BYOD) program). A personally-owned cell phone that is not used in the performance of the contract is not subject to the prohibition.

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

This rule adds a new clause at FAR 52.204–27, Prohibition on a ByteDance Covered Application, to implement the requirements of section 102 of Division R of Public Law 117–328, and its implementing guidance under OMB Memorandum M–23–13. The clause is prescribed at FAR 4.2203 for use in solicitations and contracts unless an exception is granted in accordance with OMB Memorandum M–23–13.

###### *A. Applicability to Contracts at or Below the Simplified Acquisition Threshold*

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the SAT. Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law under certain circumstances, including when the Federal Acquisition Regulatory Council (FAR Council) makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law. The FAR Council has made a determination to apply this statute to acquisitions at or below the SAT.

###### *B. Applicability to Contracts for the Acquisition of Commercial Products and Commercial Services, Including Commercially Available Off-the-Shelf (COTS) Items*

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial products and commercial services and is intended to limit the applicability of laws to

contracts for the acquisition of commercial products and commercial services. Section 1906 provides that if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial contracts, the provision of law will apply to contracts for the acquisition of commercial products and commercial services.

41 U.S.C. 1907 states that acquisitions of COTS items will be exempt from certain provisions of law unless the Administrator for Federal Procurement Policy makes a written determination and finds that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items.

The FAR Council has made a determination to apply this statute to acquisitions for commercial products and commercial services. The Administrator for Federal Procurement Policy has made a determination to apply this statute to acquisitions for COTS items.

### C. Determinations

The FAR Council has determined that it is in the best interest of the Government to apply the rule to contracts at or below the SAT and for the acquisition of commercial products and commercial services. The Administrator for Federal Procurement Policy has determined that it is in the best interest of the Government to apply this rule to contracts for the acquisition of COTS items.

While the law does not specifically address acquisitions of commercial products and commercial services, including COTS items, there is an unacceptable level of risk for the Government in allowing the presence or use of a covered application on information technology, including certain equipment used by Federal contractors. This level of risk is not alleviated by the fact that the service or product being acquired has been sold or offered for sale to the general public, either in the same form or a modified form as sold to the Government (*i.e.*, that it is a commercial product or COTS item), nor by the small size of the purchase (*i.e.*, at or below the SAT). As a result, agencies may face increased risk of exposure if the presence or use of a covered application is allowed on a contract for commercial services or commercial products (including COTS items). The prohibition on having or using a covered application on information technology, including certain equipment used by Federal contractors, is a national security measure to protect Government

information and information and communication technology systems.

### IV. Expected Impact of the Rule

This rule is not expected to have a significant economic impact on businesses. The changes made in this rule are less complex than other prohibitions that have been incorporated into the FAR, such as the prohibition on contracting for certain telecommunications and video surveillance services or equipment, which requires reviewing a contractor's supply chain to uncover any prohibited equipment or services. See FAR clause 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. The changes made by this rule do not require a contractor to review its supply chain. Additionally, there is no reporting requirement by a contractor such as those required by 52.204–25, and by FAR clause 52.204–23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities. The changes made by this rule do require contractors to leverage existing technology, policies, and procedures already in place and update those to prohibit the presence or use of a covered application or the URLs associated with a covered application on devices used by a contractor under a contract with the Government. It is expected that contractors already have technology in place to block access to unwanted or nefarious websites, prevent the download of prohibited applications (apps) to devices, and remove a downloaded app. Additionally, it is expected that contractors already have policies in place for employees to follow for workplace technology. It is recognized that these policies will need to be updated to include the prohibition on having or using a covered application, and that implementation of the prohibition may also require employee communications or training on this new requirement. It will be particularly important for contractors to clearly explain to their employees when a covered application is prohibited on a personal device used in performance of a Federal contract.

The efforts required by a contractor to update its technology and policies to implement the prohibition on having or using TikTok will be limited to an initial review of technology and policies for TikTok or any successor application or service and will only require review of policies periodically thereafter. This is also quite different from prohibitions

that require frequent reviews of the supply chain.

