



# FEDERAL REGISTER

---

Vol. 88

Thursday,

No. 187

September 28, 2023

Pages 66677–67054

OFFICE OF THE FEDERAL REGISTER



The **FEDERAL REGISTER** (ISSN 0097-6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see [www.federalregister.gov](http://www.federalregister.gov).

The seal of the National Archives and Records Administration authenticates the **Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at [www.govinfo.gov](http://www.govinfo.gov), a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, [gpocusthelp.com](mailto:gpocusthelp.com).

The annual subscription price for the **Federal Register** paper edition is \$860 plus postage, or \$929, for a combined **Federal Register**, **Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is \$330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: \$11 for an issue containing less than 200 pages; \$22 for an issue containing 200 to 400 pages; and \$33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for \$3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see [bookstore.gpo.gov](http://bookstore.gpo.gov).

There are no restrictions on the republication of material appearing in the **Federal Register**.

**How To Cite This Publication:** Use the volume number and the page number. Example: 88 FR 12345.

**Postmaster:** Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

## SUBSCRIPTIONS AND COPIES

### PUBLIC

#### Subscriptions:

Paper or fiche 202-09512-1800  
Assistance with public subscriptions 202-512-1806

General online information 202-512-1530; 1-888-293-6498

#### Single copies/back copies:

Paper or fiche 202-512-1800  
Assistance with public single copies 1-866-512-1800  
(Toll-Free)

### FEDERAL AGENCIES

#### Subscriptions:

Assistance with Federal agency subscriptions:  
Email [FRSubscriptions@nara.gov](mailto:FRSubscriptions@nara.gov)  
Phone 202-741-6000

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: <https://www.gpo.gov/frsubs>.



# Contents

## Federal Register

Vol. 88, No. 187

Thursday, September 28, 2023

### Agriculture Department

*See Food and Nutrition Service*

*See Rural Utilities Service*

### Bureau of Consumer Financial Protection

#### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66820–66821

### Centers for Medicare & Medicaid Services

#### NOTICES

Meetings:

Medicare Program; Town Hall on the Fiscal Year 2025 Applications for New Medical Services and Technologies Add-On Payments, 66850–66853

### Children and Families Administration

#### RULES

Separate Licensing or Approval Standards for Relative or Kinship Foster Family Homes, 66700–66709

#### PROPOSED RULES

Foster Care Legal Representation, 66769–66780  
Safe and Appropriate Foster Care Placement Requirements for Titles IV–E and IV–B, 66752–66769

### Coast Guard

#### RULES

Safety Zone:

Lake Erie, Buffalo, NY, 66686–66687

### Commerce Department

*See Foreign-Trade Zones Board*

*See Industry and Security Bureau*

*See International Trade Administration*

*See National Oceanic and Atmospheric Administration*

### Comptroller of the Currency

#### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66933–66939

### Consumer Product Safety Commission

#### PROPOSED RULES

Rules of Practice for Adjudicative Proceedings, 66722

### Defense Acquisition Regulations System

#### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
Defense Federal Acquisition Regulation Supplement Part 247, Transportation and Related Clauses, 66825–66826  
Defense Federal Acquisition Regulation Supplement; Inspection and Receiving Report, 66821–66822  
Defense Federal Acquisition Regulation Supplement; Occupational Safety, Drug-Free Work Force and Related Clauses, 66822–66823  
Defense Federal Acquisition Regulation Supplement; Part 215 Negotiation, 66824–66825  
Defense Federal Acquisition Regulation Supplement; Part 251, Use of Government Sources by Contractors, 66823

Defense Federal Acquisition Regulation Supplement; Small Business Programs, 66824

DoD Pilot Mentor-Protege Program, 66823–66824

### Defense Department

*See Defense Acquisition Regulations System*

#### NOTICES

Privacy Act; Systems of Records, 66826–66829

### Delaware River Basin Commission

#### PROPOSED RULES

Rules of Practice and Procedure, 66722–66728

### Education Department

#### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
Annual State Application Under Part C of the Individuals with Disabilities Act, 66829–66830  
Application for Grants under the Talent Search Program, 66829  
Application for Grants: National Resource Centers Program and Foreign Language and Area Studies Fellowships Program, 66830–66831

### Employee Benefits Security Administration

#### PROPOSED RULES

Requirements Related to the Mental Health Parity and Addiction Equity Act, 66728–66730

### Employment and Training Administration

#### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
Department of Labor-only Performance Accountability, 66902–66903  
Workforce Innovation and Opportunity Act Common Performance Reporting, 66901–66902

### Energy Department

*See Federal Energy Regulatory Commission*

#### RULES

Energy Conservation Program:  
Energy Conservation Standards for Dedicated Purpose Pool Pump Motors, 66966–67041

#### PROPOSED RULES

Energy Conservation Program:  
Standards for Walk-in Coolers and Freezers, 66710–66722

#### NOTICES

Charter Amendments, Establishments, Renewals and Terminations:

President's Council of Advisors on Science and Technology, 66831

Meetings:

Biological and Environmental Research Advisory Committee, 66832

Environmental Management Site-Specific Advisory Board, Oak Ridge, 66831

**Environmental Protection Agency****RULES**

Air Quality State Implementation Plans; Approvals and Promulgations:  
 Indiana; ArcelorMittal and NIPSCO Sulfur Dioxide Revisions, 66687–66690  
 WA; Yakima County Outdoor and Agricultural Burning Rule Revisions, 66690–66692  
 Washington; Southwest Clean Air Agency; Emission Standards and Controls for Sources Emitting Gasoline Vapors, 66692–66694  
 Control of Emissions from New, Small Nonroad Spark-Ignition Engines and Equipment; CFR Correction, 66694

**PROPOSED RULES**

Air Quality State Implementation Plans; Approvals and Promulgations:  
 New Jersey; Exemptions to Improve Resiliency, Air Toxics Thresholds, PM 2.5 and Ammonia Emission Statement Reporting, and PM 2.5 in Air Permitting, 66733–66742  
 Hazardous Waste Management System:  
 Identification and Listing of Hazardous Waste, 66742–66751

**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
 Filter Adoption Survey, 66841–66842  
 General Administrative Requirements for Assistance Programs, 66840–66841  
 Exemption:  
 Metamitron, 66842–66843

**Federal Aviation Administration****RULES**

Airworthiness Directives:  
 Dassault Aviation Airplanes, 66681–66686

**Federal Communications Commission****PROPOSED RULES**

Establishing a 5G Fund for Rural America, 66781–66795

**Federal Deposit Insurance Corporation****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66933–66939

**Federal Election Commission****NOTICES**

Meetings; Sunshine Act, 66843

**Federal Energy Regulatory Commission****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66834–66835  
 Application:  
 Cove Point LNG, LP, 66835–66837  
 Combined Filings, 66832–66833, 66835  
 Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:  
 MS Solar 6, LLC, 66839–66840  
 Meetings:  
 Reliability Technical Conference, 66837–66839

**Federal Highway Administration****NOTICES**

Final Federal Agency Actions:  
 Transportation Project in Washington State, 66929

Proposed Second Renewed Memorandum of Understanding:

Assigning Certain Federal Environmental Responsibilities to the State of Arizona, Including National Environmental Policy Act Authority for Certain Categorical Exclusions, 66930–66931

**Federal Motor Carrier Safety Administration****NOTICES**

Exemption Application:  
 Qualification of Drivers; Implantable Cardioverter Defibrillators, 66932–66933  
 Meetings:  
 Truck Leasing Task Force, 66931–66932

**Federal Reserve System****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66843–66850, 66933–66939

**Federal Transit Administration****PROPOSED RULES**

Transit Worker Hours of Service and Fatigue Risk Management Listening Session:  
 Public Meeting, 66795

**Financial Crimes Enforcement Network****PROPOSED RULES**

Beneficial Ownership Information Reporting Deadline Extension for Reporting Companies Created or Registered in 2024, 66730–66732

**Food and Drug Administration****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
 Adverse Experience Reporting for Licensed Biological Products; and General Records, 66856–66858  
 Application for Food and Drug Administration Approval to Market a New Drug, 66853–66856

**Food and Nutrition Service****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
 Pandemic EBT, 66796–66797

**Foreign Assets Control Office****NOTICES**

Sanctions Action, 66939–66959

**Foreign-Trade Zones Board****NOTICES**

Reorganization under Alternative Site Framework:  
 Foreign-Trade Zone 29, Louisville, KY, 66802

**Geological Survey****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
 Ferrous Metals Surveys, 66883

**Health and Human Services Department**

See Centers for Medicare & Medicaid Services  
 See Children and Families Administration  
 See Food and Drug Administration  
 See National Institutes of Health

See Substance Abuse and Mental Health Services  
Administration

#### **PROPOSED RULES**

Requirements Related to the Mental Health Parity and  
Addiction Equity Act, 66728–66730

#### **Homeland Security Department**

See Coast Guard

See U.S. Customs and Border Protection

#### **Housing and Urban Development Department**

##### **NOTICES**

Economic Growth Regulatory Relief and Consumer  
Protection Act:  
Implementation of National Standards for the Physical  
Inspection of Real Estate; Extension of NSPIRE  
Compliance Date for HCV Programs, 66882

#### **Industry and Security Bureau**

##### **NOTICES**

Order Denying Export Privileges:  
Azur Air, 66805–66807  
PJSC Aeroflot, 66807–66810  
UTair Aviation JSC, 66802–66805

#### **Interior Department**

See Geological Survey

See Land Management Bureau

See National Park Service

#### **Internal Revenue Service**

##### **PROPOSED RULES**

Requirements Related to the Mental Health Parity and  
Addiction Equity Act, 66728–66730

#### **International Trade Administration**

##### **NOTICES**

Antidumping or Countervailing Duty Investigations, Orders,  
or Reviews:

Certain Activated Carbon from the People's Republic of  
China, 66810–66811

Approved International Trade Administration Trade  
Mission, 66812–66815

Request for Comments:

Subsidy Programs Provided by Countries Exporting  
Softwood Lumber and Softwood Lumber Products to  
the United States, 66811–66812

#### **International Trade Commission**

##### **NOTICES**

Investigations; Determinations, Modifications, and Rulings,  
etc.:

Certain Selective Thyroid Hormone Receptor-Beta  
Agonists, Processes for Manufacturing or Relating to  
Same, and Products Containing Same, 66896–66897

Certain Smart Televisions, 66895–66896

Meetings; Sunshine Act, 66895–66896

#### **Justice Department**

##### **NOTICES**

Agency Information Collection Activities; Proposals,  
Submissions, and Approvals:

Authorization for Release of Information, 66897–66898

Authorization for Release of Medical Information, 66900–  
66901

Authorization for the Release of Medical Information –  
Mental Health, 66899–66900

Uniform Crime Reporting Data Collection Instrument  
Pretesting and Burden Estimation Generic Clearance,  
66898–66899

Proposed Consent Decree:

Clean Water Act, 66897

#### **Labor Department**

See Employee Benefits Security Administration

See Employment and Training Administration

See Wage and Hour Division

#### **Land Management Bureau**

##### **RULES**

Minerals Management:

Adjustment of Cost Recovery Fees, 66695–66700

##### **NOTICES**

Public Lands:

Malheur National Wildlife Refuge, OR; Withdrawal and  
Opportunity for Meeting, 66883–66884

Temporary Closure of Public Lands:

2023–2027 Laughlin Off-Highway Vehicle Races, Clark  
County, NV, 66884–66885

#### **National Council on Disability**

##### **NOTICES**

Meetings; Sunshine Act, 66907–66908

#### **National Institutes of Health**

##### **NOTICES**

Charter Amendments, Establishments, Renewals and  
Terminations:

Applied Therapeutics for Cancer Integrated Review  
Group, 66859–66860

Social and Community Influences on Health Integrated  
Review Group, 66861

Meetings:

National Cancer Institute, 66861–66862

National Heart, Lung, and Blood Institute, 66858–66859,  
66862–66864

National Human Genome Research Institute, 66863

National Institute of Dental and Craniofacial Research,  
66859

National Institute of Diabetes and Digestive and Kidney  
Diseases, 66862

National Institute of General Medical Sciences, 66858

National Institute on Aging, 66863

Request for Information:

Opportunities and Challenges for the Collection, Use, and  
Sharing of Real-World Data Including Electronic  
Health Records, for National Institutes of Health  
Supported Biomedical and Behavioral Research,  
66860–66861

#### **National Oceanic and Atmospheric Administration**

##### **NOTICES**

Agency Information Collection Activities; Proposals,  
Submissions, and Approvals:

Alaska American Fisheries Act Permits, 66819–66820

Alaska Pacific Halibut Fisheries: Charter, 66817–66819

Electronic Logbook for the Commercial Shrimp Fishery in  
the Gulf of Mexico, 66815–66816

National Marine Fisheries Services Alaska Region Vessel  
Monitoring System Program, 66816–66817

Reporting Requirements for the Ocean Salmon Fishery off  
the Coasts of Washington, Oregon, and California,  
66820

Tilefish Individual Fishing Quota Program, 66817

Permits; Applications, Issuances, etc.:

Marine Mammals; File No. 27424, 66815

**National Park Service****NOTICES**

## Inventory Completion:

- California State University, Chico, CA, 66894
- Detroit Institute of Arts, Detroit, MI, 66889
- Louisiana State University, Museum of Natural Science, Baton Rouge, LA, 66887, 66891–66892
- University of California, Berkeley, Berkeley, CA, 66887–66889
- University of California, Riverside, Riverside, CA, 66889–66890
- University of Nevada, Las Vegas, Las Vegas, NV, 66885–66887, 66892–66893

## Repatriation of Cultural Items:

- California State University, Chico, CA, 66894–66895
- University of California, Riverside, Riverside, CA, 66890–66891

**National Science Foundation****NOTICES**

## Agency Information Collection Activities; Proposals, Submissions, and Approvals:

- Awardee Reporting Requirements for the Established Program to Stimulate Competitive Research Research Infrastructure Improvement Programs, 66908–66909
- Graduate Research Fellowships Program, 66910
- National Science Foundation—Managed Honorary Awards, 66910–66911

## Meetings:

- Advisory Committee for Mathematical and Physical Sciences, 66912

**Personnel Management Office****RULES**

- Federal Employees' Retirement System; Present Value Conversion Factors for Spouses of Deceased Separated Employees, 66679–66681
- Noncompetitive Appointment of Certain Military Spouses, 66677–66679

**Postal Regulatory Commission****NOTICES**

New Postal Products, 66912–66913

**Postal Service****NOTICES**

## International Product Change:

- Priority Mail Express International, Priority Mail International and First-Class Package International Service Agreement, 66913

**Presidential Documents****PROCLAMATIONS**

## Special Observances:

- Asian American and Native American Pacific Islander—Serving Institutions Week (Proc. 10629), 67049–67050
- National Historically Black Colleges and Universities Week (Proc. 10628), 67043–67047
- National Hunting and Fishing Day (Proc. 10630), 67051–67052
- National Public Lands Day (Proc. 10631), 67053–67054

**Rural Utilities Service****NOTICES**

## Funding Opportunity:

- Calendar Year 2022 Disaster Circuit Rider Technical Assistance Grants Program, 66797–66802

**Securities and Exchange Commission****NOTICES**

## Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66923–66925

## Application:

- T. Rowe Price OHA Select Private Credit Fund and OHA Private Credit Advisors, LLC, 66913

## Self-Regulatory Organizations; Proposed Rule Changes:

- Financial Industry Regulatory Authority, Inc., 66916–66918
- NYSE American, LLC, 66918–66921, 66925–66927
- The Depository Trust Co., 66921–66923
- The Nasdaq Stock Market, LLC, 66913–66916

**Small Business Administration****NOTICES**

## Disaster Declaration:

- California, 66928
- Vermont, 66927–66928

**Substance Abuse and Mental Health Services Administration****NOTICES**

## Agency Information Collection Activities; Proposals, Submissions, and Approvals, 66864–66865

**Surface Transportation Board****NOTICES**

## Exemption:

- Temporary Overhead Trackage Rights; Pan Am Southern LLC, Boston and Maine Corp. and Springfield Terminal Railway Corp., 66928–66929

**Transportation Department**

See Federal Aviation Administration

See Federal Highway Administration

See Federal Motor Carrier Safety Administration

See Federal Transit Administration

**Treasury Department**

See Comptroller of the Currency

See Financial Crimes Enforcement Network

See Foreign Assets Control Office

See Internal Revenue Service

**NOTICES**

## Agency Information Collection Activities; Proposals, Submissions, and Approvals:

- Notice to Account Holder for Garnishment of Accounts Containing Federal Benefit Payments, 66959–66960
- Performance Review Board Members, 66960–66963

**U.S. Customs and Border Protection****NOTICES**

## Commercial Gauger and Laboratory; Accreditation and Approval:

- AmSpec Services, LLC, Mobile, AL, 66868–66869
- AmSpec Services, LLC, Plainfield, IL, 66872–66873
- AmSpec Services, LLC, Yorktown, VA, 66880–66881
- AmSpec, LLC, Cape Canaveral, FL, 66865–66866
- AmSpec, LLC, Davie, FL, 66867–66868
- AmSpec, LLC, Mickleton, NJ, 66869–66870
- AmSpec, LLC, Texas City, TX, 66866–66867
- Camin Cargo Control, Inc., Corpus Christi, TX, 66874–66875
- Coastal Gulf and International, Corpus Christi, TX, 66877
- Coastal Gulf and International, Gonzales, LA, 66876
- Dixie Services, Inc., Galena Park, TX, 66871–66872
- Intertek USA, Inc., Benicia, CA, 66875–66876

Intertek USA, Inc., Carteret, NJ, 66879–66880  
Intertek USA, Inc., Tampa, FL, 66872  
Intertek USA, Inc., Texas City, TX, 66878–66879  
Intertek USA, Inc., Valdez, AK, 66876–66877  
Intertek USA, Inc., Yorktown, VA, 66873–66874  
King Inspection and Testing, Inc., Carson, CA, 66869  
Pan Pacific Surveyors, Inc. Paramount, CA, 66870–66871  
Saybolt LP, Deer Park, TX, 66881–66882  
Saybolt LP, Wilmington, NC, 66877–66878

**Veterans Affairs Department****NOTICES**

Agency Information Collection Activities; Proposals,  
Submissions, and Approvals:  
Veteran/Service member's Supplemental Application for  
Assistance in Acquiring Specially Adapted Housing,  
66963

**Wage and Hour Division****NOTICES**

Rate Change:  
Minimum Wage for Federal Contracts, 66903–66907

---

**Separate Parts In This Issue****Part II**

Energy Department, 66966–67041

**Part III**

Presidential Documents, 67043–67047, 67049–67054

---

**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.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to <https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new>, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

**CFR PARTS AFFECTED IN THIS ISSUE**

---

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**3 CFR****Proclamations:**

|            |       |
|------------|-------|
| 10628..... | 67045 |
| 10629..... | 67049 |
| 10630..... | 67051 |
| 10631..... | 67053 |

**5 CFR**

|          |       |
|----------|-------|
| 315..... | 66677 |
| 843..... | 66679 |

**10 CFR**

|          |       |
|----------|-------|
| 429..... | 66966 |
| 431..... | 66966 |

**Proposed Rules:**

|          |       |
|----------|-------|
| 431..... | 66710 |
|----------|-------|

**14 CFR**

|                        |                 |
|------------------------|-----------------|
| 39 (2 documents) ..... | 66681,<br>66683 |
|------------------------|-----------------|

**16 CFR****Proposed Rules:**

|           |       |
|-----------|-------|
| 1025..... | 66722 |
|-----------|-------|

**18 CFR****Proposed Rules:**

|          |       |
|----------|-------|
| 401..... | 66722 |
|----------|-------|

**26 CFR****Proposed Rules:**

|         |       |
|---------|-------|
| 54..... | 66728 |
|---------|-------|

**29 CFR****Proposed Rules:**

|           |       |
|-----------|-------|
| 2590..... | 66728 |
|-----------|-------|

**31 CFR****Proposed Rules:**

|           |       |
|-----------|-------|
| 1010..... | 66730 |
|-----------|-------|

**33 CFR**

|          |       |
|----------|-------|
| 165..... | 66686 |
|----------|-------|

**40 CFR**

|                        |                        |
|------------------------|------------------------|
| 52 (3 documents) ..... | 66687,<br>66690, 66692 |
| 1054.....              | 66694                  |

**Proposed Rules:**

|          |       |
|----------|-------|
| 52.....  | 66733 |
| 261..... | 66742 |

**43 CFR**

|           |       |
|-----------|-------|
| 3000..... | 66695 |
|-----------|-------|

**45 CFR**

|           |       |
|-----------|-------|
| 1355..... | 66700 |
| 1356..... | 66700 |

**Proposed Rules:**

|           |       |
|-----------|-------|
| 146.....  | 66728 |
| 147.....  | 66728 |
| 1355..... | 66752 |
| 1356..... | 66769 |

**47 CFR****Proposed Rules:**

|         |       |
|---------|-------|
| 54..... | 66781 |
|---------|-------|

**49 CFR****Proposed Rules:**

|          |       |
|----------|-------|
| 675..... | 66795 |
|----------|-------|



# Rules and Regulations

Federal Register

Vol. 88, No. 187

Thursday, September 28, 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.

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

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 315

[Docket ID: OPM-2023-0026]

RIN 3206-AO57

### Noncompetitive Appointment of Certain Military Spouses

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim regulations to implement the changes authorized by the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 on the noncompetitive appointment authority for certain military spouses. These changes extend certain temporary provisions and remove the reporting requirements that were imposed by the NDAA for FY 2019. These changes will continue to enhance the recruitment and hiring of military spouses for permanent Federal positions in the competitive service.

**DATES:** The interim regulations are effective on September 28, 2023. Comments must be received on or before November 27, 2023.

**ADDRESSES:** You may submit comments, identified by docket number and/or Regulation Identifier Number (RIN) and by title, by the following method:

- *Federal Rulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at <https://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

### FOR FURTHER INFORMATION CONTACT:

Michelle Glynn, telephone: 202-606-1571, fax: 202-606-4430, TDD: 202-418-3134, or email: [michelle.glynn@opm.gov](mailto:michelle.glynn@opm.gov).

**SUPPLEMENTARY INFORMATION:** On December 23, 2022, the President signed the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 (Pub. L. 117-263) (“FY 2023 NDAA”). Section 573(d) of Public Law 115-232 (“FY 2019 NDAA”) provided for a temporary amendment to 5 U.S.C. 3330d to expand the eligibility for noncompetitive appointment of spouses currently married to a member of the armed forces on active duty. Under the FY 2019 NDAA, this authority would have sunset on August 13, 2023, which is reflected in OPM’s current regulations. Section 1111 of the FY 2023 NDAA extended the temporary amendment until December 31, 2028.

Section 573(d) of the FY 2019 NDAA required agencies to report annually to OPM on the number of relocating and non-relocating spouses of current military members appointed; the types of positions filled (by title, series, and grade level); and the effectiveness of this hiring authority. Section 573(d) also required a report to Congress 18 months after enactment that had become obsolete. The FY 2023 NDAA removed these temporary agency reporting requirements established under the FY 2019 NDAA. Although the reporting requirements have been removed from statute, section 3(f) of Executive Order 13832, of May 9, 2018, *Enhancing Noncompetitive Civil Service Appointments of Military Spouses*, imposed similar agency reporting requirements that are still in effect.

The changes in the FY 2023 NDAA became effective upon the President’s signature. OPM is amending its regulations through this interim final rule to reflect the provisions of the FY 2023 NDAA.

### Waiver of Notice of Proposed Rule Making

OPM is issuing this rulemaking as an interim final rule because it has determined that, under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), it would be impracticable and contrary to the public interest to delay a final regulation until a public notice and comment process has been completed. OPM is also

waiving general notice of proposed rulemaking under the Civil Service Reform Act’s parallel rulemaking provisions at 5 U.S.C. 1103(b)(3) because the interim rule is necessary to be implemented expeditiously as a result of a statutory change to enhance the recruitment and employment of military spouses in the Federal government.

Accordingly, to ensure the regulations accurately reflect the current state of the law, OPM finds that good cause exists to waive the general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b)(3)(B). Expeditious issuance of this interim final regulation is required to prevent confusion in light of the (now invalid) August 13, 2023 sunset date reflected in the regulations for the expanded eligibility for noncompetitive appointment of spouses married to members of the armed forces on active duty. OPM will promulgate a final rule as soon as practical after receiving public comments on the interim final rule.

### Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), OPM finds that good cause exists to waive the delay in effective date and make these regulations effective in less than 30 days. The delay in effective date is being waived because the provisions of the law extending the noncompetitive appointment authority became effective upon enactment, December 23, 2022, and a delay could result in certain military spouses improperly losing consideration for appointment.

### Expected Impact of This Interim Final Rule

#### A. Statement of Need

OPM is issuing this interim rule to implement statutory changes codified at 5 U.S.C. 3330d, which extends the eligibility date for noncompetitive appointment of military spouses married to a member of the armed forces on active duty; and removes the temporary agency reporting requirements established under section 573(d) of Public Law 115-232. These changes are required under the provisions of the FY 2023 NDAA.

#### B. Impact

OPM’s interim final rule allows spouses married to members of the armed forces on active duty to remain

eligible for noncompetitive appointment under this hiring authority until December 31, 2028. On May 25, 2023, OPM issued CHCO Memo with updated guidance for this hiring authority, to include announcing the sunset date, the December 31, 2028 eligibility date, for spouses married to active duty members of the armed forces.<sup>1</sup>

Under the FY 2019 NDAA provisions, these spouses were eligible until August 12, 2023. We anticipate that these statutory changes will improve and enhance the effectiveness of the noncompetitive appointment of these spouses consistent with E.O. 13832, which instructs agencies to consider military spouses to the greatest extent possible when filling positions in the competitive service.

#### C. Regulatory Alternatives

There are no regulatory alternatives to this interim final rule because OPM is required to implement the statute.

#### D. Costs

The costs associated with the interim final rule are minimal and include: the costs associated with the resources needed to process a potentially higher volume of job applicants for Federal jobs, and the usual learning curve of implementing a regulatory change. To help minimize the latter costs, OPM intends to provide technical assistance upon request to any agency that may require such assistance. Because agency resources and the potential volume of increased job applicants vary, OPM cannot monetize the costs of these rules.

#### E. Benefits

The interim final rule will benefit military spouses married to military members on active duty and hiring agencies as well. This rule will make clear that these spouses are eligible for noncompetitive appointment under this hiring authority until December 31, 2028, the sunset date of the FY 2023 NDAA provisions. Additionally, this rule benefits agencies by relieving them of the duplicative reporting requirements established under the FY 2019 NDAA provisions.

#### Regulatory Review

Executive Orders 13563, 12866, and 14094 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). In accordance with the provisions of Executive Order 12866, this interim final rule was reviewed by the Office of Management and Budget as a significant regulatory action, but not significant under Section (3)(f)(1) of Executive Order 14094.

#### Regulatory Flexibility Act

The Director of OPM certifies that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal agencies and employees.

#### E.O. 13132, Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, OPM has determined that this interim final rule does not have federalism implications that require preparation of a federalism summary impact statement.

#### E.O. 12988, Civil Justice Reform

OPM has determined this interim final rule meets the relevant standards of Executive Order 12988.

#### Unfunded Mandates Reform Act of 1995

This interim final rule will not result in the expenditure by State, local or tribal governments or the private sector of more than \$100 million annually. Thus, no written assessment of unfunded mandates is required.

#### Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*) requires rules (as defined in 5 U.S.C. 804) to be submitted to Congress before taking effect. OPM will submit to Congress and the Comptroller General of the United States a report regarding the issuance of this action before its effective date, as required by 5 U.S.C. 801. OMB's Office of Information and Regulatory Affairs has determined that this is not a "major rule" as defined by the Congressional Review Act (5 U.S.C. 804(2)).

#### Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

This regulatory action will not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act.

#### List of Subjects in 5 CFR Part 315

Government employees.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

Accordingly, OPM amends 5 CFR part 315 as follows:

### PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

■ 1. The authority citation for part 315 is revised to read as follows:

**Authority:** 5 U.S.C. 1302, 2301, 2302, 3301, and 3302; E.O. 10577, 19 FR 7521, 3 CFR, 1954–1958 Comp., p. 218; and E.O. 13162, 65 FR 43211, 3 CFR, 2000 Comp., p. 283, unless otherwise noted. Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652. Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104. Sec. 315.603 also issued under 5 U.S.C. 8151. Sec. 315.605 also issued under E.O. 12034, 43 FR 1917, 3 CFR, 1978 Comp., p. 111. Sec. 315.606 also issued under E.O. 11219, 30 FR 6381, 3 CFR, 1964–1965 Comp., p. 303. Sec. 315.607 also issued under 22 U.S.C. 2560. Sec. 315.608 also issued under E.O. 12721, 55 FR 31349, 3 CFR, 1990 Comp., p. 293. Sec. 315.610 also issued under 5 U.S.C. 3304(c). Sec. 315.611 also issued under 5 U.S.C. 3304(f). Sec. 315.612 also issued under E.O. 13473, 73 FR 56703, 3 CFR, 2008 Comp., p. 241; Sec. 566, Pub. L. 112–239, 126 Stat. 1632 (5 U.S.C. 3330d); Sec. 1131, Pub. L. 114–328, 130 Stat. 2000 (5 U.S.C. 3330d(c)); Sec. 573, Pub. L. 115–232, 132 Stat. 1636 (5 U.S.C. 3330d); and E.O. 13832, 83 FR 22343, 3 CFR, 2018 Comp., p. 808. Sec. 315.708 also issued under E.O. 13318, 68 FR 66317, 3 CFR, 20043 Comp., p. 265. Sec. 315.710 also issued under E.O. 12596, 52 FR 17537, 3 CFR, 1987 Comp., p. 229; E.O. 13832, 83 FR 22343, 3 CFR, 2018 Comp., p. 808; and Sec. 573, Pub. L. 115–232, 132 Stat. 1636 (5 U.S.C. 3330d), Sec. 1111, Pub. L. 117–263, 136 Stat. 2395 (5 U.S.C. 3330d).

#### Subpart F—Career or Career Conditional Appointment Under Special Authorities

■ 2. Amend § 315.612 by:

■ a. Revising paragraphs (c), (d), and (e) by replacing each occurrence of "August 12, 2023" with "December 31, 2028".

■ b. Revising paragraphs (c), (d), and (e) by replacing each occurrence of "August 13, 2023" with "January 1, 2029".

■ c. Revising paragraph (h) to read as follows.

#### § 315.612 Noncompetitive appointment of certain military spouses.

\* \* \* \* \*

(h) *Agency reporting requirements.* (1) As required by Executive Order 13832, each agency shall report annually (by December 31st of each year) to OPM and the Department of Labor on:

(i) The number of positions made available under the military spouse hiring authority;

<sup>1</sup> <https://www.chcoc.gov/content/noncompetitive-appointment-certain-military-spouses-questions-and-answers>.

(ii) The number of applications submitted under the military spouse hiring authority;

(iii) The number of military spouses appointed under the military spouse hiring authority during the preceding fiscal year; and

(iv) Actions taken to advertise the military spouse hiring authority, and any other actions taken to promote the hiring of military spouses.

(2) Agencies must send their reports electronically to OPM's Employee Services, VETS Office at [militaryspouse@opm.gov](mailto:militaryspouse@opm.gov).

(3) Agencies are also required to send their reports separately and directly to Department of Labor (DOL) at [milspouse@dol.gov](mailto:milspouse@dol.gov).

[FR Doc. 2023–21254 Filed 9–27–23; 8:45 am]

BILLING CODE 6325–39–P

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 843

[Docket ID: OPM–2023–0008]

RIN 3206–AO55

### Federal Employees' Retirement System; Present Value Conversion Factors for Spouses of Deceased Separated Employees

**AGENCY:** Office of Personnel  
Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is adopting its proposed rule to revise the table of reduction factors for early commencing dates of survivor annuities for spouses of separated employees who die before the date on which they would be eligible for unreduced deferred annuities. The annuity factor for spouses of deceased employees who die in service when those spouses elect to receive the basic employee death benefit in 36 installments under the Federal Employees' Retirement System (FERS) Act of 1986 remains unchanged. These revisions are necessary to ensure that the tables conform to the economic and demographic assumptions adopted by the Board of Actuaries and published in the **Federal Register** on April 14, 2023, as required by law.

**DATES:** This rule is effective October 1, 2023.

**FOR FURTHER INFORMATION CONTACT:**  
Karla Yeakle, (202) 606–0299.

**SUPPLEMENTARY INFORMATION:** On April 14, 2023, OPM published a notice at 88 FR 23108 in the **Federal Register** to revise the normal cost percentages

under the Federal Employees' Retirement System (FERS) Act of 1986, Public Law 99–335, 100 Stat. 514, as amended, based on economic assumptions and demographic factors adopted by the Board of Actuaries of the Civil Service Retirement System. By statute under 5 U.S.C. 8461(i), the revisions to the actuarial assumptions require corresponding changes in factors used to produce actuarially equivalent benefits when required by the FERS Act. As a result, on July 14, 2023, at 88 FR 45100, OPM published a proposed rule in the **Federal Register** to revise the table of reduction factors in 5 CFR part 843, Appendix A to subpart C for early commencing dates of survivor annuities for spouses of separated employees who die before the date on which they would be eligible for unreduced deferred annuities. The annuity factor for spouses of deceased employees who die in service when those spouses elect to receive the basic employee death benefit in 36 installments under 5 CFR 843.309 remains unchanged.

OPM received one comment in response to its proposed rule. The commentor questioned whether this rule change will affect the cost to the Federal retirement systems. Any potential cost impact to the retirement systems would merely be costs associated with complying with the statutory requirements under 5 U.S.C. 8442(c)(2)(B)(ii) and 5 U.S.C. 8461(i). The provision under 5 U.S.C. 8442(c)(2)(B)(ii) requires that if a survivor of a former Federal employee elects to receive a survivor annuity immediately upon the death of the former employee (instead of electing to wait to receive the survivor annuity until the deceased former employee would have otherwise been entitled to an unreduced deferred annuity benefit), then OPM must reduce the survivor annuity so it is “actuarially equivalent” to the present value of what the survivor annuitant would have received had the survivor elected the later survivor annuity commencing date. The statutory provision under 5 U.S.C. 8461(i) provides that OPM must determine “actuarial equivalence” using the same economic assumptions most recently used by the Board of Actuaries for valuation of the FERS based on dynamic assumptions. Therefore, any potential cost impacts to the retirement systems are the result of changes to OPM's calculations of actuarial equivalence using the most recent dynamic assumptions used by the Board of Actuaries as required under 5 U.S.C. 8442(c)(2)(B)(ii) and 5 U.S.C. 8461(i). Additionally, considering the small

number of survivor annuities affected, OPM does not anticipate this rule will have substantial cost impact to the retirement systems.

The effective date of a substantive rule is normally delayed by 30 days. See 5 U.S.C. 553(d). OPM published notice of the normal cost percentages on April 14, 2023, with an effective date of October 1, 2023. Based on the same economic assumptions as the normal cost percentages, OPM published notice of conversion factors on July 14, 2023, and provided a 30-day comment period. OPM provided notice of the October 1, 2023, effective date for the conversion factors in its July 14, 2023, proposed rule and received no comments regarding the date. Delaying the effective date by 30 days is unnecessary as this is a routine, technical rule to update the conversion factors to align with the economic assumptions underlying the normal cost percentages. Furthermore, the normal cost percentages are used to calculate payments into the Civil Service Retirement and Disability Fund (Fund) and failing to adjust the conversion factors at the same time could result in a liability to the Fund. Accordingly, it is also in the public interest to ensure consistency between the economic assumptions underlying the normal cost percentages and the conversion factors. Finally, ensuring the effective dates for the two rules are in alignment complies with 5 U.S.C. 8442 and 8461(i). Therefore, OPM finds there is good cause to make the rule effective October 1, 2023.

### Expected Impact of This Rule

OPM is adopting its proposed rule to revise the table of reduction factors for early commencing dates of survivor annuities for spouses of separated employees who die before the date on which they would be eligible for unreduced deferred annuities. The factors that are in effect can be found in appendix A to subpart C of 5 CFR part 843.

Of all the applications for survivor annuity death benefits OPM receives annually, OPM expects this rule to affect approximately one percent of those survivor annuity death applications it receives that are based on the death of a separated employee. Of the changes this rule implements, the most significant change is to conform the factors to the revised actuarial assumptions when the current or former spouse elects to receive an adjusted annuity beginning on the day after the death of the separated employee, such that the annuity is reduced using the factors in appendix A to subpart C of 5

CFR part 843 to make the annuity actuarially equivalent to the present value of the annuity that the spouse or former spouse otherwise would have received. When OPM updates the FERS normal cost, the FERS law at 5 U.S.C. 8461(i) requires that OPM make corresponding changes to the factors used to produce actuarially equivalent benefits under FERS. Specifically, this rule is needed to revise the present value conversion factors for certain benefits payable under FERS to current and former spouses of deceased separated employees. This rule allows certain survivors to make choices about what benefits they want to receive and, in some instances, when they want the benefits to begin. Considering the small number of survivor annuities affected, OPM does not anticipate this rule will substantially affect local economies or have a large impact in local labor markets.

#### Regulatory Review

Executive Orders 13563, 12866, and 14094 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). This rule was not designated as a “significant regulatory action,” under Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget (OMB).

#### Regulatory Flexibility Act

The Director of OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of state, local, or tribal governments.

#### Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

#### Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year, and it will not significantly or uniquely affect small governments.

Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### Paperwork Reduction Act

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 of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB Control Number.

This rule involves an OMB-approved collection of information subject to the PRA titled “Application for Death Benefits (FERS)/Documentation and Elections in Support of Application for Death Benefits when Deceased was an Employee at the Time of Death (FERS),” OMB Control Number 3206–0172. The public reporting burden for this collection is estimated to average 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total burden hour estimate for this form is 16,751 hours. The systems of record notice for this collection is: OPM SORN CENTRAL–1–Civil Service Retirement and Insurance Records.

#### List of Subjects in 5 CFR Part 843

Air traffic controllers, Disability benefits, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

For the reasons stated in the preamble, OPM amends 5 CFR part 843 as follows:

#### PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

- 1. The authority citation for part 843 continues to read as follows:

**Authority:** 5 U.S.C. 8461; 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; 843.309 also issued under 5 U.S.C. 8442; 843.406 also issued under 5 U.S.C. 8441.

#### Subpart C—Current and Former Spouse Benefits

- 2. Revise appendix A to subpart C of part 843 to read as follows:

#### Appendix A to Subpart C of Part 843—Present Value Conversion Factors for Earlier Commencing Date of Annuities of Current and Former Spouses of Deceased Separated Employees

With at least 10 but less than 20 years of creditable service—

| Age of separated employee at birthday before death | Multiplier |
|----------------------------------------------------|------------|
| 26 .....                                           | .1081      |
| 27 .....                                           | .1146      |
| 28 .....                                           | .1215      |
| 29 .....                                           | .1289      |
| 30 .....                                           | .1367      |
| 31 .....                                           | .1451      |
| 32 .....                                           | .1539      |
| 33 .....                                           | .1634      |
| 34 .....                                           | .1735      |
| 35 .....                                           | .1840      |
| 36 .....                                           | .1954      |
| 37 .....                                           | .2071      |
| 38 .....                                           | .2196      |
| 39 .....                                           | .2326      |
| 40 .....                                           | .2460      |
| 41 .....                                           | .2611      |
| 42 .....                                           | .2772      |
| 43 .....                                           | .2939      |
| 44 .....                                           | .3124      |
| 45 .....                                           | .3314      |
| 46 .....                                           | .3525      |
| 47 .....                                           | .3743      |
| 48 .....                                           | .3978      |
| 49 .....                                           | .4230      |
| 50 .....                                           | .4500      |
| 51 .....                                           | .4792      |
| 52 .....                                           | .5106      |
| 53 .....                                           | .5442      |
| 54 .....                                           | .5804      |
| 55 .....                                           | .6190      |
| 56 .....                                           | .6614      |
| 57 .....                                           | .7070      |
| 58 .....                                           | .7565      |
| 59 .....                                           | .8100      |
| 60 .....                                           | .8680      |
| 61 .....                                           | .9312      |

With at least 20, but less than 30 years of creditable service—

| Age of separated employee at birthday before death | Multiplier |
|----------------------------------------------------|------------|
| 36 .....                                           | .2248      |
| 37 .....                                           | .2383      |
| 38 .....                                           | .2528      |
| 39 .....                                           | .2679      |
| 40 .....                                           | .2835      |
| 41 .....                                           | .3009      |
| 42 .....                                           | .3195      |
| 43 .....                                           | .3389      |
| 44 .....                                           | .3601      |
| 45 .....                                           | .3821      |
| 46 .....                                           | .4064      |
| 47 .....                                           | .4316      |
| 48 .....                                           | .4587      |
| 49 .....                                           | .4878      |
| 50 .....                                           | .5190      |
| 51 .....                                           | .5526      |
| 52 .....                                           | .5887      |
| 53 .....                                           | .6274      |
| 54 .....                                           | .6691      |
| 55 .....                                           | .7137      |
| 56 .....                                           | .7623      |

| Age of separated employee at birthday before death | Multiplier |
|----------------------------------------------------|------------|
| 57 .....                                           | .8149      |
| 58 .....                                           | .8717      |
| 59 .....                                           | .9332      |

With at least 30 years of creditable service—

| Age of separated employee at birthday before death | Multiplier by separated employee's year of birth |                        |
|----------------------------------------------------|--------------------------------------------------|------------------------|
|                                                    | After 1966                                       | From 1950 through 1966 |
| 46 .....                                           | .4989                                            | .5332                  |
| 47 .....                                           | .5300                                            | .5665                  |
| 48 .....                                           | .5634                                            | .6021                  |
| 49 .....                                           | .5991                                            | .6403                  |
| 50 .....                                           | .6374                                            | .6813                  |
| 51 .....                                           | .6786                                            | .7253                  |
| 52 .....                                           | .7228                                            | .7725                  |
| 53 .....                                           | .7703                                            | .8232                  |
| 54 .....                                           | .8213                                            | .8778                  |
| 55 .....                                           | .8763                                            | .9365                  |
| 56 .....                                           | .9357                                            | 1.0000                 |

[FR Doc. 2023–21284 Filed 9–27–23; 8:45 am]

BILLING CODE 6325–38–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2023–1403; Project Identifier MCAI–2023–00479–T; Amendment 39–22548; AD 2023–18–07]

RIN 2120–AA64

### Airworthiness Directives; Dassault Aviation Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding Airworthiness Directive (AD) 2020–03–19, which applied to certain Dassault Aviation Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes. AD 2020–03–19 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This AD continues to require the actions in AD 2020–03–19 and requires revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations; as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is

issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective November 2, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 2, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 2, 2020 (85 FR 11280, February 27, 2020).

#### ADDRESSES:

**AD Docket:** You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–1403; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

#### Material Incorporated by Reference:

- For EASA material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); website [easa.europa.eu](https://easa.europa.eu). You may find this material on the EASA website at [ad.easa.europa.eu](https://ad.easa.europa.eu). It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–1403.

- For Dassault service information incorporated by reference in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; website [dassaultfalcon.com](https://dassaultfalcon.com).

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–1403.

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3226; email [tom.rodriguez@faa.gov](mailto:tom.rodriguez@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2020–03–19, Amendment 39–19843 (85 FR 11280, February 27, 2020) (AD 2020–03–19).

AD 2020–03–19 applied to certain Dassault Aviation Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes. AD 2020–03–19 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2020–03–19 to address fatigue cracking, damage, and corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

The NPRM published in the **Federal Register** on July 11, 2023 (88 FR 44065). The NPRM was prompted by EASA AD 2023–0058, dated March 16, 2023, issued by EASA, which is the Technical Agent for the Member States of the European Union (referred to after this as the MCAI). The MCAI states that new or more restrictive airworthiness limitations have been developed.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–1403.

In the NPRM, the FAA proposed to continue to require the actions in AD 2020–03–19. In the NPRM, the FAA also proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in an EASA AD. The FAA is issuing this AD to address fatigue cracking, damage, and corrosion in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

#### Discussion of Final Airworthiness Directive

##### Comments

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

##### Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

## Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2023–0058. This service information specifies procedures for airworthiness limitations for safe life limits and certification maintenance requirements.

This AD also requires Chapter 5–40–00, Airworthiness Limitations, of the Dassault Falcon 20 Retrofit 731 Maintenance Manual, Revision 13, dated January 1, 2019, which the Director of the Federal Register approved for incorporation by reference as of April 2, 2020 (85 FR 11280, February 27, 2020).

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

## Costs of Compliance

The FAA estimates that this AD affects 56 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2020–03–19 to be \$7,650 (90 work-hours × \$85 per work-hour).

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

The FAA estimates the total cost per operator for the new actions to be \$7,650 (90 work-hours × \$85 per work-hour).

## Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of

that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

## Regulatory Findings

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) 2020–03–19, Amendment 39–19843 (85 FR 11280, February 27, 2020); and
  - b. Adding the following new AD:

### 2023–18–07 Dassault Aviation:

Amendment 39–22548; Docket No. FAA–2023–1403; Project Identifier MCAI–2023–00479–T.

### (a) Effective Date

This airworthiness directive (AD) is effective November 2, 2023.

### (b) Affected ADs

- (1) This AD replaces AD 2020–03–19, Amendment 39–19843 (85 FR 11280, February 27, 2020) (AD 2020–03–19).
- (2) This AD affects AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (AD 2010–26–05).

### (c) Applicability

This AD applies to Dassault Aviation Model MYSTERE–FALCON 20–C5, 20–D5,

20–E5, and 20–F5 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2023–0058, dated March 16, 2023 (EASA AD 2023–0058).

### (d) Subject

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

### (e) Unsafe Condition

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

### (f) Compliance

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

### (g) Retained Revision of the Existing Maintenance or Inspection Program, With a New Terminating Action

This paragraph restates the requirements of paragraph (g) of AD 2020–03–19, with a new terminating action. Within 90 days after April 2, 2020 (the effective date of AD 2020–03–19), revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40–00, Airworthiness Limitations, of the Dassault Falcon 20 Retrofit 731 Maintenance Manual, Revision 13, dated January 1, 2019. The initial compliance time for doing the tasks is at the time specified in Chapter 5–40–00, Airworthiness Limitations, of the Dassault Falcon 20 Retrofit 731 Maintenance Manual, Revision 13, dated January 1, 2019, or within 90 days after April 2, 2020, whichever occurs later.

Accomplishing the revision of the existing maintenance or inspection program required by paragraph (i) of this AD terminates the requirements of this paragraph.

### (h) Retained Restrictions on Alternative Actions, Intervals, With a New Exception

This paragraph restates the requirements of paragraph (h) of AD 2020–03–19, with a new exception. Except as required by paragraph (i) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals are allowed unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (m)(1) of this AD.

### (i) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (j) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0058. Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

**(j) Exceptions to EASA AD 2023–0058**

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2023–0058.

(2) Paragraph (3) of EASA AD 2023–0058 specifies revising “the approved AMP” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2023–0058 is at the applicable “limitations” as incorporated by the requirements of paragraph (3) of EASA AD 2023–0058, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2023–0058.

(5) This AD does not adopt the “Remarks” section of EASA AD 2023–0058.

**(k) New Provisions for Alternative Actions and Intervals**

After the existing maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (e.g., inspections) and intervals are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2023–0058.

**(l) Terminating Action for Certain Actions in AD 2010–26–05**

Accomplishing the actions required by paragraph (g) or (i) of this AD terminates all requirements of paragraph (g)(1) of AD 2010–26–05 for Dassault Aviation Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes, except those on which the Dassault Aviation MYSTERE–FALCON 20 Supplemental Structural Inspection Program has been embodied, only.

**(m) Additional AD Provisions**

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Dassault Aviation’s EASA Design Organization Approval (DOA). If approved by the DOA,

the approval must include the DOA-authorized signature.

**(n) Additional Information**

For more information about this AD, contact Tom Rodriguez, Aviation Safety Engineer, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3226; email: [tom.rodriguez@faa.gov](mailto:tom.rodriguez@faa.gov).

**(o) Material Incorporated by Reference**

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

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

(3) The following service information was approved for IBR on November 2, 2023.

(i) European Union Aviation Safety Agency (EASA) AD 2023–0058, dated March 16, 2023.

(ii) [Reserved]

(4) The following service information was approved for IBR on April 2, 2020 (85 FR 11280, February 27, 2020).

(i) Chapter 5–40–00, Airworthiness Limitations, of the Dassault Falcon 20 Retrofit 731 Maintenance Manual, Revision 13, dated January 1, 2019.

(ii) [Reserved]

(5) For EASA AD 2023–0058, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); website [easa.europa.eu](http://easa.europa.eu). You may find this EASA AD on the EASA website at [ad.easa.europa.eu](http://ad.easa.europa.eu).

(6) For Dassault service information incorporated by reference in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; website [dassaultfalcon.com](http://dassaultfalcon.com).

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

(8) 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 September 22, 2023.

**Victor Wicklund,**

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

[FR Doc. 2023–21103 Filed 9–27–23; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2023–1405; Project Identifier MCAI–2023–00381–T; Amendment 39–22550; AD 2023–18–09]

RIN 2120–AA64

**Airworthiness Directives; Dassault Aviation Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding Airworthiness Directive (AD) 2023–04–16, which applied to certain Dassault Aviation Model FALCON 900EX airplanes. AD 2023–04–16 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2023–04–16, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This AD continues to require the actions in AD 2023–04–16, and also requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective November 2, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 2, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of May 12, 2023 (88 FR 20738, April 7, 2023).

**ADDRESSES:**

*AD Docket:* You may examine the AD docket at [regulations.gov](http://regulations.gov) under Docket No. FAA–2023–1405; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

*Material Incorporated by Reference:*



- For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); website [easa.europa.eu](http://easa.europa.eu). You may find this material on the EASA website [ad.easa.europa.eu](http://ad.easa.europa.eu).

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at [regulations.gov](http://regulations.gov) under Docket No. FAA–2023–1405.

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3226; email [tom.rodriguez@faa.gov](mailto:tom.rodriguez@faa.gov).

#### **SUPPLEMENTARY INFORMATION:**

#### **Background**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2023–04–16, Amendment 39–22363 (88 FR 20738, April 7, 2023) (AD 2023–04–16). AD 2023–04–16 applied to certain Dassault Aviation Model FALCON 900EX airplanes. AD 2023–04–16 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2023–04–16 to address reduced structural integrity of the airplane.

The NPRM published in the **Federal Register** on July 12, 2023 (88 FR 44228). The NPRM was prompted by AD 2023–0047, dated March 2, 2023, issued by EASA (EASA AD 2023–0047) (also referred to as the MCAI). The MCAI states that new or more restrictive airworthiness limitations have been developed. You may examine the MCAI in the AD docket at [regulations.gov](http://regulations.gov) under Docket No. FAA–2023–1405.

In the NPRM, the FAA proposed to continue to require the actions in AD 2023–04–16 and would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in EASA AD 2023–0047. The FAA is issuing this AD to address the unsafe condition on these products.

#### **Discussion of Final Airworthiness Directive**

#### **Comments**

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

#### **Conclusion**

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

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

The FAA reviewed EASA AD 2023–0047. This service information specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This AD also requires EASA AD 2022–0141, dated July 7, 2022, which the Director of the Federal Register approved for incorporation by reference as of May 12, 2023 (88 FR 20738, April 7, 2023).

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

#### **Costs of Compliance**

The FAA estimates that this AD affects 144 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2023–04–16 to be \$7,650 (90 work-hours × \$85 per work-hour).

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

The FAA estimates the total cost per operator for the new actions to be \$7,650 (90 work-hours × \$85 per work-hour).

#### **Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I,

section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

#### **Regulatory Findings**

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### **List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### **The Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

#### **PART 39—AIRWORTHINESS DIRECTIVES**

- 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### **§ 39.13 [Amended]**

- 2. The FAA amends § 39.13 by:
  - a. Removing Airworthiness Directive 2023–04–16, Amendment 39–22363 (88 FR 20738, April 7, 2023); and
  - b. Adding the following new Airworthiness Directive:



**2023–18–09 Dassault Aviation:**

Amendment 39–22550; Docket No. FAA–2023–1405; Project Identifier MCAI–2023–00381–T.

**(a) Effective Date**

This airworthiness directive (AD) is effective November 2, 2023.

**(b) Affected ADs**

(1) This AD replaces AD 2023–04–16, Amendment 39–22363 (88 FR 20738, April 7, 2023) (AD 2023–04–16).

(2) This AD affects AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (AD 2010–26–05).

**(c) Applicability**

This AD applies to Dassault Aviation Model FALCON 900EX airplanes, serial number (S/N) 97 and S/Ns 120 and higher, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 15, 2022.

**(d) Subject**

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

**(e) Unsafe Condition**

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

**(f) Compliance**

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

**(g) Retained Revision of the Existing Maintenance or Inspection Program, With a New Terminating Action**

This paragraph restates the requirements of paragraph (j) of AD 2023–04–16, with a new terminating action. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 15, 2021: Except as specified in paragraph (h) of this AD, comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0141, dated July 7, 2022 (EASA AD 2022–0141). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

**(h) Retained Exceptions to EASA AD 2022–0141, With No Changes**

This paragraph restates the exceptions specified in paragraph (k) of AD 2023–04–16, with no changes.

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0141 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2022–0141 specifies revising “the approved AMP” within 12 months after its effective date, but

this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after May 12, 2023 (the effective date of AD 2023–04–16).

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0141 is at the applicable “limitations” and “associated thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2022–0141, or within 90 days after May 12, 2023 (the effective date of AD 2023–04–16), whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2022–0141 do not apply to this AD.

(5) The “Remarks” section of EASA AD 2022–0141 does not apply to this AD.

**(i) Retained Restrictions on Alternative Actions and Intervals, With a New Exception**

This paragraph restates the requirements of paragraph (l) of AD 2023–04–16, with a new exception. Except as required by paragraph (j) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections) and intervals are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2022–0141.

**(j) New Revision of the Existing Maintenance or Inspection Program**

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0047, dated March 2, 2023 (EASA AD 2023–0047). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

**(k) Exceptions to EASA AD 2023–0047**

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2023–0047.

(2) Paragraph (3) of EASA AD 2023–0047 specifies revising “the approved AMP” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2023–0047 is at the applicable “limitations” and “associated thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2023–0047, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2023–0047.