### 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 a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

### VI. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801–808) requires interim and final rules to be submitted to Congress before the rule takes effect. DoD, GSA, and NASA will send this rule to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804.

### VII. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612, because of the reasons discussed in section IV of this preamble. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

DoD, GSA, and NASA are amending the FAR to implement the prohibition on having or using the social networking service TikTok or any successor application or service developed or provided by ByteDance Limited or an entity owned by ByteDance Limited (“covered application”). The rule prohibits the presence or use of a covered application on agency information technology, including certain equipment used by Federal contractors.

This interim rule is being implemented as a national security measure to protect Government information and information and communication technology systems. The legal basis for the rule is section 102 of Division R of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), and its implementing guidance under OMB Memorandum M–23–13, which collectively prohibit the presence or use of a covered application on information technology, including certain equipment used by Federal

contractors. Promulgation of the FAR is authorized by 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

This rule applies to small and other than small businesses. Based on data obtained from the Federal Procurement Data System, 116,133 unique entities (including 76,206 small businesses) were awarded contracts in FY 2022. DoD, GSA, and NASA do not have data as to how many subcontracts are awarded to small businesses.

The proposed rule does not include any reporting or record keeping requirements.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no available alternatives to the interim rule to accomplish the desired objective of the statute. Because of the nature of the prohibition enacted by section 102 of Division R of Public Law 117–328, it is not possible to exempt small entities from coverage of the rule.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2023–010), in correspondence.

#### 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. 3501–3521).

#### IX. Determination To Issue an Immediately Effective Interim Rule

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration that urgent and compelling reasons exist to promulgate this interim rule effective immediately without prior opportunity for public comment. This action is necessary because section 102 of Division R of Public Law 117–328 and its implementing guidance under OMB Memorandum M–23–13 require agencies to comply with the prohibition on a covered application in contracts no later than 120 days after the effective

date of the Memorandum. This interim rule is being implemented as a national security measure to protect Government information and information and communication technology systems. Issuing an interim rule facilitates uniformity and consistency across Government, allows agencies to prepare for the implementation of the requirements of OMB Memorandum M–23–13, limits the chance of incorrect implementation, prevents the need for contracting officers to have to relearn or change procedures if agency-specific guidance differs from the FAR implementation, and aids industry with compliance. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), the Department of Defense, General Services Administration, and National Aeronautics and Space Administration will consider public comments received in response to this interim rule in the formation of the final rule.

#### List of Subjects in 48 CFR Parts 4, 13, 39, and 52

Government procurement.

#### Janet Fry,

*Deputy Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 13, 39, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 13, 39, and 52 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

#### PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

■ 2. Add subpart 4.22 to read as follows:

##### Subpart 4.22—Prohibition on a ByteDance Covered Application

Sec.  
4.2201 Definitions.  
4.2202 Prohibition.  
4.2203 Contract clause.

##### Subpart 4.22—Prohibition on a ByteDance Covered Application

###### 4.2201 Definitions.

As used in this subpart—

*Covered application* means the social networking service TikTok or any successor application or service developed or provided by ByteDance Limited or an entity owned by ByteDance Limited.

*Information technology*, as defined in 40 U.S.C. 11101(6)—

(1) Means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency that requires the use—

(i) Of that equipment; or

(ii) Of that equipment to a significant extent in the performance of a service or the furnishing of a product;

(2) Includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; but

(3) Does not include any equipment acquired by a Federal contractor incidental to a Federal contract.

#### 4.2202 Prohibition.

(a) Section 102 of Division R of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), the No TikTok on Government Devices Act, and its implementing guidance under Office of Management and Budget (OMB) Memorandum M–23–13, dated February 27, 2023, “No TikTok on Government Devices” Implementation Guidance, collectively prohibit the presence or use of a covered application on information technology, including certain equipment used by Federal contractors.