(5) This AD does not adopt the “Remarks” section of EASA AD 2023–0047.

**(l) New Provisions for Alternative Actions and Intervals**

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (e.g., inspections) and intervals are allowed unless they are

approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2023–0047.

**(m) Terminating Action for AD 2010–26–05**

Accomplishing the actions required by paragraph (g) or (j) of this AD terminates the requirements of paragraph (g)(1) of AD 2010–26–05, for Dassault Aviation Model FALCON 900EX airplanes, S/N 97 and S/Ns 120 and higher only.

**(n) Additional AD Provisions**

The following provisions also apply to this AD:

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

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

**(o) Additional Information**

For more information about this AD, contact Tom Rodriguez, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3226; email [tom.rodriguez@faa.gov](mailto:tom.rodriguez@faa.gov).

**(p) Material Incorporated by Reference**

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

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

(3) The following service information was approved for IBR on November 2, 2023.

(i) European Union Aviation Safety Agency (EASA) AD 2023–0047, dated March 2, 2023.

(ii) [Reserved]

(4) The following service information was approved for IBR on May 12, 2023 (88 FR 20738, April 7, 2023).

(i) EASA AD 2022–0141, dated July 7, 2022.

(ii) [Reserved]

(5) For EASA ADs 2022–0141 and 2023–0047, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); website [easa.europa.eu](http://easa.europa.eu). You may find these

EASA ADs on the EASA website  
[ad.easa.europa.eu](http://ad.easa.europa.eu).

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

(7) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email [fr.inspection@nara.gov](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 September 22, 2023.

**Victor Wicklund,**

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

[FR Doc. 2023-21100 Filed 9-27-23; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2023-0765]

RIN 1625-AA00

#### Safety Zone; Lake Erie, Buffalo, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters within a 350-foot radius of 42 52'07.96" N 78 53'00.87" W. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by fallout from a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Buffalo.

**DATES:** This rule is effective from 7:30 p.m. through 9:30 p.m. on October 6, 2023.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0765 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 LT William Kelley, Waterways Management at Sector Buffalo, U.S. Coast Guard; telephone 716-843-9343, email [D09-SMB-SECBuffalo-WWM@uscg.mil](mailto:D09-SMB-SECBuffalo-WWM@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 the event sponsor did not submit notice of the fireworks display to the Coast Guard with sufficient time remaining before the event to publish an NPRM. Delaying the effective date of this rule to wait for a comment period to run would be impracticable and contrary to the public interest by inhibiting the Coast Guard's ability to protect spectators and vessels from the hazards associated with this firework display.

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**. For the same reasons discussed in the preceding paragraph, waiting for a 30-day notice period to run would be impracticable and contrary to the public interest.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port (COTP) Buffalo has determined that potential hazards associated with a fireworks display starting October 6, 2023 at 7:30 p.m., will be a safety concern for anyone within a 350-foot radius of the launch site at 42 52'07.96" N 78 53'00.87" W. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the fireworks display is active.

### IV. Discussion of the Rule

This rule establishes a safety zone from 7:30 p.m. until 9:30 p.m. on October 6, 2023. The safety zone will cover all navigable waters within 350

feet of the launch site at 42 52'07.96" N 78 53'00.87" W. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters from potential hazards, while the fireworks display is active. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP Buffalo or a designated representative.

### 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 section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. The safety zone will encompass a 350-foot radius of the fireworks launch site at 42 52'07.96" N 78 53'00.87" W lasting approximately one hour during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

#### 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 safety zone lasting 2 hours that will prohibit entry within 350 feet of the fireworks launch site at 42 52' 07.96" N 78 53' 00.87" W. 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 record keeping 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, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T09–0765 to read as follows:

### § 165.T09–0765 Safety Zone; Lake Erie, Buffalo, NY.

(a) *Location.* The following area is a safety zone: All waters of Lake Erie, from surface to bottom, encompassed by 350-foot radius around 42 52'07.96" N 78 53'00.87" W.

(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 and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) Buffalo in the enforcement of the safety zone.

(c) *Regulations.* (1) In accordance with the general regulations in section § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP Buffalo or their designated representative.

(2) Vessel operators desiring to enter or operate within the safety zone must contact the COTP Buffalo or their designated representative to obtain permission to do so. The COTP Buffalo or their designated representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP Buffalo, or their designated representative.

(d) *Enforcement period.* The regulated area described in paragraph (a) is effective from 7:30 p.m. through 9:30 p.m. on October 6, 2023.

Dated: September 13, 2023.

**M.I. Kuperman,**

*Captain, U.S. Coast Guard, Captain of the Port Buffalo.*

[FR Doc. 2023–21194 Filed 9–27–23; 8:45 am]

**BILLING CODE 9110–04–P**

### ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R05–OAR–2020–0699; FRL–10754–02–R5]

### Air Plan Approval; Indiana; ArcelorMittal and NIPSCO Sulfur Dioxide Revisions

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving, under the Clean Air Act (CAA), revisions to the sulfur dioxide (SO<sub>2</sub>) portion of the Indiana State Implementation Plan (SIP). The state of Indiana is requesting revisions to emission limits at the Northern Indiana Public Service Company Bailly Station (NIPSCO) facility reflecting permanently shut down units. Indiana is also requesting SIP revisions for two facilities formerly owned by ArcelorMittal USA LLC and currently owned by Cleveland-Cliffs LLC (the Indiana Harbor East and Indiana Harbor West facilities). The Indiana Harbor East facility is required to demonstrate continuous compliance with final SO<sub>2</sub> emission limits as a daily (24-hour) average. These revisions will result in decreases in allowable SO<sub>2</sub> emissions at all three facilities, maintaining SO<sub>2</sub> attainment/unclassifiable designations for the 2010 1-hour SO<sub>2</sub> national ambient air quality standards (NAAQS). EPA proposed to approve this action on June 26, 2023, and received no adverse comments.

**DATES:** This final rule is effective on October 30, 2023.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2020-0699. 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.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through [www.regulations.gov](http://www.regulations.gov) or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19. We recommend that you telephone Cecilia Magos, at (312) 886-7336 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Cecilia Magos, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7336, [magos.cecilia@epa.gov](mailto:magos.cecilia@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever

“we,” “us,” or “our” is used, we mean EPA.

### I. Background Information

On June 26, 2023, EPA proposed to approve the Indiana Department of Environmental Management (IDEM) site-specific SO<sub>2</sub> SIP revisions to Indiana’s sulfur dioxide rules contained in 326 Indiana Administrative Code (IAC) 7-4-14(2), 326 IAC 7-4.1-10 and 326 IAC 7-4.1-11. See 88 FR 41341. The revisions for the NIPSCO facility in Porter County and ArcelorMittal LLC (Indiana Harbor West) in Lake County, are administrative clean-up revisions removing limits that apply to permanently shut down units. The revisions for ArcelorMittal LLC (Indiana Harbor East) also located in Lake County, remove limits that apply to permanently shut down units and include a demonstration of continuous compliance with SO<sub>2</sub> emission limits as a daily (24-hour) average SO<sub>2</sub> pounds per hour (lbs/hr) emission limit. An explanation of the CAA requirements, a detailed analysis of the revisions, and EPA’s reasons for proposing approval were provided in the notice of proposed rulemaking (88 FR 41341), and will not be restated here.

The public comment period for this proposed rule ended on July 26, 2023. During the comment period, EPA received one supportive comment that covered the improved environmental conditions and the potential health benefits from reduced exposure to SO<sub>2</sub> emissions in an area. The comment received is included in the docket for this action. Because the comment is supportive and does not recommend a different action on the SIP submission from what EPA proposed, we are finalizing our action as proposed.

### II. Final Action

EPA is approving revisions to Indiana’s SO<sub>2</sub> rules submitted on March 31, 2022. Specifically, EPA is approving Indiana’s SO<sub>2</sub> rules for NIPSCO (326 IAC 7-4-14(2)), ArcelorMittal USA LLC (Indiana Harbor West) (326 IAC 7-4.1-10), and ArcelorMittal USA LLC (Indiana Harbor East) (326 IAC 7-4.1-11), effective March 31, 2021. This will strengthen the Indiana SO<sub>2</sub> SIP by lowering SO<sub>2</sub> emission limits overall and update monitoring compliance requirements to the Indiana Harbor East facility.

### III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation

by reference of the Indiana Regulations described in section II of this preamble and set forth in the amendments to 40 CFR part 52 below. EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov), and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

### IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993), and 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;

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

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

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

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

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.”

IDEM 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 performed an environmental justice analysis, as is described in the section titled, “Environmental Justice Considerations” in the notice of proposed rulemaking. See 88 FR 41343. The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 27, 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, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 19, 2023.

**Debra Shore,**

*Regional Administrator, Region 5.*

For the reasons stated in the preamble, title 40 CFR part 52 is amended as follows:

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

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

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

■ 2. In § 52.770, amend the table in paragraph (c), under “Article 7. Sulfur Dioxide Rules”:

■ a. Under “Rule 4. Emission Limitations and Requirements by County”:

■ i. By revising the entry for “7–4–14”, and

■ ii. By adding a second entry for “7–4–14” immediately following the first entry.

■ b. Under “Rule 4.1. Lake County Sulfur Dioxide Emission Limitations” by revising the entries for “7–4.1–10” and “7–4.1–11”.

The revised and added entries read as follows:

#### § 52.770 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

#### EPA-APPROVED INDIANA REGULATIONS

| Indiana citation                                               | Subject                                            | Indiana effective date | EPA approval date                                    | Notes                |
|----------------------------------------------------------------|----------------------------------------------------|------------------------|------------------------------------------------------|----------------------|
| *                                                              | *                                                  | *                      | *                                                    | *                    |
| <b>Article 7. Sulfur Dioxide Rules</b>                         |                                                    |                        |                                                      |                      |
| *                                                              | *                                                  | *                      | *                                                    | *                    |
| <b>Rule 4. Emission Limitations and Requirements by County</b> |                                                    |                        |                                                      |                      |
| *                                                              | *                                                  | *                      | *                                                    | *                    |
| 7–4–14 .....                                                   | Porter County sulfur dioxide emission limitations. | 10/23/1988             | 1/19/1989, 54 FR 2112 .....                          | Only Sec. 14. (1).   |
| 7–4–14 .....                                                   | Porter County sulfur dioxide emission limitations. | 3/31/2021              | 9/28/2023, [Insert <b>Federal Register</b> Citation] | Except Sec. 14. (1). |

## EPA-APPROVED INDIANA REGULATIONS—Continued

| Indiana citation                                                 | Subject                                                                          | Indiana effective date | EPA approval date                                     | Notes |
|------------------------------------------------------------------|----------------------------------------------------------------------------------|------------------------|-------------------------------------------------------|-------|
| *                                                                | *                                                                                | *                      | *                                                     | *     |
| <b>Rule 4.1. Lake County Sulfur Dioxide Emission Limitations</b> |                                                                                  |                        |                                                       |       |
| 7-4.1-10 ...                                                     | ArcelorMittal USA LLC (Indiana Harbor West) sulfur dioxide emission limitations. | 3/31/2021              | 9/28/2023, [Insert <b>Federal Register</b> Citation]. | *     |
| 7-4.1-11 ...                                                     | ArcelorMittal USA LLC (Indiana Harbor East) sulfur dioxide emission limitations. | 3/31/2021              | 9/28/2023, [Insert <b>Federal Register</b> Citation]. | *     |
| *                                                                | *                                                                                | *                      | *                                                     | *     |

\* \* \* \* \*

[FR Doc. 2023-20743 Filed 9-27-23; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R10-OAR-2021-0752; FRL-9203-02-R10]

### Air Plan Approval; WA; Yakima County Outdoor and Agricultural Burning Rule Revisions

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving into the Washington State Implementation Plan (SIP) the Yakima Regional Clean Air Agency's (YRCAA) revised outdoor and agricultural burning rule submitted by the State of Washington (Washington or the State) on October 14, 2021. The submitted revisions improve stringency, clarity and enforceability of the rule. The EPA is proposing to approve the SIP submission as consistent with Clean Air Act (Act or CAA) requirements.

**DATES:** This action is effective on October 30, 2023.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2021-0752. 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., 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](https://www.regulations.gov), or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Claudia Vaupel, EPA Region 10 at (206) 553-6121, or [vaupel.claudia@epa.gov](mailto:vaupel.claudia@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever “we,” “us,” or “our” is used, it means the EPA.

### I. Background

On July 26, 2023, the EPA proposed to approve Washington's October 14, 2021, SIP submission which significantly revised the SIP-approved outdoor burning rule for the Yakima area (88 FR 48147). The reasons for our proposed approval were stated in the proposed rulemaking and will not be re-stated here. The public comment period for our proposed approval ended on August 25, 2023, and we did not receive comments. Therefore, we are finalizing our action as proposed.

### II. Final Action

The EPA is approving into the Washington SIP, the rule revisions for outdoor and agricultural burning submitted by Washington on October 14, 2021, because they meet Clean Air Act requirements. The rule revisions include updates to applicability, general prohibitions and requirements for all burning, permit requirements and limited exemptions, program delegation, and rule renumbering. Based on our review, we determined that the rule revisions result in an overall strengthening of the requirements for open and agricultural burning in Yakima County.

The EPA is approving into the federally-approved SIP the YRCAA Regulation 1, Article 3, Section 3.03 (regulating outdoor and agricultural burning in Yakima County), effective September 9, 2020, except the following

provisions: 3.03.C.2.g, 3.03.E.2.a, 3.03.E.2.c, 3.03.E.3.d, 3.03.K; and the following general rule permit provisions:

General Rule Permit No. 3.03-1 Conditions: E.2.b, E.2.d, E.2.e, and G;  
General Rule Permit No. 3.03-2 Conditions: E.2.b and G;  
General Rule Permit No. 3.03-3 Conditions: E.2.b and G;  
General Rule Permit No. 3.03-4 Conditions: E.2.c and G; and  
General Rule Permit No. 3.03-5 Conditions E.2.d and G.

We are also removing from the federally-approved SIP the outdated Regulation 1, Article 5 provisions, Sections 5.01 through 5.05 (regulating outdoor burning in Yakima County), state effective December 15, 1995, that are replaced by Section 3.03.

### III. 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, we are finalizing the incorporation by reference of Regulation 1, Article 3, Section 3.03 provisions described in section II of this preamble. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](https://www.regulations.gov) and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this 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 the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation. The EPA is also removing regulatory text that includes incorporation by

reference. In accordance with requirements of 1 CFR 51.5, the EPA is removing from incorporation by reference the Regulation 1, Article 5, Sections 5.01 through 5.05 provisions described in section II of this preamble.

### III. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
  - 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 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 it 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. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

Neither Washington nor YRCAA evaluated environmental justice considerations as part of the SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of

the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 27, 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, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: September 22, 2023.

**Casey Sixkiller,**

*Regional Administrator, Region 10.*

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

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

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

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

#### Subpart WW—Washington

- 2. In § 52.2470, amend Table 10 in paragraph (c) by:
- a. Adding the entry “3.03” in numerical order under the heading “Article 3—Rules”; and
- b. Removing the heading “Article V—Emissions Standards and Preventative Measures” and the entries “5.01”, “5.02”, “5.03”, “5.04”, and “5.05”.

The addition reads as follows:

#### § 52.2470 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

TABLE 10—ADDITIONAL REGULATIONS APPROVED FOR THE YAKIMA REGIONAL CLEAN AIR AGENCY (YRCAA) JURISDICTION

[Applicable in Yakima county, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction; facilities subject to the Washington Department of Ecology's direct jurisdiction under Chapters 173–405, 173–410, and 173–415 Washington Administrative Code (WAC); Indian reservations; any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction; and the Prevention of Significant Deterioration (PSD) permitting of facilities subject to the applicability sections of WAC 173–400–700.]

| State/local citation                                | Title/subject                     | State/local effective date | EPA approval date                                   | Explanations                                                                                                                                                                                                                                                                              |
|-----------------------------------------------------|-----------------------------------|----------------------------|-----------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Yakima Regional Clean Air Agency Regulations</b> |                                   |                            |                                                     |                                                                                                                                                                                                                                                                                           |
| *                                                   | *                                 | *                          | *                                                   | *                                                                                                                                                                                                                                                                                         |
| <b>Article 3—Rules</b>                              |                                   |                            |                                                     |                                                                                                                                                                                                                                                                                           |
| *                                                   | *                                 | *                          | *                                                   | *                                                                                                                                                                                                                                                                                         |
| 3.03 .....                                          | Outdoor and Agricultural Burning. | 9/9/20                     | 9/28/23, [INSERT <b>FEDERAL REGISTER</b> CITATION]. | Except subsection 3.03.C.2.g, 3.03.E.2a, 3.03.E.2.c, 3.03.E.3.d, 3.03.K; and the following provisions in General Rule Permit No.: 3.03–1.E.2.b, 3.03–1.E.2.d, 3.03–1.E.2.e, 3.03–1.G, 3.03–2.E.2.b, 3.03–2.G, 3.03–3.E.2.b, 3.03–3.G, 3.03–4.E.2.c, 3.03–4.G, 3.03–5.E.2.d, and 3.03–5.G. |
| *                                                   | *                                 | *                          | *                                                   | *                                                                                                                                                                                                                                                                                         |

\* \* \* \* \*

[FR Doc. 2023–21255 Filed 9–27–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R10–OAR–2023–0341: FRL–11175–02–R10]

### Air Plan Approval; Washington; Southwest Clean Air Agency; Emission Standards and Controls for Sources Emitting Gasoline Vapors

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a revision to the Washington State Implementation Plan (SIP) for the Southwest Clean Air Agency (SWCAA) jurisdiction as it relates to the ozone National Ambient Air Quality Standard. This revision updates SWCAA's requirements in the SIP for Stage I and Stage II vapor recovery systems at gasoline dispensing facilities including: decommissioning existing Stage II systems incompatible with onboard refueling vapor recovery systems on or before January 1, 2023; allowing removal from service of Stage II vapor recovery equipment compatible with onboard refueling vapor recovery on or after January 1, 2023; and removing the requirement for Stage II vapor recovery at new installations. The

revisions to the SIP also include, among other changes, revised requirements for installation of enhanced conventional nozzles, installation of low permeation hoses, and annual testing based on facility throughput. SWCAA's submittal, in coordination with the Washington Department of Ecology, included a demonstration that such removal of Stage II requirements is consistent with the Clean Air Act and EPA guidance.

**DATES:** This final rule is effective October 30, 2023.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2023–0341. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information the disclosure of which 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 at <https://www.regulations.gov>, or please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hunt, EPA Region 10, 1200 Sixth Avenue—Suite 155, Seattle, WA 98101, at (206) 553–0256, or [hunt.jeff@epa.gov](mailto:hunt.jeff@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever

“we” or “our” is used, it means the EPA.

### I. Background

On June 22, 2023, SWCAA, in coordination with the Washington Department of Ecology as the Governor's designee for revisions to the SIP, submitted the current version of SWCAA 491 “Emission Standards and Controls for Sources Emitting Gasoline Vapors” for EPA approval. On August 10, 2023, we proposed to approve the submission (88 FR 54259). The reasons for our proposed approval are included in the proposal and will not be restated here. The public comment period closed on September 11, 2023. We received no comments on our proposed action and therefore we are finalizing our action as proposed.

### II. Final Action

We have determined that SWCAA's demonstration for removal of Stage II equipment meets Clean Air Act requirements. Therefore, we are approving and incorporating by reference SWCAA 491 “Emission Standards and Controls for Sources Emitting Gasoline Vapors.” Upon the effective date of this action, the Washington SIP will include the following updated sections of SWCAA 491 as they apply in the SWCAA local jurisdiction:

- 491–010 Policy and Purpose (establishing overall policy to control emissions of air contaminants from gasoline marketing and dispensing



facilities) (State effective March 18, 2001);

- 491-015 Applicability (defining the types of operations covered, including storage, transport, and transfer of gasoline) (State effective March 18, 2001);
- 491-020 Definitions (defining key terms used in the regulations to control gasoline vapor emissions) (State effective February 7, 2020);
- 491-030 Registration (requiring gasoline marketing and dispensing facilities to register annually with the local air agency) (State effective February 7, 2020);
- 491-040 Gasoline Vapor Control Requirements (requiring vapor controls on specific types of gasoline plants, terminals, tanks and other equipment) (State effective February 7, 2020);
- 491-050 Failures, Certification, Testing and Recordkeeping (prescribing vapor recovery system certification, leak testing, monitoring and recordkeeping) (State effective February 7, 2020);
- 491-060 Severability (stating that each section of the gasoline vapor control regulations are severable from the others in the event one or more are deemed invalid) (State effective March 18, 2001).

This version of SWCAA 491 removes from the Washington SIP the requirement for Stage II vapor recovery systems in SWCAA's jurisdiction and adds additional VOC controls such as the installation of enhanced conventional nozzles and low permeation hoses, as well as other historic changes since the EPA's last approval.

### III. 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, we are finalizing the incorporation by reference of the Southwest Clean Air Agency regulatory provisions described in section II of this preamble and set forth in the amendments to 40 CFR part 52 in this document. The EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the Clean Air Act as of the effective date of the final rule of the EPA's approval, and will be

incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

### IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air 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 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
  - 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.
- 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. The EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." The EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

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

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 it 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).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 27, 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

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

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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 22, 2023.  
Casey Sixkiller,  
Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart WW—Washington

■ 2. Amend § 52.2470, paragraph (c), table 8 under the heading “Emissions Standards and Controls for Sources Emitting Gasoline Vapors” by revising the entries “491–010”, “491–015”, “491–020”, “491–030”, “491–040”, “491–050”, and “491–060” to read as follows:

§ 52.2470 Identification of plan.

\* \* \* \* \*  
(c) \* \* \*

TABLE 8—ADDITIONAL REGULATIONS APPROVED FOR THE SOUTHWEST CLEAN AIR AGENCY (SWCAA) JURISDICTION  
[Applicable in Clark, Cowlitz, Lewis, Skamania and Wahkiakum counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction; facilities subject to the Washington Department of Ecology’s direct jurisdiction under Chapters 173–405, 173–410, and 173–415 Washington Administrative Code (WAC); Indian reservations; any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction; and the Prevention of Significant Deterioration (PSD) permitting of facilities subject to the applicability sections of WAC 173–400–700.]

| State/local citation                                                  | Title/subject                                        | State/local effective date | EPA approval date                            | Explanations |
|-----------------------------------------------------------------------|------------------------------------------------------|----------------------------|----------------------------------------------|--------------|
| Southwest Clean Air Agency Regulations                                |                                                      |                            |                                              |              |
| *                                                                     | *                                                    | *                          | *                                            | *            |
| Emissions Standards and Controls for Sources Emitting Gasoline Vapors |                                                      |                            |                                              |              |
| 491–010 .....                                                         | Policy and Purpose .....                             | 3/18/01                    | 9/28/23, [INSERT FEDERAL REGISTER CITATION]. |              |
| 491–015 .....                                                         | Applicability .....                                  | 3/18/01                    | 9/28/23, [INSERT FEDERAL REGISTER CITATION]. |              |
| 491–020 .....                                                         | Definitions .....                                    | 2/7/20                     | 9/28/23, [INSERT FEDERAL REGISTER CITATION]. |              |
| 491–030 .....                                                         | Registration .....                                   | 2/7/20                     | 9/28/23, [INSERT FEDERAL REGISTER CITATION]. |              |
| 491–040 .....                                                         | Gasoline Vapor Control Requirements .....            | 2/7/20                     | 9/28/23, [INSERT FEDERAL REGISTER CITATION]. |              |
| 491–050 .....                                                         | Failures, Certification, Testing and Record-keeping. | 2/7/20                     | 9/28/23, [INSERT FEDERAL REGISTER CITATION]. |              |
| 491–060 .....                                                         | Severability .....                                   | 3/18/01                    | 9/28/23, [INSERT FEDERAL REGISTER CITATION]. |              |
| *                                                                     | *                                                    | *                          | *                                            | *            |

\* \* \* \* \*  
[FR Doc. 2023–21266 Filed 9–27–23; 8:45 am]  
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1054

Control of Emissions From New, Small Nonroad Spark-Ignition Engines and Equipment

CFR Correction

This rule is being published by the Office of the Federal Register to correct

an editorial or technical error that appeared in the most recent annual revision of the Code of Federal Regulations.

■ In Title 40 of the Code of Federal Regulations, Parts 1000 to 1059, revised as of July 1, 2023, in § 1054.801, remove the second definition of “Equipment manufacturer” and place the remaining definition in alphabetical order, and reinstate the definition of “Engine manufacturer” in alphabetical order to read as follows:

§ 1054.801 What definitions apply to this part?

\* \* \* \* \*

Engine manufacturer means the manufacturer of the engine. See the definition of “manufacturer” in this section.

\* \* \* \* \*

[FR Doc. 2023–21520 Filed 9–27–23; 8:45 am]  
BILLING CODE 0099–10–P

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****43 CFR Part 3000****[BLM\_HQ\_FRN\_MO4500172991]****RIN 1004-AE97****Minerals Management: Adjustment of Cost Recovery Fees****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Final rule.

**SUMMARY:** This final rule updates the fees set forth in the Department of the Interior's onshore mineral resources regulations for the processing of certain minerals program-related actions. It also adjusts certain filing fees for minerals-related documents. These updated fees include those for actions such as lease renewals, mineral patent adjudications, and Applications for Permits to Drill (APDs).

**DATES:** This final rule is effective on October 1, 2023.

**ADDRESSES:** You may send inquiries or suggestions to Director (630), Bureau of Land Management, 1849 C St. NW, Room 5646, Washington, DC 20240; Attention: RIN 1004-AE97.

**FOR FURTHER INFORMATION CONTACT:** Yvette M. Fields, Chief, Division of Fluid Minerals, 240-712-8358, [yfields@blm.gov](mailto:yfields@blm.gov); Rebecca Good, Acting Chief, Division of Solid Minerals, 307-251-3487, [rgood@blm.gov](mailto:rgood@blm.gov); or Faith Bremner, Regulatory Analyst, Division of Regulatory Affairs, [fbremner@blm.gov](mailto:fbremner@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:****I. Background**

Federal agencies are authorized to charge processing costs by the Independent Offices Appropriation Act of 1952, 31 U.S.C. 9701. The Bureau of Land Management (BLM) also has specific authority to charge fees for processing applications and other

documents relating to public lands under Section 304 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734. In 2005, the BLM published a final cost recovery rule (70 FR 58853) that established new fees or revised fees and service charges for processing documents related to its minerals programs ("2005 Cost Recovery Rule"). The 2005 Cost Recovery Rule also established the method that the BLM would use to adjust those fees and service charges for inflation on an annual basis.

The regulations at 43 CFR 3000.12(a) provide that the BLM will annually adjust fees established in Subchapter C (43 CFR parts 3000-3900) according to changes in the Implicit Price Deflator for Gross Domestic Product (IPD-GDP), which is published quarterly by the U.S. Department of Commerce. See also 43 CFR 3000.10. This final rule updates those 48 fees and service charges consistent with that direction. The fee adjustments in this final rule are based on the mathematical formula set forth in the 2005 Cost Recovery Rule. The public had an opportunity to comment on that adjustment procedure as part of the 2005 rulemaking.

Section 3021(b) of the National Defense Authorization Act of 2015 (Pub. L. 113-291; 30 U.S.C. 191(d)) (the Act) directs the BLM to collect a fee for each new APD submitted to the BLM for fiscal years (FY) 2016 through 2026 and requires the fee amount to be adjusted annually for inflation. The Act set the initial fee amount at \$9,500 as of October 1, 2015, with updated annual fee amounts to be indexed for United States dollar inflation from that date as measured by the Consumer Price Index (CPI). 30 U.S.C. 191(d)(2). The CPI is used only for the APD fee inflation adjustment while the IPD-GDP is used for all the other fees that are being adjusted for inflation. Public comment procedures are unnecessary for this adjustment as the authorizing statute does not give the BLM the discretion to vary the amount of the inflation adjustment for the APD to reflect any views or suggestions provided by commenters.

Accordingly, the Department of the Interior for good cause finds under 5 U.S.C. 553(b)(B) and (d)(3) that notice and public comment procedures are unnecessary and that the fee adjustments in this final rule may be

effective less than 30 days after publication since periodic fee adjustments may be made in a final rule without opportunity for notice and comment. See 43 CFR 3000.10(c).

**II. Discussion of Final Rule**

As set forth in the 2005 Cost Recovery Rule, the updates for 48 of the fees covered by this rule are based on the change in the IPD-GDP. The BLM's minerals program publishes the updated cost recovery fees annually, at the start of each fiscal year.

This final rule updates the current (FY 2023) cost recovery fees for use in FY 2024. The current fees were set by the cost recovery fee rule published on September 21, 2022 (87 FR 57637), effective October 1, 2022. The update in this final rule adjusts 48 of the FY 2023 fees based on the change in the IPD-GDP from the 4th Quarter of 2021 to the 4th Quarter of 2022. The APD fee adjustment is based on the percentage change in the U.S. Bureau of Labor Statistics' CPI for all goods and all urban consumers (CPI-U) from June 2022 to June 2023.

Under this final rule, 10 fees will remain the same and 38 fees will increase. Except for the per-acre cost for nominating lands for geothermal development, which is less than \$1, the filing fees are not adjusted if the change is less than \$5. For example, if inflation adjusted a fee from \$15 to \$17.24, the filing fee would remain at \$15.

Of the 38 fees that are being increased by this final rule, 18 fees will increase by \$5, six fees will increase by \$10, two fees will increase by \$15, two fees will increase by \$25, three fees will increase by \$30, two fees will increase by \$35, and one fee will increase by \$40. The largest increase, \$350, will be applied to the APD fee, which will increase from \$11,805 to \$12,155. The fee for adjudicating a patent application containing more than 10 claims will increase by \$230—from \$3,585 to \$3,815. The fee for adjudicating a patent application containing 10 or fewer claims will increase by \$115—from \$1,790 to \$1,905. The smallest increase—1 cent—will be added to the per-acre cost of nominating lands for geothermal leasing, which will rise from 13 cents per acre to 14 cents per acre. To see the specific fee increases, please refer to the table below.

It is important to note that the “real” values of the fees are not actually increasing, since real values account for the effect of inflation. In real terms, the

values of the fees are simply being adjusted to account for the changes in the prices of goods and services produced in the United States.

The calculations that resulted in the new fees are included in the following table:

| Fixed cost recovery fees                                                                          | Existing fee <sup>1</sup><br>(FY 2023) | Existing value <sup>2</sup> | IPD-GDP increase <sup>3</sup> | New value <sup>4</sup> | New fee <sup>5</sup><br>(FY 2024) |
|---------------------------------------------------------------------------------------------------|----------------------------------------|-----------------------------|-------------------------------|------------------------|-----------------------------------|
| <b>Oil &amp; Gas (parts 3100, 3110, 3120, 3130, 3150):</b>                                        |                                        |                             |                               |                        |                                   |
| Competitive lease application .....                                                               | \$185                                  | \$184.904                   | \$11.852                      | \$196.756              | \$195                             |
| Assignment and transfer of record title or operating rights .....                                 | 105                                    | 106.665                     | 6.837                         | 113.502                | 115                               |
| Overriding royalty transfer, payment out of production .....                                      | 15                                     | 14.219                      | 0.911                         | 15.130                 | 15                                |
| Name change, corporate merger or transfer to heir/devisee .....                                   | 250                                    | 248.886                     | 15.953                        | 264.839                | 265                               |
| Lease consolidation .....                                                                         | 525                                    | 526.226                     | 33.731                        | 559.957                | 560                               |
| Lease renewal or exchange .....                                                                   | 475                                    | 476.464                     | 30.541                        | 507.005                | 505                               |
| Lease reinstatement, Class I .....                                                                | 90                                     | 92.432                      | 5.924                         | 98.356                 | 100                               |
| Leasing under right-of-way .....                                                                  | 475                                    | 476.464                     | 30.541                        | 507.005                | 505                               |
| Geophysical exploration permit application—Alaska .....                                           | 30                                     | 29.104                      | 1.865                         | 30.969                 | 30                                |
| Renewal of exploration permit—Alaska .....                                                        | 30                                     | 29.104                      | 1.865                         | 30.969                 | 30                                |
| <b>Geothermal (part 3200):</b>                                                                    |                                        |                             |                               |                        |                                   |
| Noncompetitive lease application .....                                                            | 475                                    | 476.464                     | 30.541                        | 507.005                | 505                               |
| Competitive lease application .....                                                               | 185                                    | 184.904                     | 11.852                        | 196.756                | 195                               |
| Assignment and transfer of record title or operating right .....                                  | 105                                    | 106.665                     | 6.837                         | 113.502                | 115                               |
| Name change, corporate merger or transfer to heir/devisee .....                                   | 250                                    | 248.886                     | 15.953                        | 264.839                | 265                               |
| Lease consolidation .....                                                                         | 525                                    | 526.226                     | 33.731                        | 559.957                | 560                               |
| Lease reinstatement .....                                                                         | 90                                     | 92.432                      | 5.924                         | 98.356                 | 100                               |
| Nomination of lands .....                                                                         | 135                                    | 133.123                     | 8.533                         | 141.656                | 140                               |
| Plus per acre nomination fee .....                                                                | 0.13                                   | 0.130                       | 0.008                         | 0.138                  | 0.14                              |
| Site license application .....                                                                    | 70                                     | 71.109                      | 4.558                         | 75.667                 | 75                                |
| Assignment or transfer of site license .....                                                      | 70                                     | 71.109                      | 4.558                         | 75.667                 | 75                                |
| <b>Coal (parts 3400, 3470):</b>                                                                   |                                        |                             |                               |                        |                                   |
| License to mine application .....                                                                 | 15                                     | 14.219                      | 0.911                         | 15.130                 | 15                                |
| Exploration license application .....                                                             | 390                                    | 391.120                     | 25.070                        | 416.190                | 415                               |
| Lease or lease interest transfer .....                                                            | 80                                     | 78.237                      | 5.014                         | 83.251                 | 85                                |
| <b>Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580):</b>                |                                        |                             |                               |                        |                                   |
| Applications other than those listed below .....                                                  | 45                                     | 42.670                      | 2.735                         | 45.405                 | 45                                |
| Prospecting permit amendment .....                                                                | 80                                     | 78.237                      | 5.014                         | 83.251                 | 85                                |
| Extension of prospecting permit .....                                                             | 130                                    | 128.001                     | 8.204                         | 136.205                | 135                               |
| Lease modification or fringe acreage lease .....                                                  | 35                                     | 35.565                      | 2.279                         | 37.844                 | 40                                |
| Lease renewal .....                                                                               | 610                                    | 611.582                     | 39.202                        | 650.784                | 650                               |
| Assignment, sublease, or transfer of operating rights .....                                       | 35                                     | 35.566                      | 2.279                         | 37.845                 | 40                                |
| Transfer of overriding royalty .....                                                              | 35                                     | 35.566                      | 2.279                         | 37.845                 | 40                                |
| Use permit .....                                                                                  | 35                                     | 35.566                      | 2.279                         | 37.845                 | 40                                |
| Shasta and Trinity hardrock mineral lease .....                                                   | 35                                     | 35.566                      | 2.279                         | 37.845                 | 40                                |
| Renewal of existing sand and gravel lease in Nevada .....                                         | 35                                     | 35.566                      | 2.279                         | 37.845                 | 40                                |
| <b>Multiple Use; Mining (Group 3700):</b>                                                         |                                        |                             |                               |                        |                                   |
| Notice of protest of placer mining operations .....                                               | 15                                     | 14.219                      | 0.911                         | 15.130                 | 15                                |
| <b>Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870):</b>                      |                                        |                             |                               |                        |                                   |
| Application to open lands to location .....                                                       | 15                                     | 14.219                      | 0.911                         | 15.130                 | 15                                |
| Notice of location .....                                                                          | 20                                     | 21.321                      | 1.366                         | 22.687                 | 25                                |
| Amendment of location .....                                                                       | 15                                     | 14.219                      | 0.911                         | 15.130                 | 15                                |
| Transfer of mining claim/site .....                                                               | 15                                     | 14.219                      | 0.911                         | 15.130                 | 15                                |
| Recording an annual FLPMA filing .....                                                            | 15                                     | 14.219                      | 0.911                         | 15.130                 | 15                                |
| Deferment of assessment work .....                                                                | 130                                    | 128.001                     | 8.204                         | 136.205                | 135                               |
| Recording a notice of intent to locate mining claims on<br>Stockraising Homestead Act lands ..... | 35                                     | 35.566                      | 2.279                         | 37.845                 | 40                                |
| Mineral patent adjudication (more than ten claims) .....                                          | 3,585                                  | 3,584.147                   | 229.743                       | 3,813.890              | 3,815                             |
| (ten or fewer claims) .....                                                                       | 1,790                                  | 1,792.054                   | 114.870                       | 1,906.924              | 1,905                             |
| Adverse claim .....                                                                               | 130                                    | 128.001                     | 8.204                         | 136.205                | 135                               |
| Protest .....                                                                                     | 80                                     | 78.237                      | 5.014                         | 83.251                 | 85                                |
| <b>Oil Shale Management (parts 3900, 3910, 3930):</b>                                             |                                        |                             |                               |                        |                                   |
| Exploration license application .....                                                             | 375                                    | 375.144                     | 24.046                        | 399.190                | 400                               |
| Assignment or sublease of record title or overriding royalty .....                                | 75                                     | 76.306                      | 4.891                         | 81.197                 | 80                                |

<sup>1</sup> The Existing Fee was established by the 2022 (FY 2023) cost recovery fee update rule published on September 21, 2022 (87 FR 57637), effective October 1, 2022.

<sup>2</sup> The Existing Value is the figure from the New Value column in the previous year's rule.

<sup>3</sup> From 4th Quarter 2021 (121.7) to 4th Quarter 2022 (129.5), the IPD-GDP increased by 6.41 percent. The value in the IPD-GDP Increase column is 6.41 percent of the “Existing Value.”

<sup>4</sup> The sum of the “Existing Value” and the “IPD-GDP Increase” is the “New Value.”

<sup>5</sup> The “New Fee” for FY 2024 is the “New Value” rounded to the nearest \$5 for values equal to or greater than \$1 or rounded to the nearest penny for values under \$1.

| Fixed cost recovery fees                                                                       | Existing fee (FY 2023) <sup>6</sup> | Existing value <sup>7</sup> | CPI-U increase <sup>8</sup> | New value <sup>9</sup> | New fee (FY 2024) <sup>10</sup> |
|------------------------------------------------------------------------------------------------|-------------------------------------|-----------------------------|-----------------------------|------------------------|---------------------------------|
| Oil and Gas Operations/Production (parts 3160, 3170):<br>Application for Permit to Drill ..... | 11,805                              | 11,805.790                  | 350.631                     | 12,156.421             | 12,155                          |

### III. How Fees Are Adjusted

The BLM took the base values (or “existing values”) upon which it derived the FY 2023 cost recovery fees (or “existing fees”) and multiplied them by the percent change in the IPD-GDP (6.41 percent for this update) to generate the “IPD-GDP increases” (in dollars). The BLM then added the “IPD-GDP increases” to the “existing values” to generate the “new values.” The BLM then calculated the “new fees” by rounding the “new values” to the closest multiple of \$5 for fees equal to or greater than \$1, or to the nearest cent for fees under \$1. The “new fees” are the updated cost recovery fees for FY 2024.

The source for IPD-GDP data is the U.S. Department of Commerce, Bureau of Economic Analysis website, specifically, “Table 1.1.9. Implicit Price Deflators for Gross Domestic Product.” <sup>11</sup>

The updated APD fee amount reflects an adjustment to the current fee of \$11,805 based on the percentage change in the CPI-U from the end of June 2022 to the end of June 2023. The CPI-U for June 2023 is 2.97 percent higher than the CPI-U for June 2022. Increasing the 2023 fee of \$11,805 by 2.97 percent and rounding the product to the nearest \$10 produces a 2024 fee of \$12,155.

The source for CPI-U data is the BLS, U.S. Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers: All Items in U.S. City Average [CPIAUCSL], retrieved from

<sup>6</sup> The Existing Fee was established by the 2022 (FY 2023) cost recovery fee update rule published on September 21, 2022 (87 FR 57637), effective October 1, 2022.

<sup>7</sup> The existing value is the adjusted CPI-U for June 2022 to June 2023. The statute requires that the APD calculation be based on CPI-U.

<sup>8</sup> From June 2022 to June 2023, the adjusted CPI-U increased by 2.97%.

<sup>9</sup> The sum of the “Existing Value” and the “CPI-U Increase” is the “New Value.”

<sup>10</sup> The new APD fee for FY 2024 is the “New Value” rounded to the nearest \$10.

<sup>11</sup> Available on the web at <https://apps.bea.gov/iTable/?1301=i&1303=13&ReqID=13&isuri=1&step=3>. Accessed by the BLM on July 14, 2023.

FRED, Federal Reserve Bank of St. Louis.<sup>12</sup>

### IV. Procedural Matters

#### *Regulatory Planning and Review (Executive Order 12866)*

This document is not a significant rule, and the Office of Management and Budget has not reviewed this final rule under Executive Order 12866.

The BLM’s assessment of the benefits and costs of this rule show that it is not significant under Section 3(f)(1) of E.O. 12866, as amended by E.O. 14094. This rule will not have an annual effect on the economy of \$200 million or more. It will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal Governments or communities. The changes in today’s rule are much smaller than those in the 2005 Cost Recovery Rule, which did not approach the threshold for significance.

This final rule will not create inconsistencies or otherwise interfere with an action taken or planned by another agency. This rule does not change the relationships of the onshore minerals programs with other agencies’ actions. These relationships are included in agreements and memoranda of understanding that will not change with this rule.

In addition, this final rule does not materially affect the budgetary impact of entitlements, grants, or loan programs, or the rights and obligations of their recipients. This rule applies an inflationary adjustment factor to existing user fees for processing certain actions associated with the onshore minerals programs.

Finally, this final rule will not raise novel legal or policy issues. As explained earlier, this rule simply implements an annual process to account for inflation that was adopted by and explained in the 2005 Cost Recovery Rule and Section 3021(b) of the National Defense Authorization Act of 2015.

<sup>12</sup> Available on the web at <https://fred.stlouisfed.org/series/CPIAUCSL>. Accessed by the BLM on July 14, 2023.

#### *The Regulatory Flexibility Act*

This final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As a result, a Regulatory Flexibility Analysis is not required. The Small Business Administration defines small entities as individual, limited partnerships, or small companies considered to be at arm’s length from the control of any parent companies if they meet the following size requirements as established for each North American Industry Classification System (NAICS) code:

- Iron ore mining (NAICS code 212210): 750 or fewer employees
- Gold ore mining (NAICS code 212221): 1,500 or fewer employees
- Silver ore mining (NAICS code 212222): 250 or fewer employees
- Uranium-Radium-Vanadium ore mining (NAICS code 212291): 250 or fewer employees
- All Other Metal ore mining (NAICS code 212299): 750 or fewer employees
- Bituminous Coal and Lignite Surface Mining (NAICS code 212111): 1,250 or fewer employees
- Bituminous Coal Underground Mining (NAICS code 212112): 1,500 or fewer employees
- Crude Petroleum Extraction (NAICS code 211120): 1,250 or fewer employees
- Natural Gas Extraction (NAICS code 211130): 1,250 or fewer employees
- All Other Non-Metallic Mineral Mining (NAICS code 212399): 500 or fewer employees

The SBA would consider many, if not most, of the operators with whom the BLM works in the onshore minerals programs to be small entities. The BLM notes that this final rule does not affect service industries, for which the SBA has a different definition of “small entity.”

The final rule may affect a large number of small entities because 38 fees for activities on public lands will be increased. The highest adjustment, in dollar terms, is for the APD fee. That fee will increase by \$350, from \$11,805 to \$12,155. It is important to note that the

“real” values of the fees are not actually increasing, since real values account for the effect of inflation. In real terms, the values of the fees are simply being adjusted to account for the changes in the prices of goods and services produced in the United States. Accordingly, the BLM has concluded that the economic effect of the rule’s changes will not be significant, even for small entities.

For the 2005 Cost Recovery Rule, the BLM completed a Regulatory Flexibility Act threshold analysis. That analysis concluded that the fees would not have a significant economic effect on a substantial number of small entities. The fee increases implemented in this rule are substantially smaller than those provided for in the 2005 Cost Recovery Rule.

The APD fee increase is mandated by Section 3021(b) of the National Defense Authorization Act of 2015 (Pub. L. 113–291; 30 U.S.C. 191(d)) (the Act). The Act directs the BLM to collect a fee for each new APD submitted to the BLM for fiscal years (FY) 2016 through 2026 and requires the fee amount to be adjusted for inflation.

#### *Congressional Review Act*

This final rule is not a “major rule” as defined at 5 U.S.C. 804(2). The final rule will not have an annual effect on the economy greater than \$100 million; it will not result in major cost or price increases for consumers, industries, government agencies, or regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Accordingly, a Small Entity Compliance Guide is not required.

#### *Executive Order 13132, Federalism*

This final rule 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. In accordance with Executive Order 13132, the BLM therefore finds that the final rule does not have federalism implications, and a federalism assessment is not required.

#### *The Paperwork Reduction Act of 1995*

This final rule does not contain information-collection requirements that require a control number from the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). After the effective date of this rule, the new fees may affect the non-

hour burdens associated with the following control numbers:

#### *Oil and Gas*

- (1) 1004–0034, which expires September 30, 2024;
- (2) 1004–0137, which expires January 31, 2025;
- (3) 1004–0162, which expires December 31, 2024;
- (4) 1004–0185, which expires July 31, 2025;

#### *Geothermal*

- (5) 1004–0132, which expired July 31, 2023;<sup>13</sup>

#### *Coal*

- (6) 1004–0073, which expired April 30, 2023;<sup>14</sup>

#### *Mining Claims*

- (7) 1004–0025, which expires July 31, 2025;
- (8) 1004–0114, which expired April 30, 2023;<sup>15</sup> and

#### *Leasing of Solid Minerals Other Than Oil Shale*

- (9) 1004–0121, which expires August 31, 2025.

#### *Takings Implication Assessment (Executive Order 12630)*

As required by Executive Order 12630, the BLM has determined that this final rule will not cause a taking of private property. No private property rights will be affected by a rule that merely updates fees. The BLM therefore certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights.

#### *Civil Justice Reform (Executive Order 12988)*

In accordance with Executive Order 12988, the BLM finds that this final rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive order.

#### *The National Environmental Policy Act (NEPA)*

The BLM has determined that this final rule qualifies as a routine financial transaction and a regulation of an administrative, financial, legal, or procedural nature that is categorically excluded from environmental review under NEPA pursuant to 43 CFR 46.205

and 46.210(c) and (i). The final rule does not meet any of the 12 criteria for exceptions to categorical exclusions listed at 43 CFR 46.215. Therefore, neither an environmental assessment nor an environmental impact statement is required in connection with the rule (40 CFR 1508.4).

#### *The Unfunded Mandates Reform Act of 1995*

The BLM has determined that this final rule is not significant under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*, because it will not result in State, local, private sector, or Tribal government expenditures of \$100 million or more in any one year, 2 U.S.C. 1532. This rule will not significantly or uniquely affect small governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act.

#### *Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)*

In accordance with Executive Order 13175, the BLM has determined that this final rule does not include policies that have Tribal implications. Specifically, the rule would not have substantial direct effects on one or more Indian Tribes. Consequently, the BLM did not use the consultation process set forth in Section 5 of the Executive order.

#### *Information Quality Act*

In developing this final rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

#### *Effects on the Nation’s Energy Supply (Executive Order 13211)*

In accordance with Executive Order 13211, the BLM has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It merely adjusts certain administrative cost recovery fees to account for inflation.

#### *Author*

The principal author of this final rule is Faith Bremner of the Division of Regulatory Affairs, Bureau of Land Management.

#### *List of Subjects in 43 CFR Part 3000*

Public lands—mineral resources, Reporting and recordkeeping requirements.

For reasons stated in the preamble, the Bureau of Land Management amends 43 CFR part 3000 as follows:

<sup>13</sup> A renewal request for control number 1004–0132 was submitted to the Office of Management and Budget (OMB) on July 19, 2023.

<sup>14</sup> A renewal request for control number 1004–0073 was submitted to OMB on December 27, 2022.

<sup>15</sup> A renewal request for control number 1004–0114 was submitted to OMB on January 19, 2023.

**PART 3000—MINERALS  
MANAGEMENT: GENERAL**

■ 1. The authority citation for part 3000 continues to read as follows:

**Authority:** 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.*, 301–306, 351–359, and 601 *et seq.*; 31 U.S.C. 9701; 40 U.S.C. 471 *et seq.*; 42 U.S.C. 6508; 43 U.S.C. 1701 *et seq.*; and Pub. L. 97–35, 95 Stat. 357.

**Subpart 3000—General**

■ 2. Amend § 3000.12 by revising paragraph (a) to read as follows:

**§ 3000.12 What is the fee schedule for fixed fees?**

(a) The table in this section shows the fixed fees that must be paid to the BLM for the services listed for Fiscal Year (FY) 2024. These fees are nonrefundable and must be included with documents

filed under this chapter. Fees will be adjusted annually according to the change in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP) and the change in the Consumer Price Index for all goods and all urban consumers (CPI–U) by way of publication of a final rule in the **Federal Register** and will subsequently be posted on the BLM website (<https://www.blm.gov>) before October 1 each year. Revised fees are effective each year on October 1.

TABLE 1 TO PARAGRAPH (a)—FY 2024 PROCESSING AND FILING FEE TABLE

| Document/action                                                                                | FY 2024 fee                  |
|------------------------------------------------------------------------------------------------|------------------------------|
| Oil & Gas (parts 3100, 3110, 3120, 3130, 3150):                                                |                              |
| Competitive lease application .....                                                            | \$195.                       |
| Assignment and transfer of record title or operating rights .....                              | 115.                         |
| Overriding royalty transfer, payment out of production .....                                   | 15.                          |
| Name change, corporate merger or transfer to heir/devisee .....                                | 265.                         |
| Lease consolidation .....                                                                      | 560.                         |
| Lease renewal or exchange .....                                                                | 505.                         |
| Lease reinstatement, Class I .....                                                             | 100.                         |
| Leasing under right-of-way .....                                                               | 505.                         |
| Geophysical exploration permit application—Alaska .....                                        | 30.                          |
| Renewal of exploration permit—Alaska .....                                                     | 30.                          |
| Geothermal (part 3200):                                                                        |                              |
| Noncompetitive lease application .....                                                         | 505.                         |
| Competitive lease application .....                                                            | 195.                         |
| Assignment and transfer of record title or operating rights .....                              | 115.                         |
| Name change, corporate merger or transfer to heir/devisee .....                                | 265.                         |
| Lease consolidation .....                                                                      | 560.                         |
| Lease reinstatement .....                                                                      | 100.                         |
| Nomination of lands .....                                                                      | 140.                         |
| plus per acre nomination fee .....                                                             | 0.14.                        |
| Site license application .....                                                                 | 75.                          |
| Assignment or transfer of site license .....                                                   | 75.                          |
| Coal (parts 3400, 3470):                                                                       |                              |
| License to mine application .....                                                              | 15.                          |
| Exploration license application .....                                                          | 415.                         |
| Lease or lease interest transfer .....                                                         | 85.                          |
| Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580):                    |                              |
| Applications other than those listed below .....                                               | 45.                          |
| Prospecting permit application amendment .....                                                 | 85.                          |
| Extension of prospecting permit .....                                                          | 135.                         |
| Lease modification or fringe acreage lease .....                                               | 40.                          |
| Lease renewal .....                                                                            | 650.                         |
| Assignment, sublease, or transfer of operating rights .....                                    | 40.                          |
| Transfer of overriding royalty .....                                                           | 40.                          |
| Use permit .....                                                                               | 40.                          |
| Shasta and Trinity hardrock mineral lease .....                                                | 40.                          |
| Renewal of existing sand and gravel lease in Nevada .....                                      | 40.                          |
| Public Law 359; Mining in Powersite Withdrawals: General (part 3730):                          |                              |
| Notice of protest of placer mining operations .....                                            | 15.                          |
| Mining Law Administration (parts 3800, 3810, 3830, 3860, 3870):                                |                              |
| Application to open lands to location .....                                                    | 15.                          |
| Notice of location * .....                                                                     | 25.                          |
| Amendment of location .....                                                                    | 15.                          |
| Transfer of mining claim/site .....                                                            | 15.                          |
| Recording an annual FLPMA filing .....                                                         | 15.                          |
| Deferment of assessment work .....                                                             | 135.                         |
| Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands ..... | 40.                          |
| Mineral patent adjudication .....                                                              | 3,815 (more than 10 claims). |
|                                                                                                | 1,905 (10 or fewer claims).  |
| Adverse claim .....                                                                            | 135.                         |
| Protest .....                                                                                  | 85.                          |
| Oil Shale Management (parts 3900, 3910, 3930):                                                 |                              |
| Exploration license application .....                                                          | 400.                         |
| Application for assignment or sublease of record title or overriding royalty .....             | 80.                          |
| Onshore Oil and Gas Operations and Production (parts 3160, 3170):                              |                              |

TABLE 1 TO PARAGRAPH (a)—FY 2024 PROCESSING AND FILING FEE TABLE—Continued

| Document/action                       | FY 2024 fee |
|---------------------------------------|-------------|
| Application for Permit to Drill ..... | 12,155.     |

\* To record a mining claim or site location, this processing fee along with the initial maintenance fee and the one-time location fee required by statute (43 CFR part 3833) must be paid.

\* \* \* \* \*

**Laura Daniel-Davis,**  
Principal Deputy Assistant Secretary, Land  
and Minerals Management.

[FR Doc. 2023–21191 Filed 9–27–23; 8:45 am]

**BILLING CODE 4331–29–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### 45 CFR Part 1355 and 1356

**RIN 0970–AC91**

#### Separate Licensing or Approval Standards for Relative or Kinship Foster Family Homes

**AGENCY:** Children's Bureau (CB);  
Administration on Children, Youth and  
Families (ACYF); Administration for  
Children and Families (ACF);  
Department of Health and Human  
Services (HHS).

**ACTION:** Final rule.

**SUMMARY:** This rule finalizes revisions to the definition of “foster family home” proposed on February 14, 2023 (here after referred to as the February 2023 NPRM). Title IV–E agencies may choose to claim title IV–E federal financial participation (FFP) for the cost of foster care maintenance payments (FCMP) on behalf of an otherwise eligible child who is placed in a relative or kinship licensed or approved foster family home when the agency uses different licensing or approval standards for relative or kinship foster family homes and non-relative/non-kinship foster family homes. In addition, the final rule requires title IV–E agencies to periodically review the amount of FCMPs to also ensure that the agency provides a licensed or approved relative or kinship foster family home the same amount of FCMP that would have been made if the child was placed in a non-related/non-kinship foster family home.

**DATES:** This rule is effective on November 27, 2023.

**FOR FURTHER INFORMATION CONTACT:**  
Kathleen McHugh, Director, Policy  
Division, Children's Bureau, (202) 205–  
8618. Telecommunications Relay users

may dial 711 first. Email inquiries to  
[cbcomments@acf.hhs.gov](mailto:cbcomments@acf.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Statutory Authority
- II. Background
- III. Overview of February 2023 NPRM  
Comments
- IV. Section-by-Section Responses to  
Comments
- V. Regulatory Process Matters
- VI. Tribal Consultation Statement

##### I. Statutory Authority

This rule is published under the authority granted to the Secretary of Health and Human Services (the Secretary) by section 1102 of the Social Security Act (the Act), 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, as may be necessary for the efficient administration of the functions with which the Secretary is responsible under the Act.

##### II. Background

Each state and tribal licensing entity is responsible for establishing and maintaining licensing or approval standards for foster family homes. The Act requires only that such standards established by the state or tribe are reasonably in accord with recommended standards of national organizations for foster family homes related to admission policies, safety, sanitation, protection of civil rights, and use of the reasonable and prudent parenting standard (section 471(a)(10)(A) of the Act), and that the caregiver fully meet federal requirements under section 471(a)(20) of the Act (concerning criminal background checks for all foster parents). The Act permits a title IV–E agency to waive non-safety-related licensing or approval standards for relative foster family homes on a case-by-case basis (section 471(a)(10)(D) of the Act). The Act also requires title IV–E agencies to provide a periodic review of licensing or approval standards and amounts paid as foster care maintenance payments (FCMP) and adoption assistance to assure their continuing appropriateness (section 471(a)(11) of the Act; 45 CFR 1356.21(m)).

In 2000, ACF promulgated regulations that interpreted the Act to require that each state establish and apply its licensing or approval standards to all relative and non-relative foster family homes (45 CFR 1355.20). In the years following promulgation of the 2000 rule, research (Miller, Jennifer, “Creating a Kin-First Culture,” American Bar Association, July 1, 2017) concluded that children in foster care often do best when placed with relatives and kin because: (1) family connections are critical to healthy child development and a sense of belonging; (2) relative and kinship care helps to preserve children's cultural identity and relationship to their community; and (3) children living with relatives experience fewer behavioral problems and higher placement stability rates compared to children living with non-relatives in foster care (88 FR 9414; (Child Welfare Information Gateway. (2022). Kinship care and the child welfare system. U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. <https://www.childwelfare.gov/pubs/f-kinshi/>; Generations United and National Indian Child Welfare Association. (2020). TOOLKIT—American Indian and Alaska Native Grandfamilies: Helping Children Thrive Through Connection to Family and Cultural Identity. [www.gu.org](http://www.gu.org) and [www.nicwa.org](http://www.nicwa.org); (“How can we prioritize kin in the home study and licensure process, and make placement with relatives the norm?” Casey Family Programs, 2020). Congress subsequently amended title IV–E of the Act to prioritize placements with and involvement of relatives when a child is removed from their home (sections 471(a)(19) and (29) of the Act).

Consistent with the research cited above and Congress's amendments, ACF published the February 2023 NPRM proposing to allow a title IV–E agency to adopt one set of licensing or approval standards for all relative or kinship foster family homes that is different from the licensing or approval standards used for non-relative/non-kin foster family homes. ACF determined relative and kinship care is often the best option for children in foster care. However, current licensing standards may serve as a barrier to such placements (Miller,



“Creating a Kin-First Culture,” July 1, 2017; Children’s Defense Fund. Recommendations to Ensure Children’s Well-being through Support of Kinship Caregivers; (“How can we prioritize kin in the home study and licensure process, and make placement with relatives the norm?” Casey Family Programs, 2020). For example, relatives and kin who provide care for a child in foster care may be denied a foster family home license or approval because they have not met strict licensing standards, including non-safety standards that the state may waive under current federal law. Thus, the relative or kin caregiver is not eligible for FCMPs. Another example is that many states require the same time-consuming and intensive foster parent training classes for relatives and kin as they do for non-relatives. However, relative and kin caregivers may require a different level or type of foster parent training to take care of their kin, particularly when they already know the child for whom they are going to provide care. Non-relative foster parents may need training about how to integrate a child into a home with which the child is unfamiliar, or how to determine the child’s interests and skills. Similarly, in contrast with non-relative foster parents, who prepare for the arrival of children in foster care over months and years, relatives often receive a request to care for a child in emergency situations. In addition, relatives become licensed to care for a child who is a relative, not because they want to be a foster parent to children in foster care. Therefore, relative and kin licensing standards that allow for training that is condensed and more relevant to relative and kinship families along with the necessary essential agency support for foster parents could pave the way to remove barriers to licensing relatives. Allowing title IV–E agencies to adopt separate standards for relatives and kin could remove some barriers to licensing and increase the number of licensed or approved relative or kinship foster family homes receiving services and financial resources (88 FR 9413; Foster Family-based Treatment Association. The Kinship Treatment Foster Care Initiative Toolkit. Hackensack, NJ: Foster Family-Based Treatment Association, 2015, Page 14; U.S. Government Accountability Office, Child Welfare and Aging Programs: HHS Could Enhance Support for Grandparents and Other Relative Caregivers (GAO–20–434), July 2020)).

In anticipation of a final rule, the February 2023 NPRM encouraged title IV–E agencies to consider adopting licensing or approval standards for all

relative or kinship foster family homes that place as few burdens on such families as possible, such as standards that meet only the requirements in sections 471(a)(10)(A) and (a)(20) of the Act, and not additional standards the agency requires non-relative foster family homes to meet (88 FR 9413). As noted above, the Act requires only that such standards established by the state or tribe are reasonably in accord with recommended standards of national organizations for foster family homes related to admission policies, safety, sanitation, protection of civil rights, and use of the reasonable and prudent parenting standard (section 471(a)(10)(A) of the Act), and that the caregiver fully meet federal requirements under section 471(a)(20) of the Act (concerning criminal background checks for all foster parents). Or, the agency could implement state or tribal licensing standards for all relative or kinship foster family homes to extend age limits for relative or kinship foster care providers; allow relative children to share sleeping spaces; disregard certain income, transportation, literacy, language, and education requirements; and remove disqualifications for non-child-related past crimes such as issuing bad checks (Beltran and Redlich Epstein, Improving Foster Care Licensing Standards around the United States: Using Research Findings to Effect Change, February 2013; “How can we prioritize kin in the home study and licensure process, and make placement with relatives the norm?” Casey Family Programs, 2020.).

#### *Equity Impact*

This final rule advances the Administration’s priority of equity for those historically underserved and adversely affected by persistent poverty and inequality by providing a support to low-income prospective relative caregivers, many of whom are families of color, are from underserved rural areas, or are members of other communities in which long-term systemic factors such as poverty hamper families from making intergenerational progress.

This final rule would especially provide a support to low-income prospective relative caregivers, many of whom are families of color, are from underserved rural areas, or are members of other communities in which long-term systemic factors such as poverty hamper families from making intergenerational progress. Ethnically and culturally diverse populations are disproportionately represented in relative and kinship families. “While

Black or African American individuals represent just 13% of the U.S. population, they make up nearly a quarter of all children in households where a grandparent is responsible for the needs of the child” (Advisory Council to Support Grandparents Raising Grandchildren with Assistance from the HHS Administration for Community Living. Supporting Grandparents Raising Grandchildren (SGRG) Act, Initial Report to Congress. Washington, DC: Author, p. 4, November 16, 2021.). “Similarly, American Indian and Alaska Natives make up only 1.3% of the U.S. population, but their representation in grandparent-led households where the grandparent is providing for most of their needs, is more than double that rate (U.S. Census Bureau, 2019). The available data on grandparents responsible for grandchildren suggests that underserved racial and ethnic populations are disproportionately taking responsibility for grandchildren.” (Advisory Council to Support Grandparents Raising Grandchildren with assistance from the HHS Administration for Community Living. [November 16, 2021]. Supporting Grandparents Raising Grandchildren (SGRG) Act, Initial Report to Congress. Washington, DC: Author, p. 12). Moreover, many individuals in these communities face simultaneous, multiple barriers when attempting to provide care to a relative who has been removed from their home.

Policies that expand access to FCMPs can have an especially strong impact on underserved groups. Encouraging and removing barriers to kinship placement also is consistent with cultural norms of some underserved groups that traditionally rely more heavily on kin and family in times of need. For example:

- Children age 3 to 5 who are the subject of a child maltreatment report in rural areas and those in households with incomes less than 50 percent of federal poverty level were more likely to be placed in informal kinship settings than similarly situated children in urban areas (Walsh, W.A. Informal Kinship Care Most Common Out-of-Home Placement After an Investigation of Child Maltreatment [Fact Sheet no. 24]. Durham, NH: University of New Hampshire, Carsey Institute, 2013.).

- African American families rely on extended family and other informal systems of care not only because these informal systems are cultural strengths, but because African American children historically were excluded from public and private sector child welfare programs and supports (U.S.

Government Accountability Office, Child Welfare and Aging Programs: HHS Could Enhance Support for Grandparents and Other Relative Caregivers (GAO–20–434), July 2020).

- Traditionally, grandparents and other family members assume integral roles in raising children within American Indian/Alaska Native communities. This type of extensive familial support system helps parents to pass on to their children the knowledge of customs, culture, and language essential to community survival and well-being (Capacity Building Center for Tribes, Engaging and Supporting Native Grandfamilies. 2022. <https://tribalinformationexchange.org/files/products/GrandfamiliesResourceList2022.pdf>; Lewis, Jordan & Boyd, Keri & Allen, James & Rasmus, Stacy & Henderson, Tammy. (2018). “We Raise our Grandchildren as our Own:” Alaska Native Grandparents Raising Grandchildren in Southwest Alaska. *Journal of Cross-Cultural Gerontology*. 33. 10.1007/s10823-018-9350-z.).

### III. Overview of February 2023 NPRM Comments

We received submissions from 207 commenters about the February 2023 NPRM. We reviewed and analyzed the public comments and considered them in finalizing this rule. The comments are available in the docket for this action on *Regulations.gov*. We received comments from 27 state and local government child welfare agencies; 10 American Indian/Native American Tribes, tribal consortia and tribal organizations (“tribes”) and entities representing tribal interests; 72 national advocacy, public interest, philanthropic and professional organizations; 20 service providers; 2 educational associations; 9 members of Congress; and 67 individuals. Almost all commenters supported issuing a final rule and many requested clarifications, which we address in the Section-by-Section response to comments.

#### *Summary of Comments by Type*

*Summary of Comments from Individuals.* We heard from 67 individuals, most of whom identified themselves as relatives and kin with lived experience as caregivers. A few of the individual commenters said they were non-related foster parents and other individuals not identifying as caregivers. We appreciate the willingness of relatives, kin, non-related caregivers, and other individuals to share personal details of their lived experiences to help inform this rulemaking. The relative and kin commenters, most of whom identified

themselves as grandparents caring for their grandchildren, overwhelmingly expressed that their experiences caring for a child who cannot safely remain with their parent(s) resulted in the best possible outcomes for the child and was critical to keeping their families together. They also said that such a decision was not made without considerable hardship. Relative and kin commenters noted challenges with meeting foster family home licensing standards for reasons such as too many people were living in the home or there were not enough beds or rooms for the children. They also discussed incurring financial hardship partly because they were not receiving financial support from the title IV–E agency. The relative and kin commenters said that caring for a child resulted in them delaying retirement, depleting savings and retirement funds, incurring attorney fees, substantial child care costs, and in some cases, the commenters said they had to file for bankruptcy and experienced home foreclosure.

*Summary of Comments from Tribes and Entities Representing Tribal Interests.* All ten of the tribes, tribal organizations, consortia and organizations representing tribal interests that commented on the February 2023 NPRM supported the proposal for separate licensing or approval standards for relatives and kin. They cited various reasons including the necessity of involving relatives and kin in the determination of what is in the best, short and long term interests of tribal children; the importance of relative and kin placements in maintaining an Indian child’s connection to their culture, heritage, and traditions and the importance of this connection to building relationships that will continue throughout the child’s lifetime; supporting tribal relative and kinship families with resources and services; removing barriers to families interested in providing relative foster care to tribal children; and because placements with relatives and kin support strong attachment and bonding that can generate profound and long lasting benefits to the child. Commenters also said that this proposal provides an opportunity for state and tribal title IV–E agencies to collaborate on the development of separate licensing or approval standards that align the needs of Indian children and families with varied lived experiences and from different socioeconomic backgrounds. For example, commenters mentioned that states and tribes could collaborate on training options that are culturally

appropriate. Many tribal commenters also said that placement with relatives and kin when safely possible is consistent with the Indian Child Welfare Act of 1978 (ICWA), emphasizing the importance of the extended family in Native American cultures where definitions of families are often broader and can include people who are not blood relatives but may be members of the same clan. Finally, commenters emphasized that ensuring relative and kinship foster family homes receive FCMPs equal to those provided to non-related foster family homes is necessary to support a child’s needs to grow up safe, nurtured, and strong.

*Summary of Comments from States and Local Government Agencies.* Nearly every state child welfare agency that submitted a comment supported the proposal for separate licensing or approval standards for relatives and kin noting that it builds on the efforts many of the agencies have already implemented to establish a “kin-first” culture that prioritizes relative and kin placements. Nearly all state agencies that commented expressed an intention to adopt separate licensing or approval standards for relatives and kin once the rule is final. A few state and local government non-child welfare agencies also submitted comments in support of the proposal.

*Summary of Comments from National Advocacy, Public Interest, Philanthropic, Professional Organizations and Members of Congress.* Seventy-two national advocacy, public interest, philanthropic and professional organizations supported the proposal because of the benefits it offers to children in out-of-home care, as explained in greater detail in the paragraph below. Nine members of Congress supported issuing a final rule and several suggested that states work collaboratively with relatives/kin and organizations that support relative/kinship caregivers on developing separate licensing standards for relatives and kin to ensure that the lived experiences of those caregivers are appropriately reflected in the new licensing standards.

#### *General Comments in Support of the February 2023 NPRM*

*Summary of Comments on the Benefits of the Final Rule.* Overwhelmingly, commenters believed that the separate licensing standards will ensure the safety, permanency and well-being of children in out-of-home care. For example, commenters said the proposal:

- Aligns with research that demonstrates the benefits and improved life-long outcomes for children placed with relatives and kin. For example, one commenter cited to research that children and young people in kinship care experience improved placement stability, higher levels of permanency, and decreased behavioral problems (Epstein, (2017) Kinship Care is Better for Children and Families). Another commenter cited to research that found children raised by family members (as compared to non-kin foster parents) have better behavioral and mental health outcomes, rate their situation more favorably, and are more likely to report feeling loved (Generations United. (2016). Children Thrive in Grandfamilies: [www.grandfamilies.org/Portals/0/16-ChildrenThriveinGrandfamilies.pdf](http://www.grandfamilies.org/Portals/0/16-ChildrenThriveinGrandfamilies.pdf) AARP. (2022).

- Supports relative and kin placements because they are more trauma-responsive and help maintain and support family, school, community and cultural connections for children in foster care.

- Increases the number of available out-of-home placement resources and prevents unnecessary group or child care institution (also known as congregate care) placements.

- Allows title IV–E agencies to craft licensing or approval standards that align with tribal values, culture, and traditions which emphasize the importance of the extended family to keep children safe and support family healing.

- Removes bureaucratic barriers to licensing and approving relative and kinship foster family homes by, for example, reducing the number of variances and waivers a title IV–E agency must individually approve, which may result in a more streamlined process and timely licensing or approval of relatives/kin.

- Helps alleviate financial hardships experienced by relative and kinship foster families. For example, one of the commenters explained that in their state, a child living with a traditional foster parent receives between \$544 to \$656 per month, whereas a child living with an unlicensed relative caregiver only receives \$388. This disparity directly affects the ability of relative caregivers to meet the needs of these children. Another commenter explained that in one state, seniors 65–84 who are below the median income earn, at most, \$41,700 annually. If they take in two children or youth for half a year, their daily costs for caring for those children essentially drive their income to within \$1,000 of the poverty line for a family

of four (\$27,756). Yet another commenter explains that in their state, fewer than 30 percent of relative foster family homes were licensed and the only financial resources available to these families were eligible for was non-needy TANF, which is \$654 per month to care for three children, compared to the FCMP of \$2,016–\$2,430 per month to care for three children (or higher for higher levels of need).

- Additionally, almost all commenters that addressed the proposal in § 1356.21(m) stated that the amount paid to a licensed or approved relative or kinship foster family home should be the same amount that would have been made if the child was placed in a licensed or approved non-relative/kin foster family home. Almost all states that commented confirmed they already provide equitable FCMPs to relative and kinship foster family homes and non-related foster family homes.

*Comments About the Equity Impact of the Rule.* Many commenters expressed that the proposal would expand access to FCMPs, which can have an especially strong impact on underserved groups because encouraging and removing barriers to kinship placement also is consistent with cultural norms of some underserved groups that traditionally rely more heavily on kin and family in times of need. Some commenters noted the final rule may generate opportunities for states to collaborate with groups disproportionately represented in foster care placements when developing separate licensing or approval standards. Several commenters expressed support for the February 2023 NPRM stating that it will align with the racial, cultural, and ethnic norms of African American, American Indian and Alaskan Native children and families. A few commenters emphasized that the rule may also benefit youth who identify as lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+), and who are often placed in institutional or congregate care. One commenter pointed out that for LGBTQI+ youth, delaying or denying their placement with the people who know and love them because their kin cannot meet licensure standards denies the youth a critical lifeline.

#### *Comments Not in Support of the February 2023 NPRM*

Less than a dozen individual commenters did not support allowing separate licensing standards for relative and kinship foster family homes. A few individuals expressed concerns that standards for relative and kinship placements are already too minimal, and that this would impact the children

placed with them, creating the potential for placement disruption and repeated trauma. Rather, they suggested the requirements for relative placements should increase instead of decrease because relatives and kin are often unprepared for the kinds of trauma children and youth who are in foster care have experienced. In addition, a few commenters who did not support the proposal expressed the view that it is the duty of title IV–E agencies to ensure that each child is provided with a safe and loving foster home, regardless of the caregiver's connection to the child and that if a relative is taking in a child, the relative should meet the same standards as other licensed or approved and paid foster parents. We address these comments in section IV below.

#### *Recommendations for Separate Licensing Standards for Relative and Kinship Foster Family Homes*

Many commenters from advocacy, public interest, and professional associations expressed agreement with ACF's recommendations that separate licensing or approval standards for relatives and kin only include the requirements in the Act. Specifically, those commenters agree that for relative and kinship licensing standards, title IV–E agencies should not prohibit licensing due to crimes committed beyond those enumerated in section 471(a)(20) of the Act. A couple of commenters noted that in some states, licensing or approval standards prohibit foster parents from becoming licensed or approved due to convictions for crimes that extend beyond those required by the Act, such as misdemeanors that may have occurred in the relative's or kin's youth.

#### *Comments Outside the Scope of the Regulation*

We received several comments outside the scope of this regulation, and therefore, we are unable to address most of those comments. These types of comments included: specific individual scenarios related to eligibility to receive FCMPs, payment or licensing issues; informal kinship care involving children who are not under the placement and care responsibility of the title IV–E agency; recommendations for access and availability of specific kinship services; questions about licensing procedures for relatives that want to care for both related and non-related children; interstate placements; application of additional non-discrimination procedures; questions about how the requirements in section 471(a)(10) of the Act would apply to

separate licensing standards and the ACF National Model Standards; recommendations for developing model standards; implementation of retrospective analysis and data collection using regulatory outcome measures; implementation and financial challenges for county administered states; and de-linking eligibility for title IV–E FCMPs from the 1996 Aid to Families with Dependent Children income and eligibility standards in section 472 of the Act. However, we will address the comments raised on claiming title IV–E FCMPs before all title IV–E requirements for foster family homes are met in the Section-by-Section Response to Comments so we can clarify the requirements.

#### IV. Section-by-Section Responses to Comments

We respond to the comments we received in response to the February 2023 NPRM in this section-by-section discussion.

##### Section 1355.20 Definitions

The definition of “foster family home” no longer contains “[f]oster family homes that are approved must be held to the same standards as foster family homes that are licensed,” and “the term may include group homes, agency-operated boarding homes or other facilities licensed or approved for the purpose of providing foster care by the state or tribal agency responsible for approval or licensing of such facilities.” The definition now includes: “Agencies may establish one set of foster family home licensing or approval standards for all relative or kinship foster family homes that are different from the set of standards used to license or approve all non-relative foster family homes.”

We did not receive any specific recommendations for revisions to the definition of foster family home, therefore, we are not making any substantive changes to the proposal. We are, however, making a technical correction to the second sentence of the definition to add the terminology “or approval” for consistency with the rest of the paragraph. The regulation text would read as follows: “The licensing or approval authority must be a state authority in the state in which the foster family home is located, a tribal authority with respect to a foster family home on or near an Indian Reservation, or a tribal authority of a tribal title IV–E agency with respect to a foster family home in the tribal title IV–E agency’s service area.”

As described earlier, we received very few comments that did not support the proposal, and numerous comments in

support of the revisions to the definition of foster family home to allow for separate licensing and approval standards for relatives and kin from non-relatives/kin. In addition, there were commenters who provided suggestions and recommendations for changes to regulations that are outside the scope of this proposal, but we address them here.

*Comment:* A few commenters expressed concern that states would develop separate licensing standards for relatives and kin that will impose more requirements than for non-relatives and non-kin standards. They requested explicit language that kinship licensing standards cannot be more stringent or demanding than non-relative foster family licensing.

*Response:* This is not the intent of the proposal as we fully explained in the preamble to the February 2023 NPRM. However, foster family home licensing and approval standards are determined by states and tribes. ACF does not have authority to mandate standards beyond what is required by the Act.

*Comment:* Many of the commenters recommended expanding the definition of relative and kin to include individuals related to a child by tribal custom. They explained that tribal custom often defines who is considered a relative in tribal communities and many relatives and kin already have existing relationships established with their relative children. Some commenters recommended a broader expansion of the definition of relative and kin to include individuals who may not have a relationship with the child but may have strong relationships established with the child’s family.

*Response:* We would like to clarify that ACF did not propose a new definition of relative or kin. As stated in the February 2023 NPRM, title IV–E agencies have discretion to define “relative” and “kin” when determining to whom they will apply the relative licensing and approval standards. We encourage agencies to define relative and kin in a way that is inclusive of tribal custom and adopt a broad definition of relative and kin for purposes of licensing and approval standards.

*Comment:* One commenter expressed concern that the rule would newly require full licensure for relative and kin placements by including language that “anything less than full licensure or approval is insufficient for meeting Title IV–E eligibility requirements” and the ability to seek reimbursement for foster care maintenance payments. A few commenters expressed the opposite concern that the standards for relative

and kinship placements are already too minimal.

*Response:* We would like to clarify that it is not a new requirement for any foster parent to be fully licensed or approved in order for an otherwise eligible child who is placed with that foster parent to meet title IV–E eligibility requirements. Full licensure or approval is already required in the regulatory definition of “foster family home” and the February 2023 NPRM did not propose to amend it.

*Comment:* The same commenters suggested the requirements for relative placements should increase instead of decrease because relatives and kin are often unprepared for the kinds of trauma children and youth who are in foster care have experienced and that this would impact the children placed with them, creating the potential for placement disruption and repeated trauma.

*Response:* As we explained in section II above and in the NPRM at 88 FR 9414, research demonstrates that children living with relatives experience higher placement stability rates compared to children living with non-relatives in foster care. Further, the vast majority of commenters agree that relative and kin placements are more trauma-responsive and help maintain and support family, school, community and cultural connections for children in foster care.

*Comment:* A few commenters who did not support the proposal expressed the view that it is the duty of title IV–E agencies to ensure that each child is provided with a safe and loving foster home, regardless of the caregiver’s connection to the child and that if a relative is taking in a child, the relative should meet the same standards as other licensed or approved and paid foster parents.

*Response:* We agree that in order to receive federal foster care maintenance payments for title IV–E eligible children, title IV–E agencies must ensure that all licensed or approved foster family homes meet the same safety requirements in sections 471(a)(10) and (20) of the Act.

*Comment:* Many commenters requested that ACF clarify when title IV–E agencies can begin to claim FFP for FCMPs made on behalf of children placed in relative foster family homes that are pursuing licensing or approval under separate standards. The commenters suggested that ACF allow a title IV–E agency to adopt separate licensing or approval standards wherein the agency may begin claiming FFP for children placed with relatives and kin, often in emergency circumstances, once in-state criminal background checks

show that the applicant does not have a relevant felony conviction and the fingerprint background check of the national criminal database has been initiated.

*Response:* While the suggestions are outside the scope of the February 2023 NPRM, we would like to clarify that title IV–E agencies may claim foster care maintenance payment costs from the first day of the child’s placement in the month in which all title IV–E eligibility criteria are met. However, in accordance with the statute: (1) anything less than full licensure or approval is insufficient for meeting title IV–E eligibility requirements as the foster family home must be fully licensed or approved as meeting the standards the agency establishes in accordance with the definition of “foster family home” and; (2) title IV–E FCMPs can be claimed for an eligible child only for the days that the foster parents’ criminal records check have been completed and the records reveal that the parents did not commit any prohibited felonies in section 471(a)(20)(A)(i) and (ii) of the Act. (See the Children’s Bureau Child Welfare Policy Manual section 8.4F, Q/ A #38).

#### *Section 1356.21(m) Review of Payments and Licensing Standards*

Section 1356.21(m) requires that during a title IV–E agency’s periodic review of FCMPs and licensing standards as required in 471(a)(11) of the Act, the agency must also review the amount paid to a licensed or approved relative or kinship foster family home to ensure it is the same amount that would have been paid if the child was placed in a licensed or approved non-relative foster family home. As described earlier, we received numerous comments supporting equal FCMPs to licensed or approved relative and kinship foster family homes and non-relative/kin foster family homes and are therefore not making any changes in the final rule.

### **V. Regulatory Process Matters**

#### *Executive Orders 12866 and 13563*

Executive Orders 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). Executive Order 13563 is supplemental to, and reaffirms the principles, structures, and definitions governing regulatory review as

established in Executive Order 12866, emphasizing the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule meets the criteria for a significant regulatory action under Executive Order 12866 and subject to OMB review. Based on ACF’s estimates of the likely costs associated with this rule, OMB designated this rule as a significant regulatory action under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094. The estimated cost and transfer impacts of this regulatory proposal are provided below (see the sections titled “Federal cost estimate with implementation of this final rule” and “Estimated costs of this final rule to title IV–E agencies”).

#### *Regulatory Flexibility Analysis*

The Regulatory Flexibility Act (RFA) (see 5 U.S.C. 605(b) as amended by the Small Business Regulatory Enforcement Fairness Act) requires federal agencies to determine, to the extent feasible, a rule’s impact on small entities, explore regulatory options for reducing any significant impact on a substantial number of such entities, and explain their regulatory approach. This rule does not affect small entities because it is applicable only to state and tribal title IV–E agencies. Therefore, a regulatory flexibility analysis is not required for this rule.

#### *Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) was enacted to avoid imposing unfunded federal mandates on state, local, and tribal governments, or on the private sector. That threshold level is currently approximately \$177 million. This rule does not contain mandates that would impose spending costs on state, local, or tribal governments in the aggregate, or on the private sector, in excess of the threshold.

#### *Assessment of Federal Regulations and Policies on Families*

Section 654 of the Treasury and General Government Appropriations Act of 2000 requires federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This regulation does not impose requirements on states or families. This regulation will not have any impact on the autonomy or integrity of the family as an institution.

#### *Executive Order 13132*

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism impact as defined in the Executive Order. Shortly after publication of the NPRM, we held a briefing session with states and tribes and any other interested partners on the contents of the NPRM.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (Pub. L. 104–13) seeks to minimize government-imposed burden from information collections on the public. In keeping with the notion that government information is a valuable asset, it also is intended to improve the practical utility, quality, and clarity of information collected, maintained, and disclosed.

The Paperwork Reduction Act defines “information” as any statement or estimate of fact or opinion, regardless of form or format, whether numerical, graphic, or narrative form, and whether oral or maintained on paper, electronic, or other media (5 CFR 1320.3(h)). This includes requests for information to be sent to the government, such as forms, written reports and surveys, recordkeeping requirements, and third-party or public disclosures (5 CFR 1320.3(c)). There is no burden to the Federal government or to title IV–E agencies as a result of this final regulation. First, it is optional for a title IV–E agency to develop separate licensing standards for relative and kinship foster family homes. If the agency elects to do so, there are no new reporting requirements. Second, title IV–E agencies are already required by section 471(a)(11) of the Act to conduct periodic reviews of the rates and standards related to FCMPs. Therefore, the final rule does not impose any new reporting requirements. Finally, title IV–E agencies were required to make changes consistent with Division E, Title VII of Public Law 115–123, the Family First Prevention Services Act. Therefore, the technical change will bring federal regulations up to date with title IV–E of the Act and does not impose any new reporting requirements.

### *Annualized Cost to the Federal Government*

*Total Projections to Implement Final Rule.* The estimate for the final rule was derived using fiscal year (FY) 2019 data from the Adoption and Foster Care Analysis and Reporting System (AFCARS) on title IV–E relative foster family home placements and FY 2019 claiming data from the Form CB–496 “Title IV–E Programs Quarterly Financial Report (Foster Care, Adoption Assistance, Guardianship Assistance, Prevention Services and Kinship Navigator Programs).” We did not use FY 2020 or 2021 data from AFCARS because such data would likely reflect anomalies due to the COVID–19 public health emergency period.

ACF estimates that, as a result of this final rule, there will be annual increases in the number of title IV–E relative foster family home placements and annual increases in federal costs for FCMPs and administration. ACF estimates that the final regulation will cost the federal government \$28,753,988 in title IV–E FFP for FCMPs and administration, the first year after the rule becomes final and \$3.085 billion over a total of 10 years.

*Assumptions:* ACF made several assumptions when calculating the cost of FCMPs and administrative costs for this final rule.

- First, we anticipate that without implementation of the final rule, the annual caseload growth rate (*i.e.*, the increase in title IV–E relative and non-relative foster family home placements) will be one percent, and the annual title IV–E claiming growth factor will be two percent. We retain this same annual two percent claiming growth factor in estimating the FFP to implement the final rule because relative and non-relative foster family homes receive the same amount of title IV–E FCMPs.

- Second, we assume a varied implementation rate of placements in title IV–E eligible relative and kinship foster family homes that are licensed and approved under separate standards. The estimate assumes a slow rate of change because agencies may not immediately decide to implement new or revised relative foster family home licensing or approval standards. In addition, states and tribes vary on whether policy, regulation or statutory change must precede such changes.

- Finally, the title IV–E participation rate for relative foster family home placements was 27.6 percent in FY 2019. Conversely, the title IV–E participation rate for other foster care placements was 47.7 percent in FY 2019. We assume that this percentage

will increase for relative and kin foster family home placements over time as a result of the final rule because it allows different licensing or approval standards for relative and kin and non-relative foster family home placements to mitigate barriers that relatives and kin would otherwise face. We also assume that the difference in the title IV–E participation rate of relatives and non-relatives is almost entirely due to the use of the same licensing or approval standard for both relative and non-relative foster family home placements. We anticipate incremental changes in the title IV–E participation rate for relative and kinship foster family home placements over a total of 10 years, and that by year 10, this rate would increase to 41.7 percent.

*Comment:* One commenter disagreed with the way ACF determined the rate at which kinship foster family placements would increase under the proposed rule and the growth rate factor.

*Response:* We made no changes to the annualized cost to the Federal government in the final rule. As described in the Assumptions, the growth rate factor we used to identify projected caseload over the ten-year estimate period consists of two separate factors. The first factor is the overall rate of change for relative and non-relative placements in title IV–E eligible foster care children in care, for which we reviewed caseload data for past periods. The second factor is the extent to which relative and non-relative foster care placements are determined as title IV–E eligible. To the extent that title IV–E agencies implement separate standards in the final rule, the eligibility rate for relative home placements will increase in each year based on the expected implementation level. We projected the implementation level based on our experiences with the implementation for other program changes.

*Comment:* One commenter pointed out that the proposal does not consider in its analysis how adoption of a kinship licensing standard would potentially shift caseloads and costs from informal care paid through federal Temporary Aid for Needy Families (TANF) funding (via TANF child-only cases) to formal care paid through state and federal matching FCMPs via IV–E funding. The commenter requested that ACF assess these fiscal impacts in its final rulemaking.

*Response:* The cost analysis prepared for the February 2023 NPRM addresses costs under the title IV–E foster care program. We also note that while the TANF program does, to some extent, allow use of funds for payment of foster

care maintenance payments for a child in foster care when placed with a relative, those funds are provided through a block grant that would not be reduced if some such cases were no longer being paid through TANF funds. Therefore, the rule would not result in a cost impact for the TANF program.

*Average title IV–E FCMP and administrative costs per child.* To determine the FY 2019 average FFP cost per child, we divided the total number of children in foster care in FY 2019 receiving title IV–E maintenance payments (170,446) by the total FFP claimed on the Form CB–496 for this time period. This resulted in an average title IV–E FCMP cost of \$9,240 per child; and an average title IV–E administrative cost of \$12,907 (this is the baseline FFP). We used the annual average per child costs to calculate the FFP that would be claimed over a total of 10 years with and without implementation of the rule. We made an assumption that 15 percent of the increased relative placement title IV–E caseload in each year would have already been subject to title IV–E claiming for administrative cost purposes (without the rule) based on current law that allows these costs for the period specified in the law, up to 12 months, that an application for licensure is pending (see section 472(i)(1)(A) of the Act).

*Federal cost estimates without implementation of the rule.*

*Line 1. Estimates of the number of title IV–E relative foster family home placements.* As of September 30, 2019, there were 36,953 title IV–E relative foster family home placements. Applying our assumptions, on line 1 on the table below, we display the annual increases in title IV–E relative placements without implementation of the rule for 5 different years, beginning with FY 2023 and ending with FY 2032.

*Lines 2 through 5. Estimates of FFP for title IV–E relative foster family home placements.* To determine increases in the annual FCMP and administrative costs of title IV–E relative foster family home placements, we multiplied the average annual federal cost per child (lines 2 and 3) by the annual number of title IV–E relative foster home placements on line 1. On the table below, line 4 displays the increased FCMP costs and line 5 displays increased administrative costs for 5 different years beginning with 2023 and ending with 2032. The baseline FCMP costs for 2019 is  $\$9,240 \times 36,953 = \$341,462,572$ . The baseline administrative costs for 2019 is  $\$12,907 \times 36,953 = \$476,934,437$ .

*Federal cost estimate with implementation of this final rule.*

*Lines 6 and 7. Number of title IV–E relative foster family home placements.* On line 6 of the table below, we estimate the annual increases in title IV–E relative foster family home placements as a result of this final rule. We used a caseload growth rate of 5 percent in year 1, 15 percent in year 2, 25 percent in year 3, 45 percent in year 5. By year 10, this implementation rate is expected to reach 70 percent based on our assumptions described earlier. On line 7 of the table below, we determined the annual number of *new* title IV–E relative foster family home placements

as a result of the regulation. To calculate the annual number of *new* title IV–E relative foster family home placements due to implementation of the final rule, we subtracted the projected caseload without application of the final rule on line 1 from the projected caseload of the rule on line 6. For example, in 2023 there would be 1,392 new title IV–E relative foster family home placements:  $38,714 - 37,323 = 1,392$ .

*Lines 8 through 10. Annual federal costs of title IV–E relative foster family home placements.* Lines 8 and 9 display the annual increases in FCMPs and administrative costs for the *new* title IV–E relative foster family home

placements (on line 6) resulting from this final rule. To determine the annual federal cost of the NPRM on lines 8 and 9, we multiplied the annual number of new title IV–E relative foster family home placements on line 6 by the average child costs for FCMPs and administration on lines 2 and 3. This information is displayed for 5 different years beginning with 2023 and ending with 2032. For example, on line 8, the cost in 2023 for FCMPs is approximately \$13,117,787 (1,392 children  $\times$  \$9,425 average FCMP). Line 10 displays the annual incremental federal costs of this final rule.

|                                                                                                      | 2019<br>Baseline | 2023<br>(Year 1) | 2024<br>(Year 2) | 2025<br>(Year 3) | 2027<br>(Year 5) | 2032<br>(Year 10) | Ten year<br>total cost |
|------------------------------------------------------------------------------------------------------|------------------|------------------|------------------|------------------|------------------|-------------------|------------------------|
| Estimates without regulatory changes                                                                 |                  |                  |                  |                  |                  |                   |                        |
| 1. Number of title IV–E relative placements @ 1% growth .....                                        | 36,953           | 37,323           | 37,696           | 38,073           | 38,838           | 40,819            | .....                  |
| 2. Avg. title IV–E FCMP FFP claim per child @ 2% claiming growth factor .....                        | \$9,240          | \$9,425          | \$9,614          | \$9,806          | \$10,202         | \$11,264          | .....                  |
| 3. Avg. title IV–E Administrative cost FFP claim per child @ 2% claiming growth factor .....         | \$12,907         | \$13,165         | \$13,428         | \$13,696         | \$14,250         | \$15,733          | .....                  |
| 4. FCMP cost .....                                                                                   | \$341,462,572    | \$351,774,691    | \$362,398,575    | \$373,343,289    | \$396,233,652    | \$459,790,346     | \$4,036,424,435        |
| 5. Administrative cost .....                                                                         | \$476,934,437    | \$491,337,785    | \$506,176,589    | \$521,463,509    | \$553,435,395    | \$642,207,572     | \$5,637,835,507        |
| Estimated FFP with regulatory changes                                                                |                  |                  |                  |                  |                  |                   |                        |
|                                                                                                      | 2019             | 2023<br>(Year 1) | 2024<br>(Year 2) | 2025<br>(Year 3) | 2027<br>(Year 5) | 2032<br>(Year 10) | Ten year<br>total cost |
| 6. Number of title IV–E relative placement @ varied caseload growth rates .....                      | 36,953           | 38,714           | 41,849           | 45,042           | 51,609           | 61,680            | .....                  |
| 7. Total annual increase in title IV–E relative placements .....                                     |                  | 1,392            | 4,153            | 6,970            | 12,771           | 20,861            | .....                  |
| 8. Annual increase in FCMP costs .....                                                               |                  | \$13,117,787     | \$39,926,838     | \$68,344,565     | \$130,295,804    | \$234,976,401     | \$1,304,789,018        |
| 9. Increase in administrative costs .....                                                            |                  | \$15,636,201     | \$50,233,323     | \$89,758,368     | \$175,938,591    | \$324,690,283     | \$1,780,051,762        |
| 10. Total incremental increase in FFP .....                                                          |                  | \$28,753,988     | \$90,160,161     | \$158,102,933    | \$306,234,395    | \$559,666,684     | \$3,084,840,780        |
| Title IV–E agency estimates with regulatory changes                                                  |                  |                  |                  |                  |                  |                   |                        |
|                                                                                                      | 2019             | 2023             | 2024             | 2025             | 2027<br>(Year 5) | 2032<br>(Year 10) | Ten year<br>total cost |
| 11. Maintenance Portion—Incremental Non-Federal Share (Using FY 2019 Avg. FMAP rate of 56.61%) ..... |                  | \$10,054,421     | \$30,602,817     | \$52,384,220     | \$99,868,132     | \$180,102,915     | \$1,000,084,711        |
| 12. Administration Portion—Incremental Non-Federal Share (50% FFP) .....                             |                  | \$15,636,201     | \$50,233,323     | \$89,758,368     | \$175,938,591    | \$324,960,283     | \$1,780,051,762        |
| 13. Total Incremental Increase in Non-Federal Share .....                                            |                  | \$25,690,622     | \$80,836,140     | \$142,142,587    | \$275,806,723    | \$504,793,199     | \$2,780,136,473        |

*Estimated costs of this final rule to title IV–E agencies.* Title IV–E agencies may claim reimbursement for the federal cost of FCMPs and administrative costs, and the title IV–E agency pays its share with state or tribal funds. Line 11 displays the agency's estimated FCMP costs and line 12 displays the estimated agency costs for administration. Line 13 displays the total incremental increase in cost for the state/tribal share. This information is

displayed for 5 different years beginning with 2023 and ending with 2032. The estimates provided are calculated using the national average federal medical assistance percentage (FMAP) rate of 56.61 percent for FY 2019 and an administrative cost FFP rate of 50 percent. This proposal is optional; therefore, agencies are not *required* to incur any costs.

#### Accounting Statement

From a society-wide perspective, many of the effects estimated above are transfers. We did not receive any comments on the estimation of the portion that represents new resource use attributable to the proposed rule. As shown in the table below, for this final rule the full amounts are categorized as transfers—from either the federal government or Title IV–E agencies to Title IV–E participants.



| Category                                    | Primary estimate<br>(millions) | Units                       |                      |                           |
|---------------------------------------------|--------------------------------|-----------------------------|----------------------|---------------------------|
|                                             |                                | Year dollars                | Discount rate<br>(%) | Period covered<br>(years) |
| Federal Budget Transfers (annualized) ..... | \$439<br>362                   | 2019<br>2019                | 7<br>3               | 10<br>10                  |
| From/To .....                               | From: Federal government       | To: Title IV–E participants |                      |                           |
| Other Transfers (annualized) .....          | 395<br>326                     | 2019<br>2023                | 7<br>3               | 10<br>10                  |
| From/To .....                               | From: Title IV–E agencies      | To: Title IV–E participants |                      |                           |

## V. Tribal Consultation Statement

Executive Order 13175, *Consultation and Coordination With Indian Tribal Governments*, requires agencies to consult with Indian tribes when regulations have substantial direct effects 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 and either impose substantial direct compliance costs on tribes or preempt state law. Similarly, ACF's Tribal Consultation Policy says that consultation is triggered for a new rule adoption that significantly affects tribes, meaning the new rule adoption has substantial direct effects on one or more Indian tribes, on the amount or duration of ACF program funding, on the delivery of ACF programs or services to one or more Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This final rule does not meet either standard for consultation. Rather, it provides tribal title IV–E agencies an option for implementing separate licensing or approval standards for relative and kinship foster family homes. Accordingly, a tribal title IV–E agency can adopt separate licensing or approval standards for relative or kinship foster family homes but is not required to do so. Shortly after publication of the NPRM, we held a briefing session with title IV–E agencies and any other interested partners on the contents of the NPRM. In developing this final rule, we considered comments submitted by Indian tribes, tribal organizations and consortia, and organizations that represent tribal interests.

Jeff Hild, Acting Assistant Secretary of the Administration for Children and Families, approved this document on, 2023.

## List of Subjects

### 45 CFR Part 1355

Administrative costs, Adoption Assistance, Child welfare, Fiscal requirements (title IV–E), Grant programs—social programs, Statewide information systems, Adoption and foster care, Child welfare, Grant programs—social programs.

### 45 CFR Part 1356

Adoption and foster care, Child welfare, Grant programs—social programs.

(Catalog of Federal Domestic Assistance Program Number 93.658, Foster Care Maintenance; 93.659, Adoption Assistance; 93.645, Child Welfare Services—State Grants).

Dated: September 22, 2023.

**Xavier Becerra,**

*Secretary, Department of Health and Human Services.*

For the reasons set forth in the preamble, ACF amends 45 CFR parts 1355 and 1356 as follows:

### PART 1355—GENERAL

■ 1. The authority citation for part 1355 continues to read as follows:

**Authority:** 42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.*; 42 U.S.C. 1302.

■ 2. In § 1355.20 amend paragraph (a) by revising the definition of “Foster family home” to read as follows:

#### § 1355.20 Definitions.

(a) \* \* \*

*Foster family home* means, for the purpose of title IV–E eligibility, the home of an individual or family licensed or approved as meeting the standards established by the licensing or approval authority(ies), that provides 24-hour out-of-home care for children. The licensing or approval authority must be a state authority in the state in which the foster family home is located,

a tribal authority with respect to a foster family home on or near an Indian Reservation, or a tribal authority of a tribal title IV–E agency with respect to a foster family home in the tribal title IV–E agency's service area. Agencies may establish one set of foster family home licensing or approval standards for all relative or kinship foster family homes that are different from the set of standards used to license or approve all non-relative foster family homes. Anything less than full licensure or approval is insufficient for meeting title IV–E eligibility requirements. Title IV–E agencies may, however, claim title IV–E reimbursement during the period of time between the date a prospective foster family home satisfies all requirements for licensure or approval and the date the actual license is issued, not to exceed 60 days.

\* \* \* \* \*

### PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV–E

■ 3. The authority citation for part 1356 continues to read as follows:

**Authority:** 42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.*; 42 U.S.C. 1302.

■ 4. Amend § 1356.21 by revising paragraphs (m)(1) and (2), and adding paragraph (m)(3) to read as follows:

#### § 1356.21 Foster care maintenance payments program implementation requirements.

\* \* \* \* \*

(m) \* \* \*

(1) The amount of the payments made for foster care maintenance to assure their continued appropriateness, and that the amount made to a licensed or approved relative or kinship foster family home is the same as the amount that would have been made if the child was placed in a licensed or approved non-relative foster family home;



(2) The amount of the payments made for adoption assistance to assure their continued appropriateness; and

(3) The licensing or approval standards for child care institutions and foster family homes.

\* \* \* \* \*

[FR Doc. 2023-21081 Filed 9-27-23; 8:45 am]

**BILLING CODE 4184-73-P**

# Proposed Rules

Federal Register

Vol. 88, No. 187

Thursday, September 28, 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 ENERGY

### 10 CFR Part 431

[EERE-2017-BT-STD-0009]

RIN 1905-AD79

### Energy Conservation Program: Energy Conservation Standards for Walk-In Coolers and Freezers

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

**ACTION:** Notification of data availability regarding energy conservation standards.

**SUMMARY:** On September 5, 2023, the U.S. Department of Energy (“DOE”) published a notice of proposed rulemaking (“NOPR”), in which DOE proposed amended energy conservation standards for walk-in coolers and walk-in freezers. (“September 2023 NOPR”) In this notification, DOE is summarizing and addressing comments that were considered but not discussed in the September 2023 NOPR.

#### DATES:

*Comments:* DOE will accept comments, data, and information regarding the September 2023 NOPR as supplemented by this notice of data availability no later than November 6, 2023.

*Meeting:* DOE is holding a public meeting regarding the September 2023 NOPR via webinar on Wednesday, September 27, 2023, from 1:00 p.m. to 4:00 p.m. See section IV, “Public Participation,” for webinar registration information, participant instructions and information about the capabilities available to webinar participants.

**ADDRESSES:** Interested persons are encouraged to submit comments regarding the September 2023 NOPR as supplemented by this notice of data availability using the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) under docket number EERE-2017-BT-STD-0009. Follow the instructions for submitting comments. Alternatively, interested

persons may submit comments, identified by docket number EERE-2017-BT-STD-0009, by any of the following methods:

*Email:* [WICF2017STD0009@ee.doe.gov](mailto:WICF2017STD0009@ee.doe.gov). Include the docket number EERE-2017-BT-STD-0009 in the subject line of the message.

*Non-electronic submissions:* Please contact (202) 287-1445 for instructions if an electronic copy cannot be submitted.

No telefacsimiles (“faxes”) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section IV of this document.

*Docket:* The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at [www.regulations.gov](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-2017-BT-STD-0009](http://www.regulations.gov/docket/EERE-2017-BT-STD-0009). The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section IV of this document for information on how to submit comments through [www.regulations.gov](http://www.regulations.gov).

#### FOR FURTHER INFORMATION CONTACT:

Mr. Troy Watson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121. Email: [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

Mr. Matthew Schneider, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (240) 597-6265. Email: [matthew.schneider@hq.doe.gov](mailto:matthew.schneider@hq.doe.gov).

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact the Appliance and Equipment Standards Program staff at (202) 287-1445 or by email: [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

## SUPPLEMENTARY INFORMATION:

### Table of Contents

- I. Background
- II. Discussion
  - A. General
  - B. Market and Technology Assessment
  - C. Engineering Analysis
    - a. Display Doors
    - b. Refrigeration Systems
  - D. Life-Cycle Cost and Payback Period Analysis
    - 1. Consumer Sample
    - 2. Equipment Lifetime
  - E. Conclusion
- III. Procedural Issues and Regulatory Review
- IV. Public Participation
- V. Approval of the Office of the Secretary

### I. Background

The Energy Policy and Conservation Act, Public Law 94-163, as amended (“EPCA”),<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 walk-in coolers and walk-in freezers<sup>3</sup> (hereafter referred to as “walk-ins” or “WICFs”), the subject of this notification.

The current energy conservation standards for walk-ins are set forth in DOE’s regulations at 10 CFR 431.306. Rather than establishing standards for complete walk-in systems, DOE has established standards for the principal components that make up a walk-in (*i.e.*, doors, panels, and refrigeration systems). The current energy conservation standards for walk-in doors are in terms of maximum daily energy consumption, which is measured in kWh/day (see Table I.1). The current energy conservation standards for walk-in panels are in terms of R-value, which

<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.

<sup>3</sup> Walk-in coolers and walk-in freezers are defined as an enclosed storage space, including but not limited to panels, doors, and refrigeration systems, refrigerated to temperatures, respectively, above, and at or below 32 degrees Fahrenheit that can be walked into, and has a total chilled storage area of less than 3,000 square feet; however, the terms do not include products designed and marketed exclusively for medical, scientific, or research purposes. 10 CFR 431.302.

is measured in h-ft<sup>2</sup>-°F/Btu (see Table I.2). The current energy conservation

standards for refrigeration systems are in terms of annual walk-in energy factor

(“AWEF”), which is measured in Btu/(W-h) (see Table I.3).

TABLE I.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR WALK-IN COOLERS AND WALK-IN FREEZER DOORS

| Equipment class                        | Equations for maximum daily energy consumption (kWh/day) |
|----------------------------------------|----------------------------------------------------------|
| Display door, medium-temperature ..... | $0.04 \times A_{dd} + 0.41$ .                            |
| Display door, low-temperature .....    | $0.15 \times A_{dd} + 0.29$ .                            |
| Passage door, medium-temperature ..... | $0.05 \times A_{nd} + 1.7$ .                             |
| Passage door, low-temperature .....    | $0.14 \times A_{nd} + 4.8$ .                             |
| Freight door, medium-temperature ..... | $0.04 \times A_{nd} + 1.9$ .                             |
| Freight door, low-temperature .....    | $0.12 \times A_{nd} + 5.6$ .                             |

$A_{dd}$  or  $A_{nd}$  = surface area of the display door or non-display door, respectively, expressed in ft<sup>2</sup>, as determined in appendix A to subpart R of 10 CFR part 431.

TABLE I.2—FEDERAL ENERGY CONSERVATION STANDARDS FOR WALK-IN COOLERS AND WALK-IN FREEZER PANELS

| Equipment class                                  | Minimum R-value (h-ft <sup>2</sup> -°F/Btu) |
|--------------------------------------------------|---------------------------------------------|
| Wall or ceiling panels, medium-temperature ..... | 25                                          |
| Wall or ceiling panels, low-temperature .....    | 32                                          |
| Floor panels, low-temperature .....              | 28                                          |

TABLE I.3—FEDERAL ENERGY CONSERVATION STANDARDS FOR WALK-IN COOLERS AND WALK-IN FREEZER REFRIGERATION SYSTEMS

| Equipment class                                                                                                                                 | Minimum AWEF (Btu/W-h)                         |
|-------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|
| Dedicated condensing system, medium-temperature, indoor .....                                                                                   | 5.61.                                          |
| Dedicated condensing system, medium-temperature, outdoor .....                                                                                  | 7.60.                                          |
| Dedicated condensing system, low-temperature, indoor with a net capacity ( $q_{net}$ ) of <6,500 British thermal units per hour (“Btu/h”) ..... | $9.091 \times 10^{-5} \times q_{net} + 1.81$ . |
| Dedicated condensing system, low-temperature, indoor with a net capacity ( $q_{net}$ ) of ≥6,500 Btu/h .....                                    | 2.40.                                          |
| Dedicated condensing system, low-temperature, outdoor with a net capacity ( $q_{net}$ ) of <6,500 Btu/h .....                                   | $6.522 \times 10^{-5} \times q_{net} + 2.73$ . |
| Dedicated condensing system, low-temperature, outdoor with a net capacity ( $q_{net}$ ) of ≥6,500 Btu/h .....                                   | 3.15.                                          |
| Unit cooler, medium-temperature .....                                                                                                           | 9.00.                                          |
| Unit cooler, low-temperature, indoor with a net capacity ( $q_{net}$ ) of <15,500 Btu/h .....                                                   | $1.575 \times 10^{-5} \times q_{net} + 3.91$ . |
| Unit cooler, low-temperature, indoor with a net capacity ( $q_{net}$ ) of ≥15,500 Btu/h .....                                                   | 4.15.                                          |

Where  $q_{net}$  is net capacity as determined in accordance with 10 CFR 431.304 and certified in accordance with 10 CFR part 429.

To evaluate whether to propose amendments to the energy conservation standards for walk-ins, DOE issued a request for information (“RFI”) in the **Federal Register** on July 16, 2021 (“July 2021 RFI”). 86 FR 37687. In the July 2021 RFI, DOE sought data, information, and comment pertaining to walk-ins. 86 FR 37687, 37689. DOE subsequently announced the availability of the preliminary analysis it had conducted for the purpose of evaluating the need for amending the current energy conservation standards for walk-ins in the **Federal Register** on June 30, 2022, (“June 2022 Preliminary Analysis”). The analysis was set forth in the Department’s accompanying preliminary technical support document (“TSD”). The June 2022 Preliminary Analysis summarized and addressed the comments received in response to the July 2021 RFI in chapter 2 of the June 2022 Preliminary Analysis TSD. DOE

held a public meeting via webinar to discuss and receive comment on the June 2022 Preliminary Analysis on July 22, 2022. The meeting covered the analytical framework, models, and tools that DOE used to evaluate potential standards; the results of the preliminary analyses performed by DOE; the potential energy conservation standard levels derived from those analyses; and other relevant issues.