(b) This prohibition applies to the presence or use of a covered application on any information technology owned or managed by the Government, or on any information technology used or provided by the contractor under a contract, including equipment provided by the contractor’s employees, unless an exception is granted in accordance with OMB Memorandum M–23–13.

#### 4.2203 Contract clause.

The contracting officer shall insert the clause at 52.204–27, Prohibition on a ByteDance Covered Application, in all solicitations and contracts, unless an exception is granted in accordance with OMB Memorandum M–23–13.

#### PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 3. Amend section 13.201 by adding paragraph (k) to read as follows:

13.201 General.

\* \* \* \* \*

(k) The prohibition in subpart 4.22 on use of a covered application ("TikTok") applies to purchases at or below the micro-purchase threshold where the performance of the contract may require the presence or use of a covered application, (e.g., where social media advertising services might be part of the procurement), unless an exception is granted in accordance with Office of Management and Budget Memorandum M-23-13 (see 4.2202).

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

■ 4. Amend section 39.101 by adding paragraph (g) to read as follows:

39.101 Policy.

\* \* \* \* \*

(g) See the prohibition in 4.2202 on the presence or use of a covered application ("TikTok").

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Add section 52.204–27 to read as follows:

52.204–27 Prohibition on a ByteDance Covered Application.

As prescribed in 4.2203, insert the following clause:

Prohibition on a ByteDance Covered Application (June 2023)

(a) Definitions. As used in this clause— Covered application means the social networking service TikTok or any successor application or service developed or provided by ByteDance Limited or an entity owned by ByteDance Limited.

Information technology, as defined in 40 U.S.C. 11101(6)—

(1) Means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency that requires the use—

(i) Of that equipment; or (ii) Of that equipment to a significant extent in the performance of a service or the furnishing of a product;

(2) Includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; but

(3) Does not include any equipment acquired by a Federal contractor incidental to a Federal contract.

(b) Prohibition. Section 102 of Division R of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), the No TikTok on Government Devices Act, and its implementing guidance under Office of Management and Budget (OMB) Memorandum M-23-13, dated February 27, 2023, "No TikTok on Government Devices" Implementation Guidance, collectively prohibit the presence or use of a covered application on executive agency information technology, including certain equipment used by Federal contractors. The Contractor is prohibited from having or using a covered application on any information technology owned or managed by the Government, or on any information technology used or provided by the Contractor under this contract, including equipment provided by the Contractor's employees; however, this prohibition does not apply if the Contracting Officer provides written notification to the Contractor that an exception has been granted in accordance with OMB Memorandum M-23-13.

(c) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for the acquisition of commercial products or commercial services.

(End of clause)

- 6. Amend section 52.212–5 by—
■ a. Revising the date of the clause;
■ b. Redesignating paragraphs (b)(8) through (63) as paragraphs (b)(9) through (64);
■ c. Adding a new paragraph (b)(8);
■ d. Redesignating paragraphs (e)(1)(v) through (xxiii) as paragraphs (e)(1)(vi) through (xxiv);
■ e. Adding a new paragraph (e)(1)(v);
■ f. In Alternate II:
■ i. Revising the date of the Alternate;
■ ii. Redesignating paragraphs (e)(1)(ii)(E) through (V) as paragraphs (e)(1)(ii)(F) through (W); and
■ iii. Adding a new paragraph (e)(1)(ii)(E).

The revisions and additions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

\* \* \* \* \*

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (June 2023)

\* \* \* \* \*

(b) \* \* \*
(8) 52.204–27, Prohibition on a ByteDance Covered Application (June 2023) (Section 102 of Division R of Pub. L. 117–328).

\* \* \* \* \*

(e)(1) \* \* \*

(v) 52.204–27, Prohibition on a ByteDance Covered Application (June 2023) (Section 102 of Division R of Pub. L. 117–328).

\* \* \* \* \*

Alternate II (June 2023). \* \* \*

\* \* \* \* \*

(e)(1) \* \* \*

(ii) \* \* \*

(E) 52.204–27, Prohibition on a ByteDance Covered Application (June 2023) (Section 102 of Division R of Pub. L. 117–328).