In a test procedure final rule published May 4, 2023 (“May 2023 TP Final Rule”), DOE amended the test procedures for walk-in components. DOE also established a new appendix, appendix C1 to subpart R (“appendix C1”), and a new energy metric, AWEF2, for refrigeration systems. (See 88 FR 28780 and 10 CFR part 431, subpart R, appendix C1.) Manufacturers would be required to begin using appendix C1 as of the compliance date of an energy

conservation standards promulgated as a result of this rulemaking.

On September 5, 2023, DOE published a notice of proposed rulemaking in the **Federal Register**, regarding energy conservation standards for walk-in coolers and freezers (“September 2023 NOPR”). 88 FR 60746. Specifically, DOE proposed amended standards for walk-in non-display doors and walk-in refrigeration systems based on the amended or new test procedures adopted in the May 2023 TP Final Rule. For refrigeration systems, DOE proposed amended standards in terms of the AWEF2 metric based on appendix C1. The September 2023 NOPR summarized and addressed comments received in response to the

June 2022 Preliminary Analysis. However, comments from one interested party, listed in Table I.4 of this document, were considered in developing the September 2023 NOPR, but were not summarized and discussed in the NOPR.

TABLE I.4—JUNE 2022 PRELIMINARY ANALYSIS WRITTEN COMMENTS OMITTED IN THE SEPTEMBER 2023 NOPR

| Commenter(s)                                                                                                                                                                                            | Abbreviation  | Comment number in the docket | Commenter type |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|------------------------------|----------------|
| Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison; (collectively referred to as the “California Investor-Owned Utilities”). | CA IOUs ..... | 43                           | Utilities.     |

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.<sup>4</sup>

DOE notes that it also received comments in response to the June 2022 Preliminary Analysis in the form of confidential business information from two stakeholders, which have been restricted on the public docket.<sup>5</sup> To the extent that these stakeholders provided confidential information, DOE did not address those comments directly due to the confidential nature of the comments received. However, DOE considered these confidential comments in its analysis presented in the September 2023 NOPR.

## II. Discussion

This section summarizes the comments received from the CA IOUs and provides DOE’s responses that were not addressed in the September 2023 NOPR. Separate subsections address each component of DOE’s analyses on which DOE has received comment from the CA IOUs.

### A. General

The CA IOUs recommended that DOE consider linear AWEF energy conservation standards for refrigeration systems that vary with capacity. (CA IOUs, No. 43 at p. 3) The CA IOUs stated that refrigeration efficiency typically increases with system capacity and pointed to the energy conservation standards for Commercial Refrigeration Equipment and Automatic Commercial Ice Makers, which are dependent on capacity. (*Id.*) The CA IOUs further provided examples supporting its

assertion that efficiency increases with capacity for both dedicated condensing units and unit coolers. Specifically, the CA IOUs showed examples of standard options offered for model lines of medium- and low-temperature unit coolers; these examples show a larger capacity model line that is available with several options that are not available as standard features for the smaller capacity model line, including electronic expansion valves (“EEVs”), evaporator fan control boards, variable-speed electronically commutated fan motors (“ECMs”), and electronic controller systems that offer on-cycle evaporator fan controls and adaptive defrost capability. (*Id.* at pp. 3–4) The CA IOUs also included in its comment examples of dedicated condensing system model lines that showed higher cooling efficiencies (in terms of energy efficiency ratio (“EER”)) for larger capacity systems. (*Id.* at p. 4) The CA IOUs also pointed to the baseline AWEFs presented in the preliminary analysis TSD, which increased with capacity. (*Id.* at pp. 5–7)

In its analysis for the September 2023 NOPR, DOE evaluated the economics of each efficiency level for each representative unit, which indicated that more stringent standards were generally economically justified for larger units. Therefore, DOE proposed standards that varied with capacity for many refrigeration system equipment classes in the September 2023 NOPR. 88 FR 60746, 60748–60749. The proposed standards are summarized in section I of the September 2023 NOPR.

### B. Market and Technology Assessment

As discussed in the September 2023 NOPR, DOE develops information in the market and technology assessment that provides an overall picture of the market for the equipment concerned, including the purpose of the equipment, the industry structure, manufacturers, market characteristics, and technologies used in the equipment. 88 FR 60746, 60760. This activity includes both quantitative and qualitative

assessments, based primarily on publicly available information. The subjects addressed in the market and technology assessment for this rulemaking include (1) a determination of the scope of the rulemaking and equipment classes, (2) manufacturers and industry structure, (3) existing efficiency programs, (4) shipments information, (5) market and industry trends; and (6) technologies or design options that could improve the energy efficiency of walk-ins.

As discussed in the September 2023 NOPR, DOE considered separate technology options for whole walk-ins, doors, and panels, and refrigeration systems. 88 FR 60746, 60764–60765. In the preliminary market analysis and technology assessment, DOE identified 16 technology options that would be expected to improve the efficiency of refrigeration systems. DOE requested comment on the technology options in section ES.4.2 of the June 2022 Preliminary Analysis TSD. In response, the CA IOUs suggested several modifications to the technology options analyzed by DOE in the June 2022 Preliminary Analysis. (CA IOUs, No. 43 at p. 8)

In section 5.7.2.1 of chapter 5 of the June 2022 Preliminary Analysis TSD, DOE stated that at the time, it lacked data on the performance of multiple-capacity and variable-capacity compressors, but DOE intended to collect more data to evaluate these compressors as design options for the NOPR analysis. In response to the June 2022 Preliminary Analysis, the CA IOUs commented that they support the evaluation of variable-capacity compressors as a design option. (CA IOUs, No. 43 at p. 8) The CA IOUs recommended that DOE request full EER curves of amperage versus capacity for variable-capacity compressors from manufacturers. (*Id.*) The CA IOUs also recommended that DOE perform testing to record the efficiency gains of variable-capacity compressors and evaluate the reduction in compressor cycling and improved ability of the

<sup>4</sup> The parenthetical reference provides a reference for information located in the docket of DOE’s rulemaking to develop energy conservation standards for walk-ins. (Docket No. EERE–2017–BT–STD–0009, 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).

<sup>5</sup> DOE received comments marked as confidential business information from Anthony International (see EERE–2017–BT–STD–0009–0040) and Lennox International (see EERE–2017–BT–STD–0009–0036).

compressor to match the system cooling loads. (*Id.* at pp. 8–9)

As discussed in the September 2023 NOPR, DOE analyzed variable-capacity compressors for low- and medium-temperature refrigeration systems and assumed that the system was redesigned to take advantage of the variable-capacity compressor. 88 FR 60746, 60776. However, DOE was unable to obtain performance data from manufacturers as recommended by the CA IOUs, and therefore based the variable-capacity design option performance on its test data. Additional details of the variable-capacity compressor design option implementation in the NOPR analysis can be found in chapter 5 of the accompanying TSD.<sup>6</sup>

In the June 2022 Preliminary Analysis, DOE analyzed floating head pressure and floating head pressure with an EEV as design options for outdoor dedicated condensing units. See section 5.7.2.7 of the June 2022 Preliminary Analysis TSD. In response to the June 2022 Preliminary Analysis, the CA IOUs suggested that DOE analyze EEVs as a technology option separate from floating head pressure. (CA IOUs, No. 43 at p. 10) The CA IOUs provided an example where the use of an EEV rather than a thermostatic expansion valve (“TXV”) saved energy by reducing cycling losses where the TXV “hunts” for the optimal opening range. (*Id.*) Further, the CA IOUs commented that EEVs allow for more precise superheat control over TXVs, which could improve energy efficiency. (*Id.* at p. 10)

DOE notes that the tests conducted as part of the test procedures in appendix C1 are steady-state tests. Because of this, DOE has tentatively concluded that a test performed with a TXV would result in the same measured efficiency as a test of the same unit performed with an EEV. DOE acknowledges that a unit cooler installed with an EEV may be able to achieve more capacity for a given suction condition given that EEVs can achieve less superheat than a TXV would be able to. Considering feedback received during manufacturer interviews, DOE has tentatively concluded that manufacturers would not recommend a lower superheat value for unit coolers installed with an EEV rather than a TXV. Additionally, DOE notes that Figure 8 presented in the CA IOUs comment shows that at the steady-state operation that is the basis of test procedures, systems equipped with

TXVs are no less efficient than systems equipped with EEVs. As such DOE has tentatively concluded that when performing a valid refrigeration system test according to the DOE test procedure, replacing a TXV with an EEV would not improve measured efficiency. For this reason, DOE did not analyze EEVs as a standalone technology in the September 2023 NOPR analysis. See section 5.7.2.7 of the September 2023 NOPR TSD for discussion of how DOE considered head pressure control in the analysis.

See chapter 3 of the September 2023 NOPR TSD for further discussion of the market and technology assessment.

### C. Engineering Analysis

As discussed in the September 2023 NOPR, the purpose of the engineering analysis is to establish the relationship between the efficiency and cost of each component of walk-ins (e.g., doors, panels, and refrigeration systems). 88 FR 60746, 60767. There are two elements to consider in the engineering analysis; the selection of efficiency levels to analyze (i.e., the “efficiency analysis”) and the determination of product cost at each efficiency level (i.e., the “cost analysis”). In determining the performance of higher-efficiency walk-ins, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each walk-in component equipment class, DOE estimates the baseline cost, as well as the incremental cost for the walk-in component at efficiency levels above the baseline. The output of the engineering analysis is a set of cost-efficiency “curves” that are used in downstream analyses (i.e., the LCC and PBP analyses and the NIA).

In section ES4.4 of the June 2022 Preliminary Analysis TSD, DOE requested comment on the efficiency levels considered in the analysis. Specifically, DOE sought feedback on whether the efficiency levels beyond the baseline are appropriate, including the maximum technology efficiency level.

#### a. Display Doors

The CA IOUs commented that, based on its evaluation, the ratings in DOE’s Compliance Certification Management System Database (“CCD”) for display doors are conservative. The CA IOUs asserted that the ratings in CCD for display doors should not be used as the basis for establishing an updated energy conservation standard because their analysis suggests the ratings are conservative. Rather, the CA IOUs encouraged DOE to independently evaluate the performance of representative display doors in its

analysis. (CA IOUs, No. 43 at pp. 7–8, 21)

In response, DOE notes that it did not analyze higher efficiency levels for display doors solely using data from CCD, but rather conducted testing on doors with varying glass pack designs. See sections 5.6.1 and 5.7.1.1 of the NOPR TSD for further discussion on DOE’s methodology for developing the baseline and higher efficiency energy consumption characteristics for the representative units of display doors analyzed.

#### b. Refrigeration Systems

The CA IOUs stated that the AWEF levels in CCD are based on the base model of a product line rather than the models that utilize higher efficiency design options. (CA IOUs, No. 43 at p. 3) The CA IOUs also commented that DOE’s performance modeling in the June 2022 Preliminary Analysis underestimated the efficiency benefits of the design options currently available in the market. (*Id.*) The CA IOUs recommended that DOE validate the results of the June 2022 Preliminary Analysis by conducting testing on representative examples of walk-in refrigeration systems. (*Id.*)

As discussed in the September 2023 NOPR, DOE used a design-option approach for dedicated condensing units and single-packaged dedicated systems. 88 FR 60746, 60768. DOE’s performance modeling of each design option for dedicated condensing units and single-packaged dedicated systems in the September 2023 NOPR analysis was developed with manufacturer feedback through confidential manufacturer interviews. Additionally, DOE notes that it has validated its results of the September 2023 NOPR analysis through its own walk-in refrigeration system testing. See section 5.7.2 of the September 2023 NOPR TSD for details of the refrigeration systems engineering analysis.

Furthermore, DOE used both an efficiency-level approach and design option approach for its analysis of unit coolers, depending on equipment class. 88 FR 60746, 60768. DOE’s performance modeling of medium- and low-temperature unit coolers in the September 2023 NOPR analysis was based on the capacities certified in the CCD, fan power data from product literature, and the default defrost energy use from AHRI 1250–2020<sup>7</sup> adjusted

<sup>6</sup> The NOPR TSD can be found in the docket at [regulations.gov/document/EERE-2017-BT-STD-0009-0046](https://www.regulations.gov/document/EERE-2017-BT-STD-0009-0046).

<sup>7</sup> Appendix C1 references industry test standard Air-Conditioning, Heating, and Refrigeration Institute (“AHRI”) Standard 1250–2020, 2020 Standard for Performance Rating of Walk-in Coolers and Freezers (“AHRI 1250–2020”).

such that the lowest calculated AWEFs match the current energy conservation standard. DOE notes that while most of the unit coolers in the CCD are rated at baseline, when AWEF is calculated using the data as described, many units appear to have efficiencies above baseline. DOE has tentatively determined that the results of these analyses are representative of the units and technologies currently available on the market. Details of the unit cooler engineering analysis are discussed in section 5.8 of the September 2023 NOPR TSD.

#### Refrigerants Analyzed

The CA IOUs commented that it expects that the use of R-404A to estimate the performance of CO<sub>2</sub>-based unit coolers (which DOE did in the June 2022 Preliminary Analysis) would result in a similar AWEF to that of an AWEF that was based on performance data of CO<sub>2</sub>. However, the CA IOUs recommended that DOE use CO<sub>2</sub> data in its analysis to avoid confusion. The CA IOUs stated that DOE should use available CO<sub>2</sub>-specific data, request information from manufacturers, and derive EER curves using software tools. (CA IOUs, No. 43 at p. 14)

DOE acknowledges that there is some performance data available for CO<sub>2</sub> unit coolers. However, the CCD and manufacturer product literature have more data available for unit coolers that use R-404A. In response to the preliminary analysis, as discussed in the September 2023 NOPR, HTPG supported the use of R-404A to analyze medium- and low-temperature unit coolers. 88 FR 60746, 60779. Additionally, as the CA IOUs stated, the performance results of unit coolers using R-404A and CO<sub>2</sub> are similar. DOE has tentatively concluded that using R-404A as the refrigerant for the analysis of medium- and low-temperature unit coolers is representative of the unit cooler market. Therefore, as discussed in the September 2023 NOPR, DOE used R-404A as the refrigerant in its analysis of medium- and low-temperature unit coolers. 88 FR 60746, 60780. Further, DOE notes that the EERs used to calculate unit cooler AWEF and AWEF2 are prescribed by the suction conditions and EER table of the DOE test procedure at section 3.4.14 of appendix C1. As such, DOE did not consider alternative EER curves in the September 2023 NOPR analysis.

#### Representative Units

In section 2.2 of the June 2022 Preliminary Analysis TSD, DOE stated that it has not seen condensate heaters on any of the single-packaged dedicated

systems that it has tested. When making this statement in the June 2022

Preliminary Analysis, DOE was referring to pan heaters. In response, the CA IOUs commented that they are aware of three manufacturers of packaged systems that currently offer a condensate heater element and showed examples of unit coolers that offer drain line heaters as standard features or options. (CA IOUs, No. 43 at pp. 12–14) Additionally, the CA IOUs stated that in specific applications (e.g., meat and dairy coolers) medium-temperature coolers typically use condensate heaters. (*Id.* at p. 12) Therefore, the CA IOUs recommended that AWEF should include an allocation for condensate heater energy use. (*Id.*)

DOE has not encountered drain line heaters on any of the single-packaged dedicated systems or unit coolers that it has tested and DOE expects that drain line heaters would typically be provided as an optional feature and installed by a contractor. In the September 2023 NOPR analysis, DOE evaluated what it considers to be “representative units” in the market; therefore, DOE did not evaluate units with drain line heaters.

DOE has encountered low-temperature unit coolers with pan heaters. In the September 2023 NOPR analysis, DOE based the low-temperature unit cooler defrost power on the default defrost power calculations in AHRI 1250–2020. See section C10.2 of AHRI 1250–2020 for details. These calculated power values are representative of the power draw of the entire unit cooler during a defrost cycle. Additionally, the default defrost power calculations in AHRI 1250–2020 include a set of calculations for units with hot gas coil defrost and an electric resistive pan heater. See section C10.1.2 of AHRI 1250–2020. As such, DOE has tentatively determined that the AHRI 1250–2020 default power calculations include representative pan heater power consumption and that an allocation for condensate heater energy use is not warranted at this time.

#### Baseline Efficiency

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

common or least efficient unit on the market.

The CA IOUs stated that when DOE updates a test procedure for equipment already included in the DOE regulatory program, DOE typically performs a cross-walk analysis to ensure energy conservation standards set using the new test procedure do not result in backsliding. (CA IOUs, No. 43 at p. 1) The CA IOUs commented that the June 2022 Preliminary Analysis TSD does not appear to include a cross-walk analysis (*Id.*) The CA IOUs stated that, therefore, its comments regarding the baseline efficiency assumed the analysis presented in the preliminary TSD was based on the current test procedure at appendix C to subpart R of 10 CFR part 431. (*Id.* at pp. 2–3) Based on this assumption, the CA IOUs encouraged DOE to align the baseline efficiency level of all refrigeration systems with the current minimum energy conservation standards and indicated which representative units they interpreted as having efficiency levels below the current minimum energy conservation standards. *Id.*

Current energy conservation standards for walk-in refrigeration systems are in terms of the AWEF metric and the energy conservation standards proposed in the September 2023 NOPR use the AWEF2 metric. The primary difference between these two metrics is that AWEF2 includes off-cycle power consumption.<sup>8</sup> As discussed in the September 2023 NOPR, DOE set baseline efficiency levels for dedicated condensing units with energy conservation standards at the current minimum standard level using the appendix C test procedure (see appendix C to subpart R to 10 CFR 431). 88 FR 60746, 60778. For example, for a medium-temperature, outdoor dedicated condensing unit, DOE determined which technology options would just meet the current AWEF standard of 7.6 Btu/(W·h) using the appendix C test procedure. *Id.* Once each representative unit had its baseline design options set, DOE conducted the remainder of the efficiency analysis using the appendix C1 test procedure to determine AWEF2 values for each efficiency level, including the baseline. *Id.* DOE notes that in the June 2022 Preliminary Analysis, refrigeration system efficiency values were labeled as AWEF; however, all efficiency values calculated in accordance with the appendix C1 test

<sup>8</sup> The complete discussion of the differences between these metrics can be found in the May 2023 Test Procedure Final Rule. 88 FR 28780, 28810.

procedure were AWEF2 values, as defined in appendix C1. *Id.*

The representative units that DOE modeled in the September 2023 NOPR analysis were based on actual units that are certified at the currently applicable minimum energy conservation standards (*i.e.*, baseline AWEF) in CCD. To account for the differences between AWEF and AWEF2, DOE determined representative off-cycle power values for each representative unit analyzed in the September 2023 NOPR using product catalogs and feedback from manufacturer interviews.

Additionally, in the September 2023 NOPR, DOE proposed more stringent energy conservation standards for the

majority of refrigeration system equipment classes. 88 FR 60746, 60748–60749. The only equipment classes with standards proposed at the equivalent current baseline in terms of the new AWEF2 metric are medium-temperature indoor dedicated condensing systems with a capacity of less than 8,000 Btu/h and low-temperature indoor dedicated condensing systems with a capacity of 9,000 Btu/h. See section IV.C.1.d of the September 2023 NOPR for further discussion of the analysis based on AWEF2.

#### Design Options

In chapter 5 of the June 2022 Preliminary Analysis TSD, DOE

analyzed improved condenser coils as a design option for dedicated condensing system equipment classes. See section 5.7.2.2 of the Preliminary Analysis TSD for details of this analysis. Based on information gathered during previous rulemakings and feedback received during the preliminary analysis manufacturer interviews, DOE determined representative improved midpoint condensing temperatures for the representative units analyzed. DOE published the following table to summarize the baseline and improved condensing midpoint temperatures.

TABLE II.1—WALK-IN REFRIGERATION SYSTEM CONDENSER COIL TEMPERATURE DIFFERENCE (“TD”) ASSUMPTIONS

| Equipment class  | Temperature of air entering the condenser coil (°F) | Baseline midpoint (°F) | Baseline TD (°F) | Improved midpoint (°F) | Improved TD (°F) |
|------------------|-----------------------------------------------------|------------------------|------------------|------------------------|------------------|
| SPU.H.I .....    | 90                                                  | 115                    | 20               | 110                    | 15               |
| DC/SPU.M.I ..... | 90                                                  | 115                    | 25               | 110                    | 20               |
| DC/SPU.L.I ..... | 90                                                  | 110                    | 20               | 105                    | 15               |
| SPU.H.O .....    | 95                                                  | 120                    | 20               | 115                    | 15               |
| DC/SPU.M.O ..... | 95                                                  | 120                    | 25               | 115                    | 20               |
| DC/SPU.L.O ..... | 95                                                  | 115                    | 20               | 110                    | 15               |

In response to the June 2022 Preliminary Analysis, the CA IOUs recommended that DOE should review the baseline and improved condensing midpoint assumptions used for high-temperature single-packaged dedicated systems, as the temperature differences and ambient air temperatures do not sum to equal the corresponding midpoint temperature. (CA IOUs, No. 43 at p. 16)

DOE acknowledges that the baseline and improved temperature differences for high-temperature single-packaged dedicated condensing systems were incorrectly printed in table 5.7.13 in the June 2022 Preliminary Analysis TSD. For high-temperature single-packaged dedicated condensing systems, the table should have listed the baseline temperature difference as 25 °F and the improved temperature difference as 20 °F. These misprints only occurred in this table and the correct values were used in conducting the June 2022 Preliminary Analysis. Similarly, as discussed in section 5.7.2.2 of the September 2023 NOPR TSD, DOE did not use the incorrect values in the September 2023 NOPR analysis.

In the June 2022 Preliminary Analysis, DOE analyzed head pressure controls as a design option for outdoor dedicated condensing system equipment classes. See section 5.7.2.7 of the June 2022 Preliminary Analysis TSD for details. Head pressure controls allow outdoor condensing units’ head pressure to “float” down to a minimum condensing pressure as the ambient air temperature falls. This allows the compressor to operate more efficiently and therefore reduces the power consumption of the system without reducing the capacity. As discussed in section 5.7.2.7 of the June 2022 Preliminary Analysis TSD, DOE evaluated two design options pertaining to head pressure control for the representative units of outdoor dedicated condensing units and outdoor single-packaged dedicated systems analyzed. These two design options were floating head pressure and floating head pressure with an EEV.<sup>9</sup> DOE

<sup>9</sup> Systems equipped with an EEV could operate with an even lower head pressure because the greater flexibility of the electronic controls allows an EEV to have a wider range of orifice open area without leading to unstable operation in warm ambient conditions.

assumed fixed head pressure would be the baseline design. Based on information collected during previous rulemakings, DOE determined the minimum condensing pressure associated with these design options. DOE converted all minimum condensing pressures to minimum condenser dewpoint temperatures so that the values would be refrigerant agnostic. DOE assumed this minimum dewpoint would apply at the lowest ambient rating condition—35 °F. At the intermediate rating temperature of 59 °F, DOE estimated the head pressure for fixed and floating systems when using a TXV based on testing results. DOE did not have testing results for a system with an EEV, so DOE calculated the degree to which the pressure would “float” down based on an assumption that the condenser TD would scale with the capacity. DOE used test results and scaling to estimate a minimum dewpoint offset at 59 °F. Minimum condensing dewpoints at the 35 °F C test point and at the 59 °F B test point are summarized in Table II.2.

TABLE II.2—SUMMARY OF PRELIMINARY ANALYSIS HEAD PRESSURE CONTROL DESIGN OPTIONS

| Design option description                                       | Minimum condensing dewpoint at 35 °F (°F) | Minimum condensing dewpoint at 59 °F (°F) |
|-----------------------------------------------------------------|-------------------------------------------|-------------------------------------------|
| Fixed head pressure .....                                       | 101.5                                     | 104.4                                     |
| Floating head pressure .....                                    | 85                                        | 86.7                                      |
| Floating head pressure with an electronic expansion valve ..... | 67                                        | 85.9                                      |

In addition to the minimum condensing dewpoints imposed by head pressure control strategies, different compressor types have different

minimum condensing dewpoints. The minimum condensing dewpoint temperatures for hermetic, semi-hermetic, scroll and rotary compressors

used in the June 2022 Preliminary Analysis are listed in Table II.3.

TABLE II.3—MINIMUM CONDENSING DEWPOINT TEMPERATURES BY COMPRESSOR TYPE USED IN THE JUNE 2022 PRELIMINARY ANALYSIS

| Compressor type     | Minimum condensing dewpoint temperature (°F) |
|---------------------|----------------------------------------------|
| Hermetic .....      | 85                                           |
| Semi-hermetic ..... | 67                                           |
| Scroll .....        | 67                                           |
| Rotary .....        | 67                                           |

In response to the June 2022 Preliminary Analysis, the CA IOUs stated that its interpretation of the June 2022 Preliminary Analysis assumed that the minimum condensing pressure is reached only at the 35 °F ambient C test condition. (CA IOUs, No. 43 at p. 14) The CA IOUs commented that in its experience, the minimum condensing pressure is reached anytime the ambient temperature plus the condenser temperature difference is less than the minimum condensing temperature and that the minimum condensing pressure is “fixed” (*i.e.*, does not change with lower ambient temperatures) and that controls and valves function to maintain that pressure. (*Id.* at pp. 14–15).

Based on test data and feedback during manufacturer interviews, DOE tentatively concluded that the minimum condensing dewpoint temperature can be reached at ambient temperatures above 35 °F. DOE determined the condensing dewpoints at the B (59 °F) and C (35 °F) test points considering the minimum condensing dewpoint allowed by the floating head pressure controls and compressor type of the representative unit as well as the minimum condensing temperature necessary to achieve a sufficient condenser temperature difference. The details of this analysis can be found in section 5.7.2.7 of the September 2023 NOPR TSD.

Additionally, the CA IOUs stated that generally, fixed head pressure systems have minimum condensing dewpoint temperatures of 95 °F to 120 °F and that adding floating head pressure controls

with TXVs to these systems allows minimum condensing dewpoint temperatures of 70 °F to 85 °F and changing the TXVs for EEVs on systems with floating head pressure controls allows temperatures of 55 °F to 70 °F. (CA IOUs, No. 43 at p. 14) The CA IOUs stated that minimum condensing dewpoint temperature for low-temperature systems can be lower than those for medium-temperature systems. *Id.* DOE determined the minimum condensing dewpoint temperature for the September 2023 NOPR analysis using feedback from confidential manufacturer interviews. DOE aggregated this feedback and tentatively determined that 72 °F is a representative minimum condensing dewpoint for the walk-in industry as a whole. During interviews, manufacturers indicated that this was a standard design on all walk-in condensing systems and that this minimum condensing dewpoint temperature could be achieved by systems using TXVs, therefore DOE did not consider an additional step down in pressure associated with EEVs. Based on testing results, DOE tentatively determined that most dedicated condensing systems would need this floating head pressure design option to achieve the current AWEF standards. Feedback from the most recent round of manufacturer interviews confirmed this. As such DOE considered floating head pressure controls as the baseline design option for all dedicated condensing system representative units in the September 2023 NOPR analysis and did not consider floating head pressure

controls with an EEV as a design option. See section 5.7.2.7 of the September 2023 NOPR TSD for details of this analysis.

Additionally, the CA IOUs stated that the minimum condensing dewpoints allowed by the compressor operating envelopes in DOE’s June 2022 Preliminary Analysis are too high and provided examples of semi-hermetic compressors with lower minimum condensing dewpoints. (CA IOUs, No. 43 at p. 15)

Information obtained during previous rulemakings and manufacturer feedback received during the most recent interviews indicated that the operating envelope of hermetic reciprocating compressors would limit the minimum condensing dewpoint further. As such, DOE set the minimum condensing dewpoint for hermetic compressors at 85 °F. DOE acknowledges that the published operating envelope of semi-hermetic, scroll, and rotary compressors may allow for condensing dewpoints lower than 72 °F. However, manufacturers indicated that in spite of the lower dewpoints published in compressor literature, they and their customers have concerns about the potential system reliability issues. The 72 °F is representative of the lowest dew point levels used for rating purposes by manufacturers. In many cases this level can be adjusted in the field, and it often is set higher. As such, DOE did not consider condensing dewpoints lower than 72 °F in the September 2023 NOPR analysis. The floating head pressure design option is discussed in more



detail in section 5.7.2.7 of chapter 5 of the September 2023 NOPR TSD.

The CA IOUs recommended that DOE use the minimum condensing midpoint instead of the minimum condensing dewpoint in its analysis when discussing floating head pressure control. (CA IOUs, No. 43 at p. 15) As discussed in section 5.5.3.1 of the September 2023 NOPR TSD, DOE used the compressor model described in section 6.4 of AHRI Standard 540–2004, “Performance Rating of Positive Displacement Refrigerant Compressors and Compressor Units” to determine compressor power consumption and mass flow at each test condition. This model requires condensing dewpoint, rather than mid-point, as an input. Therefore, DOE used condensing dewpoint to characterize the floating head pressure design option.

In the June 2022 Preliminary Analysis, DOE did not analyze on-cycle evaporator fan control as a design option because DOE had tentatively determined that variable-capacity compressors are a prerequisite for on-cycle evaporator fan controls to be effective. DOE did not analyze variable-capacity compressors as a design option in the June 2022 Preliminary Analysis because it had insufficient data at the time to analyze them. See section 5.7.2.13 of the June 2022 Preliminary Analysis TSD.

In response, the CA IOUs agreed that on-cycle evaporator fan controls are most effective when paired with variable-capacity compressors, but referenced methods of fan control that could provide efficiency benefits without a multiple- or variable-capacity compressor. Therefore, the CA IOUs suggested that evaporator fan on-cycle control should be evaluated as a design option for single-packaged dedicated systems without a multiple- or variable-capacity compressor. (CA IOUs, No. 43 at p. 9) The CA IOUs provided two examples of how evaporator fan control could result in energy savings: (1) setting fan speed using refrigerant liquid temperature change across the expansion valve; and (2) setting fan speed based on walk-in interior temperature and refrigerant coil temperature using an electronic expansion valve (“EEV”) to control superheat. *Id.* Further, the CA IOUs commented that evaporator fans included in a walk-in system are based on ambient design conditions, which may only occur a few days per year and provided an example of a unit cooler that has evaporator fans running below full load for a majority of the time. (*Id.* at pp. 9–10)

DOE interprets the first fan control method described in the CA IOUs comment to be a reduction in fan power when the liquid line solenoid closes, indicating the compressor is cycling off. DOE considered off-cycle fan control for single-packaged dedicated systems in the September 2023 NOPR analysis, discussed in detail in section 5.7.2.8 of the September 2023 NOPR TSD. Based on the description of the second fan control method described in the CA IOUs comment, DOE has tentatively determined that when operating in a test chamber held at a constant temperature (consistent with the test procedure approach of testing with constant evaporator inlet air condition or constant condensing unit suction inlet condition) such a control system would not trigger any reduction in fan speed. Therefore, when tested according to the DOE test procedure in appendix C1 to 10 CFR part 431 subpart R (“appendix C1”) a single-packaged dedicated system equipped with this evaporator fan control system would not have an improved efficiency. In addition, DOE notes that the figure provided as an example in the CA IOUs’ comment shows condenser fan run time, not evaporator fan run time. DOE did consider on-cycle condenser fan controls in the September 2023 NOPR analysis. 88 FR 60746, 60767.

In the June 2022 Preliminary Analysis DOE analyzed permanent-split capacitor (“PSC”) and ECM motors as design options for improved condenser fan motors, and did not analyze improved evaporator fan motors as a design option. See sections 5.7.2.4 and 5.7.2.11 of the June 2022 Preliminary Analysis TSD. In response, the CA IOUs commented that DOE should consider permanent magnet AC (“PMS”) motors as the maximum-technologically-feasible design option for unit cooler fan motors and as a technology option for condensing unit fan motors. The CA IOUs cited examples of how PMS motor efficiency compares with ECM efficiency, specifically stating that PMS motors can offer an average of 17–27 percent energy savings over ECMs for unit cooler fan motors and 40 percent savings over permanent-split capacitor (“PSC”) motors that are mostly installed in condensing units. The CA IOUs stated that several utility and efficiency organizations offer rebate programs to upgrade ECMs with PMS motors. However, the CA IOUs stated that PMS motors are not available in new equipment and that it was only aware of one manufacturer offering PMS motors. (CA IOUs, No. 43 at pp. 11–12)

EPCA governs permissible evaporator and condenser fan motors in walk-ins

(42 U.S.C. 6313(f)(1)(E) and (F)). For condenser fan motors under 1 horsepower (“HP”), EPCA prescribes the use of either ECMs, permanent split capacitor (“PSC”) type motors, or 3-phase motors. (42 U.S.C. 6313(f)(1)(F)) DOE only analyzed one representative unit with condenser fan motors equal to or greater than 1 HP in the September 2023 NOPR analysis, which did not include a permanent magnet AC motor. Given that EPCA does not allow the use of any other motor types for motors under 1 horsepower, DOE did not consider permanent magnet AC motors as a design option for condenser fan motors.

For evaporator fan motors under 1 HP, EPCA prescribes the use of either ECMs or 3-phase motors. (42 U.S.C. 6313(f)(1)(E)) DOE has adopted this requirement in its regulations at 10 CFR 431.306(a)(5)(i)–(ii). DOE has encountered commercially available motor technologies that may perform more efficiently than the ECMs already required by the prescriptive standard. However, consistent with the EPCA requirements and existing regulations, DOE did not include them in its September 2023 NOPR analysis. See section 5.7.2.11 of the September 2023 NOPR TSD. Additionally, DOE notes that all evaporator fan powers are under the 1 HP threshold for the representative units analyzed at the proposed standard levels in the September 2023 NOPR.

#### *D. Life-Cycle Cost and Payback Period Analysis*

As discussed in the September 2023 NOPR, DOE conducted LCC and PBP analyses to evaluate the economic impacts on individual consumers of potential energy conservation standards for walk-ins. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

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

- The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower

operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

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

For each considered efficiency level in each equipment class, DOE calculated the LCC and PBP for a nationally representative set of commercial consumers. As stated previously, DOE developed household samples from the 2018 Commercial Buildings Energy Consumption Survey (“CBECS”).<sup>10</sup> For each sample, DOE determined the energy consumption for the walk-ins and the appropriate energy price. By developing a representative sample of commercial consumers, the analysis captured the variability in energy consumption and energy prices associated with the use of walk-ins.

Inputs to the calculation of total installed cost include the cost of the product—which includes MPCs,

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

The computer model DOE uses to calculate the LCC relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and walk-ins user samples. The model calculated the LCC for products at each efficiency level per simulation run. The analytical results include a distribution of 30,000 data points for refrigeration systems and 10,000 data points for envelope components, showing the range of LCC savings for a given efficiency level relative to the no-new-standards case efficiency distribution. In performing an iteration of the Monte Carlo simulation for a given consumer, product efficiency is chosen based on its probability. If the

chosen product efficiency is greater than or equal to the efficiency of the standard level under consideration, the LCC calculation reveals that a consumer is not impacted by the standard level. By accounting for consumers who already purchase more-efficient products, DOE avoids overstating the potential benefits from increasing product efficiency.

DOE calculated the LCC and PBP for consumers of walk-ins as if each were to purchase a new product in the expected year of required compliance with new or amended standards. Amended standards would apply to walk-ins manufactured three years after the date on which any new or amended standard is published. (42 U.S.C. 6313(f)(5)(B)(i)) At this time, DOE estimates publication of a final rule in 2024; therefore, for purposes of its analysis, DOE used 2027 as the first year of compliance with any amended standards for walk-ins.

Table II.4 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the September 2023 NOPR TSD and its appendices.

TABLE II.4—SUMMARY OF INPUTS AND METHODS FOR THE SEPTEMBER 2023 NOPR LCC AND PBP ANALYSIS \*

| Inputs                             | Source/method                                                                                                                                                                                                                                |
|------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Product Cost .....                 | Derived by multiplying MPCs by manufacturer and retailer markups and sales tax, as appropriate. Used historical data to derive a price scaling index to project product costs.                                                               |
| Installation Costs .....           | Baseline installation cost determined with data from RS Means. Assumed no change with efficiency level.                                                                                                                                      |
| Annual Energy Use .....            | The total annual energy use multiplied by the buildings containing WICF. <i>Variability:</i> Based on the CBECS 2018.                                                                                                                        |
| Energy Prices .....                | <i>Electricity:</i> Based on EIA’s Form 861 data for 2021. <i>Variability:</i> Regional energy prices determined for 9 divisions.                                                                                                            |
| Energy Price Trends .....          | Based on AEO2023 price projections.                                                                                                                                                                                                          |
| Repair and Maintenance Costs ..... | Assumed no change with efficiency level.                                                                                                                                                                                                     |
| Product Lifetime .....             | <i>Average:</i> between 9 and 12 years.                                                                                                                                                                                                      |
| Discount Rates .....               | Approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board’s Survey of Consumer Finances. |
| Compliance Date .....              | 2027.                                                                                                                                                                                                                                        |

\* Not used for PBP calculation. References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the September 2023 NOPR TSD.

1. Consumer Sample

As discussed in the September 2023 NOPR DOE conducts its analysis in support of a potential new minimum efficiency standard at the National level. This means that DOE must distribute its sample of consumers of walk-in equipment throughout the Nation to

capture variability of key inputs of walk-ins operation. Specifically, for the annual energy use estimate, DOE is concerned about distributing the population of walk-in installations across different regions to capture variability in equipment installation saturations and electricity prices, which will impact the operating cost of the

equipment. This distribution of installations is referred to as the “consumer sample.”

The CA IOUs suggested that DOE revise the distribution of weights of WICF equipment by sector. (CA IOUs, No. 43 at pp. 18–19)

As stated in the September 2023 NOPR, DOE used data supplied by

<sup>10</sup> U.S. Energy Information Administration. *Commercial Buildings Energy Consumption Survey 2018*, 2022.

AHRI and CBECS to estimate the number of walk-in installations by sector and Census Division. 88 FR 60746, 60792. The weights of each representative unit by sector are repeated from the September 2023

NOPR here in Table II.5 through Table II.7.<sup>11</sup> These weights show that dedicated condensing systems are evenly spread across all sectors, with small business sectors limited to smaller capacity equipment. Additionally,

single-packaged dedicated condensing systems are limited to the small business sectors and concentrated in the food service sector.

TABLE II.5—CONSUMER SAMPLE AND WEIGHTS—DEDICATED CONDENSING UNITS  
[%]

| Equipment class | Sector        |             | Capacity (kBtu/hr) |    |    |    |    |     |
|-----------------|---------------|-------------|--------------------|----|----|----|----|-----|
|                 | Cat.          | Size        | 3                  | 9  | 25 | 54 | 75 | 124 |
| DC.L.I .....    | Other .....   | Large ..... | 23                 | 18 | 4  | 10 |    |     |
|                 |               | Small ..... | 1                  | 1  | 0  | 0  |    |     |
|                 | Sales .....   | Large ..... | 4                  | 3  | 1  | 2  |    |     |
|                 |               | Small ..... | 3                  | 3  | 1  | 0  |    |     |
|                 | Service ..... | Large ..... | 5                  | 4  | 1  | 2  |    |     |
|                 |               | Small ..... | 7                  | 6  | 1  | 0  |    |     |
| DC.L.O .....    | Other .....   | Large ..... | 7                  | 25 | 7  | 5  | 14 |     |
|                 |               | Small ..... | 0                  | 2  | 0  | 0  | 0  |     |
|                 | Sales .....   | Large ..... | 1                  | 4  | 1  | 1  | 2  |     |
|                 |               | Small ..... | 1                  | 4  | 1  | 0  | 0  |     |
|                 | Service ..... | Large ..... | 1                  | 6  | 1  | 1  | 3  |     |
|                 |               | Small ..... | 2                  | 8  | 2  | 0  | 0  |     |
| DC.M.I .....    | Other .....   | Large ..... | * 12               | 30 | 7  | 4  | 0  |     |
|                 |               | Small ..... | * 1                | 2  | 0  | 0  | 0  |     |
|                 | Sales .....   | Large ..... | * 2                | 5  | 1  | 1  | 0  |     |
|                 |               | Small ..... | * 2                | 4  | 1  | 0  | 0  |     |
|                 | Service ..... | Large ..... | * 3                | 6  | 1  | 1  | 0  |     |
|                 |               | Small ..... | * 4                | 9  | 2  | 0  | 0  |     |
| DC.M.O .....    | Other .....   | Large ..... | * 3                | 30 | 9  | 2  | 6  | 6   |
|                 |               | Small ..... | * 0                | 2  | 1  | 0  | 0  | 0   |
|                 | Sales .....   | Large ..... | * 1                | 5  | 2  | 0  | 1  | 1   |
|                 |               | Small ..... | * 0                | 4  | 1  | 0  | 0  | 0   |
|                 | Service ..... | Large ..... | * 1                | 7  | 2  | 0  | 1  | 1   |
|                 |               | Small ..... | * 1                | 9  | 3  | 0  | 0  | 0   |

\* For the September 2023 NOPR DOE did not consider the impacts of representative units DC.M.I and DC.M.O at the 3 kBtu/hr capacity (see the Representative Units subsection of section IV.C.1.d of the September 2023 NOPR 88 FR 60746, 60780). However, these capacities persist within the consumer sample as they are still distributed in commerce, and the impacts for the fraction of these equipment must be accounted for when determining overall costs and benefits for DC.M.I and DC.M.O as equipment classes even if efficiency improvements are not being considered for these specific capacities.

TABLE II.6—CONSUMER SAMPLE AND WEIGHTS—SINGLE-PACKAGED DEDICATED SYSTEMS  
[%]

| Equipment class | Sector        |             | Capacity (kBtu/hr) |   |    |   |
|-----------------|---------------|-------------|--------------------|---|----|---|
|                 | Cat.          | Size        | 2                  | 6 | 7  | 9 |
| SP.H.I .....    | Other .....   | Large ..... | 0                  |   | 0  |   |
|                 |               | Small ..... | 0                  |   | 0  |   |
|                 | Sales .....   | Large ..... | 0                  |   | 0  |   |
|                 |               | Small ..... | 0                  |   | 0  |   |
|                 | Service ..... | Large ..... | 0                  |   | 0  |   |
|                 |               | Small ..... | 74                 |   | 26 |   |
| SP.H.ID .....   | Other .....   | Large ..... | 0                  |   | 0  |   |
|                 |               | Small ..... | 0                  |   | 0  |   |
|                 | Sales .....   | Large ..... | 0                  |   | 0  |   |
|                 |               | Small ..... | 0                  |   | 0  |   |
|                 | Service ..... | Large ..... | 0                  |   | 0  |   |
|                 |               | Small ..... | 74                 |   | 26 |   |
| SP.H.O .....    | Other .....   | Large ..... | 0                  |   | 0  |   |
|                 |               | Small ..... | 0                  |   | 0  |   |
|                 | Sales .....   | Large ..... | 0                  |   | 0  |   |
|                 |               | Small ..... | 0                  |   | 0  |   |
|                 | Service ..... | Large ..... | 0                  |   | 0  |   |
|                 |               | Small ..... | 22                 |   | 78 |   |
| SP.H.OD .....   | Other .....   | Large ..... | 0                  |   | 0  |   |

<sup>11</sup> A full breakdown of the consumer sample showing the distribution of equipment by Census

Division can be found in appendix 8E of the September 2023 NOPR TSD.

TABLE II.6—CONSUMER SAMPLE AND WEIGHTS—SINGLE-PACKAGED DEDICATED SYSTEMS—Continued  
[%]

| Equipment class | Sector        |             | Capacity (kBtu/hr) |    |    |    |
|-----------------|---------------|-------------|--------------------|----|----|----|
|                 | Cat.          | Size        | 2                  | 6  | 7  | 9  |
| SP.L.I .....    | Sales .....   | Small ..... | 0                  | 0  | 0  | 0  |
|                 |               | Large ..... | 0                  | 0  | 0  | 0  |
|                 | Service ..... | Small ..... | 0                  | 0  | 0  | 0  |
|                 |               | Large ..... | 0                  | 0  | 0  | 0  |
|                 | Other .....   | Small ..... | 22                 | 78 | 78 | 78 |
|                 |               | Large ..... | 0                  | 0  | 0  | 0  |
|                 | Sales .....   | Small ..... | 9                  | 4  | 4  | 4  |
|                 |               | Large ..... | 0                  | 0  | 0  | 0  |
|                 | Service ..... | Small ..... | 19                 | 9  | 9  | 9  |
|                 |               | Large ..... | 0                  | 0  | 0  | 0  |
| SP.L.O .....    | Other .....   | Small ..... | 41                 | 18 | 18 | 18 |
|                 |               | Large ..... | 0                  | 0  | 0  | 0  |
|                 | Sales .....   | Small ..... | 3                  | 9  | 9  | 9  |
|                 |               | Large ..... | 0                  | 0  | 0  | 0  |
|                 | Service ..... | Small ..... | 7                  | 21 | 21 | 21 |
|                 |               | Large ..... | 0                  | 0  | 0  | 0  |
|                 | Other .....   | Small ..... | 15                 | 45 | 45 | 45 |
|                 |               | Large ..... | 0                  | 0  | 0  | 0  |
|                 | Sales .....   | Small ..... | 3                  | 10 | 10 | 10 |
|                 |               | Large ..... | 0                  | 0  | 0  | 0  |
| SP.M.I .....    | Service ..... | Small ..... | 6                  | 22 | 22 | 22 |
|                 |               | Large ..... | 0                  | 0  | 0  | 0  |
|                 | Other .....   | Small ..... | 14                 | 46 | 46 | 46 |
|                 |               | Large ..... | 0                  | 0  | 0  | 0  |
|                 | Sales .....   | Small ..... | 1                  | 12 | 12 | 12 |
|                 |               | Large ..... | 0                  | 0  | 0  | 0  |
|                 | Service ..... | Small ..... | 2                  | 26 | 26 | 26 |
|                 |               | Large ..... | 0                  | 0  | 0  | 0  |
|                 | Other .....   | Small ..... | 3                  | 56 | 56 | 56 |
|                 |               | Large ..... | 0                  | 0  | 0  | 0  |

TABLE II.7—CONSUMER SAMPLE AND WEIGHTS—UNIT COOLERS  
[%]

| Equipment class | Sector        |             | Capacity (kBtu/hr) |    |    |    |    |
|-----------------|---------------|-------------|--------------------|----|----|----|----|
|                 | Cat.          | Size        | 3                  | 9  | 25 | 54 | 75 |
| UC.H.I* .....   | Other .....   | Large ..... | 0                  | 0  | 0  | 0  | 0  |
|                 |               | Small ..... | 0                  | 0  | 0  | 0  | 0  |
|                 | Sales .....   | Large ..... | 0                  | 0  | 0  | 0  | 0  |
|                 |               | Small ..... | 0                  | 0  | 0  | 0  | 0  |
|                 | Service ..... | Large ..... | 30                 | 11 | 11 | 11 | 11 |
|                 |               | Small ..... | 43                 | 16 | 16 | 16 | 16 |
| UC.H.ID .....   | Other .....   | Large ..... | 0                  | 0  | 0  | 0  | 0  |
|                 |               | Small ..... | 0                  | 0  | 0  | 0  | 0  |
|                 | Sales .....   | Large ..... | 0                  | 0  | 0  | 0  | 0  |
|                 |               | Small ..... | 0                  | 0  | 0  | 0  | 0  |
|                 | Service ..... | Large ..... | 30                 | 11 | 11 | 11 | 11 |
|                 |               | Small ..... | 43                 | 16 | 16 | 16 | 16 |
| UC.L.I .....    | Other .....   | Large ..... | 18                 | 16 | 4  | 14 | 0  |
|                 |               | Small ..... | 1                  | 1  | 0  | 1  | 0  |
|                 | Sales .....   | Large ..... | 3                  | 3  | 1  | 3  | 0  |
|                 |               | Small ..... | 3                  | 2  | 1  | 2  | 0  |
|                 | Service ..... | Large ..... | 4                  | 3  | 1  | 3  | 0  |
|                 |               | Small ..... | 6                  | 5  | 1  | 5  | 0  |
| UC.L.M .....    | Other .....   | Large ..... | 2                  | 21 | 28 | 8  | 8  |
|                 |               | Small ..... | 0                  | 0  | 0  | 0  | 0  |
|                 | Sales .....   | Large ..... | 0                  | 4  | 5  | 1  | 1  |
|                 |               | Small ..... | 0                  | 0  | 0  | 1  | 1  |
|                 | Service ..... | Large ..... | 0                  | 5  | 6  | 2  | 2  |
|                 |               | Small ..... | 1                  | 0  | 0  | 2  | 2  |
| UC.L.O .....    | Other .....   | Large ..... | 6                  | 22 | 7  | 7  | 10 |
|                 |               | Small ..... | 0                  | 1  | 0  | 0  | 1  |
|                 | Sales .....   | Large ..... | 1                  | 4  | 1  | 1  | 2  |
|                 |               | Small ..... | 1                  | 3  | 1  | 1  | 2  |
|                 | Service ..... | Large ..... | 1                  | 5  | 2  | 2  | 2  |
|                 |               | Small ..... | 1                  | 5  | 2  | 2  | 2  |

TABLE II.7—CONSUMER SAMPLE AND WEIGHTS—UNIT COOLERS—Continued  
[%]

| Equipment class | Sector        |             | Capacity<br>(kBtu/hr) |    |    |    |    |
|-----------------|---------------|-------------|-----------------------|----|----|----|----|
|                 | Cat.          | Size        | 3                     | 9  | 25 | 54 | 75 |
| UC.M.I .....    | Other .....   | Small ..... | 2                     | 7  | 2  | 2  | 3  |
|                 |               | Large ..... | 10                    | 27 | 8  | 7  | 0  |
|                 | Sales .....   | Small ..... | 1                     | 2  | 1  | 0  | 0  |
|                 |               | Large ..... | 2                     | 5  | 1  | 1  | 0  |
|                 | Service ..... | Small ..... | 1                     | 4  | 1  | 1  | 0  |
|                 |               | Large ..... | 2                     | 6  | 2  | 1  | 0  |
| UC.M.M .....    | Other .....   | Small ..... | 3                     | 9  | 2  | 2  | 0  |
|                 |               | Large ..... | 2                     | 29 | 19 | 8  | 8  |
|                 | Sales .....   | Small ..... | 0                     | 0  | 0  | 0  | 0  |
|                 |               | Large ..... | 0                     | 5  | 3  | 1  | 1  |
|                 | Service ..... | Small ..... | 0                     | 0  | 0  | 1  | 1  |
|                 |               | Large ..... | 0                     | 6  | 4  | 2  | 2  |
|                 |               | Small ..... | 1                     | 0  | 0  | 2  | 2  |

\* For unit coolers, the index I, O, and M indicate that the unit cooler is connected to an Indoor, Outdoor, or Multiplex condensing system.

## 2. Equipment Lifetime

When determining lifetimes, DOE calculates a Weibull distribution of potential lifetimes from average and maximum lifetime for the different types of equipment under consideration.

In response to the June 2022 Preliminary Analysis, the CA IOUs suggested alternative lifetime estimates for walk-ins. As published data on WICF lifetimes are unavailable, the CA IOUs' lifetime estimates were sourced from technician interviews from a

mechanical engineering firm. The stated lifetimes differ from those used by DOE in the June 2022 Preliminary Analysis,<sup>12</sup> and September 2023 NOPR (88 FR 60746, 60798), and are shown in Table II.8 for comparison. (CA IOUs, No. 43 at pp. 17–18)

TABLE II.8—ESTIMATED WICF LIFETIMES  
[Years]

| Equipment category                        | DOE                |                    | CA IOU             |                    |
|-------------------------------------------|--------------------|--------------------|--------------------|--------------------|
|                                           | Average<br>(years) | Maximum<br>(years) | Average<br>(years) | Maximum<br>(years) |
| Panels .....                              | 12                 | 25                 | 20                 | 25                 |
| Display Doors .....                       | 12                 | 25                 | 7                  | 15                 |
| Non-display Doors .....                   | 8.5                | 12                 | 10                 | 15                 |
| Indoor Dedicated Condensing Systems ..... | 10.5               | 20                 | 12                 | 15                 |
| Outdoor Condensing Systems .....          | 10.5               | 20                 | 6                  | 15                 |
| Medium Temperature Unit Coolers .....     | 10.5               | 20                 | 17                 | 20                 |
| Low Temperature Unit Coolers .....        | 10.5               | 20                 | 17                 | 15–20              |
| Single-packaged Condensing Systems .....  | 10.5               | 20                 | * 12               | * 15               |

\* Indicates that an estimate was not available, however commenters indicated that lifetimes would be like indoor-dedicated condensing systems.

The CA IOUs' comment did not indicate if their interviewees were referencing lifetimes of walk-ins in the National scope or only California. DOE also notes that the very close average and maximum lifetime values for panels, indoor dedicated condensing systems, and unit coolers (medium- and low-temperature) to be unlikely. DOE's lifetimes were initially determined in response to comments for the June 2014 Final Rule (79 FR 32086). Other than the information provided by the CA IOUs, DOE received comment from AHRI in response to the July 2021 RFI in support of the existing lifetimes. (AHRI, No. 16

at p. 15) Given some of DOE's questions about the CA IOUs supplied lifetimes, DOE tentatively determined to maintain its use of the lifetimes from the June 2022 Preliminary Analysis in the September 2023 NOPR. DOE welcomes additional information on this topic in response to the September 2023 NOPR.

### E. Conclusion

As discussed in the preceding sections, DOE has considered the comments provided by the CA IOUs in response to the June 2022 Preliminary Analysis. This document provides responses to the CA IOUs' comments that were not included in the September

2023 NOPR, but does not change the analysis or proposals presented in the NOPR. DOE welcomes comment on the information presented in the September 2023 NOPR, including the additional comment summaries and responses presented in this notification.

### III. Procedural Issues and Regulatory Review

DOE has concluded that the tentative determinations made pursuant to the various procedural requirements applicable to the September 2023 NOPR remain unchanged for this notification. These tentative determinations are set

<sup>12</sup> See: June 2022 Preliminary Analysis Executive Summary, p. ES–20, June 2022

[www.regulations.gov/document/EERE-2017-BT-STD-0009-0024](https://www.regulations.gov/document/EERE-2017-BT-STD-0009-0024).

forth in the September 2023 NOPR. 88 FR 60746, 60855–60861.

#### IV. Public Participation

Please refer to section VII of the September 2023 NOPR for information regarding the public webinar, submission of comments, and issues on which DOE seeks comment. 88 FR 60746, 60861–60863. DOE additionally welcomes comment on the information presented in this notification.

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

The Secretary of Energy has approved publication of this notification of data availability regarding energy conservation standards.

#### Signing Authority

This document of the Department of Energy was signed on September 21, 2023, by Jeffrey Marootian, Principal Deputy 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 September 25, 2023.

**Treena V. Garrett,**

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

[FR Doc. 2023–21190 Filed 9–27–23; 8:45 am]

**BILLING CODE 6450–01–P**

#### CONSUMER PRODUCT SAFETY COMMISSION

##### 16 CFR Part 1025

[CPSC Docket No. CPSC–2016–0006]

#### Rules of Practice for Adjudicative Proceedings

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Termination of rulemaking.

**SUMMARY:** The Consumer Product Safety Commission is withdrawing its proposed rule to update the Commission's Rules of Practice for Adjudicative Proceedings because the Commission has not taken any action on

this proposed rule since it was published in 2016.

**DATES:** As of September 28, 2023, the proposed rule published on April 13, 2016, at 81 FR 21775, is withdrawn.

**ADDRESSES:** Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814.

**FOR FURTHER INFORMATION CONTACT:** Daniel Vice, Office of the General Counsel, 4330 East-West Highway, Bethesda, MD 20814; telephone: 301–504–6996; *dvice@cpsc.gov*.

**SUPPLEMENTARY INFORMATION:** Under the Administrative Procedure Act, adjudications required by a statute to be determined on the record after an opportunity for an agency hearing are subject to certain procedural requirements. 5 U.S.C. 554. In 1980, the Commission adopted Rules of Practice for Adjudicative Proceedings (Rules) to govern such Commission proceedings. 16 CFR part 1025.

On April 13, 2016, the Commission issued a notice of proposed rulemaking (NPR) to update the Rules. 81 FR 21775. The Commission proposed to modernize the Rules to reflect changes in civil and administrative litigation and revisions to the Federal Rules of Civil Procedure and Federal Rules of Evidence since adoption of the Rules. The Commission received four comments on the proposed rule.

In November 2019, Commission staff sent to the Commission a draft supplemental notice of proposed rulemaking (SNPR). The draft SNPR proposed additional changes to the Rules in light of comments received on the NPR and the Commission's experience with adjudicative proceedings since publication of the NPR. The Commission did not take any action on the draft SNPR.

Because the Commission has not taken action on this proposed rule since 2016, the Commission is terminating this proceeding.<sup>1</sup> In the future, the Commission may consider revisions to the Rules in light of its experience with agency adjudications and relevant circumstances including changes to rules for Federal judicial proceedings.

**Elina Lingappa,**

*Paralegal Specialist, Office of the Secretary, Consumer Product Safety Commission.*

[FR Doc. 2023–21165 Filed 9–27–23; 8:45 am]

**BILLING CODE 6355–01–P**

<sup>1</sup> On September 19, 2023, the Commission voted 4–0 to publish this termination of rulemaking.

#### DELAWARE RIVER BASIN COMMISSION

##### 18 CFR Part 401

#### Rules of Practice and Procedure

**AGENCY:** Delaware River Basin Commission.

**ACTION:** Notice of proposed rulemaking; public hearing.

**SUMMARY:** The Commission proposes to amend its Rules of Practice and Procedure to: resolve ambiguities around the automatic termination of project approvals issued by the Commission; make conforming amendments to related provisions as appropriate; update the Commission's Water Resources Program and Project Review procedures to better conform them to current practice; remove references to the Federal Freedom of Information Act that create confusion about the regulations applicable to requests for Commission public records; and align pronouns with the Commission's policies regarding diversity, inclusion, and belonging.

#### DATES:

*Written comments:* Written comments will be accepted through 5 p.m. on Thursday, November 30, 2023.

*Public hearings:* Public hearings will be held remotely via Zoom on the following dates at the noted times. Details about accessing the hearings are available on the Commission's website, [www.drbc.gov](http://www.drbc.gov).

1. November 13, 2023, 1:30 p.m. to no later than 4 p.m.

2. November 13, 2023, 6:30 p.m. to no later than 9 p.m.

#### ADDRESSES:

*To submit written comments:* Written comments will be accepted until 5 p.m. on Thursday, November 30, 2023 through the Commission's online public comment collection system at: <https://hearing.drbc.commentinput.com?id=T95htQGAg>. To request an exception from use of the online system based on lack of access to the internet, please contact: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628.

*To register to speak at public hearings:* Although attendance at the hearings is not limited and requires no registration, those who wish to provide oral comment at a hearing must register in advance to do so. Registration will be through Zoom. Links to the Zoom registration for each of the public hearing dates and times are posted at [www.drbc.gov](http://www.drbc.gov). Online registration will remain open until 5 p.m. on the day prior to the hearing date or until all available speaking slots have been

filled, whichever is earlier. Each person who wishes to provide oral comment may do so at only one public hearing. Registrations will be monitored, and if capacity is not adequate to accommodate all who wish to speak, additional opportunities may be added.

See **SUPPLEMENTARY INFORMATION** for details regarding the substance of written comments.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the public hearings and submission of written comments, contact Kate Schmidt, Communications Specialist, at [kate.schmidt@drbc.gov](mailto:kate.schmidt@drbc.gov) (preferred) or 609-883-9500, ext. 205. For information concerning the proposed amendments, contact Pamela Bush, Commission Secretary and Assistant General Counsel, at [pam.bush@drbc.gov](mailto:pam.bush@drbc.gov) (preferred) or 609-477-7203.

**SUPPLEMENTARY INFORMATION:** The Delaware River Basin Commission (“DRBC” or “Commission”) is a Federal-interstate compact agency formed by the enactment of concurrent legislation by four states and the United States in 1961<sup>1</sup> to manage the water resources of the Delaware River Basin (the “Basin”) without regard to political boundaries. The Commission’s members are, *ex officio*, the governors of the basin states (Delaware, New Jersey, New York, and Pennsylvania) and the Division Engineer of the U.S. Army Corps of Engineers North Atlantic Division, who represents the United States.

### Background

The Commission’s Rules of Practice and Procedure (“RPP”), comprising part 401 of Title 18 of the Code of Federal Regulations, govern the adoption and revision of the Commission’s Comprehensive Plan and Water Resources Program, the exercise of the Commission’s authority pursuant to the provisions of Article 3.8 of the Delaware River Basin Compact (the “Compact”) and other actions of the Commission mandated or authorized by the Compact, including but not limited to the administration of public access to records and information in the Commission’s possession.

The proposed amendments are intended primarily to resolve ambiguities in the current language of paragraph (a) of § 401.41 (“Limitation of approval”); to replace certain out-of-date provisions, such as the requirement

for paper copies of project review applications under Section 3.8 of the Compact, that no longer conform to current practice; and to eliminate references to the Federal Freedom of Information Act (“FOIA”) in Subpart H—Public Access to Records and Information, because the Commission is not a Federal agency and because the Compact expressly exempts the Commission from the Federal Administrative Procedure Act, of which FOIA is a part. The changes proposed to § 401.41 create the need for conforming changes in four other provisions of Subpart C but do not alter the Commission’s interpretation or implementation of these provisions.

Ambiguities in the language of paragraph (a) of § 401.41 came to light in 2022 in connection with a request in accordance with this provision for extension of an approval issued in 2019 under Section 3.8 of the Compact. The current provision states that a Commission approval “shall expire three years from the date of Commission action unless prior thereto the sponsor has expended substantial funds (in relation to the cost of the project) in reliance upon such approval.” The provision further provides that “[a]n approval may be extended or renewed by the Commission upon application.” The questions raised by this language include: whether, if the listed conditions are met, an expiring docket automatically extends or renews without the need for Commission action; whether, if acknowledgement or a decision is necessary, the Commission must vote on the matter or the Executive Director may issue the acknowledgment or render the decision; whether the project sponsor may be relieved of the requirement that it have “expended substantial funds” if circumstances beyond the sponsor’s control have prevented it from doing so; whether public notice and a public hearing should be provided before an extension is acknowledged, approved or denied; and the duration of an extension if acknowledged or approved.

### Proposed Amendments

#### *Amendments to § 401.41*

*Proposed § 401.41(a).* Paragraph (a) of § 401.41 operates when the instrument of Commission approval contains no expiration date. This occurs when the Commission approves an activity such as dredging under Section 3.8 of the Compact and accompanying regulations at 18 CFR 401.35(a)(7) or construction under the Commission’s Flood Plain Regulations, 18 CFR part 415. Because the Commission exercises no continuing

oversight over dredging and construction activities, no renewal of an approval for such activities is ordinarily required. Section 401.41(a) serves as a backstop in the unusual instances in which the approved activity is not promptly undertaken. In contrast, approvals for ongoing withdrawals and discharges are issued for limited terms of ten and five years, respectively, as set forth in the instrument of approval. Under existing regulations, an application for renewal of an approval, when required, must be submitted no fewer than 120 days in advance of the assigned expiration date unless the instrument of approval provides otherwise. See 18 CFR 401.43(b)(4)(ii). (An amendment proposed in this rulemaking would change the required timing of submission to 180 days in advance of the assigned expiration date.) That paragraph (a) of § 401.41 operates only when an approval contains no expiration date is made explicit in the amended rule.

In addition, the proposed amendments extend from three years to five the time by which a Commission approval that lacks an expiration date “shall expire” if certain requirements are not met. In the Commission’s view, a period of five years, rather than the current three, is appropriate given modern permitting and construction timeframes for Commission-approved projects. As noted above, five years is also the term of a Commission approval for a wastewater discharge, and is the term normally applied to individual permits issued under the Coastal Zone Management Rules established by an agency of one of the Commission’s member states, the New Jersey Department of Environmental Protection (“NJDEP”) (see N.J. Admin. Code Sec. 7.7–8.2).

Additional changes to § 401.41 are proposed to resolve ambiguities in the current language. Under the proposed revision, the project sponsor must submit a written request for an extension, accompanied by supporting documentation. In response, the Executive Director by a written determination must grant a five-year extension if the sponsor’s request and supporting documentation demonstrate to the Executive Director’s satisfaction that certain criteria are met. Specifically, the Executive Director must grant the extension if he or she determines: (1) that no material change is proposed to the project as approved; (2) that the sponsor has expended, at a minimum, the lesser of one million dollars or substantial funds in relation to the cost of the project or has been prevented from doing so by

<sup>1</sup> United States Public Law 87–328, Approved Sept. 27, 1961, 75 Statutes at Large 688; 53 Delaware Laws, Ch. 71, Approved May 26, 1961; New Jersey Laws of 1961, Ch. 13, Approved May 1, 1961; New York Laws of 1961, Ch. 148, Approved March 17, 1961; Pennsylvania Acts of 1961, Act. No. 268, Approved July 7, 1961.

circumstances beyond the sponsor's control; and (3)–(4), that neither the Commission's Comprehensive Plan nor the condition of the project site has changed in a manner important to determining whether the project would substantially impair or conflict with the Comprehensive Plan.

The term “material change” is proposed to be added to Subpart I—General Provisions, § 401.121 (Definitions), and defined as, “a change to a project previously approved by the Commission that is important in determining whether the project would substantially impair or conflict with the Commission's comprehensive plan.” The proposed definition restates the purpose of the Commission's review as set forth in Article 3.8 of the Compact, which provides in relevant part that “[t]he commission shall approve a project whenever it finds and determines that such project would not substantially impair or conflict with the comprehensive plan and may modify and approve as modified, or may disapprove any such project whenever it finds and determines that the project would substantially impair or conflict with such plan.”

As proposed, amended § 401.41(a) would also require public notice of a determination by the Executive Director on or before the Commission's next quarterly public hearing or business meeting. The proposed language establishes that determinations by the Executive Director under the provision are appealable in accordance with Subpart F—Administrative and Other Hearings, §§ 401.81–401.90.

*Proposed § 401.41(b).* The proposed amendments include a new § 401.41(b), which makes clear that if one or more material changes to an approved project are proposed, or if the Executive Director determines that any one or more of the other criteria listed at proposed § 401.41(a) are not satisfied, the project sponsor must apply for renewal and modification of its approval in accordance with the customary application procedure for any docket renewal or approval issued by the Commission. This section applies to any Commission approval, whether or not it includes an expiration date, and regardless of whether the project sponsor has expended a minimum amount of funds in relation to the cost of a project (Existing § 401.43(b)(4)(iii) sets forth the fee associated with modification of a Commission approval).

*Proposed § 401.41(c).* Proposed § 401.41(c) would effectively preserve the current § 401.41(b), which provides that a project review application (as

opposed to a Commission approval) that remains dormant (defined by the rule as “no active pursuit of approvals”) for three years from the date of Commission receipt of the application will terminate without further action by the Commission.

#### *Conforming Amendments in Part 401*

Introduction of the new defined term, “material change,” creates the need to replace existing language with the new term in four other provisions of part 401. In each of these instances, the current language includes the undefined term “substantial change,” or some variant of that term. The affected provisions are §§ 401.8(a), 401.42(e), 401.43(b)(1)(ii), and 401.43(b)(4)(iii).

#### *Updates of Subparts B and C*

The proposed amendments would revise provisions of the RPP concerning the Water Resources Program (subpart B) and the review of projects under Section 3.8 of the Compact (subpart C), to align them with current practice.

*Period to be covered by the Water Resources Program.* Article 13.2 of the Compact requires the Commission to “annually adopt a water resources program, based upon the comprehensive plan, consisting of the projects and facilities which the commission proposes to be undertaken . . . during the ensuing six years or such other reasonably foreseeable period as the commission may determine.” Currently, § 401.22 dictates that the Water Resources Program “will be a reasonably detailed amplification of that part of the Comprehensive Plan which the Commission recommends for action within the ensuing six-year period.” The proposed revision would restore the flexibility the Compact allows regarding the period to be covered by the annual program.

*Information required for concurrent inclusion of a project in the Comprehensive Plan and Water Resources Program.* Section 401.23 establishes that a project may be added to the Comprehensive Plan and included in the Water Resources Program by concurrent action of the Commission, provided that in such instances the project sponsor has furnished the Commission with detailed information, a list of which is set forth in the provision. As amended, the list is replaced by a reference to § 401.4(b), which contains a list of the information that must be provided for any project proposed to be included in the Comprehensive Plan.

*Removal of provisions concerning out-of-use classifications.* Sections 401.24–401.26 relate to a system of classifying

projects included in the Water Resources Program as either “A” list or “B” list projects. Because this classification system is no longer in use, these sections are proposed to be deleted.

*Time of referral of a project by a State or Federal agency.* The proposed amendments include a revision of § 401.38, captioned “Form of referral by State or Federal agency,” to conform the language of this provision to current practice. In practice, the Commission reviews projects concurrently with reviews performed by the regulatory agencies of its member states and the Federal government. Accordingly, as proposed, § 401.38 provides that upon receipt of an application for a project that is subject to Commission review (rather than upon issuance of an approval as in the current rule), the member state agency will refer the application to the Commission.

*Form of submission of a project review application.* The proposed rule would amend § 401.39, captioned “Form of submission of projects,” to provide that for any project subject to review under Section 3.8 of the Compact, an application will be considered complete and ripe for technical review by Commission staff when the project sponsor submits a completed application using the form provided on the Commission's website and pays the applicable fee plus any outstanding fees, penalties, or interest. The Commission's ability to request additional information from a project sponsor is preserved. The amendment would leave certain submission requirements and procedures to the instructions in the applicable form. It would conform § 401.39 to the practice already used by the Commission and most applicants, as well as by some regulatory agencies of the Commission's State and Federal members.

*Timely submission of a renewal application.* The proposed amendments include the revision of paragraph § 401.43(b)(4)(ii) to provide that a project sponsor must file its application for renewal of an expiring approval 180 calendar days prior to the date of expiration of the approval to avoid a late fee. The current rule requires that to avoid a late fee, a renewal application must be filed 120 days prior to the date of expiration of the approval.

*Fees for name change and change of ownership.* The amendments are proposed to include consolidation into a single fee of the fees that currently apply, respectively, when the sponsor of a project undergoes a name change (§ 401.43(b)(4)(iv)) and when the project undergoes a change of ownership



(§ 401.43(b)(4)(v)). A corresponding change is required to the accompanying Table 3 to § 401.43. The amendment is proposed because the two types of events entail comparable time and effort on the part of the Commission's project review staff.

#### *Public Access to Records and Information*

Subpart H of the RPP contains regulations related to the disclosure of Commission records to members of the public upon request. The rules currently identify the Federal FOIA as authority pursuant to which the Commission promulgated Subpart H, and the subpart contains multiple references to the FOIA. Although certain language in the current Subpart H is identical to language in the FOIA, the Commission, a Federal-interstate compact agency, is not a Federal agency, and the Commission is expressly exempt by § 15.1(m) of the Compact from the Federal Administrative Procedure Act, of which FOIA is a part. The agenda for a January 29, 1975 Commission conference session and business meeting at which adoption of the then-draft Subpart H regulations was discussed makes clear the Commission understood this at the time. The agenda states, "The Commission is not subject to the Administrative Procedures (*sic*) Act. However, staff recommends approval of these regulations in any case as a matter of desirable policy." At a business meeting on February 26, 1975, the Commission adopted the Subpart H regulations as proposed.

References to the FOIA in Subpart H have created confusion on the part of individuals who seek access to Commission records. In particular, requests for records filed with the Commission under Subpart H often cite to procedural provisions of the FOIA that differ from those in Subpart H. The proposed amendments would eliminate an important source of such confusion. The proposed amendments also would remove gendered pronouns used in the current regulations to align with the Commission's support of diversity, equity, inclusion and belonging.

#### **Public Process**

*Substance of comments.* The Commission welcomes and will consider comments that concern the potential impacts of the proposed amendments on the conservation, utilization, development, management and control of the water and related resources of the Delaware River Basin and on public participation in the Commission's water resource management activities.

Non-digitized, voluminous materials such as books, journals and collections of documents will not be accepted. Digital submissions of articles and websites must be accompanied by a statement containing citations to the specific findings or conclusions the commenter wishes to reference.

*Submission of written comments.* Written comments along with any attachments should be submitted through the Commission's web-based comment system (<https://hearing.drbc.commentinput.com?id=T95htQGAg>) until 5 p.m. on Thursday, November 30, 2023. All materials should be provided in searchable formats, preferably in .pdf searchable text. Notably, a picture scan of a document may not result in searchable text. Comments received through any method other than the designated on-line method, including via email, fax, postal/delivery services or hand delivery, will not be considered or included in the rulemaking record unless accompanied by a written request for an exception based on lack of access to the web-based comment system. Such requests and accompanying materials may be sent to: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628.

*Public hearings.* To provide for an orderly process, support public and community health measures, and provide expanded access to interested parties regardless of their geographic location, the Commission is conducting its public hearings virtually. Attendance at the hearings is not limited and requires no registration. However, to eliminate uncertainty on the part of attendees about whether they will have an opportunity to provide oral comment, those who wish to speak at a hearing must register in advance to do so, using the link on the Commission's website. Registrations will be monitored, and if capacity is not adequate to accommodate all who wish to speak, additional opportunities may be added. Key elements of the procedure are as follows:

- Online registration to speak at a public hearing will remain open until 5 p.m. the day prior to each hearing.
- Each person who wishes to provide oral comment may do so at only one public hearing.
- Speaking time will be limited to approximately three minutes per speaker.
- Elected government officials and their staff will have the opportunity to identify themselves when registering to attend a hearing.

■ Attendance at the public hearings is not limited and requires no advance registration.

■ Written and oral comment will receive equal consideration.

The Commission appreciates the public's participation and input on this matter.

*Translation Services for Rulemaking Materials.* The Commission will consider requests for translation of this notice and the proposed rule text into languages other than English. To request translation of documents related to this rulemaking, please send an email to [translate@drbc.gov](mailto:translate@drbc.gov). Please specify both the requested language and the requested documents.

*More Information.* Detailed and up-to-date information about the public process, including all proposed rule text, related documents, and links for online registration to speak at each of the scheduled public hearings can be found on the Commission website, [www.drbc.gov](http://www.drbc.gov).

#### **List of Subjects in 18 CFR Part 401**

Administrative practice and procedure, Archives and records, Water resources.

For the reasons set forth in the preamble, the Delaware River Basin Commission proposes to amend title 18, chapter III of the Code of Federal Regulations as follows:

#### **PART 401—RULES OF PRACTICE AND PROCEDURE**

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

**Authority:** Delaware River Basin Compact (75 Stat. 688), unless otherwise noted.

#### **Subpart A—Comprehensive Plan**

■ 2. In § 401.8, revise paragraph (a) to read as follows:

##### **§ 401.8 Public projects under Article 11 of the Compact.**

(a) After a project of any Federal, State or local agency has been included in the Comprehensive Plan, no further action will be required by the Commission or by the agency to satisfy the requirements of Article 11 of the Compact, except as the Comprehensive Plan may be amended or revised pursuant to the Compact and this part. Any project which is materially changed from the project as described in the Comprehensive Plan will be deemed to be a new and different project for the purposes of Article 11 of the Compact. Whenever a change is made the sponsor shall advise the Executive Director, who will determine whether the change is

deemed a material change within the meaning of this part.

\* \* \* \* \*

### Subpart B—Water Resources Program

■ 3. Revise §§ 401.22 and 401.23 to read as follows:

#### § 401.22 Concept of the program.

The Water Resources Program, as defined and described in Section 13.2 of the Compact, will be a reasonably detailed amplification of that part of the Comprehensive Plan which the Commission recommends for action. That part of the Program consisting of a presentation of the water resource needs of the Basin will be revised only at such intervals as may be indicated to reflect new findings and conclusions, based upon the Commission's continuing planning programs.

#### § 401.23 Procedure.

The Water Resources Program will be prepared and considered by the Commission for adoption annually. Projects included in the Water Resources Program shall have been previously included in the Comprehensive Plan, except that a project may be added to both the Plan and the Program by concurrent action of the Commission. In such instances, the project's sponsor shall furnish the information listed in § 401.4(b) prior to the inclusion of the project in the Comprehensive Plan and Water Resources Program.

#### §§ 401.24–401.26 [Removed]

■ 4. Remove §§ 401.24 through 401.26.

### Subpart C—Project Review Under Section 3.8 of the Compact

■ 5. In § 401.38, revise the introductory text to read as follows:

#### § 401.38 Form of referral by State or Federal agency.

Upon receipt of an application by any State or Federal agency for any project reviewable by the Commission under these regulations, if the project has not prior thereto been reviewed and approved by the Commission, such agency shall refer the project for review under Section 3.8 of the Compact in such form and manner as shall be provided by Administrative Agreement.

\* \* \* \* \*

■ 6. Revise § 401.39 to read as follows:

#### § 401.39 Form of submission of projects.

(a) *Submission constituting application.* Where a project is subject to review under Section 3.8 of the Compact, the submission shall be in accordance with such form of

application as the Executive Director may prescribe and with such supporting documentation as the Executive Director may reasonably require for the administration of the provisions of the Compact. An application shall be deemed complete and the Commission's review of the application may commence upon submission of the completed form in accordance with paragraph (b) of this section, and payment of the applicable fee as set forth in § 401.43 together with all balances due the Commission, if any, by the applicant or any member of its corporate structure, for unpaid fees, penalties, or interest.

(b) *Submission of applications.* Application forms and accompanying submissions shall be filed in accordance with the filing instructions included on the application form.

(c) *Availability of forms.* Any person may obtain a copy of any form prescribed for use in paragraph (a) of this section on the Commission's website, <https://www.drbc.gov>.

■ 7. Revise § 401.41 to read as follows:

#### § 401.41 Limitation of approval; dormant applications.

(a) *Extension by Executive Director.* (1) For any Commission approval not assigned an expiration date, the Commission's approval shall expire five years from the approval date unless prior thereto the Executive Director extends the approval for an additional five-year period based upon a written request from the project sponsor accompanied by supporting documentation demonstrating to the Executive Director's satisfaction that the following criteria have been met:

(i) Either:

(A) The project sponsor has expended, at a minimum, the sum of one million dollars (\$1,000,000) or an amount representing substantial funds in relation to the cost of the project in reliance upon the Commission's approval; or

(B) In the alternative, circumstances beyond the project sponsor's control (including but not limited to, pending legal challenges to local, State or Federal permits) have prevented the sponsor from expending an amount equal to either of the sums set forth in paragraph (a)(1)(i)(A) of this section;

(ii) No material changes to the project as approved are proposed;

(iii) The condition of the project site has not changed in a manner important to determining whether the project would substantially impair or conflict with the Commission's Comprehensive Plan; and

(iv) The Commission's Comprehensive Plan has not changed in a manner important to determining whether the project would substantially impair or conflict with the Comprehensive Plan.

(2) Otherwise, the Executive Director shall deny the request.

(3) Public notice of a determination by the Executive Director pursuant to this paragraph (a) shall be provided no later than the Commission's next regularly scheduled public hearing or business meeting following the determination. A determination by the Executive Director pursuant to this section is appealable in accordance with subpart F of this part.

(b) *Review by Commissioners.* If in the view of the Executive Director (or if appealed to the Commission pursuant to subpart F of this part, in the view of the Commission), one or more material changes to a project as approved are proposed, or if the Executive Director determines that any one or more of the other criteria listed in paragraph (a) of this section are not satisfied, the project sponsor must apply for renewal and modification of its approval in accordance with the customary application procedure for any docket renewal or approval.

(c) *Automatic termination of application.* Any application that remains dormant (no proof of active pursuit of approvals) for a period of three years from date of receipt, shall be automatically terminated without further action of the Commission. Any renewed activity following that date will require submission of a new application.

■ 8. In § 401.42, revise paragraph (e) to read as follows:

#### § 401.42 One permit program.

\* \* \* \* \*

(e) *Comprehensive Plan projects.* Articles 11 and 13 of the Compact require certain projects to be included in the Comprehensive Plan. To add a project not yet included in the Comprehensive Plan, the project sponsor shall submit a separate application to the Commission. If following its review and public hearing the Commission approves the addition of the project to the Comprehensive Plan, the Commission's approval will include such project requirements as are necessary under the Compact and Commission regulations. All other project approvals that may be required from the Signatory Party Agency or the Commission under regulatory programs administered pursuant to this section may be issued through the One Permit Program. An application for renewal or modification of a project in the

Comprehensive Plan that does not materially change the project may be submitted only to the Signatory Party Agency unless otherwise specified in the Administrative Agreement.

\* \* \* \* \*

■ 9. In § 401.43, revise paragraphs (b)(1)(ii) and (b)(4)(ii), (iii), and (iv) and remove the entries for “Name change” and “Change of Ownership” in Table 3 to § 401.43 and add an entry for “Name change or Change of Ownership” in their place.

The revisions and addition read as follows:

#### § 401.43 Regulatory program fees.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) *Project requiring inclusion in the comprehensive plan.* Any project that in accordance with section 11 or section 13.1 of the *Delaware River Basin Compact* and DRBC regulations must be added to the Comprehensive Plan (also, “Plan”). In addition to any new project required to be included in the Plan, such projects include existing projects that in accordance with section 13.1 of the *Compact* are required to be included in the Plan and which were not previously added to the Plan. Any existing project that is materially changed from the project as described in the Plan shall be deemed to be a new and different project for purposes of this section.

\* \* \* \* \*

(4) \* \* \*

(ii) *Late filed renewal application.* Any renewal application submitted fewer than 180 calendar days in advance of the expiration date or after such other date specified in the docket or permit or letter of the Executive Director for filing a renewal application shall be subject to a late filed renewal application charge in excess of the otherwise applicable fee.

(iii) *Modification of a DRBC approval.* Following Commission action on a project, any material change to the project as approved shall require an additional application and accompanying fee. Such fee shall be calculated in accordance with paragraph (e) of this section and may be subject to an alternative review fee in accordance with paragraph (b)(3) of this section.

(iv) *Name change or change of ownership.* Each project with a docket or permit issued by the DRBC will be charged an administrative fee as set forth in paragraph (e) of this section if it undergoes a change in name or a “change in ownership” as that term is

defined at § 420.31(e)(2) of this subchapter.

\* \* \* \* \*

TABLE 3 TO § 401.43—ADDITIONAL FEES

| Proposed action                                  | Fee                  | Fee maximum |
|--------------------------------------------------|----------------------|-------------|
| * * *                                            | * * *                | * * *       |
| Name Change or<br>Change of Owner-<br>ship ..... | \$1,842 <sup>1</sup> | .....       |

<sup>1</sup> Subject to annual adjustment in accordance with paragraph (c) of this section.

#### Subpart H—[Amended]

■ 10. Amend Subpart H by removing the authority citation.

■ 11. In § 401.103, revise paragraph (a) to read as follows:

#### § 401.103 Request for existing records.

(a) Any written request to the Commission for existing records not prepared for routine distribution to the public shall be deemed to be a request for records pursuant to the provisions of this part, whether or not the provisions of this part are mentioned in the request, and shall be governed by the provisions of this part.

\* \* \* \* \*

■ 12. Revise § 401.104 to read as follows:

#### § 401.104 Preparation of new records.

The provisions of this part apply only to existing records that are reasonably described in a request filed with the Commission pursuant to the procedures herein established. The Commission shall not be required to prepare new records in order to respond to a request for information.

■ 13. In § 401.105, revise paragraph (b) to read as follows:

#### § 401.105 Indexes of certain records.

\* \* \* \* \*

(b) A copy of each such index is available at cost of duplication from the Records Access Officer.

■ 14. Revise § 401.106 to read as follows:

#### § 401.106 Records Access Officer.

The Executive Director shall designate a Commission employee as the Records Access Officer. The Records Access Officer shall be responsible for Commission compliance with the provisions of this part. All requests for agency records shall be sent to the Records Access Officer in a manner consistent with § 401.108(a).

■ 15. In § 401.108, revise paragraphs (a), (b)(1), (c), and (d) to read as follows:

#### § 401.108 Filing a request for records.

(a) All requests for Commission records shall be submitted to the Records Access Officer on such forms as the Executive Director may prescribe, which shall be available on the Commission’s website, <https://www.drbc.gov>, or by written request to the Commission, 25 Cosey Road, West Trenton, NJ 08628.

(b) \* \* \*

(1) If the description is insufficient to locate the records requested, the Records Access Officer will so notify the person making the request and indicate the additional information needed to identify the records requested.

\* \* \* \* \*

(c) Upon receipt of a request for records, the Records Access Officer shall enter it in a public log (which entry may consist of a copy of the request). The log shall state the date and time received, the name and address of the person making the request, the nature of the records requested, the action taken on the request, the date of the determination letter sent pursuant to § 401.109(b), the date(s) any records are subsequently furnished, the number of staff-hours and grade levels of persons who spent time responding to the request, and the payment requested and received.

(d) A denial of a request for records, in whole or in part, shall be signed by the Records Access Officer. The name and title or position of each person who participated in the denial of a request for records shall be set forth in the letter denying the request. This requirement may be met by attaching a list of such individuals to the letter.

■ 16. In § 401.109, revise paragraphs (a), (b) introductory text, and (c) to read as follows:

#### § 401.109 Time limitations.

(a) All time limitations established pursuant to this section shall begin as of the time at which a request for records is logged in by the Records Access Officer pursuant to § 401.108(c). An oral request for records shall not begin any time requirement. A written request for records sent elsewhere within the Commission shall not begin any time requirement until it is redirected to the Records Access Officer and is logged in accordance with § 401.108(c). A request that is expected to involve fees in excess of \$50.00 will not be deemed received until the requester is promptly notified and agrees to bear the cost or has so indicated on the initial request.

(b) Within 10 working days (excepting Saturdays, Sundays, and legal public holidays) after a request for records is logged by the Records Access Officer, the record shall be furnished or a letter shall be sent to the person making the request determining whether, or the extent to which, the Commission will comply with the request, and, if any records are denied, the reasons therefor.

\* \* \* \* \*

(c) If any record is denied, the letter shall state the right of the person requesting such records to appeal any adverse determination to the Executive Director of the Commission. Such an appeal shall be filed within 30 days from receipt of the Records Access Officer's determination denying the requested information (where the entire request has been denied), or from the receipt of any information made available pursuant to the request (where the request has been denied in part). Within 20 working days (excepting Saturdays, Sundays, and legal public holidays) after receipt of any appeal, or any authorized extension, the Executive Director or the Executive Director's designee shall make a determination and notify the appellant of such determination. If the appeal is decided in favor of the appellant the requested information shall be promptly supplied as provided in this part. If on appeal the denial of the request for records is upheld in whole or in part, the appellant shall be entitled to appeal to the Commission at its regular meeting. In the event that the Commission confirms the Executive Director's denial the appellant shall be notified of the provisions for judicial review.

\* \* \* \* \*

■ 17. In § 401.110, revise paragraphs (a)(1)(i)(A) and (c) to read as follows:

**§ 401.110 Fees.**

- (a) \* \* \*  
(1) \* \* \*  
(i) \* \* \*

(A) Processing requests for records;

\* \* \* \* \*

(c) Payment shall be made by check or money order payable to "Delaware River Basin Commission" and shall be sent to the Records Access Officer.

■ 18. Revise § 401.115 to read as follows:

**§ 401.115 Discretionary disclosure by the Executive Director.**

(a) The Executive Director may exercise discretion to disclose part or all of any Commission record that is otherwise exempt from disclosure pursuant to this part whenever the Executive Director determines that such disclosure is in the public interest, will

promote the objectives of the Commission, and is consistent with the rights of individuals to privacy, the property rights of persons in trade secrets, and the need for the Commission to promote frank internal policy deliberations and to pursue its regulatory activities without disruption.

(b) Discretionary disclosure of a record pursuant to this section shall invoke the requirement that the record shall be disclosed to any person who requests it pursuant to § 401.108, but shall not set a precedent for discretionary disclosure of any similar or related record and shall not obligate the Executive Director to disclose any other record that is exempt from disclosure.

**Subpart I—General Provisions**

■ 19. In § 401.121, redesignate paragraph (e) as paragraph (f) and add new paragraph (e) to read as follows:

**§ 401.121 Definitions.**

\* \* \* \* \*

(e) *Material change* shall mean a change to a project previously approved by the Commission that is important in determining whether the project would substantially impair or conflict with the Commission's comprehensive plan.

\* \* \* \* \*

Dated: September 21, 2023.

**Pamela M. Bush,**

*Commission Secretary/Assistant General Counsel.*

[FR Doc. 2023–21117 Filed 9–27–23; 8:45 am]

**BILLING CODE 6360–01–P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 54**

[REG–120727–21]

**RIN 1545–BQ29**

**DEPARTMENT OF LABOR**

**Employee Benefits Security Administration**

**29 CFR Part 2590**

**RIN 1210–AC11**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**45 CFR Parts 146 and 147**

[CMS–9902–P]

**RIN 0938–AU93**

**Requirements Related to the Mental Health Parity and Addiction Equity Act; Extension of Comment Period**

**AGENCY:** Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

**ACTION:** Proposed rules; extension of comment period.

**SUMMARY:** This document extends the comment period for the proposed rules entitled "Requirements Related to the Mental Health Parity and Addiction Equity Act" that were published in the August 3, 2023, issue of the **Federal Register**. The comment period for the proposed rules, which had been scheduled to close on October 2, 2023, is extended 15 days to October 17, 2023.

**DATES:** The comment period for the proposed rules published August 3, 2023, at 88 FR 51552, is extended. To be assured consideration, comments must be received at one of the addresses provided below, no later than October 17, 2023.

**ADDRESSES:** Written comments may be submitted to the addresses specified below. Any comment that is submitted will be shared with the Department of the Treasury (Treasury Department), Internal Revenue Service (IRS), and the Department of Health and Human Services (HHS). Please do not submit duplicates.

Comments will be made available to the public. Warning: Do not include any personally identifiable information

(such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are posted on the internet exactly as received and can be retrieved by most internet search engines. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously.

In commenting, please refer to file code 1210-AC11. Because of staff and resource limitations, the Department of Labor (DOL) cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following two ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <https://www.regulations.gov>. Follow the "Submit a comment" instructions.

2. *By mail.* You may mail written comments to the following address ONLY: Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N-5653, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, *Attention:* 1210-AC11.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

**FOR FURTHER INFORMATION CONTACT:**

Shira McKinlay, Internal Revenue Service, Department of the Treasury, at 202-317-5500; Beth Baum or David Sydlík, Employee Benefits Security Administration, Department of Labor, at 202-693-8335; David Mlawsky, Centers for Medicare & Medicaid Services, Department of Health and Human Services, at 410-786-6851.

*Customer Service Information*

Individuals interested in obtaining information from DOL concerning private employment-based health coverage laws may call the Employee Benefits Security Administration (EBSA) Toll-Free Hotline at 1-866-444-EBSA (3272) or visit the DOL's website ([www.dol.gov/agencies/ebsa](http://www.dol.gov/agencies/ebsa)).

In addition, information from HHS on private health insurance coverage and coverage provided by self-funded, non-Federal governmental group health plans can be found on the Centers for Medicare & Medicaid Services (CMS) website ([www.cms.gov/ccio](http://www.cms.gov/ccio)), and information on health care reform can be found at [www.healthcare.gov](http://www.healthcare.gov) or <https://www.hhs.gov/healthcare/index.html>. In addition, information about mental and behavioral health and addiction is available at <https://>

[www.samhsa.gov/mental-health](http://www.samhsa.gov/mental-health) and <https://www.samhsa.gov/find-support>.

**SUPPLEMENTARY INFORMATION:** In the proposed rules, "Requirements Related to the Mental Health Parity and Addiction Equity Act," released by the Departments of the Treasury, Labor, and HHS (collectively, the Departments) on July 25, 2023, and published in the **Federal Register** on August 3, 2023 (88 FR 51552), the Departments solicited public comments on proposals to amend the regulations that implement the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) and establish new regulations for the nonquantitative treatment limitation (NQTL) comparative analyses required under MHPAEA, as amended by the Consolidated Appropriations Act, 2021. The proposed rules would amend the existing NQTL standard to prevent group health plans and health insurance issuers offering group or individual health insurance coverage that provides both medical and surgical benefits and mental health or substance use disorder benefits from using NQTLs to place greater limits on access to mental health and substance use disorder benefits as compared to medical/surgical benefits. As part of these proposed changes, the proposed rules would require plans and issuers to collect and evaluate relevant data in a manner reasonably designed to assess the impact of NQTLs on access to mental health and substance use disorder benefits and medical/surgical benefits, and propose a special rule for NQTLs related to network composition. The proposed rules also would amend existing examples and add new examples on the application of the rules for NQTLs to clarify and illustrate the protections of MHPAEA. In addition, the proposed rules would set forth the content requirements for NQTL comparative analyses and specify how plans and issuers must make these comparative analyses available to the Departments, as well as to an applicable State authority, and participants, beneficiaries, and enrollees. The Departments also solicited comments on whether there are ways to improve the coverage of mental health and substance use disorder benefits through other provisions of Federal law. Additionally, HHS proposed amendments to implement the sunset provision for self-funded, non-Federal governmental plan elections to opt out of compliance with MHPAEA, as adopted in the Consolidated Appropriations Act, 2023. The comment period for the proposed rules was scheduled to close on October 2, 2023.

Additionally, on July 25, 2023, DOL, in collaboration with HHS and the Treasury Department, issued Technical Release 2023-01P.<sup>1</sup> The Technical Release sets out principles and seeks public comment to inform future guidance with respect to the application of the proposed data collection and evaluation requirements to NQTLs related to network composition and a potential time-limited enforcement safe harbor for plans and issuers that include data in their comparative analyses that demonstrates they meet or exceed all of the thresholds identified in future guidance with respect to NQTLs related to network composition. Specifically, the Technical Release solicits feedback on the type, form, and manner for the data that plans and issuers would be required to include, along with other relevant data as appropriate, as part of their comparative analyses for NQTLs related to network composition which must be submitted to the Departments upon request. The Technical Release also solicits feedback on how to define certain thresholds for required data and a potential time-limited enforcement safe harbor to be specified in future guidance that, if satisfied, would demonstrate to the Departments that a plan or coverage provides comparable access to in-network providers for mental health and substance use disorder benefits as compared to medical/surgical benefits. In turn, if all of these safe harbor thresholds are met or exceeded, the plan or issuer would not be subject to Federal enforcement under MHPAEA with respect to NQTLs related to network composition for a specified period of time. Comments on Technical Release 2023-01P should be sent via email to [mhpaea.rfc.ebsa@dol.gov](mailto:mhpaea.rfc.ebsa@dol.gov). All comments on Technical Release 2023-01P submitted to DOL will be shared with HHS, the IRS, and the Treasury Department and posted on DOL's Employee Benefits Security Administration's (EBSA) website. The comment period for Technical Release 2023-01P was scheduled to close on October 2, 2023.

Since the publication of the proposed rules in the **Federal Register** and the release of Technical Release 2023-01P on EBSA's website, there has been considerable interest expressed in these

<sup>1</sup> Department of Labor, Employee Benefits Security Administration, Technical Release 2023-01P: Request for Comment on Proposed Relevant Data Requirements for Nonquantitative Treatment Limitations (NQTLs) Related to Network Composition and Enforcement Safe Harbor for Group Health Plans and Health Insurance Issuers Subject to the Mental Health Parity and Addiction Equity Act (July 25, 2023), available at <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/technical-releases/23-01>.

documents, and some interested parties have requested additional time to review and submit comments. The Departments value public feedback as they consider whether and how to issue final rules and future guidance. In response to these requests, the Departments are extending the period for submitting comments on the proposed rules to October 17, 2023. Additionally, to ensure consistency with the comment period for the proposed rules, DOL is simultaneously extending the comment period for Technical Release 2023–01P to October 17, 2023. To be assured consideration, comments on the proposed rules and Technical Release must be received no later than October 17, 2023.

Dated: September 22, 2023.

**Douglas W. O'Donnell,**

*Deputy Commissioner for Services and Enforcement, Internal Revenue Service.*

**Lisa M. Gomez,**

*Assistant Secretary, Employee Benefits, Security Administration, Department of Labor.*

**Xavier Becerra,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2023–21177 Filed 9–27–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

#### 31 CFR Part 1010

#### RIN 1506–AB62

### Beneficial Ownership Information Reporting Deadline Extension for Reporting Companies Created or Registered in 2024

**AGENCY:** Financial Crimes Enforcement Network (FinCEN), Treasury.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** FinCEN is proposing to amend the beneficial ownership information (BOI) reporting rule (Reporting Rule) to extend the filing deadline for certain BOI reports. Under the Reporting Rule, entities created or registered on or after the rule's effective date of January 1, 2024, must file initial BOI reports with FinCEN within 30 days of notice of their creation or registration. This proposed amendment would extend that filing deadline from 30 days to 90 days for entities created or registered on or after January 1, 2024, and before January 1, 2025, to give those entities additional time to understand the new reporting obligation and collect

the necessary information to complete the filing. Entities created or registered on or after January 1, 2025, would have 30 days to file their BOI reports with FinCEN, as required under the Reporting Rule.

**DATES:** Written comments on this proposed rule may be submitted on or before October 30, 2023.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- *Federal E-rulemaking Portal:*

<https://www.regulations.gov>. Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2023–0014 and the Office of Management and Budget (OMB) control number 1506–0076.

- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2023–0014 and OMB control number 1506–0076.

**FOR FURTHER INFORMATION CONTACT:** The FinCEN Regulatory Support Section at 1–800–767–2825 or electronically at [frc@fincen.gov](mailto:frc@fincen.gov).

#### SUPPLEMENTARY INFORMATION:

#### I. Introduction

In this NPRM, FinCEN is proposing to amend the Reporting Rule<sup>1</sup> to extend the deadline to file initial BOI reports for entities created or registered on or after the rule's effective date of January 1, 2024, and before January 1, 2025. Under the Reporting Rule, such entities must file initial BOI reports with FinCEN within 30 days of notice of their creation or registration. The proposed amendment would extend that filing deadline from 30 days to 90 days for entities created or registered on or after January 1, 2024, and before January 1, 2025, to give those entities additional time to understand the new reporting obligation and collect the necessary information to complete their filings. Entities created or registered on or after January 1, 2025, would have 30 days to file their BOI reports with FinCEN, as required under the Reporting Rule.

#### II. Background

On September 30, 2022, FinCEN published the Reporting Rule, with an effective date of January 1, 2024.<sup>2</sup> The

<sup>1</sup> Treasury, FinCEN, Beneficial Ownership Information Reporting Requirements, 87 FR 59498 (Sept. 30, 2022).

<sup>2</sup> The Reporting Rule is the first in a series of rulemakings to implement the CTA, enacted on January 1, 2021, as part of the Anti-Money Laundering Act of 2020 and codified at 31 U.S.C. 5336. The CTA is Title LXIV of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283 (Jan. 1, 2021) (the NDAA). Division F of the NDAA is the

Reporting Rule requires certain corporations, limited liability companies, and other similar entities (“reporting companies”)<sup>3</sup> to report certain identifying information about the beneficial owners who own or control such entities and the company applicants who form or register them.<sup>4</sup> These requirements are intended to facilitate access to BOI for certain authorized recipients, including law enforcement and regulators, for the purpose of countering money laundering, the financing of terrorism, and other illicit activity.<sup>5</sup> The Corporate Transparency Act (CTA) directs FinCEN to promulgate regulations that achieve the objectives of the statute, while minimizing burdens on reporting companies to the greatest extent practicable and ensuring that the BOI collected is “highly useful” for national security, intelligence, and law enforcement activities.<sup>6</sup>

The Reporting Rule requires reporting companies to report to FinCEN within prescribed time periods information about themselves, as well as information about two categories of individuals: (1) the beneficial owners of the reporting company; and (2) the company applicants, who are the individuals who filed a document to create the reporting company or register it to do business. For a domestic or foreign reporting company created or registered to do business in the United States before the rule's effective date of January 1, 2024, an initial BOI report must be filed by January 1, 2025.<sup>7</sup> For a reporting company created or registered on or after January 1, 2024, however, the Reporting Rule requires that an initial BOI report must be filed within 30 days of the earlier of the date on which it receives actual notice or public notice that it has been created or registered.<sup>8</sup>

#### III. Proposed Extension of Time for Certain Reporting Companies

FinCEN proposes to extend the period for certain reporting companies to file initial BOI reports. Under this proposed amendment to the Reporting Rule, reporting companies created or registered on or after January 1, 2024, and before January 1, 2025, would have 90 days to submit their initial BOI

Anti-Money Laundering Act of 2020, which includes the CTA.

<sup>3</sup> See 31 U.S.C. 5336(a)(11).

<sup>4</sup> See U.S. Department of the Treasury (Treasury), FinCEN, Beneficial Ownership Information Reporting Requirements, 87 FR 59498, 59498–99 (Sept. 30, 2022).

<sup>5</sup> Public Law 116–283, Section 6402 (Jan. 1, 2021).

<sup>6</sup> *Id.*

<sup>7</sup> 31 CFR 1010.380(a)(iii).

<sup>8</sup> 31 CFR 1010.380(a)(i)–(ii).

reports, instead of 30 days.<sup>9</sup> Reporting companies formed on or after January 1, 2025, would continue to be required to submit their initial BOI reports within 30 days.

In the preamble to the Reporting Rule, FinCEN explained its expectation that a 30-day timeframe for initial reports would provide sufficient time for reporting companies to resolve various issues after initial creation, including obtaining necessary information and identifying their beneficial owners with sufficient time to file an initial report.<sup>10</sup> Upon continued dialogue with partners in the private sector, including trade associations, non-profits, and other key stakeholder organizations, FinCEN believes that extending the deadline for reporting companies created or registered on or after January 1, 2024, and before January 1, 2025, to file an initial BOI report from 30 to 90 days will have multiple benefits.<sup>11</sup>

First, this extension will increase the time available for these entities to understand and comply with their new regulatory obligations under the Reporting Rule. FinCEN recognizes that there are many aspects of the Reporting Rule that newly created or registered entities will need to navigate, including whether the new legal entity falls under the definition of “reporting company” or qualifies for an exemption, the meaning of “beneficial owner” under the rule, and the application of other key terms and requirements. FinCEN is developing simple, easy-to-read guidance and educational materials such as frequently asked questions (FAQs), videos, infographics, and compliance guides to help reporting companies comply with the new rules. FinCEN published initial guidance and educational materials on March 24, 2023, and a Small Entity Compliance Guide on September 18, 2023. FinCEN aims to publish additional materials in the near future. Additionally, FinCEN continues to conduct extensive outreach

to ensure that all stakeholders understand their obligations and how best to seek assistance to have their questions answered. Yet FinCEN recognizes the novelty of the BOI reporting requirement and the need to provide filers, many of which are interfacing with FinCEN for the first time, particular consideration when it comes to the reporting deadline for entities created or registered in 2024.

Second, the extension will provide new reporting companies additional time to obtain the information necessary to complete their initial BOI reports. The Reporting Rule requires reporting companies to obtain and report certain BOI to FinCEN. At the outset of the implementation of the rule, making and responding to requests for BOI will be an unfamiliar exercise for many new companies or third-party service providers, and beneficial owners. FinCEN recognizes that additional time could greatly benefit these parties, particularly those who have not interacted with FinCEN before.<sup>12</sup>

Furthermore, the extension will give reporting companies more time to resolve questions that may arise in the process of completing their initial BOI reports. FinCEN continues to work actively to develop and issue guidance and educational materials such as FAQs, videos, infographics, and compliance guides to help reporting companies complete and submit their BOI reports to FinCEN. FinCEN also continues to engage in extensive outreach to ensure that stakeholders are able to submit BOI reports in a streamlined and efficient manner. Reporting companies and other stakeholders may want more time to become familiar with these guidance and educational materials given the new obligations and reporting timeframes. In addition, reporting companies may wish to consult with a third-party service provider such as an accountant or lawyer, or to contact FinCEN with an inquiry. FinCEN aims to establish a contact center prior to January 1, 2024, to field questions about the BOI reporting requirements from reporting companies and other stakeholders. Extending the reporting deadline from 30 to 90 days will allow all parties additional time to resolve questions about the new reporting requirements. It will also help FinCEN manage the volume of contact center inquiries and provide more comprehensive customer service by giving reporting companies and other stakeholders more time to consult guidance materials and

internally resolve questions about the new requirements.

The proposed extension to 90 days would apply to both domestic and foreign entities created or registered in the United States in the first year after the Reporting Rule becomes effective, but entities created or registered on or after January 1, 2025, would remain subject to the 30-day deadline established in the Reporting Rule. FinCEN believes that extending the time period in the first year is appropriate because of the novelty of the beneficial ownership reporting regime created by Congress under the CTA. For the first time, the United States is now requiring legal entities to submit beneficial ownership information to a centralized, Federal Government database, and the reporting requirements are likely to be entirely new to business owners, corporate formation professionals, secretary of state offices, and other key stakeholders. After January 1, 2025, however, FinCEN expects that the BOI reporting requirements will be more familiar to those involved in corporate formation, and newly created or registered companies should be in a better position to promptly file their BOI reports.

Although FinCEN believes that providing this additional time and flexibility for reporting companies created or registered in 2024 to file their initial BOI reports will benefit reporting companies and their service providers, FinCEN recognizes that the extension could cause a delay in submissions to the BOI database in the first year of its operation. For example, under the proposed rule, if entities are created or registered on December 31, 2024, they would have until April 1, 2025 (90 days after December 31, 2024) to submit their initial BOI reports. In contrast, under the Reporting Rule, law enforcement could expect all compliant reporting companies created or registered on or before December 31, 2024, to have submitted their initial BOI reports by January 30, 2025 (30 days after December 31, 2024). With all of that taken into account, FinCEN still believes that the potential adverse effects of any such delay in the first year of the program are outweighed by the relief they will provide for small businesses, as explained above. FinCEN solicits comment on this assessment, and on whether there are any other potential consequences of the extension that it has not identified.

#### IV. Regulatory Analysis

FinCEN has analyzed the proposed rule as required under Executive Orders 12866, 13563, and 14094; the Regulatory

<sup>9</sup> CTA, Section 6402(8)(a).

<sup>10</sup> Treasury, FinCEN, Beneficial Ownership Information Reporting Requirements, 87 FR 59498, 59511 (Sept. 30, 2022).

<sup>11</sup> Although the CTA provides that reports are to be filed by entities created or registered on or after January 1, 2024 “at the time of formation or registration,” FinCEN may prescribe an exemption from that requirement consistent with the directive to ensure that the database is highly useful to law enforcement while at the same time minimizing burdens on reporting companies. FinCEN believes it is appropriate to do so for entities created or registered on or after January 1, 2024 and before January 1, 2025 for the reasons explained below. See 31 U.S.C. 5336(b)(1)(C). Under 31 U.S.C. 5318(a)(7), FinCEN has authority to “prescribe an appropriate exemption from a requirement under this subchapter,” which includes the CTA in section 5336.

<sup>12</sup> See Reporting Rule, 31 CFR 1010.380(b)(1)(i).



Flexibility Act; the Unfunded Mandates Reform Act; and the Paperwork Reduction Act. This proposed rule would not have an annual effect on the economy of \$200 million or otherwise constitute a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, as amended. Pursuant to the Regulatory Flexibility Act, FinCEN certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. FinCEN assessed that this proposed rule would result in no additional costs to small businesses. Furthermore, pursuant to the Unfunded Mandates Reform Act, FinCEN has concluded that the proposed rule would not result in an expenditure of \$177 million or more annually by state, local, and Tribal governments or by the private sector.<sup>13</sup> FinCEN does not estimate any burden, as defined by the Paperwork Reduction Act, associated with the proposed rule.