\* \* \* \* \*

- 7. Amend section 52.213–4 by—
■ a. Revising the date of the clause;
■ b. Redesignating paragraphs (a)(1)(iv) through (x) as paragraphs (a)(1)(v) through (xi);
■ c. Adding a new paragraph (a)(1)(iv); and
■ d. Removing from paragraph (a)(2)(vii) "(MAR 2023)" and adding "(June 2023)" in its place.

The revision and addition read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

\* \* \* \* \*

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) (June 2023)

(a) \* \* \*

(1) \* \* \*

(iv) 52.204–27, Prohibition on a ByteDance Covered Application (June 2023) (Section 102 of Division R of Pub. L. 117–328), unless the agency grants an exception—see paragraph (b) of 52.204–27.

\* \* \* \* \*

- 8. Amend section 52.244–6 by—
■ a. Revising the date of the clause;
■ b. Redesignating paragraphs (c)(1)(vii) through (xx) as paragraphs (c)(1)(viii) through (xxi); and
■ c. Adding a new paragraph (c)(1)(vii).

The revision and addition read as follows:

52.244–6 Subcontracts for Commercial Products and Commercial Services.

\* \* \* \* \*

Subcontracts for Commercial Products and Commercial Services (June 2023)

\* \* \* \* \*

(c)(1) \* \* \*

(vii) 52.204–27, Prohibition on a ByteDance Covered Application (June 2023) (Section 102 of Division R of Pub. L. 117–328).

\* \* \* \* \*

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Chapter 1**

[Docket No. FAR–2023–0051, Sequence No. 3]

**Federal Acquisition Regulation;  
Federal Acquisition Circular 2023–04;  
Small Entity Compliance Guide**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Small Entity Compliance Guide (SECG).

**SUMMARY:** This document is issued under the joint authority of DoD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2023–04, which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding this rule by referring to FAC 2023–04, which precedes this document.

**DATES:** June 2, 2023.

**ADDRESSES:** The FAC, including the SECG, is available at <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** *Farpolicy@gsa.gov* or call 202–969–4075 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov*. Please cite FAC 2023–04, FAR Case 2023–010. An asterisk (\*) next to a rule indicates that a regulatory flexibility analysis has been prepared.

**Rule Listed in FAC 2023–04**

*Subject:* \*Prohibition on a ByteDance Covered Application.

*FAR Case:* 2023–010.

**SUPPLEMENTARY INFORMATION:** A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR rule, refer to the specific subject set forth in the document preceding this summary. FAC 2023–04 amends the FAR as follows:

**Prohibition on a ByteDance Covered Application (FAR Case 2023–010)**

This interim rule amends the Federal Acquisition Regulation to implement the prohibition on having or using the social networking service TikTok or any successor application or service developed or provided by ByteDance Limited or an entity owned by ByteDance Limited (“covered application”). The rule prohibits the presence or use of a covered application on information technology, including certain equipment used by Federal contractors. This prohibition applies to devices regardless of whether the device is owned by the Government, the

contractor, or the contractor’s employees (e.g., employee-owned devices that are used as part of an employer bring your own device (BYOD) program). A personally-owned cell phone that is not used in the performance of the contract is not subject to the prohibition.

This rule implements section 102 of Division R of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), the No TikTok on Government Devices Act, and its implementing guidance under Office of Management and Budget Memorandum M–23–13, “No TikTok on Government Devices” Implementation Guidance. This rule applies to all contracts, including contracts at or below the simplified acquisition threshold, contracts for commercial products (including commercially available off-the-shelf items), and for commercial services. The change is not expected to have a significant economic impact on a substantial number of small entities. This interim rule is being implemented as a national security measure to protect Government information and information and communication technology systems.

**Janet Fry,**

*Deputy Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.*

[FR Doc. 2023–11757 Filed 6–1–23; 8:45 am]

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