FinCEN assesses that the extension of the reporting deadline for entities created or registered in the first year of the reporting requirement will not impose new costs. The costs for BOI reporting have been estimated in the regulatory impact analysis (RIA) in the Reporting Rule.<sup>14</sup> In that RIA, FinCEN estimated the total number of reporting companies in 2024, the first year that the Reporting Rule will go into effect, to be approximately 32.6 million. The Reporting Rule RIA also estimated the costs for these reporting companies in filing their initial BOI reports, analyzing the potential cost of each step in the filing process.<sup>15</sup> FinCEN’s analysis in the final Reporting Rule would not be changed by an extension of the reporting timeline for new reporting companies created or registered in 2024 from 30 days to 90 days.

FinCEN acknowledges that this change would shift some of the estimated aggregate cost in the Reporting Rule RIA from “Year 1” (2024) to “Year 2” (2025) in the analysis. This shift in cost is difficult to quantify. However, FinCEN assesses

that the shift of these costs would be *de minimis* and would not change the conclusions of the Reporting Rule’s RIA. Additionally, the per-reporting company burden and cost estimate in the Reporting Rule RIA would not be affected by this proposed change.

Furthermore, as discussed in Section III, FinCEN notes that the proposed change in the reporting timeline for reporting companies created or registered in 2024 would likely have multiple benefits. These benefits include additional time for these reporting companies to understand and comply with the requirements of the Reporting Rule as well as greater opportunities for FinCEN to efficiently respond to questions and address problems that reporting companies may have in complying. FinCEN invites comment on whether the proposed rule may provide for other benefits to reporting companies, their service providers, or other stakeholders. FinCEN also solicits comments on whether any aspects of this proposed rule would result in cost or burden, or whether the proposed rule would affect the estimate of the cost, burden, and impact of the Reporting Rule in the Reporting Rule’s RIA.

### Proposed Regulatory Text

#### List of Subjects in 31 CFR Part 1010

Administrative practice and procedure, Aliens, Authority delegations (Government agencies), Banks and banking, Brokers, Business and industry, Citizenship and naturalization, Commodity futures, Crime, Currency, Electronic filing, Federal savings associations, Federal-States relations, Foreign persons, Holding companies, Indians, Indian—law, Indians—tribal government, Insurance companies, Investigations, Investment advisors, Investment companies, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities, Small business, Terrorism, Time.

For the reasons set forth in **SUPPLEMENTARY INFORMATION**, FinCEN proposes to amend part 1010 of chapter X of title 31 of the Code of Federal Regulations, as amended September 30, 2022, at 87 FR 59498, effective January 1, 2024, as follows:

### PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 continues to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5336; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 2006, Pub. L. 114–41, 129 Stat. 458–459; sec. 701, Pub. L. 114–74, 129 Stat. 599.

■ 2. In § 1010.380, revise (a)(1)(i)–(ii) to read as follows:

#### § 1010.380 Reports of beneficial ownership information.

(a) Reports required; timing of reports—

(1) Initial report. Each reporting company shall file an initial report in the form and manner specified in paragraph (b) of this section as follows:

(i) (A) Any domestic reporting company created on or after January 1, 2024, and before January 1, 2025, shall file a report within 90 calendar days of the earlier of the date on which it receives actual notice that its creation has become effective or the date on which a secretary of state or similar office first provides public notice, such as through a publicly accessible registry, that the domestic reporting company has been created.

(B) Any domestic reporting company created on or after January 1, 2025, shall file a report within 30 calendar days of the earlier of the date on which it receives actual notice that its creation has become effective or the date on which a secretary of state or similar office first provides public notice, such as through a publicly accessible registry, that the domestic reporting company has been created.

(ii) (A) Any entity that becomes a foreign reporting company on or after January 1, 2024, and before January 1, 2025, shall file a report within 90 calendar days of the earlier of the date on which it receives actual notice that it has been registered to do business or the date on which a secretary of state or similar office first provides public notice, such as through a publicly accessible registry, that the foreign reporting company has been registered to do business.

(B) Any entity that becomes a foreign reporting company on or after January 1, 2025, shall file a report within 30 calendar days of the earlier of the date on which it receives actual notice that it has been registered to do business or the date on which a secretary of state or similar office first provides public notice, such as through a publicly accessible registry, that the foreign reporting company has been registered to do business.

**Andrea M. Gacki,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. 2023–21226 Filed 9–27–23; 8:45 am]

**BILLING CODE P**

<sup>13</sup> The Unfunded Mandates Reform Act requires an assessment of mandates that will result in an annual expenditure of \$100 million or more, adjusted for inflation. The U.S. Bureau of Economic Analysis reports the annual value of the gross domestic product (GDP) deflator in 1995, the year of the Unfunded Mandates Reform Act, as 71.823, and as 127.224 in 2022. See U.S. Bureau of Economic Analysis, “Table 1.1.9. Implicit Price Deflators for Gross Domestic Product” (accessed Friday, June 2, 2023). Thus, the inflation adjusted estimate for \$100 million is  $127.224/71.823 \times 100 = \$177$  million.

<sup>14</sup> See Treasury, FinCEN, Beneficial Ownership Reporting Requirements, 87 FR 59549–59591 (Dec. 8, 2021).

<sup>15</sup> *Id.*



**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52****[EPA–R02–OAR–2023–0252; FRL–11034–01–R2]****Approval of Air Quality Implementation Plans; New Jersey; Exemptions To Improve Resiliency, Air Toxics Thresholds, PM<sub>2.5</sub> and Ammonia Emission Statement Reporting, and PM<sub>2.5</sub> in Air Permitting****AGENCY:** Environmental Protection Agency.**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve adoptions, repeals, and amendments to the New Jersey State Implementation Plan (SIP) concerning exemptions to improve resiliency during emergency situations, updates to hazardous air pollutant (HAP) reporting thresholds, updates to the certification and submission of emission statements, and the addition of Federal New Source Review (NSR) requirements for fine particles (PM<sub>2.5</sub>). The intended effect of New Jersey's revisions are to enable government and business entities to be more resilient during and following disruptions from natural and human-caused disasters; update HAP unit risk factors and reference concentrations to reflect current research, scientific, and technological advancements; update provisions to require the reporting of PM<sub>2.5</sub> and ammonia (NH<sub>3</sub>) emissions at the source level and update the electronic reporting of emission statements to adapt with advancements and Federal requirements; and conform the State's rules on air permits to the EPA's NSR requirements for PM<sub>2.5</sub> to ensure a source does not adversely impact the EPA established National Ambient Air Quality Standards (NAAQS). Other revisions New Jersey made, which the EPA is proposing to approve with this notice of proposed rulemaking, will conform administrative penalties to the proposed rules and correct errors and inconsistencies throughout the State's SIP.

**DATES:** Written comments must be received on or before October 30, 2023.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R02–OAR–2023–0252 at <https://www.regulations.gov>. 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 electronically through <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Ferreira, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3127, or by email at [ferreira.nicholas@epa.gov](mailto:ferreira.nicholas@epa.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Summary of the SIP Revision and the EPA's Analysis
- III. Environmental Justice Considerations
- IV. The EPA's Proposed Action
- V. Incorporation by Reference
- VI. Statutory and Executive Order Reviews

**I. Background**

The EPA is proposing to approve New Jersey's State Implementation Plan (SIP) submittals consisting of new rules, repeals, and amendments to subchapter 8, subchapter 16, subchapter 17, subchapter 18, subchapter 19, subchapter 21, and subchapter 22 of New Jersey Administrative Code, Title 7, Chapter 27 (N.J.A.C. 7:27), as well as

to subchapter 3 of N.J.A.C., Title 7, Chapter 27A.

New Jersey's revisions to N.J.A.C. 7:27 implement changes based on the experience the State has gained in response to disruptions caused by natural disasters such as Superstorm Sandy and discussions that the State has held with representatives of the regulated community and environmental groups. New Jersey's revisions include exemptions from air emission control and permitting requirements that will provide flexibility for facilities to use low-emitting temporary and portable equipment to improve resiliency during emergency situations.

Additionally, New Jersey's revisions update HAP reporting thresholds using the most recent science-based methodologies; amend the rules governing emissions statements to require each facility to report criteria pollutants and precursors (including PM<sub>2.5</sub> and ammonia) at the source level; revise the rules governing certification and electronic submittal of emissions statements; revise the New Source Review (NSR) requirements to implement the National Ambient Air Quality Standards (NAAQS) for fine particles (PM<sub>2.5</sub>); and modify penalty provisions to provide consistency with the State's revisions being proposed for approval within this notice. For the reasons herein stated, the EPA proposes to approve the revisions made by New Jersey to strengthen the effectiveness of the State's SIP.

**II. EPA's Evaluation of New Jersey's Submittal**

On December 14, 2017, New Jersey submitted to the EPA, proposed SIP revisions to subchapter 8, subchapter 18, subchapter 21, and subchapter 22 of N.J.A.C. 7:27. Additionally, on August 23, 2018, New Jersey submitted proposed revisions to subchapter 8, subchapter 16, subchapter 17, subchapter 19, subchapter 21 and subchapter 22 of N.J.A.C. 7:27, and to subchapter 3.10 of N.J.A.C., Title 7, Chapter 27A. These proposed revisions to the State's SIP and are listed in the following table. This submission included supplemental materials such as documentation of the public hearing, public comment period, and the State's responses to public comments. These materials are in the EPA's docket for this proposal.

| New Jersey regulation:                                  | Related SIP topic(s):                                                              |
|---------------------------------------------------------|------------------------------------------------------------------------------------|
| N.J.A.C. 7:27–8 (Subchapter 8) .....                    | Resiliency; PM <sub>2.5</sub> in Air Permitting.                                   |
| N.J.A.C. 7:27–16 (Subchapter 16) .....                  | Resiliency.                                                                        |
| N.J.A.C. 7:27–17 (Subchapter 17) .....                  | Air Toxics Thresholds.                                                             |
| N.J.A.C. 7:27–18 (Subchapter 18) .....                  | PM <sub>2.5</sub> in Air Permitting.                                               |
| N.J.A.C. 7:27–19 (Subchapter 19) .....                  | Resiliency.                                                                        |
| N.J.A.C. 7:27–21 (Subchapter 21) .....                  | Air Toxics Thresholds; PM <sub>2.5</sub> and Ammonia Emission Statement Reporting. |
| N.J.A.C. 7:27–22 (Subchapter 22) .....                  | Air Toxics Thresholds; PM <sub>2.5</sub> in Air Permitting.                        |
| N.J.A.C. 7:27A–3.10 (Subchapter 3 of Chapter 27A) ..... | Penalty Provisions.                                                                |

*Revisions to Subchapter 8 (Related to Exemptions To Improve Resiliency and PM<sub>2.5</sub> in Air Permitting)*

The EPA is proposing to approve New Jersey's revisions to subchapter 8, "Permits and Certificates for Minor Facilities (and Major Facilities Without an Operating Permit)." Pertaining to the New Jersey's August 23, 2018 submittal, with a State effective date of January 16, 2018, the State's revisions to subchapter 8 include the addition of definitions to N.J.A.C. 7:27–8.1, "Definitions," for the terms "construction engine," "emergency management activity," "open top surface cleaner," "portable," "rental facility," and "stationary reciprocating engine," as well as amended definitions for the terms "emergency," "hazardous waste," and "potential to emit."

New Jersey's definition for the term "construction engine" within this subchapter is identical to the definition for this term as it is currently found in the current federally approved version of N.J.A.C. 7:27–19.1, with a State effective date of November 6, 2017. New Jersey's definition for "stationary reciprocating engine," which is identical to the definition for the term that New Jersey inserts at N.J.A.C. 7:27–16.1 and 19.1, has no substantive changes and is solely being amended to improve readability. Similarly, the State's amended definition for the term "hazardous waste" will correct typographical errors. New Jersey's definition of "emergency management activity" is derived from the Federal Emergency Management Agency's (FEMA) use of the term and includes activities in advance since, in some instances, it may be necessary to use equipment in advance to reduce the impact of a potentially devastating event. Additionally, New Jersey's definition of "portable," found in this subchapter and subchapter 19 and 21 will be consistent with the State's definition of that term in an August 4, 2011 Memorandum, "Permit Applicability for Equipment and Source Operations Operated During Construction, Repair and Maintenance

Events."<sup>1</sup> Further, since there exists portable equipment for which an air pollution permit is required, a definition for the term "rental facility" is being added as a business that owns and rents or leases portable equipment to another person(s) to prevent any confusion regarding the application of exempt activities proposed for approval by the EPA with this notice under subchapter 21. The term "open top surface cleaner" is used in the existing N.J.A.C. 7:27–8.2 but is not defined. Therefore, since the State regulates surface cleaners to control the emissions from the VOC and HAP solvents used in this equipment, New Jersey has inserted a definition to this subchapter to provide consistency with the definition for the term that New Jersey also added to subchapters 16 and 22 of N.J.A.C. 7:27.

Furthermore, New Jersey's amended definition for "emergency" will now be identical to the definition for the term currently found under the existing federally approved N.J.A.C. 7:27–16.1 and 19.1. This definition, which defines an "emergency" as a situation that arises from a sudden and reasonably unforeseeable event beyond the control of an owner or operator of a facility that requires immediate corrective action to prevent a system collapse or to restore normal operations at the facility, will coordinate with New Jersey's amended definition for "emergency generator" under N.J.A.C. 7:27–16.1 and 19.1, also being proposed for approval by the EPA with this notice. Finally, the definition for "potential to emit" was amended by New Jersey to align with the deletion of components under N.J.A.C. 7:27–31. New Jersey's amendments to definitions under N.J.A.C. 7:27–8.1, which the EPA is proposing to approve with this notice, will improve resiliency during emergencies or similar situations and strengthen New Jersey's SIP by improving consistency and uniformity throughout the State's SIP.

<sup>1</sup> Memorandum on Permit Applicability for Equipment and Source Operations Operated During Construction, Repair and Maintenance Events. [https://www.nj.gov/dep/enforcement/CRM\\_Permits\\_Applic.pdf](https://www.nj.gov/dep/enforcement/CRM_Permits_Applic.pdf). The NJDEP Bureau of Air Permits, Trenton NJ (August 4, 2011).

Moreover, pertaining to New Jersey's December 14, 2017, submittal to the EPA, with a State effective date of November 6, 2017, the State's revisions to N.J.A.C. 7:27–8.1 include the addition of definitions for the terms "PM<sub>2.5</sub>" and "SO<sub>2</sub>," as well as amended definitions for "major facility," "NO<sub>x</sub> or oxides of nitrogen," and "PM<sub>10</sub>." Since the terms "PM<sub>2.5</sub>" and "SO<sub>2</sub>" are used but not defined in N.J.A.C. 7:27–8, the EPA proposes to approve New Jersey's addition of definitions for the terms at N.J.A.C. 7:27–8.1 which are consistent with those currently in N.J.A.C. 7:27. New Jersey amended the term "major facility" to include major facility thresholds for PM<sub>2.5</sub>, NO<sub>x</sub> as a PM<sub>2.5</sub> precursor, and SO<sub>2</sub> as a PM<sub>2.5</sub> precursor to be consistent with Federal requirements since the current SIP approved definition includes thresholds for both NO<sub>x</sub> and SO<sub>2</sub>, but as ozone precursors, and not as PM<sub>2.5</sub> precursors. For consistency with the definition of NO<sub>x</sub> elsewhere in N.J.A.C. 7:27, the EPA proposes to approve New Jersey's amended definition of "NO<sub>x</sub>" to add the alternative for the term, "oxides of nitrogen." Finally, New Jersey's definition for "PM<sub>10</sub>" which the EPA is proposing to approve with this notice will replace the term "micrometers" with the equivalent and more commonly used term "microns."

Furthermore, the EPA proposes to approve New Jersey's revisions to Table A, "Reporting and SOTA thresholds" of 8 Appendix 1, to include a reporting threshold and state of the art (SOTA) threshold for PM<sub>2.5</sub> that are the same as the existing thresholds in the table for PM<sub>10</sub>, since PM<sub>2.5</sub> is a subset of PM<sub>10</sub>. The State's revisions will strengthen permitting requirements regarding PM<sub>2.5</sub> emissions and consequently strengthen New Jersey's SIP to be consistent with the Federal requirements. Lastly, New Jersey proposed further revisions to subchapter 8 that EPA will address in a separate rulemaking action.

*Revisions to Subchapter 16 (Related to Exemptions To Improve Resiliency)*

The EPA is proposing to approve New Jersey's revisions to subchapter 16, "Control and Prohibition of Air

Pollution by Volatile Organic Compounds.” The State’s revisions to N.J.A.C. 7:27–16.1, “Definitions,” include the addition of definitions for the terms “open top surface cleaner” and “PJM Interconnection or PJM” and amendments to definitions for the terms “emergency generator” and “stationary reciprocating engine.”

The terms “open top surface cleaner” and “PJM Interconnection or PJM” are used in the existing federally approved N.J.A.C. 7:27–16 but are not defined. Therefore, as previously mentioned within this notice, a definition for “open top surface cleaner” was added by New Jersey to this subchapter to provide consistency with the definition for the term which New Jersey also added to subchapters 8 and 22 of N.J.A.C. 7:27. Additionally, since New Jersey defined an “emergency generator” as being operated during power outages and voltage reductions issued by PJM, a definition for “PJM Interconnection” or “PJM,” which was previously used in the regulations but not defined, was added to subchapter 16 by the State to define the regional electricity transmission organization. As previously stated within this notice, New Jersey’s amended definition for “stationary reciprocating engine” has no substantive changes and was merely amended to improve readability and provide consistency with the definition for the term in other subchapters of N.J.A.C. 7:27.

The EPA also proposes to approve New Jersey’s amended definition for the term “emergency generator.” The State’s revised definition for “emergency generator” will expand the allowable use of permitted emergency generators to provide electrical power when the primary source of energy is unavailable following a power disruption that results from construction, repair, or maintenance activity at a facility for a limit of no more than 30 days in any calendar year. There will be no similar time limit for the use of an emergency generator following the issuance of a voltage reduction by PJM or during an emergency, as is defined under the definition for the term “emergency” within the current federally approved version of this subchapter. This proposed allowance will not include operation during performance of normal testing and maintenance procedures on emergency generators as recommended by the manufacturer and provided under N.J.A.C. 7:27–19.2(d)(1). Moreover, emergency generators will continue to be subject to permit requirements at N.J.A.C. 7:27–8.2(c)(1) and paragraph 11 of the definition of

“significant source operation” at N.J.A.C. 7:27–22.1.

Facilities that experience a power disruption because of construction, repair, or maintenance may be forced to shut down their operations due the unavailability of an accessible power source. New Jersey states in its submission that “the time required to obtain a permit for a generator or other portable equipment to be used in an emergency could result in unacceptably delayed responses to emergency situations.” The practical solution to remedy power disruptions that result from construction, repair, or maintenance is to allow facilities to use their pre-installed emergency generators for a limited time. Such an approach has many benefits. First, it will minimize downtime to the operating facility, as the process of firing a pre-installed generator unit is rather expeditious. This will enable affected businesses to be more resilient to disruptions with as little interruption to business operations as possible. Second, operating a pre-installed emergency unit instead of a rental unit is beneficial to the environment because the evidence points to such pre-installed units being better maintained, thereby resulting in higher operating performance and less pollution. Finally, as the incentive for not reporting emissions resulting from the unpermitted use of emergency generators under such conditions at facilities with a facility-wide potential-to-emit that is less than the reporting thresholds in Table 1 at N.J.A.C. 7:27–21.2(a) is removed, regulators would be expected to have access to more reliable actual emissions data, which could then be used to improve air quality modeling and data analysis.

Moreover, as New Jersey mentions in their submission to the EPA, following Superstorm Sandy, there has been an increase in the number of permitted emergency generators being operated on natural gas (NJDEP has issued 461 air permits for natural gas-fired emergency generators from 2013 through 2016). Additionally, as clarified by New Jersey, in an email provided within the docket for this proposed rulemaking, although facilities are asked to acquire Tier 3 or 4 emergency generator rentals, the majority of rental emergency generators are diesel fuel-fired (Tier 2 or less). Natural gas combustion produces less off-gassing than anything achieved by diesel; therefore, a positive environmental impact is expected from this proposed allowance of permitted onsite emergency generators following a power disruption that results from construction, repair, or maintenance activity at a facility, since many of the

recently permitted emergency generators are natural gas fired. Furthermore, in its submittal, New Jersey asserted that even if an existing on-site permitted emergency generator is a Tier 2 diesel-fired engine, and not natural gas-fired, the unnecessary mobile emissions created from the transport of a Tier 2 rental emergency generator to and from a facility, especially if the mobile source is also fueled by diesel, would result in a negative air quality impact.

Per the comments New Jersey received in response to the proposed revised definition for the term “emergency generator,” the EPA acknowledges that it is not currently feasible for the State to accurately quantify the air quality impact of allowing the use of onsite emergency generators during power disruptions that result from construction, repair, and maintenance at a facility since emissions from these sources under these circumstances are not reported to the State unless these sources are located at a facility with a facility-wide potential-to-emit that is equal to or greater than the reporting thresholds in Table 1 at N.J.A.C. 7:27–21.2(a). However, as previously stated, with the removal of the incentive to not report the emissions resulting from the unpermitted use of emergency generators under such conditions, it is expected that further quantifying the air quality impact of such usage would become possible.

Although the EPA believes New Jersey’s amended definition for “emergency generator” provides air quality benefits, the structure of New Jersey’s amended definition, which includes the allowable use of emergency generators for up to 30 days following a power disruption that results from construction, repair, or maintenance activity at a facility, is not, on its face, consistent with EPA’s established definition for the term. Nonetheless, the EPA does not believe this is a sufficient justification for disapproval of the definition. As previously detailed, the EPA believes the amended definition adds further constraints on the use of emergency generators and that a positive environmental impact is expected. Thus, while the EPA is proposing to approve the amended definition for “emergency generator,” the EPA advises that, for clarity, New Jersey consider creating and submitting for SIP approval: a definition that parallels EPA’s definition of “emergency generator” and a separate provision that allows for the use of emergency generators following a power disruption that results from

construction, repair, or maintenance activity at a facility. In summary, since this proposed expanded use of emergency generators will not interfere with maintenance and attainment of the NAAQS and a positive environmental impact is expected, EPA proposes to approve the revision.

Additional revisions to subchapters 16, that the EPA is proposing to approve will update N.J.A.C. 7:27–16.4 to prevent any potential confusion by providing units of measure for inputs within the existing equation for calculating the emission factor to be utilized when determining the total annual emission rate for a storage tank. The EPA is proposing to approve New Jersey's deletion of subparts 16.6(a) through (i) to simplify the codified rules since the specified date in the most recent federally approved rule has passed and is no longer applicable to open top tanks and surface cleaners that contain VOC and to solvent cleaning operations. The EPA is also proposing to approve the State's revision which will remedy confusion with existing N.J.A.C. 7:27–16.6(j)(3) that currently prohibits the use of water, which is technically a solvent, in cleaning machines. The EPA is also proposing to approve the State's amendment to subpart 16.16 to improve clarity and address a holdover from a prior version of these rules. Furthermore, New Jersey's revision to N.J.A.C. 7:27–16.16(d)(4) is being proposed for approval by the EPA and will regulate VOC with a vapor pressure greater than 14.7 psia by establishing the source gas range classification based solely on the percent by volume of the VOC in a source gas emitted from source operation.

Furthermore, the EPA is proposing to approve New Jersey's deletion of N.J.A.C. 7:27–16.17(b)(1), which required the submission of a demonstration by certain source operations subject to N.J.A.C. 7:27–16.17(a)(1), being this provision no longer has any effect since submission was due October 26, 1994. Consequently, subchapter 16.17(e), (l), and (r), which relate only to N.J.A.C. 7:27–16.17(b)(1), were also removed by the State. In conclusion, all the previously detailed revisions New Jersey made to subchapter 16 are being proposed for approval by the EPA with this notice since it is expected they will improve resiliency during emergencies or similar situations and strengthen New Jersey's SIP by improving uniformity throughout N.J.A.C. 7:27.

#### *Revisions to Subchapter 17 (Related to Air Toxics Thresholds)*

The EPA is proposing to approve New Jersey's revisions to subchapter 17, now entitled, "Control and Prohibition of Air Pollution by Toxic Substances and Hazardous Air Pollutants." The State's revisions, which add a definition to N.J.A.C. 7:27–17.1, "Definitions," for the term "hazardous air pollutant" or "HAP," necessitate further revisions to the subchapter to update and consolidate New Jersey's reporting thresholds for 185 of the air contaminants that are identified as HAPs under 42 U.S.C. 7412(b). It should be noted that while 42 U.S.C. 7412(b) contains 187 HAPs, New Jersey's rules will contain reporting thresholds for 185 of the federally listed HAPs since the State regulates the two remaining federally listed HAPS, radionuclides, and mineral fibers, including asbestos, through its Radiation Protection rules.<sup>2</sup>

New Jersey promulgated the existing HAP reporting thresholds more than 25 years ago and has not updated them since. Current research and scientific advancements in toxicology have generated new and modified HAP unit risk factors and reference concentrations. In addition, technological improvements have produced more accurate air quality modeling computer programs. In some cases, these improvements and advances have indicated the existing HAP thresholds are not stringent enough to be protective of human health and the environment. In others, it has been determined the thresholds can be less stringent and still protect health and the environment, lessening the regulatory burden on applicants.

Under the most recent SIP approved HAP thresholds for New Jersey, the State regulated only 13 HAPs under N.J.A.C. 7:27–17. The existing reporting and SOTA thresholds for these 13 HAPs, identified by New Jersey as "toxic substances," were listed under N.J.A.C. 7:27–8 Appendix 1, Table A and B. To simplify cross-references, the EPA, therefore, proposes to approve New Jersey's revisions which relocate, consolidate, and update all the HAP reporting and SOTA thresholds from Tables A and B of Appendix 1 in N.J.A.C. 7:27–8, and Table B of the Appendix in N.J.A.C. 7:27–22, to N.J.A.C. 7:27–17.9. The State's revisions to update regulations related to HAPs in subchapter 17 reflects the most recent

science on air toxics and ensures that the State remains protective of public health and welfare without placing undue burden on industry. New Jersey's procedure for updating the HAP thresholds was based on scientific advancements detailing the latest scientifically generated risk factors and exposure assessment techniques, technological improvements producing more accurate air quality modeling computer programs, and robust statistical evaluation of maximum ambient concentrations of HAPs for a range of stack heights and property line distances through the AMS/USEPA Regulatory Model (AERMOD) modeling system (Version 15181).

Under N.J.A.C. 7:27, for New Jersey to determine the type of permit modification that a facility must submit, a facility must conduct a health risk assessment, as described in Technical Manual 1003, for the HAPs that it identifies.<sup>3</sup> With the revisions New Jersey made, which the EPA is proposing to approve with this notice, if a risk assessment indicates potential HAP emissions to be above the established threshold and non-negligible, the facility must modify the source operation to lower the risk to the point where the output shows a negligible risk or consider other risk reduction measures. With the implementation of the more comprehensive health risk assessment, which is expected to further reduce risk from the health impacts associated with discharges, and its consideration of numerous variables including stack heights, discharge direction, potential for aerodynamic downwash, and health impact on the surrounding communities, portions of existing N.J.A.C. 7:27–17.4 are therefore redundant. Therefore, the EPA proposes to approve New Jersey's deletion of existing N.J.A.C. 7:27–17.4(a) and (b), which requires specific conditions be met regarding the discharge for 11 of the 13 HAPs that New Jersey previously regulated under the most recent federally approved version of subchapter 17. Moreover, N.J.A.C. 7:27–17.4(a) and (b) evaluate only 11 toxic substances, all of which are a subset of the list of HAPs, while the health risk assessment procedure evaluates all 185 HAPs, thereby providing more protection from air toxics to surrounding communities.

Consequently, the EPA also proposes to approve New Jersey's removal of

<sup>2</sup> New Jersey Radiation Regulation Downloads including N.J.A.C. 7:28 and the Radiation Protection Act. <https://www.state.nj.us/dep/rpp/njacdown.html>. The NJDEP's Radiation Protection Element (last updated February 6, 2023).

<sup>3</sup> Guidance on Preparing a Risk Assessment for Air Contaminant Emissions: Technical Manual 1003 <https://dep.nj.gov/wp-content/uploads/boss/technical-manuals/1003.pdf>. The NJDEP Division of Air Quality (2018).

definitions under N.J.A.C. 7:27–17.1 for the terms “aerodynamic downwash,” “effective stack height,” and “stack or chimney” being they are no longer required as they are solely referenced under provisions N.J.A.C. 7:27–17.4(a) and (b). Further, the State’s deletion of N.J.A.C. 7:27–17.4(a) and (b) necessitated an amendment to what was previously N.J.A.C. 7:27–17.9(a) and made provisions under the previous version of N.J.A.C. 7:27–17.4 inapplicable to the benzene constituent of gasoline discharged to the atmosphere from storage tanks or transfer operations. N.J.A.C. 7:27–17.9 is now listed as N.J.A.C. 7:27–17.8 and N.J.A.C. 7:27–17.8(a), previously N.J.A.C. 7:27–17.9(a), is amended to remove the exemption of benzene constituents of gasoline from N.J.A.C. 7:27–17.4. The New Jersey revisions now subject benzene to the health risk assessment which is intended to reduce health risks from discharges as previously detailed. Therefore, with this notice of proposed rulemaking, the EPA proposes to approve all the previously mentioned revisions that New Jersey made to subchapter 17 as they will strengthen the State’s SIP by updating the HAP reporting thresholds to incorporate the latest scientifically generated risk factors and exposure assessment techniques.

*Revisions to Subchapter 18 (Related to PM<sub>2.5</sub> in Air Permitting)*

The EPA is proposing to approve New Jersey’s revisions to subchapter 18, “Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules).” In 1997, the EPA first established annual and 24-hour NAAQS for PM<sub>2.5</sub>. PM<sub>2.5</sub> includes all particulate matter having an aerodynamic diameter less than or equal to a nominal 2.5 microns, including condensable particulate matter. After establishing NAAQS for PM<sub>2.5</sub>, the EPA promulgated PM<sub>2.5</sub> permitting requirements, which New Jersey’s amendments to this subchapter are intended to address. The EPA developed the Federal New Source Review (NSR) program to ensure that the construction and modification of sources of air contaminant emissions do not adversely impact the ambient levels of a criteria pollutant for which the EPA established a NAAQS. As part of the PM<sub>2.5</sub> NAAQS implementation, the EPA expanded NSR requirements to include PM<sub>2.5</sub> and its precursors (71 FR 28321, May 16, 2008). The revisions New Jersey made, which will conform the State’s rules to the EPA’s NSR requirements for PM<sub>2.5</sub>, are being proposed for approval

into the SIP with this rulemaking by the EPA.

New Jersey’s revisions to subchapter 18 include the addition of definitions to N.J.A.C. 7:27–18.1, “Definitions,” for the terms “PM<sub>2.5</sub>” and “PM<sub>2.5</sub> inter-pollutant offset” as well as an amended definition for “respective criteria pollutant” which incorporates new requirements for PM<sub>2.5</sub> and its precursors by identifying NO<sub>x</sub> and SO<sub>2</sub> as precursors of PM<sub>2.5</sub>. Thus, the definition for “respective criteria pollutant” will include PM<sub>2.5</sub> as a respective criteria pollutant for PM<sub>2.5</sub>, NO<sub>x</sub> and SO<sub>2</sub>. PM<sub>2.5</sub> is emitted to the atmosphere in two ways: primary PM<sub>2.5</sub> emissions are discharged directly from a stack; and secondary PM<sub>2.5</sub> emissions are formed downwind from the stack when PM<sub>2.5</sub> precursor gases, such as NO<sub>x</sub> and SO<sub>2</sub>, are transformed through physical or chemical processes to fine particulates (73 FR 28321, at 28326 through 28328, May 16, 2008). The EPA proposes to approve New Jersey’s definition for the term “PM<sub>2.5</sub> inter-pollutant offset” which will be consistent with the Federal requirements and will simplify provisions in N.J.A.C. 7:27–18.5 that refer to this type of emission offsetting.

The Emission Offset rules at N.J.A.C. 7:27–18 apply to a facility if the facility has the potential to emit any of the air contaminants listed in N.J.A.C. 7:27–18.2(a)(1) at a level equal to or exceeding the threshold level in the rule. Thus, the EPA is proposing to approve New Jersey’s amendment at N.J.A.C. 7:27–18.2(a)(1) which will strengthen the State’s SIP by adding PM<sub>2.5</sub>, and NO<sub>x</sub> and SO<sub>2</sub> (as PM<sub>2.5</sub> precursors), to the list of air contaminants and by setting potential to emit applicability threshold levels for the previously listed air contaminants. These revisions to threshold levels will impose conditions upon growth and development to ensure that new construction, industrial growth and development, and modification of sources of air contaminant emissions do not result in increased emissions that could negatively impact maintenance or attainment of NAAQS in an area within the State.

The Emission Offset program also avoids further degradation of air quality by requiring an air quality impact analysis pursuant to N.J.A.C. 7:27–18.4. The EPA is proposing to approve New Jersey’s revisions to include annual and 24-hour significant air quality impact levels (or SILs) for PM<sub>2.5</sub> at Table 1 under N.J.A.C. 7:27–18.4, which are identical to that which the EPA established in Appendix S and its rules at 40 CFR 51.165(b). This revision will

require an applicant seeking a permit for a proposed new source or proposed modification of an existing source for which there would be a significant net emission increase (SNEI) of any air contaminant listed in Table 3 of N.J.A.C. 7:27–18.7, to conduct an air quality impact analysis to demonstrate that the allowable emission increases from the proposed new or modified source would not cause or contribute to a violation of an applicable NAAQS. The EPA proposes to approve New Jersey’s modification which will reinforce air permitting requirements related to PM<sub>2.5</sub> and is expected to improve air quality.

Additionally, the EPA proposes to approve New Jersey’s amendments to Table 2 under N.J.A.C. 7:27–18.5(c) which would establish minimum offset ratios for increased emissions of PM<sub>2.5</sub> and its precursors of 1.0:1.0, which is the same offset ratio as set forth in Appendix S, Section IV.A and Clean Air Act (CAA) Section 173(c). The State’s amendments to Table 2 also address how nearby the emission reductions must be to a facility to be considered emission offsets and ensure that the emission reductions for PM<sub>2.5</sub> and its precursors may be obtained at any distance from the facility’s address. The EPA also proposes to approve the State’s amended N.J.A.C. 7:27–18.5(f)(1) which will establish a minimum offset ratio of 1.00:1.00 for NO<sub>x</sub> and SO<sub>2</sub> (as PM<sub>2.5</sub> precursors). New Jersey’s amendments to N.J.A.C. 7:27–18.5(g) and N.J.A.C. 7:27–18.5(l), allow PM<sub>2.5</sub> inter-pollutant offsets, which is the use of creditable emission reductions of PM<sub>2.5</sub> and its precursors (NO<sub>x</sub> and SO<sub>2</sub>) to offset increases of PM<sub>2.5</sub> and its precursors, removing the restriction that the emission reductions must be to the same air contaminant category. The State’s revisions, which the EPA proposes to approve with this notice, better reflect the requirements of Appendix S for criteria pollutants, such as PM<sub>2.5</sub> and its precursors, and will make the provisions of subchapter 18 more consistent with Federal regulations.

Furthermore, under the revised N.J.A.C. 7:27–18.5(l), a facility that proposes to use PM<sub>2.5</sub> inter-pollutant offsets must use one of three methods to demonstrate that there is a net air quality benefit from the ratio that it proposes. This revision from New Jersey will remove the restriction that emission reductions must be for the same air contaminant category. The EPA is proposing to approve this revision since this is expected to improve air quality by allowing a facility to offset PM<sub>2.5</sub> with reductions of either SO<sub>2</sub> or NO<sub>x</sub> emissions as offsets (but only if these are being offset as precursors to PM<sub>2.5</sub>),

and not limit a facility to offset PM<sub>2.5</sub> solely with reductions of PM<sub>2.5</sub>. The State's new N.J.A.C. 7:27–18.5(m) clarifies that the permit applicant would need to secure NO<sub>x</sub> offsets only once (based on the more stringent offset ratio) when offset ratios (for NO<sub>x</sub> as an ozone precursor or NO<sub>x</sub> as a PM<sub>2.5</sub> precursor, or both) would apply and when NO<sub>x</sub> offsets are required both for ozone and for PM<sub>2.5</sub>. New Jersey's amended N.J.A.C. 7:27–18.5(n) prohibits the use of PM<sub>2.5</sub> inter-pollutant offsets for use in a determination of significant net emission increase (SNEI), being that EPA is not allowing inter-pollutant offsets for SNEI purposes at this time (as stated in the preamble to the 2008 final rule (73 FR 28321)), since doing so would be resource-intensive and demonstrating the net air quality benefit of a single source trade through air quality modeling is difficult. The EPA proposes to approve all the previously mentioned revisions New Jersey made as it believes these modifications will further strengthen the State's SIP and improve air quality.

Finally, the EPA also proposes to approve New Jersey's addition of PM<sub>2.5</sub> and its precursors (NO<sub>x</sub> and SO<sub>2</sub>) to the list of air contaminants in N.J.A.C. 7:27–18.7, Table 3; as well as the State's established SNEI levels for these newly added air contaminants. If a facility emits or proposes to emit an air contaminant at a level greater than the SNEI threshold, the facility must obtain an air permit that includes non-attainment NSR (NNSR) requirements, such as offsets. New Jersey will not issue an air permit that would result in an exceedance of a NAAQS. With the revisions New Jersey made to subchapter 18, that the EPA is proposing to approve, requirements for applicants to secure emission offsets in accordance with the subchapter will strengthen the State's SIP and improve air quality.

#### *Revisions to Subchapter 19 (Related to Exemptions To Improve Resiliency)*

The EPA is proposing to approve New Jersey's revisions to subchapter 19, "Control and Prohibition of Air Pollution from Oxides of Nitrogen." The State's revisions to subchapter 19 will correct inconsistencies and typographical errors in the subchapter, amend provisions within the subchapter applicable to emergency generators, and revise exemptions to improve resiliency during and following significant events.

Under N.J.A.C. 7:27–19.1, "Definitions," revisions New Jersey made, which the EPA is proposing to approve into the State's SIP, include the addition of definitions for the terms

"portable" and "PJM interconnection;" revisions to definitions for "stationary reciprocating engine," "construction engine" and "emergency generator;" and the deletion of definitions for the terms "MEG alert," "budget source" and "load dispatcher." The definitions for "portable," "PJM interconnection," "stationary reciprocating engine," "construction engine" and "emergency generator" will be consistent with the definitions for the terms previously discussed within this notice and being proposed for approval by the EPA. Furthermore, the definitions for the terms "MEG alert," "budget source," and "load dispatcher" were deleted by the State because they are only used in this subchapter in connection with provisions under the subchapter (N.J.A.C. 7:27–19.24) that no longer exist and will be unnecessary with the finalizing of this rulemaking.

New Jersey's amended definition for the term "emergency generator," being proposed for approval with this notice, identifies the allowable uses for emergency generators. Thus, subparagraph 3 under the current SIP approved definition for "emergency generator" within subchapter 19.1, which details the use of an emergency generator for repair and maintenance, is proposed to be relocated to amended N.J.A.C. 7:27–19.2(d)1. Although emergency generators are technically stationary reciprocating engines, and therefore subject to permit requirements at N.J.A.C. 7:27–8.2(c)(1) and paragraph 11 of the definition of "significant source operation" at N.J.A.C. 7:27–22.1, due to their limited use, they are not subject to any VOC RACT rules under N.J.A.C. 7:27–16 and there are no applicable presumptive NO<sub>x</sub> RACT emission limits under N.J.A.C. 7:27–19. Currently, within subchapter 19, the only NO<sub>x</sub> RACT rules applicable to emergency generators are recordkeeping requirements listed at N.J.A.C. 7:27–19.11. However, in the current SIP approved N.J.A.C. 7:27–19.2(d), the existing language is not precise and fails to make it clear that recordkeeping is the only NO<sub>x</sub> RACT requirement applicable to emergency generators. Thus, the EPA proposes to approve the State's revised N.J.A.C. 7:27–19.2(d), which improves readability and clarifies that recordkeeping satisfies all the NO<sub>x</sub> RACT requirements applicable to emergency generators under subchapter 19.

In addition, the State has recognized and expressed the need for public water systems, wastewater and stormwater systems, and sludge management facilities to perform normal testing and maintenance on their emergency

generators, regardless of air quality, during the 48 hours prior to a National Weather Service-designated named storm impacting the facility's area of the State. Thus, New Jersey's amended N.J.A.C. 7:27–19.2(d)(2) reflects the requirements for such testing and will require notification to the State when air quality is forecast to be unhealthy or worse during that time of testing.

Under subchapter 19, the term "portable" is being proposed to be defined as being "not attached to a permanent foundation, and designed and capable of being carried or moved from one location to another by means of wheels, skids, carrying handles, dolly, trailer, platform, or similar device." Thus, being that retrofitting engines powering portable equipment to meet NO<sub>x</sub> emission standards would make such equipment no longer truly portable, the EPA proposes to approve the State's new N.J.A.C. 7:27–19.2(g). This revision will exclude engines that are not connected to the electric power distribution grid, not replacing grid power, and are portable and supplying power only to portable equipment from the provisions of subchapter 19. Nevertheless, engines which are connected to the electric power distribution grid or are replacing grid power will not be exempt and will remain subject to the NO<sub>x</sub> emission standards of subchapter 19 (N.J.A.C. 7:27–19.8). Additionally, since the EPA considers portable equipment remaining on site for more than a year to be a stationary source, under such qualifying circumstances, portable equipment would not be exempt from the NO<sub>x</sub> emission standards of subchapter 19 and would be subject to applicable Federal regulations.

In effort to prevent the requirement that a facility operate a boiler or indirect heat exchanger during a given calendar year quarter solely for the purpose of performing an annual adjustment of the combustion process, as required under existing N.J.A.C. 7:27–19.7(g)(1) through (3), the EPA is proposing to approve the State's new N.J.A.C. 7:27–19.7(g)(4). This amendment will allow the owner/operator of an industrial/commercial/institutional boiler or other indirect heat exchanger that is not used at least quarterly to adjust the combustion process within seven days after the next operation of the boiler or indirect heat exchanger. The EPA proposes to approve New Jersey's revision which will strengthen the State's SIP by eliminating unnecessary operation of a boiler or indirect heat exchanger that can potentially negatively impact air quality. Moreover, the EPA is proposing to approve New Jersey's revisions to

N.J.A.C. 7:27–19.8(a), (b), and (c) which will correct minor errors such as replacing “370kW” with “37kW” and “or more” with “or greater,” when referring to engine output in (a) through (c). These revisions will provide consistency with terminology and enhance clarity to N.J.A.C. 7:27–19.8 since the recordkeeping requirements for emergency generators do not make sense if they are applicable to only those emergency generators with a maximum rated power output of exactly 37 kW hours. The EPA also proposes to approve the State’s revisions to N.J.A.C. 7:27–19.11(a) which will replace the term “maximum rated output” with the correct term, “maximum rated power output,” and clarify that the recordkeeping requirements extend to emergency generators with a maximum power output rating of 37 kW or more by adding the phrase “or greater.”

Furthermore, the EPA also proposes to approve New Jersey’s amendments to N.J.A.C. 7:27–19.16(a)(5) to correct the inaccurate suggestion that oxygen (O<sub>2</sub>) is to be measured in parts per million by volume on a dry basis (ppmvd). Oxygen is measured in percent, as is correctly stated in the current federally approved instructions at N.J.A.C. 7:27–19.16(a)(6). N.J.A.C. 7:27–19.24, which concerns MEG alerts (periods when electric generating units operate at emergency capacity) that occurred on or before November 15, 2005, is to be repealed from the State’s SIP since this date has long passed, making these provisions obsolete and no longer having any effect. As stated previously in the explanation of revisions to N.J.A.C. 7:27–19.1, with the State’s deletion of N.J.A.C. 7:27–19.24, the EPA is proposing to approve the removal of the terms “MEG alert,” “budget source,” and “load dispatcher” since they are only utilized in N.J.A.C. 7:27–19.24.

The EPA proposes to approve New Jersey’s deletion of the 500-hours allotted for natural gas curtailment at permitted facilities under N.J.A.C. 7:27–19.25(c)(4). The State’s amended rule will allow a permitted combustion source to continue to operate without interruption during the full period of natural gas curtailment and will require the combustion source to return to using only natural gas or obtain an appropriate permit once the supply of natural gas is restored. The proposed deletion of this provision will not remove the requirement for a source to control its emissions and, if a source has controls, it must continue to operate such controls whenever technically feasible, regardless of the fuel type being combusted. Additionally, the owner or operator of a source will be required to

satisfy the recordkeeping requirements of N.J.A.C. 7:27–19.19(d) and (e) and incorporate such records into reports submitted to the State as required at N.J.A.C. 7:27–19.19(g) and in accordance with the reporting requirements of N.J.A.C. 7:27–19.25(d)(1)–(4).

The EPA acknowledges New Jersey’s determination that during significant events and their aftermath, the operation of a facility may be crippled if natural gas remains unavailable for more than 500 hours (roughly 20 days) during a consecutive 12-month period. The existing regulations require an owner or operator of such facilities to obtain or modify facility permits to enable the combustion source to operate on liquid fuel and to have the combustion source comply with applicable NO<sub>x</sub> emission limits under N.J.A.C. 7:27–19, while the fuel oil or other liquid fuel is burned. Modifying a permit is a complex process that requires thorough evaluation and consideration, which may be made even more difficult when the State is faced with addressing competing priorities following significant events and their aftermath. New Jersey states in its submittal to the EPA, that few facilities have reached the 500-hour limit under the existing N.J.A.C. 7:27–19.25(c)(4) and have only done so during significant weather events and their aftermath, which are the circumstances this rule was designed to provide resiliency for. In discussions with facilities following the aftermath of Superstorm Sandy and other major storms, it was made clear that the switch to oil was a necessity as natural gas was sometimes limited. By removing the 500 hours limitation, operations such as essential services, can continue to be available even if the natural gas curtailment period goes beyond 500 hours.

Historically, natural gas curtailments usually occur during extreme cold weather events that require the burning of large amounts of natural gas and fuel oil to keep private dwellings warm. In order to manage available supplies during these frigid days, a curtailment of natural gas for large industrial users is implemented when natural gas supplies are forecasted to run low during an extended period of frigid temperatures. Thus, the proposed deletion of the 500-hour limit restriction for fuel oil use during potential extended natural gas curtailments is appropriate. Additionally, any associated increase of NO<sub>x</sub> and VOC emissions from the additional oil burning during natural gas curtailments events in response to cold weather

events is not expected to be of significant concern since ozone exceedances occur during the warmer months and not during the colder months. If natural gas curtailment happens to last longer than 500 hours, it is not advantageous to require a facility to shut down as they have no control over the supply of natural gas, especially under emergency conditions. It is critical that facilities like hospitals and emergency response facilities be allowed to continue operating equipment for heating and power. Furthermore, the proposed deletion of the 500-hour limit for the use of fuel oil is expected to have a negligible environmental impact because, historically, lengthy curtailments seldom occur.

Per the comments New Jersey received in response to the proposed deletion of the 500-hour limit for natural gas curtailment, the EPA acknowledges that it is not feasible for the State to quantify the air quality impact that would be expected from the deletion of such a provision. Since the State does not require facilities to report the use of fuel oil during periods of natural gas curtailment, the information needed to calculate the emissions impact is not available. Additionally, the EPA acknowledges it is not possible to predict or project when and for how long a natural gas curtailment may take place in the future, and to what extent it is likely to exceed the 500-hour limit previously in effect. Extreme weather events are predicted to increase in severity and frequency in response to climate change, and these are the events for which such a provision within this notice is seeking to provide resiliency for. Thus, the EPA agrees with the State’s claim that deletion of the 500-hour limit will have a negligible, albeit unquantifiable, environmental impact because the use of the exemption for more than 500 hours will only be during the occurrence of an exceptional event.

Finally, the EPA is proposing to approve New Jersey’s revision that will address a discrepancy between existing N.J.A.C. 7:27–19.25(d) and 19.19(g). N.J.A.C. 7:27–19.25(d) refers to the submission of quarterly reports; however, existing N.J.A.C. 7:27–19.19(g) provides for either quarterly reports (N.J.A.C. 7:27–19.19(g)1) or annual reports (N.J.A.C. 7:27–19.19(g)2), depending on whether a combustion source is equipped with a continuous emission monitoring system (CEMS). With the State’s revision to replace “required quarterly” in the existing version of N.J.A.C. 7:27–19.25(d) with a reference to N.J.A.C. 7:27–19.19(g), the discrepancy is eliminated. This revision



will require quarterly reports if a combustion source has a CEMS and annual reports if it does not in accordance with the existing N.J.A.C. 7:27–19.19(g). In conclusion, the EPA is proposing to approve New Jersey's revisions to subchapter 19, as previously detailed within this notice, since they will improve resiliency by enabling government and business entities to respond swiftly and recover from emergency situations.

*Revisions to Subchapter 21 (Related to Air Toxics Thresholds and PM<sub>2.5</sub> & Ammonia Emission Statement Reporting)*

The EPA is proposing to approve New Jersey's adoptions and revisions to subchapter 21, "Emission Statements." The State's amendments to subchapter 21 modify outdated provisions and make reporting requirements consistent with Federal guidelines. At N.J.A.C. 7:27–21.1, "Definitions," the EPA proposes to approve the State's update to the definition for "Emission Statement Guidance Document" to correct the internet address at which this document can be viewed so that it corresponds to the most recent version of the document which is updated annually. Additionally, a definition for "RADIUS," which is New Jersey's Remote Access Data Information User System and is utilized for electronic submissions and interactions with the State, is now defined to include reference to successor software which the State intends to develop in the future for the same usage as RADIUS. This reference to successor software will allow for the definition to adapt with future technology and minimize confusion that may arise otherwise. Finally, the State's amendments to the definition of "PM<sub>2.5</sub>" correct grammar and are intended to provide clarity to PM<sub>2.5</sub> emission statement reporting.

New Jersey's subchapter 21 requires a facility with the potential to emit an air contaminant in excess of the applicable threshold to submit an Emission Statement. The existing rules require the reporting of PM<sub>2.5</sub> and ammonia at the facility-wide level, which means that a facility would report a single value for each pollutant, representing the total of all emissions of that pollutant from all sources and/or equipment at that facility. This is inconsistent with the Federal Air Emissions Reporting Requirements (AERR), which require the reporting of all criteria pollutants and precursors (including PM<sub>2.5</sub> and ammonia) at the source level for each facility. Accordingly, the EPA proposes to approve New Jersey's amended N.J.A.C. 7:27–21.3(b) which will require

the reporting of PM<sub>2.5</sub> and ammonia at the source level to be consistent with the Federal AERR reporting requirements.

The EPA anticipates that there will be no economic impact with the proposed requirement of reporting PM<sub>2.5</sub> and ammonia at the source level instead of the facility level. Reporting at the source level will not require any additional effort since the source-level emissions already have to be determined in order to calculate the facility-level emissions. In addition, this level of reporting is consistent with the current practice of the regulated community in New Jersey, in accordance with Federal requirements. Furthermore, the EPA proposes to approve the State's amended N.J.A.C. 7:27–21.3(b)(1)(ii) and (2)(iii) which will require emissions for particular HAPs listed under N.J.A.C. 7:27–21 Appendix 1, Table 1, that exceed the applicable thresholds in proposed N.J.A.C. 7:27–17.9 to be included on emission statements. Notably, this will not include hydrochloric acid, hydrazine, methylene chloride, tetrachloroethylene, 1, 1, 1 trichloroethane, carbon dioxide and methane. As a result of the previously discussed new HAP reporting thresholds for the State, proposed for approval by the EPA with this rulemaking, emissions of certain HAPs, which may have not exceeded the previous applicable thresholds and were therefore not previously reported on emissions statements, will now be required in some cases. This will improve air quality by requiring the reporting of certain air toxics on emission statements in conjunction with the newly proposed reporting thresholds in this notice.

Moreover, New Jersey's amendment to N.J.A.C. 7:27–21.4 will eliminate the option for permittees to submit emission statements electronically through the less secure use of email, in favor of the option to submit these statements through the State's secure internet portal, NJDEP Online ([www.njdeponline.com](http://www.njdeponline.com)). Under the proposed revision, reference to email submissions is deleted and a facility will continue to prepare its emission statement using RADIUS, as required under the existing rules, but submit it electronically through NJDEP Online. This revision is proposed for approval by the EPA since it will provide the requisite level of security to satisfy the Federal Cross-Media Electronic Reporting Rule (CROMERR) and will improve ease of access to emission statements by the State. This elimination of the option to email an

emission statement will also not result in a cost to facilities because RADIUS is available without cost. Furthermore, New Jersey no longer uses diskettes, so the EPA proposes to approve the State's removal of reference to diskettes at N.J.A.C. 7:27–21.4(b)(3)(ii).

In response to New Jersey's revisions at N.J.A.C. 7:27–21.3, existing N.J.A.C. 7:27–21.5(e), which identifies when emissions are reported at the facility-wide level and when they are reported at the source level, is no longer necessary and is proposed by the EPA to be deleted from the State's SIP. In practice, New Jersey states that the regulated community has been reporting emissions of PM<sub>2.5</sub> and ammonia at the source level, and the State already implements this source level reporting procedure to comply with AERR. Existing N.J.A.C. 7:27–21.8(b) provides methods of certifying an emission statement, with (b)(1) governing certification of electronic submittals, and paragraph (b)(2) governing certification of paper submittals. The State's amended rule also provides certification methods, but separates the paragraphs based on whether the emission statement is submitted through NJDEP Online or delivered to NJDEP (on paper or an electronic medium) by mail or courier service. These revisions to certification methods serve as a clarification of the methods used and imposes no additional reporting requirements. New Jersey's amendments which the EPA is proposing to approve with this notice will enhance and provide clarity to PM<sub>2.5</sub> and ammonia emission statement reporting measures, further strengthening the State's SIP.

*Revisions to Subchapter 22 (Related to Air Toxic Thresholds and PM<sub>2.5</sub> in Air Permitting)*

The EPA will address New Jersey's revisions to subchapter 22, "Operating Permits," submitted to the EPA alongside the submittals previously detailed in this notice, with a separate rulemaking action in the future.

*Revisions to Section 3.10 (Subchapter 3 of Chapter 27A) (Related to Exemptions To Improve Resiliency and Air Toxics Thresholds)*

The EPA is proposing to approve New Jersey's revisions to subchapter 3, "Civil Administrative Penalties and Requests for Adjudicatory Hearings," under Chapter 27A, "Air Administrative Procedures and Penalties," to conform the administrative penalties of this Section to the proposed rules in this notice. Pursuant to N.J.A.C. 7:27A–3.10(m), violations of N.J.A.C. 7:27, whether the violations are minor or non-



minor, have corresponding civil administrative penalty amounts for each violation as set forth in the “Civil Administrative Penalty Schedule” of this subchapter. Accordingly, the EPA proposes to approve the State’s request to remove from the SIP penalties listed under N.J.A.C. 7:27A–3.10(m)(16) which correspond to the violation of provisions the State repealed at N.J.A.C. 7:27–16.6(b) through (i) and which the State has requested be removed from the SIP; the State’s request to remove from the SIP penalties listed under N.J.A.C. 7:27A–3.10(m)(16) which correspond to the violation of provisions the State repealed at N.J.A.C. 7:27–16.17(b)(1) and 16.17(e) and which the State has requested be removed from the SIP; the State’s request to remove from the SIP penalties listed under N.J.A.C. 7:27A–3.10(m)(17) which correspond to the violation of provisions the State repealed at N.J.A.C. 7:27–17.4(a) and (b) and which the State has requested be removed from the SIP; and State’s request to remove from the SIP penalties listed under N.J.A.C. 7:27A–3.10(m)(19) which correspond to the violation of provisions the State repealed at N.J.A.C. 7:27–19.24(b) and which the State has requested be removed from the SIP. Similarly, the EPA proposes to approve New Jersey’s revision to N.J.A.C. 7:27A–3.10(m)(16) which previously corresponded to violation of provisions at N.J.A.C. 7:27–16.6(n) and now corresponds to violation of provisions at N.J.A.C. 7:27–16.6(l). As previously stated, the State’s revisions to this subchapter will conform the administrative penalties of this section to the rule revisions New Jersey submitted to the EPA for approval and ensure consistency throughout N.J.A.C. 7:27, therefore, strengthening New Jersey’s SIP.

### III. Environmental Justice Considerations

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to review state choices, and approve those choices if they meet the minimum criteria of the Act.

New Jersey provided a supplement to the SIP submissions being proposed for approval with this rulemaking on May 16, 2023. The supplemental submission briefed the EPA on Environmental Justice (EJ) considerations within New Jersey by detailing the State’s programs and initiatives addressing the needs of communities with EJ concerns that have been ongoing since 1998. Although New

Jersey included environmental justice considerations as part of its SIP submittal, the CAA and applicable implementing regulations neither prohibit nor require such an evaluation.

In its supplement, New Jersey discusses addressing the needs of communities with EJ concerns since 1998, including assisting in the creation of the Environmental Equity Task Force in 1998, which eventually became the Environmental Justice Advisory Council (EJAC). These groups hold regular meetings that include EJ advocates and the New Jersey Department of Environmental Protection (NJDEP) to discuss and address environmental justice issues of concern.

New Jersey also details having implemented numerous initiatives, collaborations, Administrative Orders and Executive Orders to address the needs and concerns of overburdened communities. A timeline of New Jersey’s EJ actions implemented, including both prior to and after the SIP submittals addressed within this notice was provided and is indicative of the State’s continued attention to EJ issues within the state.

Administrative Orders (AO) and Executive Orders (E.O.) include New Jersey’s first EJ E.O. issued by Governor James E. McGreevey in 2004 (E.O. No. 96), an EJ E.O. issued by Governor Jon Corzine in 2009 (E.O. No. 131), an EJ AO issued by NJDEP Commissioner Bob Martin in 2016 (AO 2016–08) and an EJ E.O. issued by Governor Phil Murphy in 2018 (E.O. No. 23). Notably, U.S. Senator for New Jersey, Cory Booker, introduced the first federal EJ bill in 2017 (S.1996—Environmental Justice Act of 2017).

Additionally, New Jersey also created the “What’s In My Community”<sup>4</sup> tool, a GIS-mapping web application that allows a user to see the air permits issued in their community. The tool also identifies the overburdened communities, schools, hospitals, and emergency services (Police and Fire departments). The public users can also see measurements from air monitors using the tool.

The EPA did take EJ into consideration when reviewing New Jersey’s provisions being proposed for approval by the EPA within this notice; however, the EPA determined that a comprehensive analysis of EJ would not be appropriate for the provisions New Jersey submitted for approval. New

Jersey’s provisions being proposed for approval by the EPA within this notice address statewide matters, and since EJ issues are more accurately captured when evaluating relatively smaller areas or on a community level basis, the EPA determined it would not have been appropriate to evaluate EJ concerns at a statewide level. As previously stated, the CAA and applicable implementing regulations neither prohibit nor require such an evaluation of EJ. In addition, there is no information in the record indicating that this action is inconsistent with the stated goal of E.O. 12898 and/or that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

Thus, the EPA expects that this proposed action will generally be neutral or contribute to reduced environmental and health impacts on all populations in New Jersey, including people of color and low-income populations in New Jersey. At a minimum, this action is not expected to worsen any air quality and it is expected this action will ensure the State is meeting requirements to attain and/or maintain air quality standards.

The EPA therefore concludes that this proposed rule will not have or lead to disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns. New Jersey evaluated environmental justice considerations as part of its SIP submittal even though the CAA and applicable implementing regulations neither prohibit nor require an evaluation. The EPA’s evaluation of New Jersey’s EJ considerations is described above. The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. The EPA is taking action under the CAA on bases independent of the State’s evaluation of EJ.

### IV. The EPA’s Proposed Action

The EPA proposes to approve New Jersey’s revisions to N.J.A.C. 7:27 subchapter 8, “Permits and Certificates for Minor Facilities (and Major Facilities without an Operating Permit),” section 8.1, “Definitions;” subchapter 18, “Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules);” and subchapter 21, “Emission Statements,” with State effective dates of November 6, 2017. In addition, the EPA proposes to approve the State’s revisions to N.J.A.C. 7:27 subchapter 8, “Permits and Certificates for Minor Facilities (and

<sup>4</sup> Mapping application used to find facilities with an air permit registered with New Jersey’s Division of Air Quality <https://njdep.maps.arcgis.com/apps/webappviewer/index.html?id=76194937cbbe46b1ab9a9ec37c7d709b>. The NJDEP Division of Air Quality.

Major Facilities without an Operating Permit),” section 8.1, “Definitions;” subchapter 16, “Control and Prohibition of Air Pollution by Volatile Organic Compounds;” subchapter 17, “Control and Prohibition of Air Pollution by Toxic Substances;” subchapter 19, “Control and Prohibition of Air Pollution by Oxides of Nitrogen;” subchapter 21, “Emission Statements;” and Chapter 27A, subchapter 3.10, “Civil Administrative Penalties for Violations of Rules Adopted Pursuant to the Act,” with State effective dates of January 16, 2018. The EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

## V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference revisions to N.J.A.C. 7:27 subchapter 8, “Permits and Certificates for Minor Facilities (and Major Facilities without an Operating Permit),” section 8.1, “Definitions;” subchapter 16, “Control and Prohibition of Air Pollution by Volatile Organic Compounds;” subchapter 17, “Control and Prohibition of Air Pollution by Toxic Substances;” subchapter 18, “Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules);” subchapter 19, “Control and Prohibition of Air Pollution by Oxides of Nitrogen;” subchapter 21, “Emission Statements;” and Chapter 27A, subchapter 3.10, “Civil Administrative Penalties for Violations of Rules Adopted Pursuant to the Act” as described in section II, of this preamble. 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 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law(s) as meeting federal requirements and

does not impose additional requirements beyond those imposed by state law(s). For that reason, this proposed 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 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- 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, this proposed SIP will not apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rules do 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 NJDEP evaluated environmental justice as part of its SIP submittal even though the CAA and applicable implementing regulations neither prohibit nor require an evaluation. The EPA’s evaluation of the NJDEP’s environmental justice considerations is described above in the section titled, “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. The EPA is taking action under the CAA on bases independent of New Jersey’s evaluation of environmental justice. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based that is inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ammonia, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

**Lisa Garcia,**

*Regional Administrator, Region 2.*

[FR Doc. 2023–21138 Filed 9–27–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

[EPA–R06–RCRA–2023–0040; FRL–11286–01–R6]

### Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Rule

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to grant an exclusion from the list of hazardous wastes to WRB Refining LP (Petitioner) located in Borger, Texas. This action responds to a petition to exclude (or “delist”) up to 7,000 cubic yards per year of solids removed from four stormwater tanks from the list of federal hazardous wastes when disposed of in a Resource Conservation Recovery Act (RCRA) Subtitle D Landfill. The EPA is proposing to grant the petition based on an evaluation of waste-specific information provided by the Petitioner. A previous proposed action was published in the **Federal Register** on November 23, 2022, that proposed to grant this petition (see Docket ID Number EPA–R06–RCRA–2022–0653). However, after the proposed rule was published, EPA received notification during the public comment period from the Petitioner that the table detailing the delisting constituents and levels was incorrect. After review, EPA agreed that the information contained in the table in question was incorrect. EPA has corrected the table to reflect the appropriate constituents and values and is withdrawing the previously published proposed rule from November 23, 2022. EPA is issuing a new action proposing to grant the petition, which will include a new 30-day comment period.

**DATES:** Comments on this proposed exclusion must be received by October 30, 2023.

**ADDRESSES:** Submit your comments by one of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- **Email:** [shah.harry@epa.gov](mailto:shah.harry@epa.gov).

**Instructions:** The EPA must receive your comments by October 30, 2023. Direct your comments to Docket ID Number EPA–R06–RCRA–2023–0040. The EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov>, or email. The [Federal regulations.gov](https://www.regulations.gov) website is an “anonymous access” system, which means the EPA will not know your identity or contact information unless

you provide it in the body of your comment. If you send an email comment directly to the EPA without going through [regulations.gov](https://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment with any CBI you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses.

**Docket:** The index to the docket for this action is available electronically at [www.regulations.gov](https://www.regulations.gov). Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy.

You can view and copy the delisting petition and associated publicly available docket materials either through [www.regulations.gov](https://www.regulations.gov) or at: EPA, Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270. The EPA facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Harry Shah, at (214) 665–6457, before visiting the Region 6 office. Interested persons wanting to examine these documents should make an appointment with the office.

#### FOR FURTHER INFORMATION CONTACT:

Harry Shah, (214) 665–6457, [shah.harry@epa.gov](mailto:shah.harry@epa.gov). Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via <https://www.regulations.gov>, as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Overview Information
- II. Background
  - A. What is the history of the delisting program?

- B. What is a delisting petition, and what does it require of a petitioner?
  - C. What factors must the EPA consider in deciding whether to grant a delisting petition?
  - D. Environmental Justice Evaluation
- III. The EPA’s Evaluation of the Waste Information and Data
  - A. What waste did the Petitioner petition the EPA to delist?
  - B. How did the Petitioner generate the waste?
  - C. How did the Petitioner sample and analyze the petitioned waste?
  - D. What factors did the EPA consider in deciding whether to grant the delisting petition?
  - E. How did the EPA evaluate the risk of delisting this waste?
  - F. What did the EPA conclude?
- IV. Conditions for Exclusion
  - A. How will the Petitioner manage the waste if it is delisted?
  - B. What are the maximum allowable concentrations of hazardous constituents in the waste?
  - C. How frequently must the Petitioner test the waste?
  - D. What data must the Petitioner submit?
  - E. What happens if the Petitioner fails to meet the conditions of the exclusion?
  - F. What must the Petitioner do if the process changes?
- V. When would the EPA finalize the proposed delisting exclusion?
- VI. How would this action affect states?
- VII. Public Comments Received From the Previous Proposed Exclusion
  - A. Who submitted comments on the previous proposed rule?
  - B. Comments Submitted on the November 23, 2022, Proposed Rule (Docket ID Number EPA–R06–RCRA–2022–0653)
- VIII. Statutory and Executive Order Reviews

#### I. Overview Information

The EPA is proposing to grant a May 2020 petition (“Delisting Petition for Stormwater Solids”) request submitted by WRB Refining LP in Borger, Texas to exclude (or “delist”) up to 7,000 cubic yards per year of F037 stormwater solids from the list of federal hazardous waste set forth in 40 CFR 261.3 (hereinafter, all sectional references are to 40 CFR unless otherwise indicated). The Petitioner claims that the petitioned wastes do not meet the criteria for which the EPA listed it, and that there are no additional constituents or factors which could cause the waste to be hazardous. Based on our review described in Section III, we propose to approve the petition request, and allow the delisted waste to be disposed in a Subtitle D landfill. A copy of the May 2020 petition is located in the docket to this proposal action.

## II. Background

### A. What is the history of the delisting program?

The EPA published an amended list of hazardous wastes from non-specific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and codifies the list in §§ 261.31 and 261.32.

The EPA lists the Petitioner's wastes as hazardous because: (1) the wastes typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity), (2) the wastes meet the criteria for listing contained in § 261.11(a)(2) or (a)(3), or (3) the wastes are mixed with or derived from the treatment, storage or disposal of such characteristic and listed wastes and which therefore become hazardous under § 261.3(a)(2)(iv) or (c)(2)(i), known as the "mixture" or "derived-from" rules, respectively.

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these part 261 regulations or resulting from the operation of the mixture or derived-from rules generally is hazardous, a specific waste from an individual facility may not be hazardous.

For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that the EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

### B. What is a delisting petition, and what does it require of a petitioner?

A delisting petition is a request from a facility to the EPA or an authorized state to exclude wastes from the list of hazardous wastes. The facility petitions the EPA because it does not consider the waste as hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed.

The criteria for which the EPA lists a waste are in 40 CFR part 261 and further explained in the background documents for the listed waste in the June 30, 1992 publication of the "Final Best Demonstrated Available Technology (BDAT) Background Document for Newly Listed Refinery Wastes F037 and F038" (<https://nepis.epa.gov/Exe/ZyNET.exe/P100VUGS.TXT?ZyActionD=ZyDocument&Client=EPA&Index=1991+Thru+1994&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C91thru94%5CTxt%5C00000035%5CP100VUGS.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL>).

In addition, under 40 CFR 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste.

Generators remain obligated under RCRA to confirm whether their waste remains non-hazardous based on the hazardous waste characteristics even if EPA has "delisted" the waste.

### C. What factors must the EPA consider in deciding whether to grant a delisting petition?

Besides considering the criteria in 40 CFR 260.22(a) and § 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) aside from

those for which EPA listed the waste, if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

The EPA must also consider hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See § 261.3(a)(2)(iii and iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 66 FR 27266 (May 16, 2001).

### D. Environmental Justice Evaluation

To better meet EPA's "responsibilities related to the protection of public health and the environment, EPA has developed a new environmental justice (EJ) mapping and screening tool called EJ Screen" that reports values as a percentile when compared to a state or the nation. "It is based on nationally consistent data and an approach that combines environmental and demographic indicators in maps and reports," (<https://www.epa.gov/ejscreen>). EPA is providing analysis of environmental justice associated with this action. We are doing so for the purpose of providing information to the public, not as a basis of our final action.

EPA utilized EJScreen to evaluate potential environmental justice concerns in communities at one-, three-, and five-mile radiuses around the Borger facility. EPA considers the potential for EJ concerns in a community when one or more of the 13 supplemental EJ indices is at or above the 80th percentile when compared to the rest of the USA. At the one-mile radial measurement, six supplemental EJ indices exceeded the 80th percentile, at the three-mile radial measurement, five supplemental EJ indices exceeded the 80th percentile, and at the five-mile radial measurement, three supplemental EJ indices exceeded the 80th percentile. This information is provided below in Table 1. More information on EJ Screen, including an explanation of the 13 EJ indices can be found at [www.epa.gov/ejscreen/what-ejscreen](http://www.epa.gov/ejscreen/what-ejscreen).

TABLE 1—SUPPLEMENTAL EJ INDICES AT ONE-, THREE-, AND FIVE-MILE RADIUSES AROUND THE FACILITY

| Supplemental EJ index<br>(USA percentile)          | 1 Mile radius<br>around the facility | 3 Mile radius<br>around the facility | 5 Mile radius<br>around the facility |
|----------------------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|
| Particulate Matter 2.5 Supplemental Index .....    | 13                                   | 12                                   | 11                                   |
| Ozone Supplemental Index .....                     | 81                                   | 79                                   | 75                                   |
| Diesel Particulate Matter Supplemental Index ..... | 62                                   | 60                                   | 53                                   |
| Air Toxics Cancer Risk Supplemental Index .....    | 44                                   | 43                                   | 40                                   |
| Air Toxics Respiratory HI Supplemental Index ..... | 27                                   | 26                                   | 25                                   |
| Toxic Releases to Air Supplemental Index .....     | 92                                   | 89                                   | 86                                   |

TABLE 1—SUPPLEMENTAL EJ INDICES AT ONE-, THREE-, AND FIVE-MILE RADIUSES AROUND THE FACILITY—Continued

| Supplemental EJ index<br>(USA percentile)          | 1 Mile radius<br>around the facility | 3 Mile radius<br>around the facility | 5 Mile radius<br>around the facility |
|----------------------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|
| Traffic Proximity Supplemental Index .....         | 68                                   | 61                                   | 57                                   |
| Lead Paint Supplemental Index .....                | 84                                   | 83                                   | 79                                   |
| Superfund Proximity Supplemental Index .....       | 44                                   | 42                                   | 39                                   |
| RMP Facility Proximity Supplemental Index .....    | 92                                   | 91                                   | 88                                   |
| Hazardous Waste Proximity Supplemental Index ..... | 79                                   | 71                                   | 65                                   |
| Underground Storage Tanks Supplemental Index ..... | 84                                   | 80                                   | 75                                   |
| Wastewater Discharge Supplemental Index .....      | 85                                   | 83                                   | 81                                   |

### III. The EPA's Evaluation of the Waste Information and Data

#### A. What waste did the Petitioner petition the EPA to delist?

In May 2020, WRB Refining LP petitioned the EPA to exclude from the list of hazardous wastes contained in § 261.31, stormwater tank solids (F037) generated from its facility located in Borger, Texas. The waste falls under the classification of listed waste pursuant to § 261.31. Specifically, in its petition, WRB Refining requested that the EPA grant a standard exclusion for 7,000 cubic yards per year of the stormwater tank solids.

#### B. How did the Petitioner generate the waste?

The principal products manufactured at the Refinery are gasoline, diesel, aviation fuel, natural gas liquids (NGL), petroleum coke, and solvents. The stormwater tanks are active and have been in operation for approximately 25 years. To restore capacity in the stormwater tanks, the Borger Refinery will be removing accumulated solids. The solids removal process will typically occur within a calendar year and will be an ongoing operational item for the refinery in the future.C

The solids are removed from the four stormwater tanks. These tanks are listed as the North Stormwater Tank, West Stormwater Tank, North Dropout Basin,

and West Grit Trap (hereafter collectively referred to as “the stormwater tanks”). The four stormwater tanks are identified as solid waste management unit (SWMU) No. 50 on the facility's notice of registration (NOR) with the Texas Commission on Environmental Quality (TCEQ).

The stormwater tanks solids originated from both historical and current operation of the wastewater treatment system at the refinery. To the extent possible, hydrocarbons present in refinery wastewaters have been recovered. However, historically more hydrocarbons passed through the “oil recovery system” and flowed into the stormwater tanks. Hydrocarbons in the wastewater can result from various sources (e.g., crude oil). Over time, more of the oily streams were routed to storage tanks from collection system piping and/or smaller tanks for interception and recovery instead of into the stormwater tanks. Recovered oil from the oil recovery system is stored in tanks prior to being reintroduced into the refining process. Historically, these oily flows occurred in conjunction with facility operations, were relatively routine in nature, and not directly associated with precipitation. As such, they were classified by the EPA as “dry weather” flows. By contrast, wastewater directly associated with precipitation (i.e., stormwater) is referred to as “wet weather” flows. The EPA listing criteria

for F037 generally encompasses primary solids associated with dry-weather, oily flows.

Since the stormwater tanks receive what could be classified as dry-weather, oily flows as specified in the November 2, 1990, **Federal Register** rule publication (55 FR 46354, Nov. 2, 1990), the solids within the four tanks are believed to be classified as F037 when generated. WRB Refining assumes that solids removed from the stormwater tanks bear the F037 (primary oil/water/solids separation sludge) listing when generated.

#### C. How did the Petitioner sample and analyze the petitioned waste?

A total of eight acceptable sample results were provided by Petitioner to support the petition. The EPA considered all 8 samples of the stormwater tank solids and the disposal scenario of the landfill was modeled using the Delisting Risk Assessment Software. The worst-case scenario of the constituents' concentrations for the F037 solids were used as input in the model to determine if it would meet the hazardous waste criteria for which it was listed. The maximum total and leachate concentrations for the inorganic and organic constituents which were found in the analytical data provided by Petitioner are presented in Table 2.

TABLE 2—MAXIMUM TOTAL AND TCLP CONCENTRATIONS

| Chemical name                    | Maximum total<br>concentration<br>(mg/kg) | Maximum TCLP<br>concentration<br>(mg/l) |
|----------------------------------|-------------------------------------------|-----------------------------------------|
| Acenaphthene .....               | 0.04                                      | <0.00030                                |
| Acetone .....                    | <0.0033                                   | <0.040                                  |
| Anthracene .....                 | 0.18                                      | <0.00030                                |
| Antimony .....                   | 6.93                                      | 0.0293                                  |
| Arsenic .....                    | 10.5                                      | 0.0277                                  |
| Barium .....                     | 732                                       | 3.1                                     |
| Benz(a)anthracene .....          | 0.26                                      | <0.00030                                |
| Benzene .....                    | 0.19                                      | <0.012                                  |
| Benzo(a)pyrene .....             | 0.19                                      | <0.00040                                |
| Benzo(b)fluoranthene .....       | 0.17                                      | <0.00040                                |
| Benzo(k)fluoranthene .....       | 0.16                                      | <0.00070                                |
| Beryllium .....                  | 0.91                                      | <0.0020                                 |
| Bis(2-ethylhexyl)phthalate ..... | 1.2                                       | <0.00080                                |

TABLE 2—MAXIMUM TOTAL AND TCLP CONCENTRATIONS—Continued

| Chemical name                                     | Maximum total concentration (mg/kg) | Maximum TCLP concentration (mg/l) |
|---------------------------------------------------|-------------------------------------|-----------------------------------|
| Cadmium .....                                     | 1.03                                | 0.00689                           |
| Carbon disulfide .....                            | 0.026                               | <0.018                            |
| Chlorobenzene .....                               | <0.00098                            | <0.0080                           |
| Chloroform .....                                  | <0.00082                            | <0.012                            |
| Chromium .....                                    | 80.8                                | 0.00495                           |
| Chrysene .....                                    | 0.34                                | <0.00080                          |
| Cobalt .....                                      | 13.3                                | 0.0355                            |
| Dibenz(a,h)anthracene .....                       | 0.061                               | <0.00060                          |
| 1,2-Dichlorobenzene .....                         | <0.0099                             | <0.00040                          |
| 1,3-Dichlorobenzene .....                         | <0.0099                             | <0.00050                          |
| 1,4-Dichlorobenzene .....                         | <0.017                              | <0.00040                          |
| 1,1-Dichloroethane .....                          | <0.00082                            | <0.0080                           |
| 1,2-Dichloroethane .....                          | <0.00098                            | <0.010                            |
| 1,1-Dichloroethylene .....                        | <0.00082                            | <0.010                            |
| Diethyl phthalate .....                           | <0.017                              | <0.00070                          |
| Dimethyl phthalate .....                          | 0.034                               | <0.00050                          |
| 2,4-Dimethylphenol .....                          | <0.054                              | <0.00040                          |
| Di-n-butyl-phthalate .....                        | 0.0057                              | <0.00080                          |
| 2,4-Dinitrophenol .....                           | <0.074                              | <0.00050                          |
| 1,4-Dioxane .....                                 | <0.033                              | <0.82                             |
| Ethylbenzene .....                                | 0.0063                              | <0.010                            |
| Fluoranthrene .....                               | 0.84                                | <0.00040                          |
| Fluorene .....                                    | 0.17                                | <0.00050                          |
| Indeno(1,2,3-cd)pyrene .....                      | 0.12                                | <0.00060                          |
| Lead .....                                        | 301                                 | 0.974                             |
| Mercury .....                                     | 1.58                                | <0.000030                         |
| Methyl ethyl ketone .....                         | 0.092                               | <0.020                            |
| Naphthalene .....                                 | 0.18                                | 0.0047                            |
| Nickel .....                                      | 439                                 | 0.142                             |
| 4-Nitrophenol .....                               | <0.031                              | <0.00060                          |
| Phenanthrene .....                                | 1.2                                 | <0.00040                          |
| Phenol .....                                      | <0.018                              | <0.00040                          |
| Pyrene .....                                      | 0.92                                | <0.00030                          |
| Pyridine .....                                    | <0.015                              | <0.00030                          |
| Selenium .....                                    | 2.8                                 | <0.0110                           |
| Silver .....                                      | 0.08                                | <0.00200                          |
| Styrene .....                                     | <0.0011                             | <0.010                            |
| Tetrachloroethylene .....                         | <0.0011                             | <0.012                            |
| Toluene .....                                     | 0.036                               | <0.010                            |
| 1,1,1-Trichloroethane .....                       | <0.00082                            | <0.010                            |
| Trichloroethylene (1,1,2-Trichloroethylene) ..... | <0.00098                            | 0.010                             |
| Vanadium .....                                    | 50.4                                | <0.00600                          |
| Xylenes, Total .....                              | 0.087                               | <0.010                            |
| Zinc .....                                        | 930                                 | 2.76                              |

*D. What factors did the EPA consider in deciding whether to grant the delisting petition?*

In reviewing this petition, we considered the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See § 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2) through (4). We evaluated the petitioned wastes against the listing criteria and factors cited in § 261.11(a)(2) and (3).

In addition to the criteria in 40 CFR 260.22(a), 261.11(a)(2) and (3), 42 U.S.C. 6921(f), and in the background documents for the listed wastes, the EPA also considered factors (including additional constituents) other than those for which EPA listed the waste if these

additional factors could cause the waste to be hazardous (See the background documents).

Our proposed decision to grant the May 2020 petition to delist the waste from Petitioner's facility in Borger, Texas is based on our evaluation of the wastes for factors or criteria which could cause the waste to be hazardous. These factors included: (1) Whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentration of the constituents in the waste; (4) the tendency of the constituents to migrate and to bioaccumulate; (5) the persistence in the environment of any constituents once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of

waste produced; and (8) waste variability.

The EPA must also consider as hazardous wastes mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. Mixture and derived-from wastes are also eligible for exclusion but remain hazardous until excluded.

*E. How did the EPA evaluate the risk of delisting this waste?*

For this proposed delisting determination, we evaluated the risk that the waste would be disposed of as a non-hazardous waste in a landfill. We considered transport of waste

constituents through groundwater, surface water and air. We evaluated Petitioner's analysis of the petitioned waste using the Delisting Risk Assessment Software (DRAS) to predict the concentration of hazardous constituents that might be released from the petitioned waste and to determine if the waste would pose a threat to human health and the environment. The DRAS software and associated documentation can be found at [www.epa.gov/hw/hazardous-waste-delisting-risk-assessment-software-dras](http://www.epa.gov/hw/hazardous-waste-delisting-risk-assessment-software-dras).

To predict the potential for release to groundwater from landfilled wastes and subsequent routes of exposure to a receptor, the DRAS uses dilution attenuation factors derived from the EPA's Composite Model for leachate migration with transformation products. From a release to groundwater, the DRAS considers routes of exposure to a human receptor through ingestion of contaminated groundwater, inhalation from groundwater while showering and dermal contact from groundwater while bathing.

From a release to surface water by erosion of waste from an open landfill into storm water run-off, DRAS evaluates the exposure to a human receptor by fish ingestion and ingestion of drinking water. From a release of waste particles and volatile emissions to air from the surface of an open landfill, DRAS considers routes of exposure of inhalation of volatile constituents, inhalation of particles, and air deposition of particles on residential soil and subsequent ingestion of the contaminated soil by a child. The technical support document and the user's guide to DRAS are available at <https://www.epa.gov/hw/hazardous-waste-delisting-risk-assessment-software-dras>.

#### *F. What did the EPA conclude?*

Petitioner stated in its petition that the petitioned waste meets the criteria of F037 for which the EPA listed it. Petitioner also stated that no additional constituents or factors could cause the waste to be hazardous. Petitioner also stated that disposal in a landfill will not adversely impact human health or the environment. The EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and CFR 260.22(d)(1)–(4). In making the initial delisting determination, the EPA evaluated the petitioned waste against the listing criteria and factors cited in

§ 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the Petitioner that the petitioned waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, the EPA would propose to deny the petition.) The EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste. The EPA believes that the petitioned waste does not meet the listing criteria and thus, should not be a listed waste. The EPA's proposed decision to delist the waste from Petitioner's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Borger, Texas facility, and that is contained in the Petition and attachments, all of which are included in the docket to this action.

#### **IV. Conditions for Exclusion**

##### *A. How will the Petitioner manage the waste if it is delisted?*

If the petitioned wastes are delisted as proposed, the Petitioner must dispose of them in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste or in the on-site landfill.

##### *B. What are the maximum allowable concentrations of hazardous constituents in the waste?*

The EPA notes that in some instances the maximum allowable total constituent concentrations provided by the DRAS model exceed 100% of the waste—these DRAS results are an artifact of the risk calculations that do not have physical meaning. In instances where DRAS predicts a maximum constituent greater than 100 percent of the waste (that is, greater than 1,000,000 mg/kg or mg/L, respectively, for total and TCLP concentrations), the EPA is not proposing to require the Petitioner to perform sampling and analysis for that constituent and sampling type (total or TCLP).

##### *C. How frequently must the Petitioner test the waste?*

The testing approach for this waste stream will be conducted as generated. Prior to disposal of any future tank cleanouts, Petitioner must conduct sampling and analysis as described in the delisting sampling and analysis plan and ensure that the wastes do not exceed the delisting parameters. If compliance with the delisting parameters is demonstrated with analytical testing (TCLP analysis), the Petitioner may dispose of the tank cleanouts. The annual amount of solids generated from the tank clean outs may not exceed 7,000 cubic yards. The annual sampling report shall include the volume of solids disposed of in the landfill, as well as annual testing event data. The petitioner should monitor and report increasing trends of constituents which will affect the overall compliance with the stormwater discharge permit.

##### *D. What data must the Petitioner submit?*

The Petitioner must submit the data obtained through verification testing to U.S. EPA Region 6, Office of Land, Chemicals and Redevelopment Division, 1201 Elm Street, Suite 500, M/C 6LCR–RP, Dallas, Texas 75270–2102, within 30 days after receiving the final results from the laboratory. These results may be submitted electronically to Harry Shah, [shah.harry@epa.gov](mailto:shah.harry@epa.gov). The Petitioner must make those records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

##### *E. What happens if the Petitioner fails to meet the conditions of the exclusion?*

If this Petitioner violates the terms and conditions established in the exclusion, the Agency may start procedures to withdraw the exclusion. Additionally, the terms of the exclusion provide that “[a]ny waste volume for which representative composite sampling does not reflect full compliance with the exclusion criteria must continue to be managed as hazardous.”

If the testing of the waste does not demonstrate compliance with the delisting concentrations described in section IV.C above, or other data (including but not limited to leachate data or groundwater monitoring data from the final land disposal facility) relevant to the delisted waste indicates that any constituent is at a concentration in waste above specified delisting verification concentrations in Table 1, the Petitioner must notify the



Agency within 10 days, or such later date as the EPA may agree to in writing, after receiving the final verification testing results from the laboratory or of first possessing or being made aware of other relevant data. The EPA may require the Petitioner to conduct additional verification sampling to better define the particular volume of wastes within the affected unit that does not fully satisfy delisting criteria. For any volume of wastes for which the corresponding representative sample(s) do not reflect full compliance with delisting exclusion levels, the exclusion by its terms does not apply, and the waste must be managed as hazardous.

The EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978) *et seq.* to reopen a delisting decision if we receive new information indicating that the conditions of this exclusion have been violated or, are otherwise not being met.

*F. What must the Petitioner do if the process changes?*

Any process changes or additions implemented at Petitioner's facility which would significantly impact the constituent concentrations of the waste must be reported to the EPA in accordance with Condition VI. of the exclusion language.

**V. When would the EPA finalize the proposed delisting exclusion?**

HSWA specifically requires the EPA to provide notice and an opportunity for public comment before granting or denying a final exclusion. Thus, the EPA will not make a final decision or grant an exclusion until it has addressed all timely public comments, including any at public hearings. Upon receipt and consideration of all comments, the EPA will publish its final determination as a final rule. Since this rule would reduce the existing requirements for persons generating hazardous wastes, the regulated community does not need a six-month period to come into compliance in accordance with § 3010 of RCRA, as amended by HSWA.

**VI. How would this action affect states?**

Because the EPA is proposing to issue this exclusion under the federal RCRA delisting regulations, only states subject to federal RCRA delisting provisions will be affected. This exclusion may not be effective in states which have received authorization from the EPA to make their own delisting decisions.

RCRA allows states to impose more stringent regulatory requirements than RCRA's under § 3009 of RCRA. These more stringent requirements may

include a provision that prohibits a federally-issued exclusion from taking effect in the state. We urge Petitioners to contact the state regulatory authority to establish the status of its wastes under the state law.

The EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those states. If the Petitioner manages the wastes in any state with delisting authorization, the Petitioner must obtain delisting authorization or other determination from the receiving state before it can manage the waste as nonhazardous in that state.

**VII. Public Comments Received From the Previous Proposed Exclusion**

*A. Who submitted comments on the previous proposed rule?*

The EPA received four public comments on the November 23, 2022 (87 FR 71532), proposed rule via [regulations.gov](https://www.regulations.gov) and email submittal. The previous proposed rule has since been withdrawn due to a discrepancy with information contained in the **Federal Register** publication, which was brought to EPA's attention by the Petitioner. The Petitioner subsequently submitted a public comment via email during the public comment period to the EPA Region 6 office identifying the discrepancy regarding the delisting constituents and values listed in the table titled "Appendix IX to Part 261 Wastes Excluded Under §§ 260.2 and 260.22" (see comment 4). Since the previous proposed rule was withdrawn, the four previously submitted public comments will be addressed under a new proposed rule at the conclusion of a new 30-day comment period.

*B. Comments Submitted on the November 23, 2022, Proposed Rule (Docket ID Number EPA-R06-RCRA-2022-0653)*

*Comment 1.* "Although I am not sure where I stand overall on delisting the waste in question, I do believe that the processes in which this decision was made were appropriate. I trust the EPA in its decision to approve delisting the waste and removal of solids at WRB Refining LP in Borger, Texas. The how this decision was made could have been a lot more careless. However, the EPA took a lot into consideration and tested multiple samples from the petitioner's facility and agreed with the petitioner that the wastes are nonhazardous. It also did an environmental justice evaluation. Environmental justice is often overlooked when it comes to making

decisions concerning discarding waste. This proposed rule is a great example of how to go about making such decisions while taking caution."

*Comment 2.* "I appose this rule/exception being passed through. When you take the table and look at some of the chemicals that make up this storm drain runoff products there are some very hazardous chemicals that make up these products. One chemical that makes up this product is Beryllium. Beryllium can be lethal in humans and cause a variety of health concerns. According to the EPA website "beryllium is toxic at 0.002 milligrams per kilogram body weight per day (mg/kg/d)" (Beryllium compounds—US EPA). Using this equation the average size man weighing 200lbs can only be exposed to .4mg a day. That is roughly only 146mg a year. The refinery is requesting that they be allowed to dump .91mg per kg a year into a nonhazardous waste landfill. That would mean that they would be dumping enough material (Beryllium) to lethally infect 50,000 people per year."

*Comment 3.* "I believe that to not consider stormwater as a hazardous waste is a bold statement, but since a lot of measures are taken to ensure this is not a health hazard for animals and for humans. I think if it keeps being measured how many toxic chemicals this stormwater has before being disposed somewhere else. Since the stormwater waste is going to be disposed in a landfill that is permitted to manage industrial waste, this can give a sense of safety, but it is not truly known how this landfill will manage and treat this waste, and if it will do it correctly to ensure that no animals have contact or do not get poisoned by the stormwater. Stormwater usually has many toxic chemicals that can pollute water sources such as oil, pesticides, antifreeze, grease and other types of chemicals that can be dangerous and poisonous to the environment and the wildlife that inhabit these water sources. Also, one of the consequences is that they can cause toxic algae blooms that sink and decompose in the water removing oxygen from it. Animals and other organisms can't live in water with low dissolved oxygen levels. It can also contaminate drinking water supplies if not treated properly. These consequences should be kept in mind before agreeing, as the public, to these types of petitions. If stormwater is treated properly in a treatment plant this can reduce how hazardous this might be. Since the stormwater that the petitioner wants to delist as a possible hazard has such small amounts of these toxic chemicals, it makes sense why the



EPA thinks to delist this waste. One of the examples of this small amounts is Arsenic, which is a solid that occurs naturally in water and soil but that is also produced industrially in big quantities. The amount of Arsenic that is considered as a hazard is 6.1 while the amount of arsenic that the stormwater in this facility has it's 0.1. However, all these amounts need to be tested each time that the facility wants to dispose of them, to ensure that it is still not considered a hazard, which is one of the rules of EPA to consider the petition of the facility. I think if it is proved that the stormwater waste from this facility is treated properly in this landfills, it is safe to say that this would not be a hazard for humans or wildlife.

*Comment 4.* “On November 23, 2022, EPA published the draft delisting petition for WRB Refining LP (Petitioner), which was submitted in May 2020. On behalf of WRB Refining LP and Big Star Consulting LLC, please accept the comments to the draft publication that are contained herein.

The delisting levels calculated using EPA's Delisting Risk Assessment Software (DRAS) were presented in the 2020 petition request and subsequently updated in March 2022 using DRAS Version 4.0. The delisting values reflected in the **Federal Register** are not in agreement with the calculated values. Specifically, it appears that the delisting values published on November 23rd were inadvertently carried forward from a prior delisting petition. We respectfully request that Item (1) in the table found on Page 71538 of the **Federal Register** be revised to reflect the following desilting levels:

Stormwater Solids Leachate:  
Acenaphthene—219; Anthracene—534;  
Antimony—2.52; Arsenic—0.266;  
Barium—100; Benz(a)anthracene—10.5;  
Benzo(a)pyrene—3,960;  
Benzo(b)fluoranthene—33,700;  
Benzene—1.59; 2-Butanone—7,150;  
Cadmium—1.0; Carbondisulfide—1,150;  
Chromium—1.56; Chrysene—1,050;  
Cobalt—5.56; Di-n-butyl-phthalate—507; Ethylbenzene—16.2;  
Fluoranthrene—50.7; Fluorene—101;  
Indeno(1,2,3-cd)pyrene—3.71; Lead—5.0; Mercury—0.2; Napthalene—1.95;  
Nickel—279; Pyrene—91.7; Selenium—1.0; Silver—5.0; Toluene—311;  
Vanadium—85.6; Xylenes, Total—177;  
Zinc—4,060.

## VIII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This proposed action is exempt from review by the Office of Management and Budget because it is a rule of particular applicability, not general applicability. The proposed action approves a delisting petition under RCRA for the petitioned waste at a particular facility.

### *B. Paperwork Reduction Act*

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it only applies to a particular facility.

### *C. Regulatory Flexibility Act*

Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provision of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

### *D. Unfunded Mandates Reform Act*

This proposed action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538) and does not significantly or uniquely affect small governments. The action imposes no new enforceable duty on any state, local, or tribal governments or the private sector.

### *E. Executive Order 13132: Federalism*

This proposed action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This proposed action does not have tribal implications as specified in Executive Order 13175. This proposed action applies only to a particular facility on non-tribal land. Thus, Executive Order 13175 does not apply to this action.

### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

This proposed action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 13045 and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to

children. This proposed action's health and risk assessments using the Agency's Delisting Risk Assessment Software (DRAS), which considers health and safety risks to children, are described in section III.E above. The technical support document and the user's guide for DRAS are included in the docket.

### *H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use*

This proposed action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 13211.

### *I. National Technology Transfer and Advancement Act*

This proposed action does not involve technical standards as described by the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note).

### *J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, Feb. 16, 1994) directs federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.” (<https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>).

The EPA believes that this proposed action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples. The EPA has determined that this proposed action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection

provided to human health or the environment. The Agency's risk assessment, as described in section III.E above, did not identify risks from management of this material in an authorized, solid waste landfill (*e.g.*, RCRA Subtitle D landfill, commercial/ industrial solid waste landfill, etc.) or the on-site landfill. Therefore, the EPA believes that any populations in proximity of the landfills used by the Borger facility should not be adversely affected by common waste management practices for this delisted waste.

#### K. Congressional Review Act

This proposed action is exempt from the Congressional Review Act (5 U.S.C.

801 *et seq.*) because it is a rule of particular applicability.

#### List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Dated: September 14, 2023.

**Monica Smith,**

*Acting Director, Land, Chemicals and Redevelopment Division.*

For the reasons set out in the preamble, the EPA proposes to amend 40 CFR part 261 as follows:

#### PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

■ 2. Amend table 1 of Appendix IX to part 261, by adding an entry for “WRB Refining LP” at the end of the table to read as follows:

#### Appendix IX to Part 261 Wastes Excluded Under §§ 260.20 and 260.22

| Facility        | Address       | Waste description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------|---------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| WRB Refining LP | Borger, Texas | <p>Stormwater Solids (the EPA Hazardous Waste No. F037) generated at a maximum generation of 7,000 cubic yards per calendar year after (<i>date rule finalized</i>) and disposed in a landfill. WRB Refining must implement a verification program that meets the following Paragraphs:</p> <p>(1) <i>Delisting Levels:</i> All leachable constituent concentrations must not exceed the following levels. The petitioner must use the method specified in 40 CFR 261.24 to measure constituents in the waste leachate (mg/L). Stormwater Solids Leachate: Acenaphthene—219; Anthracene—534; Antimony—2.52; Arsenic—0.266; Barium—100; Benz(a)anthracene—10.5; Benzene—0.5; Benzo(a)pyrene—3,960; Beryllium—2.95; Cadmium—1; Carbon disulfide—1,150; Chlorobenzene—31.1; Chloroform—1.64; Chromium—1.56; Chrysene—1,050; Cobalt—5.56; Di-n-butyl phthalate—507; 1,2-Dichlorobenzene—192; 1,4-Dichlorobenzene—4.26; 1,1-Dichloroethane—1,080; 1,2-Dichloroethane—0.5; 1,1-Dichloroethylene—0.7; 2,4-Dimethylphenol—234; 2,4-Dinitrophenol—23.8; 1,4-Dioxane—2.32; Ethylbenzene—16.2; Fluoranthene—50.7; Fluorene—101; Lead—5; Mercury—0.2; Methyl ethyl ketone—200; Naphthalene—1.95; Nickel—279; Phenol—3,580; Pyrene—91.7; Pyridine—5; Selenium—1; Silver—5; Styrene—31.1; Tetrachloroethylene—0.7; Toluene—311; Trichloroethylene—0.5; Vanadium—85.6; Xylenes—177; Zinc—4,060</p> <p>(2) <i>Waste Holding and Handling:</i></p> <p>(A) All stormwater solids from tank clean outs must be tested to assure they have met the concentrations described in Paragraph (1). Solids that do not meet the concentrations must be disposed of as hazardous waste.</p> <p>(B) Levels of constituents measured in the samples of the solids that do not exceed the levels set forth in Paragraph (1) are non-hazardous. WRB Refining can manage and dispose the non-hazardous stormwater solids according to all applicable solid waste regulations.</p> <p>(C) WRB Refining must maintain a record of the actual volume of the stormwater solids to be disposed in the Subtitle D or on-site landfill according to the requirements in Paragraph (4).</p> <p>(3) <i>Changes in Operating Conditions:</i> If WRB Refining significantly changes the process described in its petition or starts any processes that may or could affect the composition or type of waste generated as established under Paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), they must notify the EPA in writing; they may no longer handle the wastes generated from the new process as nonhazardous until the test results of the wastes meet the delisting levels set in Paragraph (1) and they have received written approval to do so from the EPA.</p> <p>(4) <i>Data Submittals:</i> WRB Refining must submit the information described below. If WRB Refining fails to submit the required data within the specified time or maintain the required records on-site for the specified time, the EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 5. WRB Refining must:</p> <p>(A) Submit the data obtained through Paragraph 3 to the Chief, RCRA Permits &amp; Solid Waste Section, Mail Code, (6LCR-RP) US EPA Region 6, 1201 Elm Street, Suite 500, Dallas, TX 75270 within the time specified. Data may be submitted via email to the technical contact for the delisting program.</p> <p>(B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years.</p> <p>(C) Furnish these records and data when the EPA or the State of Texas request them for inspection.</p> |

## Facility

(D) Send along with all data, a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by the EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

(5) *Reopener:*

- (A) If, any time after disposal of the delisted waste, WRB Refining possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data.
- (B) If the verification testing of the waste does not meet the delisting requirements in Paragraph 1, WRB Refining must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data.
- (C) If WRB Refining fails to submit the information described in paragraphs (4), (5)(A) or (5)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.
- (D) If the Division Director determines that the reported information does require Agency action, the Division Director will notify the facility, in writing, of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information.
- (E) Following the receipt of information from the facility described in paragraph (5)(D) or (if no information is presented under paragraph (5)(D)) the initial receipt of information described in paragraphs (4), (5)(A) or (5)(B), the Division Director will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise.
- (6) *Notification Requirements:* WRB Refining must do the following before transporting the delisted waste: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision.
- (A) Provide a written notification to any State Regulatory Agency to which, or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. If WRB Refining transports the excluded waste to or manages the waste in any state with delisting authorization, WRB Refining must obtain delisting authorization from that state before it can manage the waste as nonhazardous in the state.
- (B) Update the one-time written notification if they ship the delisted waste to a different disposal facility.
- (C) Failure to provide the notification will result in a violation of the delisting variance and a possible revocation of the exclusion.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### 45 CFR Part 1355

RIN 0970–AD03

#### Safe and Appropriate Foster Care Placement Requirements for Titles IV–E and IV–B

**AGENCY:** Children’s Bureau (CB), Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** Federal law requires that state and tribal title IV–E/IV–B agencies (“agencies”) ensure that each child in foster care receives “safe and proper” care and has a case plan that addresses the specific needs of the child while in foster care to support their health and wellbeing. Federal law also requires that for children ages 14 and over, agencies must consult with them about their case plans. To ensure agencies meet these and other related statutory requirements, ACF proposes to specify the steps agencies must take when implementing the case plan and case review requirements for children in foster care who identify as lesbian, gay, bisexual, transgender, queer or questioning, intersex, as well as children who are non-binary, or have non-conforming gender identity or expression (all of whom are referred to under the umbrella term LGBTQI+ for purposes of this regulation).

**DATES:** In order to be considered, ACF must receive written comments on or before November 27, 2023. We intend to notify tribal title IV–E/IV–B agency leadership about the opportunity to provide comment on this NPRM no later than September 28, 2023.

**ADDRESSES:** You may submit comments, identified by the Regulatory Information Number (RIN), by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov). Include the RIN number in subject line of the message.

*Instructions:* All submissions received must include the agency name and RIN for this rulemaking. All comments received by the methods and due date specified above may be posted without

change to [www.regulations.gov](http://www.regulations.gov), including any personal information provided. However, the Department may redact certain non-substantive content from comments before posting, including threats, hate speech, profanity, graphic images, or individually identifiable information about a third-party individual other than the commenter. In addition, comments or material designated as confidential or not to be disclosed to the public will not be accepted. Comments may be redacted or rejected as described above without notice to the commenter, and the Department will not consider in rulemaking any redacted or rejected content that would not be made available to the public as part of the administrative record.

**FOR FURTHER INFORMATION CONTACT:** Kathleen McHugh, Director, Policy Division, Children’s Bureau, (202) 205–8618. Telecommunications Relay users may dial 711 first. Email inquiries to [cbcomments@acf.hhs.gov](mailto:cbcomments@acf.hhs.gov). Upon request, the Department will provide an accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed regulations. To schedule an appointment for this type of accommodation or auxiliary aid, please call (202) 205–8618 for assistance or email [cbcomment@acf.hhs.gov](mailto:cbcomment@acf.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Statutory Authority To Issue NPRM
- II. Background
- III. Overview of Proposal
- IV. Section-by-Section Discussion of Proposed Regulatory Changes
- V. Regulatory Process Matters
- VI. Tribal Consultation Statement

#### I. Statutory Authority To Issue NPRM

Titles IV–E and IV–B of the Social Security Act (the Act) require title IV–E/IV–B agencies (referred to as “agencies”) to provide case plans for all children in foster care that include “a plan for assuring that the child receives safe and proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents’ home, facilitate return of the child to his own safe home or the permanent placement of the child, and address the needs of the child while in foster care.” Section 475(1)(B). Agencies must also have case review systems through which they ensure that each foster child’s case plan is “designed to achieve placement in a safe setting that is the least restrictive (most family like) and most appropriate

setting available and in close proximity to the parents’ home, consistent with the best interest and special needs of the child[.]” Section 475(5). In order to receive IV–E and IV–B funds, title IV–E/IV–B agencies must have plans approved by ACF that provide for case plans and case review systems that meet these statutory requirements. Section 471(a)(16) and section 422(b).

Additionally, in order to receive IV–E funds, states and tribes must certify in their IV–E plans that they will ensure that before a child in foster care is placed with prospective foster parents, the prospective foster parents “will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child . . .”. In addition, the preparation “shall include . . . knowledge and skills relating to the developmental stages of the cognitive, emotional, physical, and behavioral capacities of a child.” Section 471(a)(24). Agencies must also ensure that at least one staff member at any child-care institution providing foster care receives this training. Section 471(a)(10).

The Act authorizes the Secretary of Health and Human Services (the Secretary) to review state compliance with the title IV–E and IV–B program requirements. Specifically, the Act requires the Secretary to determine whether state programs are in substantial conformity with state plan requirements under IV–E and IV–B, implementing regulations promulgated by the Secretary, and the states’ approved state plans. Section 1123A.

Section 1102 of the Act authorizes the Secretary to publish regulations as may be necessary for the efficient administration of the functions for which the Secretary is responsible under the Act.

#### II. Background

Titles IV–E and IV–B of the Act set forth numerous requirements for state and tribal title IV–E/IV–B agencies (referred to as “agencies”) to meet for children in foster care. This NPRM applies to the state or tribal agency administering or supervising the administration of the title IV–E and title IV–B plans.

Titles IV–E and IV–B of the Act provide protections that are designed to ensure that while in foster care, children receive safe and proper care. As part of its title IV–E and IV–B plan, an agency must develop a case plan for each child in care that, among other things, assures that the child receives “safe and proper” care, and “address(es) the needs of the child while in foster care.” (Title IV–E, section 475(1)(B) of the Act). This

includes a “discussion of the appropriateness of the services that have been provided to the child under the plan” (*Id.*). Similarly, the title IV–E/IV–B case review system requires that the agency have procedures for assuring that each child has a case plan designed to achieve placements in the most appropriate setting available, consistent with the best interests and special needs of the child (422(b), 471(a)(16), 475(1)(B), and 475(5)).

In addition, the Act requires the agency to certify that foster parents are “prepared adequately with the appropriate knowledge and skills to provide for the needs of the child [and] that the preparation will be continued, as necessary, after the placement of the child” (471(a)(24)). Finally, the Act requires agencies to develop and implement standards to ensure that children in foster care placements are provided quality services that protect their safety and health (471(a)(22)).

#### *Overrepresentation of LGBTQI+ Children in Foster Care*

LGBTQI+ children are overrepresented in the foster care population. One recent confidential survey revealed that 32 percent<sup>1</sup> of foster children ages 12–21 surveyed report that they identify as having a diverse sexual orientation or gender identity. A recent study using nationally representative survey data found that youth with a minority sexual orientation, such as lesbian, gay, and bisexual youth, are nearly 2.5 times as likely as heterosexual youth to experience a foster care placement.<sup>2</sup>

A study published in 2016 of the population of youth who have been involved in both the foster care and juvenile justice systems found that LGBTQI+ juvenile-justice involved youth were much more likely to have been removed from their home and to have experienced being physically abused.<sup>3</sup>

<sup>1</sup> Institute for Innovation and Implementation at University of Maryland’s School of Social Work and the National Quality Improvement Center on Tailored Services, Placement Stability, and Permanency for LGBTQ2S Children and Youth in Foster Care (2021), *The Cuyahoga Youth Count: A Report on LGBTQ+ Youth Experience in Foster Care*, <https://theinstitute.umaryland.edu/media/ssw/institute/Cuyahoga-Youth-Count.6.8.1.pdf>.

<sup>2</sup> Fish, J., Baams, L., Wojciak, A.S., & Russell, S.T. (2019). Are Sexual Minority Youth Overrepresented in Foster Care, Child Welfare, and Out-of-Home Placement? Findings from Nationally Representative Data. *Child Abuse and Neglect*. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7306404/>.

<sup>3</sup> Irvine, Angela, and Canfield, Aisha. *The Overrepresentation of Lesbian, Gay, Bisexual, Questioning, Gender Nonconforming and Transgender Youth within the Child Welfare to*

LGBTQI+ youth are overrepresented in the child welfare system because of a confluence of factors. Studies suggest that many LGBTQI+ youth face higher rates of parental physical abuse,<sup>4</sup> and are more likely to run away from home or be kicked out, often because of conflict over their sexual orientation or gender identity.<sup>5</sup> These experiences place LGBTQI+ youth at greater risk of entering foster care, and mean that many LGBTQI+ youth enter foster care with complex needs and trauma related to the discrimination and stigma they have experienced because of their sexual orientation or gender identity.<sup>6</sup>

#### *Impact of Family and Caregiver Behavior on LGBTQI+ Youth Wellbeing*

Research shows that the treatment LGBTQI+ youth receive from their families and caregivers related to their sexual orientation or gender identity is highly predictive of their mental health and wellbeing. For example, a 2021 survey<sup>7</sup> found that “LGBTQ youth who felt high social support from their family reported attempting suicide at less than half the rate of those who felt low or moderate social support. Moreover, the survey<sup>8</sup> found the five most common ways that LGBTQ youth reported feeling supported by their parents or caregivers included having been welcoming to their LGBTQ friends or partners, talking with them respectfully about their LGBTQ identity, using their name and pronouns correctly, supporting their gender

*Juvenile Justice Crossover Population*, 24.2 Am. U. J. Gender Soc. Pol’y & L., 243–261 (2016), <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1679&context=jgspl>.

<sup>4</sup> Friedman, M., Marshal, M., Guadamuz, T., Wei, C., Wong, C., Saewyc, C., and Stall, R., 2011: A Meta-Analysis of Disparities in Childhood Sexual Abuse, Parental Physical Abuse, and Peer Victimization Among Sexual Minority and Sexual Nonminority Individuals American Journal of Public Health 101, 1481–1494, <https://doi.org/10.2105/AJPH.2009.190009>.

<sup>5</sup> Pearson, J., Thrane, L., & Wilkinson, L. (2017). Consequences of runaway and throwaway experiences for sexual minority health during the transition to adulthood. *Journal of LGBT Youth*, 14(2), 145–171, <https://www.tandfonline.com/doi/full/10.1080/19361653.2016.1264909>.

<sup>6</sup> For a review of risk factors impacting children in foster care see Matarese, M., Greeno, E. and Betsinger, A. (2017). Youth with Diverse Sexual Orientation, Gender Identity and Expression in Child Welfare: A Review of Best Practices. Baltimore, MD: Institute for Innovation & Implementation, University of Maryland School of Social Work, [https://qiclgbtq2s.org/wp-content/uploads/sites/6/2018/05/LGBTQ2S-Lit-Review\\_-5-14-18.pdf](https://qiclgbtq2s.org/wp-content/uploads/sites/6/2018/05/LGBTQ2S-Lit-Review_-5-14-18.pdf).

<sup>7</sup> The Trevor Project, 2022 National Survey on LGBTQ Youth Mental Health, [https://www.thetrevorproject.org/survey-2022/assets/static/trevor01\\_2022survey\\_final.pdf](https://www.thetrevorproject.org/survey-2022/assets/static/trevor01_2022survey_final.pdf).

<sup>8</sup> *Ibid.*

expression, and educating themselves about LGBTQ people and issues.<sup>9</sup>

Another study further quantified the negative impacts of family rejection of LGBTQI+ children, which can lead to greater representation in foster care. The study found that family behaviors, including excluding LGBTQI+ children from family events and activities because of their identity and not letting their child learn about their LGBTQI+ identity, that tried to change their child’s LGBTQ identity increased the risk of depression, suicide, illegal drug use and other serious health risks.<sup>10</sup> The study also found that family behaviors that support LGBTQI+ children including by standing up for their child when others mistreat them because of their LGBTQI+ identity had positive outcomes, helped promote self-esteem, overall health, and protected against suicidal behavior, depression and substance abuse.<sup>11</sup> The study found that LGB young adults who reported high levels of family rejection during adolescence were more than eight times more likely to report having attempted suicide, nearly six times more likely to report high levels of depression, and more than three times more likely to use illegal drugs compared with their LGB counterparts from families that reported no or low levels of family rejection.<sup>12</sup> Moreover, rejecting caregiver behavior—including refusing to use a child’s chosen name and pronouns, ridiculing or name-calling because of the child’s LGBTQI+ identity, or isolating behaviors such as blocking access to LGBTQI+ friends, events, and resources—contributes to higher rates of health and mental health problems.<sup>13</sup>

<sup>9</sup> *Ibid.*

<sup>10</sup> Innovations Institute, University of Connecticut School of Social Work, Family Acceptance Project, and National SOGIE Center (n.d.). *Parents & Families Have a Critical Impact on Their LGBTQ Children’s Health Risks & Well-Being* [Fact Sheet] [https://lgbtqfamilyacceptance.org/family-matters/Data for the fact sheet is drawn from Ryan, C \(2021\) Helping Diverse Families Learn to Support Their LGBTQ Children to Prevent Health and Mental Health Risks and Promote Well-Being, San Francisco, Family Acceptance Project, San Francisco State University. Available at https://lgbtqfamilyacceptance.org/wp-content/uploads/2021/11/FAP-Overview\\_Helping-Diverse-Families6.pdf](https://lgbtqfamilyacceptance.org/family-matters/Data for the fact sheet is drawn from Ryan, C (2021) Helping Diverse Families Learn to Support Their LGBTQ Children to Prevent Health and Mental Health Risks and Promote Well-Being, San Francisco, Family Acceptance Project, San Francisco State University. Available at https://lgbtqfamilyacceptance.org/wp-content/uploads/2021/11/FAP-Overview_Helping-Diverse-Families6.pdf) and Ryan, C., Huebner, D., Diaz, R.M., & Sanchez, J. (2009). *Family rejection as a predictor of negative health outcomes in white and latino lesbian, gay, and bisexual young adults*. *Pediatrics*, 123(1), Retrieved from <http://pediatrics.aappublications.org/content/123/1/346>.

<sup>11</sup> *Ibid.*

<sup>12</sup> Ryan, C., Huebner, D., Diaz, R.M., & Sanchez, J. (2009). *Family rejection as a predictor of negative health outcomes in white and latino lesbian, gay, and bisexual young adults*. *Pediatrics*, 123(1), Retrieved from <http://pediatrics.aappublications.org/content/123/1/346>.

<sup>13</sup> Ryan, C (2021) *Helping Diverse Families Learn to Support Their LGBTQ Children to Prevent Health*

Conversely, the study found improved health outcomes in youth whose caregivers demonstrated supportive behavior towards the child's LGBTQI+ identity, including connecting the child to an LGBTQI+ adult role model.<sup>14</sup>

#### *Experience of LGBTQI+ Children in Foster Care*

A meaningful body of research demonstrates that LGBTQI+ children in foster care face disproportionately worse outcomes and experiences than other children in foster care due to their specific health and well-being needs are often unmet. LGBTQI+ youth in foster care report experiencing mistreatment related to their sexual orientation or gender identity. One study<sup>15</sup> found that, "one of the most consistent themes that LGBTQ youth have conveyed in focus groups and qualitative interviews is a tendency to be harassed, teased, and bullied by staff, peers, and care providers . . . LGBTQ youth are often excluded and rejected by their peers and caretakers . . . It is common for LGBTQ youth in group home and foster home settings to be isolated to their own bedroom or to their own wing of the house due to fears of placing them with youth of the same sex."

Children in foster care who identify as LGBTQI+ are more likely to be placed in congregate care settings (group homes and residential care), experience multiple placements, and have adverse experiences in their placement than non-LGBTQI+-identifying youth.<sup>16</sup> One study found that LGBTQI+ youth in foster care are more likely to experience at least 10 foster care placements, with youth of color who are LGBTQ reporting the highest rates.<sup>17</sup> Moreover, older children identifying as LGBTQI+ in foster care report less satisfaction with their child welfare experience and had higher rates of negative outcomes, including emotional distress, greater rates of homelessness, and more placements.<sup>18</sup>

and Mental Health Risks and Promote Well-Being, San Francisco, Family Acceptance Project, San Francisco State University. Available at [https://lgbtfamilyacceptance.org/wp-content/uploads/2021/11/FAP-Overview\\_Helping-Diverse-Families6.pdf](https://lgbtfamilyacceptance.org/wp-content/uploads/2021/11/FAP-Overview_Helping-Diverse-Families6.pdf).

<sup>14</sup> Ibid.

<sup>15</sup> McCormick, A., Schmidt, K., and Terrazas, S. (2017) LGBTQ Youth in the Child Welfare System: An Overview of Research, Practice, and Policy, *Journal of Public Child Welfare*, 11:1, 27–39, DOI: 10.1080/15548732.2016.1221368, <https://doi.org/10.1080/15548732.2016.1221368>.

<sup>16</sup> Wilson, Cooper, Kastanis & Nezhad (2014).

<sup>17</sup> Jeffrey Poirier, *Jim Casey Youth Opportunities Initiative: Experiences and Outcomes of Youth Who Are LGBTQ*, 96.1 *Child Welfare*, 1–26 (2018), <https://www.proquest.com/docview/2056448464>.

<sup>18</sup> Wilson, B.D.M., & Kastanis, A.A. (2015). Sexual and gender minority disproportionality and

Children in foster care who identify as LGBTQI+ report a perception of poor treatment by the foster care system more frequently than their non-LGBTQI+ counterparts, and feel less frequently that they can be themselves.<sup>19</sup> Children in foster care who identify as LGBTQI+ are less likely to report at least "good" physical and mental health, and are less likely to have at least one supportive adult on whom they can rely for advice or guidance, than their non-LGBTQI+ counterparts in foster care.<sup>20</sup>

In one study that looked at LGBTQI+ status-related discrimination, 37.7 percent of children in foster care ages 12 through 21 who identify as LGBTQI+-reported poor treatment connected to their gender expression, sexual minority status, or transgender status.<sup>21</sup> The study also showed that LGBTQI+ foster youth were more likely than their non-LGBTQI+ foster youth counterparts to have been hospitalized for emotional reasons or been homeless at some point in their life.<sup>22</sup> Youth in foster care identifying as LGBTQI+ have also reported more fights in school and more mental health problems compared with their non-LGBTQI+ counterparts.<sup>23</sup>

Research has also demonstrated correlations between LGBTQI+ children who spent time in foster care and who later experienced housing instability, homelessness, and food insecurity.<sup>24</sup>

disparities in child welfare: A population-based study. *Children and Youth Services Review*, 58, 11–17, and Bianca D.M. Wilson, Angeliki A. Kastanis, Sexual and gender minority disproportionality and disparities in child welfare: A population-based study. *Children and Youth Services Review*, Volume 58, 2015, Pages 11–17, ISSN 0190–7409, <https://doi.org/10.1016/j.childyouth.2015.08.016>.

<sup>19</sup> Matarese, M., Greeno, E., Weeks, A., Hammond, P. (2021). The Cuyahoga youth count: A report on LGBTQ+ youth's experience in foster care. Baltimore, MD: The Institute for Innovation & Implementation, University of Maryland School of Social Work. <https://theinstitute.umaryland.edu/media/ssw/institute/Cuyahoga-Youth-Count.6.8.1.pdf>.

<sup>20</sup> Jeffrey Poirier, *Jim Casey Youth Opportunities Initiative: Experiences and Outcomes of Youth Who Are LGBTQ*, 96.1 *Child Welfare*, 1–26 (2018), <https://www.proquest.com/docview/2056448464>.

<sup>21</sup> Wilson, B.D.M., Cooper, K., Kastanis, A., & Nezhad, S. (2014), Sexual and Gender Minority Youth in Foster care: Assessing Disproportionality and Disparities in Los Angeles, The Williams Institute, UCLA School of Law <https://williamsinstitute.law.ucla.edu/wp-content/uploads/SGM-Youth-in-Foster-Care-Aug-2014.pdf>.

<sup>22</sup> Ibid.

<sup>23</sup> Baams, Laura., Stephen T. Russell, and Bianca D.M. Wilson. LGBTQ Youth in Unstable Housing and Foster Care, *American Academy of Pediatrics*, Volume 143, Issue 3, March 2019. <https://doi.org/10.1542/peds.2017-4211>.

<sup>24</sup> DeChants, J.P., Green, A.E., Price, M.N., & Davis, C.K. (2021), Homelessness and Housing Instability Among LGBTQ Youth, West Hollywood, CA, The Trevor Project, <https://www.thetrevorproject.org/wp-content/uploads/2022/02/Trevor-Project-Homelessness-Report.pdf>; Dworsky, A., 2013. "The Economic Well-Being of Lesbian, Gay, and Bisexual

These many findings illustrate the need for child welfare personnel and foster parents to be educated and trained on their critical role in the lives of LGBTQI+ youth to avoid re-traumatization and further victimization of youth.<sup>25</sup> Implementing strategic foster parent training and recruitment to meet the well-being needs of children who are LGBTQI+ is critical.

#### *Mental Health Needs of LGBTQI+ Youth*

Research consistently shows that when LGBTQI+ youth experience supportive environments and services, they experience the same positive mental health outcomes as other youth.<sup>26</sup> However, research demonstrates that LGBTQI+ youth in foster care face significant mental health disparities that result from experiences of stigma and discrimination. A 2020 survey found that LGBTQI+ youth in foster care were 2.6 times more likely to report a past year suicide attempt than LGBTQI+ youth who were not in foster care, with 35 percent of LGBTQI+ foster youth reporting such an attempt.<sup>27</sup> Reports of past year suicide attempt rates were even higher among LGBTQI+ foster youth of color (38 percent) and non-binary and transgender foster youth (45 percent).<sup>28</sup> Additionally, two child welfare agency studies showed that foster youth who identified as LGBTQI+ were more likely to be hospitalized for emotional reasons compared to non-

Youth Transitioning Out of Foster Care," Mathematica Policy Research Reports Mathematica Policy Research, [https://www.acf.hhs.gov/sites/default/files/documents/opre/opre\\_lgbt\\_brief\\_01\\_04\\_2013.pdf](https://www.acf.hhs.gov/sites/default/files/documents/opre/opre_lgbt_brief_01_04_2013.pdf).

<sup>25</sup> For a review of best practices for child welfare practitioners, see Matarese, M., Greeno, E. and Betsinger, A. (2017). Youth with Diverse Sexual Orientation, Gender Identity and Expression in Child Welfare: A Review of Best Practices. Baltimore, MD: Institute for Innovation & Implementation, University of Maryland School of Social Work. [https://qiclgbtq2s.org/wp-content/uploads/sites/6/2018/05/LGBTQ2S-Lit-Review\\_-5-14-18.pdf](https://qiclgbtq2s.org/wp-content/uploads/sites/6/2018/05/LGBTQ2S-Lit-Review_-5-14-18.pdf).

<sup>26</sup> Substance Abuse and Mental Health Services Administration (SAMHSA): Moving Beyond Change Efforts: Evidence and Action to Support and Affirm LGBTQI+ Youth. SAMHSA Publication No. PEP22–03–12–001. Rockville, MD: Center for Substance Abuse Prevention. Substance Abuse and Mental Health Services Administration, 2023. <https://store.samhsa.gov/sites/default/files/pep22-03-12-001.pdf>.

<sup>27</sup> The Trevor Project, The Trevor Project Research Brief: LGBTQ Youth with a History of Foster Care (2021), [https://www.thetrevorproject.org/wp-content/uploads/2021/07/LGBTQ-Youth-with-a-History-of-Foster-Care\\_-May-2021.pdf](https://www.thetrevorproject.org/wp-content/uploads/2021/07/LGBTQ-Youth-with-a-History-of-Foster-Care_-May-2021.pdf).

<sup>28</sup> The Trevor Project, The Trevor Project Research Brief: LGBTQ Youth with a History of Foster Care (2021), [https://www.thetrevorproject.org/wp-content/uploads/2021/07/LGBTQ-Youth-with-a-History-of-Foster-Care\\_-May-2021.pdf](https://www.thetrevorproject.org/wp-content/uploads/2021/07/LGBTQ-Youth-with-a-History-of-Foster-Care_-May-2021.pdf).

LGBTQI+ foster youth.<sup>29</sup> Due to the mental health challenges experienced by LGBTQI+ children in foster care it is essential to place LGBTQI+ children in placements that can provide the support and specialized resources necessary to support their health and wellbeing. We encourage the public to submit additional data, including personal stories from current and former LGBTQI+ foster children and others, that speak to the risks to children of placements that are not safe and appropriate, and the advantages of placements that are.

One area of particular concern for the mental health of LGBTQI+ youth in foster care may be the possible exposure to so-called “conversion therapy.” Efforts to change or suppress a child’s sexual orientation, gender identity, or gender expression are not supported by credible evidence and have been rejected as harmful by the American Academy of Child and Adolescent Psychiatry, the American Academy of Pediatrics, the American Psychiatric Association, the American Psychological Association, and the National Association of Social Workers, among others.<sup>30</sup> The American Psychological Association (APA) has concluded that any behavioral health or gender identity change effort that attempts to change an individual’s gender identity or expression is inappropriate.<sup>31</sup> After reviewing scientific evidence on gender identity change efforts, harm, affirmative treatments, and professional practice guidelines, the APA has affirmed gender identity change efforts are associated with reported harm, and the APA opposes gender identity change efforts because of their association with harm.<sup>32</sup> Likewise, according to the APA sexual orientation change efforts are “coercive, can be harmful, and should

not be part of behavioral health treatment.”<sup>33</sup>

Further, evidence from qualitative studies, listening sessions, and Congressional testimony makes clear that many LGBTQI+ foster youth do not currently receive placements or services that are safe and appropriate, as required by statute.<sup>34</sup>

#### *Current Approaches for Meeting the Needs of LGBTQI+ Children in Foster Care*

Current approaches for meeting the needs of LGBTQI+ children vary across states and tribes. Some agencies use, or are working towards implementing, child welfare practice models that address the specific needs of LGBTQI+ children, in line with existing Federal statutory requirements applicable to all children in foster care. In 2023, the Child Welfare Information Gateway issued Protecting the Rights and Providing Appropriate Services to LGBTQI+ Youth in Out-of-Home Care (the Report).<sup>35</sup> The report provides a review of state laws, regulations, and policies related to reducing the negative experiences of any child who identifies as LGBTQI+, including laws and policies that support a child’s ability to be safe and free from discrimination; have access to needed care and services; and be placed in safe and appropriate placement settings with caregivers who have received appropriate training. The Report found that 22 states and the District of Columbia require agencies to provide youth who identify as LGBTQI+ with services and supports that are tailored to meet the specific needs of an LGBTQI+ child, such as providing

clothing and hygiene products and referring to the child by the name and pronouns that align with their gender identity.<sup>36</sup> Eight states and the District of Columbia offer developmentally appropriate case management that helps child welfare workers support LGBTQI+ youth.<sup>37</sup> Fifteen states and the District of Columbia require training on LGBTQI+ issues for foster caregivers and related staff, including on how to communicate effectively and professionally with youth who identify as LGBTQI+, and education on current social science research and common risk factors for LGBTQI+ youth experiencing various negative outcomes.<sup>38</sup>

However, the Report also demonstrates that a majority of agencies do not have laws, regulations, or policies to make appropriate services and supports, or safe and appropriate placements, available to a child in foster care who identifies as LGBTQI+. Without such laws or policies, agencies may not adequately meet statutory requirements that guarantee LGBTQI+ youth in foster care face, like all foster youth, a safe and appropriate placement. In March 2022, ACF published Information Memorandum (IM) ACYF-CB-IM-22-01 which included suggestions on how agencies could best provide services and supports to each child who identifies as LGBTQI+ who is at risk of entering or is in foster care.<sup>39</sup> ACF is proposing this NPRM to address the extensively documented risk factors and adverse outcomes that children in foster care who identify as LGBTQI+ experience.

### III. Overview of Proposal

To support states and tribes in complying with Federal laws that require that all children in foster care receive safe and proper care, in this NPRM, ACF is proposing to require that agencies implement specific processes and requirements to ensure children in foster care who identify as LGBTQI+ are provided with placements the agency designates as safe and appropriate for an LGBTQI+ child, and with services that are necessary to support their health and wellbeing. These requirements clarify how title IV-E/IV-B agencies must meet IV-E and IV-B statutory requirements, including for the case review system and case plan, to appropriately serve children in foster care who identify as LGBTQI+. While

<sup>29</sup> Wilson, B.D.M., Cooper, K., Kastanis, A., & Nezhad, S. (2014). Sexual and Gender Minority Youth in Foster care: Assessing Disproportionality and Disparities in Los Angeles. Los Angeles, The Williams Institute, UCLA School of Law. Also see Institute for Innovation and Implementation at University of Maryland’s School of Social Work and the National Quality Improvement Center on Tailored Services, Placement Stability, and Permanency for LGBTQ2S Children and Youth in Foster Care (2021), The Cuyahoga Youth Count: A Report on LGBTQ+ Youth Experience in Foster Care, <https://theinstitute.umaryland.edu/media/ssw/institute/Cuyahoga-Youth-Count.6.8.1.pdf>.

<sup>30</sup> Substance Abuse and Mental Health Services Administration, FAQs About Finding LGBTQI+ Inclusive Providers. <https://www.samhsa.gov/behavioral-health-equity/lgbtqi/faqs>.

<sup>31</sup> American Psychological Association, APA Resolution of Gender Identity Change Efforts, February 2021, <https://www.apa.org/about/policy/resolution-gender-identity-change-efforts.pdf>.

<sup>32</sup> Ibid.

<sup>33</sup> American Psychological Association, APA Resolution on Sexual Orientation Change Efforts, February 2021, <https://www.apa.org/about/policy/resolution-sexual-orientation-change-efforts.pdf>.

<sup>34</sup> For examples, see Charles Gallo testimony before the Ways and Means Committee Worker and Family Support Subcommittee Hearing on “Making a Difference for Families and Foster Youth,” May 12, 2021. <https://www.congress.gov/117/meeting/house/112622/witnesses/HHRG-117-WM03-Wstate-Charles-Gallo-W-20210512.pdf>, Creating Safer Spaces for Youth who are LGBTQ in Broward County, Florida: Collecting SOGIE Data for Lice-Coaching Services. Vol. 96, No. 1, Special Issue: Sexual Orientation, Gender Identity/Expression, and Child Welfare (First of two issues) (2018), pp. 27–52 (26 pages) <https://www.jstor.org/stable/48628034>, Mountz, S., Capous-Desyllas, M., & Pourciau, E. (2018). ‘Because we’re fighting to be ourselves’ voices from former foster youth who are transgender and gender expansive. Child Welfare, Suppl.Special Issue: Sexual Orientation, Gender Identity/Expression, and Child Welfare, 96(1), 103–125. Retrieved from <https://www.proquest.com/scholarly-journals/because-were-fighting-be-ourselves-voices-former/docview/2056448509/se-2>.

<sup>35</sup> Child Welfare Information Gateway, Protecting the Rights and Providing Appropriate Services to LGBTQIA2S+ Youth in Out-of-Home Care, 2023, <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/LGBTyouth/>.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Children’s Bureau, Guidance for Title IV-B and IV-E Agencies When Serving LGBTQI+ Children and Youth, March 2, 2022, <https://www.acf.hhs.gov/cb/policy-guidance/im-22-01>.



the general requirements for the case review system are not new. ACF is proposing to prescribe how agencies must implement the requirements to provide placements and services to children in foster care who identify as LGBTQI+.

Under this proposed rule, agencies must ensure that a safe and appropriate placement is available for and provided to any child in foster care who identifies as LGBTQI+ and requests such a placement. The NPRM proposes to require agencies to ensure that the totality of their child welfare system includes sufficient placements for LGBTQI+ children that meet these standards, but would not require that every provider become designated as a safe and appropriate placement for LGBTQI+ children.<sup>40</sup> To be considered as a safe and appropriate placement for a LGBTQI+ child means the provider with whom the agency places the child will establish an environment free of hostility, mistreatment, or abuse based on the child's LGBTQI+ status, the provider is trained to be prepared with the appropriate knowledge and skills to provide for the needs of the child related to the child's self-identified sexual orientation, gender identity, and gender expression,<sup>41</sup> and the provider will facilitate the child's access to age-appropriate resources, services, and activities that support their health and well-being (671(a)(24)) if the child wishes to access those resources, services, and activities. The proposed rule also includes requirements to notify children about the availability of these placements, the process to request such a placement, and the process to report placement concerns. The proposed requirements would also prohibit retaliation against a child who identifies as or is perceived to be LGBTQI+, require specific steps before the placement of transgender, intersex, and gender non-conforming children in sex-segregated child-care institutions (CCIs), require specific training for IV-E/IV-B

agency caseworkers and supervisors on how to appropriately serve LGBTQI+ youth and on how to implement the procedural requirements of this proposed rule. The proposed requirements would also require IV-E/IV-B agencies to ensure that agency contractors and subrecipients, as well as any placement providers who do not seek designation as safe and appropriate placements, are informed of the procedural requirements of the proposed rule. These proposed requirements aim to fulfill existing case review system requirements and other statutory requirements that require that all children in foster care are appropriately placed in a safe setting consistent with the best interest and special needs of each child. The details of our proposals are described further in the section by section of the preamble below.

Furthermore, ACF is proposing to modify the current regulations in § 1355.34 to monitor a state agency's compliance with the requirement in proposed § 1355.22(a)(1) through the Child and Family Service Reviews (CFSR). The CFSRs are a formal monitoring protocol in which the state's efforts to comply with title IV-E and IV-B program requirements are assessed at the case and systems level. No tribal title IV-E agency is subject to CFSRs because none has a sufficient number of children in foster care and children receiving in-home services for ACF to apply the onsite CFSR case sampling procedures.

Upon enactment of a final rule, ACF proposes to monitor both state and tribal title IV-E/IV-B agency's plan compliance with the proposed requirements of § 1355.22(a) through (c) using the existing partial review process outlined in § 1355.34 because these requirements must be included in the state or tribe's title IV-E plan that ACF must review and approve. Therefore, no regulatory changes to the partial review process are necessary. If ACF becomes aware of a potential non-compliance issue with § 1355.22, it will initiate the partial review process. Evidence of non-conformity identified through the partial review process may result in the state/tribal title IV-E/IV-B agency entering into a program improvement plan. The program improvement plan will be developed on a case-by-case basis by ACF and the agency will consider the extent of noncompliance. If the title IV-E/IV-B agency remains out of compliance, the agency will be subject to a penalty related to the extent of the noncompliance.

## Equity Impact

This NPRM is consistent with the Administration's priority of advancing equity for LGBTQI+ individuals as well as those historically underserved and adversely affected by persistent poverty and inequality (see *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Executive Order (E.O.) 13985)*, issued Jan. 20, 2021; *Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals (E.O. 14075)*, issued June 15, 2022). E.O. 14075 laid out objectives to reduce disparities that LGBTQI+ children face, including in foster care. LGBTQI+ children often have greater service needs, are at an increased risk for poor outcomes, are more likely to be placed in group settings and experience more placements, including those that may harm their well-being by undermining or suppressing their identity. By requiring agencies to ensure that safe and appropriate placements are available for and provided to LGBTQI+ children, we will work with agencies to ensure compliance with statutory requirements for all children in foster care to have a safe and appropriate placement that supports their health and well-being.

## IV. Section-by-Section Discussion of Proposed Regulatory Changes

### *Required Protections for LGBTQI+ Children in Foster Care To Receive Safe and Appropriate Placements*

#### Section 1355.22

Title IV-E establishes case plan requirements in sections 471(a)(16), 475(1) and 475(5)(A) and (D) of the Act and 45 CFR 1356.21(g), assuring that a child in foster care receives safe and proper care consistent with the best interest and special needs of the child, and that the case plan provide a discussion of the safety and appropriateness of the child's placement. To ensure that LGBTQI+ youth receive safe and proper care consistent with their best interests and special needs, in paragraph (a), ACF proposes procedural requirements that the title IV-E/IV-B agency must meet for each child in foster care who self-identifies as LGBTQI+ or who has entered the child welfare system, in whole or in part, because of familial conflict related to their LGBTQI+ identity.

ACF proposes to require in paragraph (a)(1) that the title IV-E/IV-B agency ensure a safe and appropriate placement is available for, and provided to, any

<sup>40</sup> As described in the Section-by-Section Discussion of Proposed Regulatory Changes, for example, nothing in this proposed rule will limit, preclude, or deny any religious provider's ability to participate in the foster care system, as religious providers who have sincerely held religious beliefs that conflict with the policies of this proposed rule are not required to offer such placements for LGBTQI+ children.

<sup>41</sup> Note that only providers seeking to be designated as safe and appropriate providers for LGBTQI+ children would be required to complete specific training to provide for the needs of the child related to the child's self-identified sexual orientation, gender identity, and gender expression. Training and notification requirements proposed for all other contractors and providers are outlined in the Section-by-Section Discussion of Proposed Regulatory Changes.



child in foster care who identifies as LGBTQI+.

#### Requirements of a Safe and Appropriate Placement

For a placement to be considered safe and appropriate for a child who identifies as LGBTQI+, we propose to require that the title IV–E/IV–B agency make available and ensure that a child is placed with a foster care provider (e.g., foster family home, child care institution) who: (1) will establish an environment free of hostility, mistreatment, or abuse based on the child's LGBTQI+ status, (2) is trained to be prepared with the appropriate knowledge and skills to provide for the needs of the child related to the child's self-identified sexual orientation, gender identity, and gender expression, and (3) will facilitate the child's access to age-appropriate resources, services, and activities that support their health and well-being.

#### 1. A Placement That Is Free From Hostility, Mistreatment, or Abuse

Title IV–E provides that each child in foster care must receive a placement that is safe. In paragraph (a)(1)(i) we propose that the agency must place the child with a placement provider (e.g., foster family home, child care institution) who will establish an environment free from hostility, mistreatment, or abuse based on the child's LGBTQI+ identity and status. In the background section of this proposed rule, we explain the significant body of evidence which demonstrates that when LGBTQI+ children face hostility, stigma, or rejection related to their sexual orientation or gender identity they are put at significant increased risk of adverse mental health outcomes and attempt suicide at higher rates.<sup>42</sup> For example, under the proposed requirement, a provider who used derogatory language or slurs about a child's LGBTQI+ identity would not be a safe and appropriate placement. Similarly, a provider who attempted to undermine, suppress, or change the sexual orientation, gender identity, or gender expression of a child, including through the use of so-called “conversion therapy” would not be a safe and appropriate placement. As explained by the Substance Abuse and Mental Health Services Administration (SAMHSA),

<sup>42</sup> See Substance Abuse and Mental Health Services Administration (SAMHSA): *Moving Beyond Change Efforts: Evidence and Action to Support and Affirm LGBTQI+ Youth*. SAMHSA Publication No. PEP2203–12–001. Rockville, MD: Center for Substance Abuse Prevention. Substance Abuse and Mental Health Services Administration, 2023.

efforts that attempt to suppress or change a child's sexual orientation or gender identity “are inappropriate, ineffective, and harmful practices that should not be provided to children and adolescents.”<sup>43</sup> In meeting the proposed requirement, the agency must not place LGBTQI+ identifying children with a provider who unreasonably limits or denies a child's ability to express their sexual orientation, gender identity, or gender expression. For example, to be considered a safe and appropriate placement, a provider is expected to utilize the child's identified pronouns, chosen name, and allow the child to dress in an age-appropriate manner that the child believes reflects their self-identified gender identity and expression.

#### 2. A Placement With a Provider Trained To Provide for the Needs of an LGBTQI+ Child

For a placement to be considered safe and appropriate for children who identify as LGBTQI+, we propose in paragraph (a)(1)(ii) that the agency must place the child with a placement provider who is trained to be prepared with the appropriate knowledge and skills to provide for the needs of the child related to the child's self-identified sexual orientation, gender identity, and gender expression. This includes foster family home providers and staff who work in child-care institutions (CCIs) as defined in 45 CFR 1355.20.<sup>44</sup>

Title IV–E requires the agency to certify that foster parents are “prepared adequately with the appropriate knowledge and skills to provide for the needs of the child [and] that the preparation will be continued, as necessary, after the placement of the child” (471(a)(24)). These requirements are important for protecting the safety and mental health of the child. As explained in studies cited above and SAMHSA's 2023 report *Moving Beyond Change Efforts: Evidence and Action to Support and Affirm LGBTQI+ Youth*, research demonstrates that when a LGBTQI+ child has their identity respected and supported by the

<sup>43</sup> Substance Abuse and Mental Health Services Administration (SAMHSA): *Moving Beyond Change Efforts: Evidence and Action to Support and Affirm LGBTQI+ Youth*. SAMHSA Publication No. PEP22–03–12–001. Rockville, MD: Center for Substance Abuse Prevention. Substance Abuse and Mental Health Services Administration, 2023.)

<sup>44</sup> As noted throughout this document, the proposed rule would not require that all providers seek designation as a safe and appropriate placement for LGBTQI+ children, but instead requires the state or tribal title IV–E/IV–B agency to ensure that the totality of its child welfare system provides safe and appropriate placements for all LGBTQI+ children.

caregivers in their life, their risks of attempted suicide decrease dramatically.

Some states already provide training of practices to serve LGBTQI+ children, as noted on the Child Welfare Information Gateway's State Statutes Search.<sup>45</sup> Many agencies have not yet incorporated provider training addressing the needs of a child who identifies as LGBTQI+ into their curriculum. We anticipate that all title IVE/IVB agencies will need to develop or revise their training curriculum to meet the proposed provider training requirements in this NPRM.

We are not proposing a specific training curriculum that agencies would need to use to train foster care providers (i.e., foster family homes and child care institutions). However, agencies would need to ensure that the training curriculum adequately prepares foster family home and child-care institution providers to meet the best interests and special needs of an LGBTQI+ child. For a training to adequately prepare a provider to meet the best interests and special needs of an LGBTQI+ child, it would need to be a training that reflects evidence, studies, and research about the impacts of rejection, discrimination, and stigma on the safety and wellbeing of LGBTQI+ youth, and provides information for providers about practices that promote the safety and wellbeing of LGBTQI+ youth. HHS seeks comments on how ACF can ensure these training curriculums for foster care providers are of high quality.

We encourage agencies to consider using or adapting foster care provider training already established by entities with specialized knowledge on this topic, such as the National SOGIE Center, a collaborative led by Innovations Institute at the University of Connecticut School of Social Work and funded by the ACF Children's Bureau to improve permanency, stability, and well-being for this population.<sup>46</sup> The Child Welfare Information Gateway has also issued publications providing guidance on how to create a welcoming and safe placement for children in foster care who identify as LGBTQI+.

<sup>45</sup> Child Welfare Information Gateway, State Statute Search. <https://www.childwelfare.gov/topics/systemwide/laws-policies/state/>.

<sup>46</sup> See National SOGIE Center, Trainings, <https://sogiecenter.org/offering/training/>. National SOGIE Center trainings include trainings for agency facilitators, such as All Children—All Families Training of Facilitators. Also see the San Francisco State University Family Acceptance Project, <https://familyproject.sfsu.edu/>.

including Supporting LGBTQ+ Youth: A Guide for Foster Parents.<sup>47</sup>

As explained in studies cited above and SAMHSA's 2023 Moving Beyond Change Efforts: Evidence and Action to Support And Affirm LGBTQI+ Youth, research demonstrates that even just one supportive adult can positively impact the mental health of LGBTQI+ youth. This support can reduce negative mental health outcomes and risk of suicide. The placement provider can and should be a supportive adult for the children in their care. Moreover, the SAMHSA report also found that "family or caregiver, peer, school, and community support for youth of diverse sexual orientation and/or gender identity promotes better mental health and fewer negative outcomes and can lead to positive development and emotional resilience."<sup>48</sup> These findings demonstrate how a supportive placement can promote positive outcomes, while also illustrating how a lack of support on the part of an adult caregiver does not.

### 3. A Placement That Will Facilitate Access to Age-Appropriate Resources, Services, and Activities

The title IV–E/IV–B case review system requires that the agency have procedures for assuring that each child has a case plan designed to achieve placements in the most appropriate setting available consistent with the best interests and special needs of the child (422(b), 471(a)(16), 475(1)(B), and 475(5)). To ensure that children have their special needs met, we propose in paragraph (a)(1)(ii)(B) that the agency must place the LGBTQI+ child with a placement provider will facilitate the child's access to age-appropriate resources, services, and activities that support the child's health and wellbeing, which may include services and supports related to their sexual orientation or gender identity. This proposal will ensure specifically that a child who identifies as LGBTQI+ will have access to a range of services and activities that addresses their specific health and wellbeing needs. These may include, but are not limited to, facilitating access to behavioral health supports respectful of their LGBTQI+ identity, interacting with LGBTQI+ mentors and peers, joining and participating in affinity groups, and connecting the child to available LGBTQI+ supportive resources and

events, either in person or virtually depending on local availability. A significant body of research demonstrates that these services are essential to support the child's safe and appropriate placement, and to support the emotional, developmental, and behavioral health needs of LGBTQI+ children in foster care.<sup>49</sup> As such, a safe and appropriate provider for an LGBTQI+ child must not discourage or prevent the child who identifies as LGBTQI+ from receiving age-appropriate services and supports that support their health and well-being related to the child's self-identified sexual orientation, gender identity, or gender expression. HHS understands that some IV–E/IV–B agencies will have more limited access to age-appropriate resources, services, and activities due to fewer service providers able to provide LGBTQI+ supportive services. HHS seeks comments on how ACF can best support agencies, including those located in rural and other resource limited areas, in fulfilling this requirement.

### Prohibition of Disclosure of Sensitive Information

Title IV–E/IV–B agencies are prohibited from disclosing information concerning foster children for any purpose except for those specifically authorized by statute section 471(a)(8). Information about a foster child's LGBTQI+ identity, as well as any other information in their foster care case file, is protected by these confidentiality requirements. Foster children's personal information may only be disclosed for specific authorized purposes, which are, in paraphrase: the administration of the title IV–E plan and that of other Federal assistance programs; any investigation, prosecution, or audit conducted in connection with any of those programs; and reporting child abuse and neglect to appropriate authorities. Under ACF regulations and policy, information that the IV–E/IV–B agency discloses for those allowable purposes may not be redisclosed by recipients unless the redisclosure is also for one of the enumerated allowable purposes. 45 CFR 205.50; Child Welfare Policy Manual 8.4E.

### Notification and Requests for Safe and Appropriate Placements

In paragraph (a)(2) ACF proposes to require that the title IV–E/IV–B agency establish a process by which a child identifying as LGBTQI+ may request a safe and appropriate placement as described in paragraph (a)(1). This will help the agency ensure that plan requirements regarding placements are fulfilled, consistent with the child's best interest and special needs. In paragraph (a)(2)(i), we propose that the agency's process include a notice to specified children of the availability of these placements and how to request them. Specifically, at a minimum, the agency must provide notice to a child aged 14 and over, and a child under age 14 if the child was removed, either in whole or in part, as a result of familial conflict about their actual or perceived LGBTQI+ identity, or if the child's LGBTQI+ identity is otherwise known to the agency. This proposed requirement is imposed on the state or tribal agency and is not a requirement of providers. As discussed further on in the proposed rule, this proposal gives states and tribes flexibility to determine how to work with providers to disseminate such information.

We are proposing the agency provide notification to all children aged 14 and older because the existing case plan requirement in section 475(1)(B) of the Act already requires that each child's case plan "shall be developed in consultation with the child" for children 14 and older. Nothing in this proposed rule would preclude agencies from notifying children earlier of the availability of safe and appropriate placements.

In paragraph (a)(2)(ii), ACF proposes that the notice must be provided in an age-appropriate manner, both verbally and in writing. We propose these two communication forms to provide the child with different opportunities and ways to understand that placements described in paragraph (a)(1) are available and how they can be requested. For example, having a verbal conversation provides a ready opportunity for a child to ask questions to their caseworker as needed. In contrast, written information allows the agency to provide children with uniform, consistent information that a child or youth can review at their convenience. The agency process for a child to request a placement defined in proposed paragraph (a)(1) may vary by state, tribe, and/or locality. Examples include a process for the child to: call or text the agency caseworker/other agency personnel, inform agency

<sup>47</sup> Child Welfare Information Gateway (2021). Supporting LGBTQ+ youth: A guide for foster parents. U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. <https://www.childwelfare.gov/pubPDFs/LGBTQyouth.pdf>.

<sup>49</sup> See Substance Abuse and Mental Health Services Administration (SAMHSA): Moving Beyond Change Efforts: Evidence and Action to Support and Affirm LGBTQI+ Youth. SAMHSA Publication No. PEP22-03-12-001. Rockville, MD: Center for Substance Abuse Prevention. Substance Abuse and Mental Health Services Administration, 2023.

personnel in person, or email the agency caseworker/other agency personnel. Other options may include establishing private, secure accounts on a social media platform or smart phone application that could be used by children in foster care and accessed by designated agency caseworkers or agency personnel. In paragraph (a)(2)(iii), we propose that the notice must inform the child of how they may request a safe and appropriate placement.

Once the child's LGBTQI+ identity is known to the title IV-E/IV-B agency, it is the responsibility of the agency to provide the required information to the child, while protecting the privacy and confidentiality of the child. Regardless of the method used, agencies must ensure the privacy and confidentiality of any information shared by a child who is seeking a safe and appropriate placement.

#### Reporting and Responding to Concerns About Placements That Are Not Safe or Appropriate

In paragraph (a)(3), ACF proposes to require the title IV-E/IV-B agency to implement a process for children identifying as LGBTQI+ to report concerns about any placements that do not meet the requirements of paragraph (a)(1). We are proposing this requirement to ensure that agencies meet case plan requirements to assure that the child receives safe and appropriate care.

In paragraph (a)(3)(i), we propose that the agency provide a notice of the availability of this process to all children who meet the requirements of paragraphs (a)(2)(i)(A) and (B). Specifically, we propose that the agency provide the notice to all children in foster care age 14 and over, and a child under age 14 if the child was removed, either in whole or in part, as a result of familial conflict about their actual or perceived LGBTQI+ identity, or if the child's LGBTQI+ identity is otherwise known to the agency. Once the child's LGBTQI+ identity is known to the title IV-E/IV-B agency, it is the responsibility of the agency to provide the information about the agency's process to the child.

The proposed agency process for children to report concerns about their placement may vary by state, tribe, and/or locality. Examples include a process for the child to: call or text the agency caseworker/other agency personnel, inform agency personnel in person, call a hotline, or email the agency caseworker/other agency personnel. Other options may include establishing private, secure accounts on a social

media platform or smart phone application that could be used by children and accessed by designated agency caseworkers or agency personnel. Regardless of the method used, agencies must ensure the privacy and confidentiality of any information shared by a child who is seeking a safe and appropriate placement. In paragraph (a)(3)(ii), ACF proposes that the agency must provide notice to the child explaining how to report concerns about placements to the child in an age-appropriate manner, both verbally and in writing. We propose these two communication forms to provide the child with different opportunities and ways to understand the agency's process for the child to make a report about their placement concerns not meeting paragraph (a)(1). For example, having a verbal conversation provides a ready opportunity for a child to ask questions to their caseworker as needed. In contrast, written information allows the agency to provide children with uniform, consistent information that a child or youth can review at their convenience.

We propose in paragraph (a)(3)(iii) that the agency respond promptly to the child's reported concerns. The title IV-E/IV-B agency must notify all children who meet the requirements of paragraph (a)(2)(i) of the availability of this process in an age-appropriate manner, both verbally and in writing and in a manner consistent with the agency's timeframes for investigating child abuse and neglect reports.

ACF has reviewed state agencies policies and practices about investigating child abuse and neglect in order to provide context for this proposal and identified existing state agency requirements for handling such reports and responding to reports with different levels of urgency.<sup>50</sup> We propose that the agency determine the timeframe for responding promptly to a child's report by requiring the agency to align this proposed process with existing timelines for agency child abuse and neglect reporting and investigating procedures. All states are required to initiate a child abuse and neglect investigation in a timely manner, which is generally defined as within 72 hours. However, when there is reasonable cause to believe that a child is in imminent danger, most agencies require investigations to be initiated immediately, in as little as two hours and not longer than 24 hours after the report is made. Further, in many

agencies, the investigation must begin within 12 hours of a report if serious harm is indicated. In certain cases, we anticipate that a report from a LGBTQI+ youth that they feel their placement is not safe or appropriate should merit a response of great urgency from the agency. For example, given the extensive evidence that LGBTQI+ youth who face bullying, discrimination, or harassment related to their sexual orientation or gender identity are at significantly increased risk of violence or self-harm, we anticipate that agencies should respond with urgency when a LGBTQI+ child raises concerns that a placement that is not safe and appropriate.

ACF solicits public comment on whether and how best to define "promptly" as applied to this provision, understanding that the circumstances of the child's report may dictate the timeframes and immediacy of the action the IV-E/IV-B agency must take in responding to the report.

#### Protection From Retaliation

In paragraph (a)(4), ACF proposes to require that the title IV-E/IV-B agency have a procedure to ensure that no child in foster care experiences retaliation when the child has disclosed their LGBTQI+ identity, is otherwise reported or perceived to have an LGBTQI+ identity, has requested a safe and appropriate placement, or has reported concerns that the placement is not meeting the requirements of paragraph (a)(1). Retaliation in this context can be committed by title IV-E/IV-B agency personnel, the agency's contractors, or foster care providers. This proposed requirement will assist agencies in ensuring that a child in foster care receives safe and appropriate care consistent with the best interest and special needs of the child. The term retaliation means imposing negative consequences on the child because of the child's disclosure of their LGBTQI+ identity, perceived LGBTQI+ identity, request, or report. This may include such things as unwarranted placement changes (including unwarranted placement in congregate care rather than in family-like settings), restriction of access to LGBTQI+ peers or age-appropriate materials, required participation in efforts to degrade, disparage or change the child's sexual orientation or gender identity, disclosing the child's LGBTQI+ identity in ways that cause harm or risk the privacy of the child, or other activities that stigmatize a child's LGBTQI+ identity.

ACF is proposing this requirement because we are concerned about the

<sup>50</sup> Child Welfare Information Gateway, State Statute Search. <https://www.childwelfare.gov/topics/systemwide/laws-policies/state/>.

potential for a child who identifies or is perceived as LGBTQI+ to be subjected to negative consequences in response to disclosure of their actual or perceived LGBTQI+ identity.

The agency must ensure that children who disclose their identity, are perceived to have an LGBTQI+ identity, report a problem with a placement, or request a safe and appropriate placement are not subjected to any attempt to undermine, suppress, or change their sexual orientation, gender identity, or gender expression, efforts sometimes referred to as so-called “conversion therapy.” This includes ensuring the privacy and confidentiality of any information shared during these processes. As described in the background section of this proposed rule, these practices put LGBTQI+ youth at significant risk and are never safe or appropriate.

#### Access to Supportive and Age-Appropriate Services

In paragraph (a)(5), ACF proposes to require that the title IV–E/IV–B agency ensure that children who identify as LGBTQI+ have access to age-appropriate services that support their needs related to their sexual orientation and gender identity or expression. This includes clinically appropriate mental and behavioral health care supportive of their sexual orientation and gender identity and expression as needed. Clinically appropriate services means that they are based on current evidence and generally accepted medical standards of care.

Studies show that LGBTQI+ children have higher rates of suicidality than their heterosexual peers.<sup>51</sup> Two recent child welfare agency studies showed that LGBTQI+ youth in foster care were more likely to be hospitalized for emotional reasons compared to non-LGBTQI+ youth.<sup>52</sup> Being in foster care also appears to be an independent risk factor for LGBTQI+ youth: a 2020 survey found that “LGBTQ youth who reported having been in foster care had three

times greater odds of reporting a past-year suicide attempt compared to those who had not.”<sup>53</sup>

The proposal to ensure that children who identify as LGBTQI+ have access to services that are tailored to their specific needs, including needs related to their LGBTQI+ identity is supported by the existing case plan requirements as defined in section 475(1)(B) of the Act, specifically, the section requiring that each child have a plan “for assuring that . . . services are provided to the parents, child, and foster parents in order to . . . address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.” The proposal also provides guidance to states and tribes regarding how ACF interprets, for LGBTQI+ children, the IV–E state plan requirement that agencies develop and implement standards to ensure that children in foster care placements are provided quality services that protect their safety and health. Section 471(a)(22).

ACF understands that some states also have few services providers able to provide LGBTQI+ supportive services. ACF seeks comments on how ACF can best support agencies, including those located in rural and other resource limited areas, in fulfilling this requirement.

#### Placement Requirements for Transgender, Gender Non-Conforming, and Intersex Children

The title IV–E statute provides that each child must have a case plan designed to achieve placements in the most appropriate setting available consistent with the best interests and special needs of the child (422(b), 471(a)(16), 475(1)(B), and 475(5)). To meet these statutory requirements, in paragraph (b), ACF proposes to require when the title IV–E/IV–B agency is placing a transgender, gender non-conforming, and intersex child with a safe and appropriate provider that is a sex segregated child-care institution, that they must make placements consistent with the child’s self-identified gender identity. Evidence demonstrates that when transgender, intersex, or gender non-conforming youth have their gender identity respected it reduces the risk of adverse mental health outcomes and attempted suicide, and provides benefits such as enhancing a child’s sense of safety and

overall well-being, supporting their sense of self and positively impacting their mental health. Conversely, when transgender<sup>54</sup> gender non-conforming youth are forced to use sex-segregated spaces that do not align with their gender identity it can exacerbate the psychological distress related to gender dysphoria.<sup>55</sup> The IV–E/IV–B agency must consult with the transgender, gender non-conforming, or intersex child to provide an opportunity to voice any concerns related to placement when the agency is considering a placement in such a facility. when the agency is considering a placement in such a facility.

#### Training and Informational Requirements

In paragraph (c), ACF proposes to require that title IV–E/IV–B agencies ensure that their employees who have responsibility for placing children in foster care, making foster care placement decisions, or providing services are trained to implement the procedural requirements of this proposed rule and to appropriately serve LGBTQI+ children. Such training should adequately prepare caseworkers and supervisors with the appropriate knowledge and skills to address the needs of foster children on their caseload related to sexual orientation, gender identity, and expression. The training should also ensure that all agency caseworkers and supervisors are prepared to implement and fulfill the requirements of this proposed rule. For a training to adequately prepare agency staff to meet the best interests and special needs of an LGBTQI+ child, it would need to be a training that reflects evidence, studies, and research about the impacts of rejection, discrimination, and stigma on the safety and wellbeing of LGBTQI+ youth, and provides information for agency staff about practices that promote the safety and wellbeing of LGBTQI+ youth. This proposed requirement is necessary to ensure that IV–E/IV–B agencies can properly implement the case plan and case review requirements of the Act for LGBTQI+ foster children.

In paragraph (c), ACF also proposes to require that title IV–E/IV–B agencies ensure that all agency contractors and subrecipients who have responsibility

<sup>51</sup> The Trevor Project (2021), Facts About LGBTQ Youth Suicide. <https://www.thetrevorproject.org/resources/article/facts-about-lgbtq-youth-suicide/>.

<sup>52</sup> Wilson, B.D.M., Cooper, K., Kastanis, A., & Nezhad, S. (2014). Sexual and Gender Minority Youth in Foster care: Assessing Disproportionality and Disparities in Los Angeles. Los Angeles: The Williams Institute, UCLA School of Law. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/SGM-Youth-in-Foster-Care-Aug-2014.pdf>.

<sup>1</sup> Matarese, M., Greeno, E., Weeks, A., Hammond, P. (2021). The Cuyahoga youth count: A report on LGBTQ+ youth’s experience in foster care. Baltimore, MD: The Institute for Innovation & Implementation, University of Maryland School of Social Work. <https://theinstitute.umaryland.edu/media/ssw/institute/Cuyahoga-Youth-Count.6.8.1.pdf>.

<sup>53</sup> The Trevor Project (2021) The Trevor Project Research Brief: LGBTQ Youth with a History of Foster Care [https://www.thetrevorproject.org/wp-content/uploads/2021/07/LGBTQ-Youth-with-a-History-of-Foster-Care\\_May-2021.pdf](https://www.thetrevorproject.org/wp-content/uploads/2021/07/LGBTQ-Youth-with-a-History-of-Foster-Care_May-2021.pdf).

<sup>54</sup> See Substance Abuse and Mental Health Services Administration (SAMHSA): Moving Beyond Change Efforts: Evidence and Action to Support and Affirm LGBTQI+ Youth. SAMHSA Publication No. PEP2203–12–001. Rockville, MD: Center for Substance Abuse Prevention. Substance Abuse and Mental Health Services Administration, 2023.

<sup>55</sup> Ibid.

for placing children in foster care, making placement decisions, or providing services are informed of the procedural requirements necessary to comply with this proposed rule. Similarly, we propose to require that agencies ensure that all placement providers who have not chosen to seek designation as safe and appropriate placement providers for LGBTQI+ foster children are also informed of the procedural requirements necessary to comply with this proposed rule. As part of this requirement, agencies would be required to ensure that contractors, subrecipients, and placement providers are all informed of the required non-retaliation provisions outlined in paragraph (a)(4).

#### Ensuring Compliance Through the Child and Family Services Review

ACF proposes to revise the Child and Family Services Review (CFSR) regulations to make clear that the CFSR process will assess agencies on their compliance with the requirements of these proposed regulations. Specifically, we propose to revise § 1355.34(c)(2)(i) to add “including placements described in § 1355.22(a)(1)” to the case review system requirement for provisions to place the child in an appropriate placement that meets their needs. We also propose to add at the end of § 1355.34(c)(2)(i) within the parenthetical “§ 1355.22(a)(1)”. Under the current CFSR regulations, the Children’s Bureau reviews how title IV–E agencies ensure the safety and appropriateness of foster care placements. This proposed amendment will ensure that the requirements proposed to be added to § 1355.22(a)(1) are included in the CFSRs, and specifically examined under the case review systemic factor outlined in § 1355.34(c)(2)(i).

In implementing the requirements proposed under this rule, ACF anticipates that agencies will likely need to produce new administrative records to monitor and track requests for safe and appropriate placements and adjudication of those requests. Such administrative records, including at the case file level, may be reviewed through the CFSR process. ACF invites public comment on what further guidance states may need on producing such administrative records, while protecting the privacy and confidentiality of LGBTQI+ youth.

#### Severability

For the reasons described above, ACF believes that its authority to implement each of the provisions in the proposed regulation is well-supported in law and

practice and should be upheld in any legal challenge. ACF also believes that its exercise of its authority reflects sound policy. However, in the event that any portion of the proposed rule is declared invalid, ACF intends that the other provisions be severable.

#### Religious Liberty and Other Freedoms

ACF appreciates the vital role that religious providers play in providing care and services to children in the child welfare system. ACF values the child welfare services that faith-based organizations provide, consistent with HHS-wide regulations governing social services ensuring that religious organizations are eligible on the same basis as any other organization to participate in child welfare programs administered with title IV–E and IV–B funds. See 45 CFR 87.3(a). ACF takes seriously its obligations to comply with the Constitution and Federal laws that support and protect religious exercise and freedom of conscience, including the First Amendment and the Religious Freedom Restoration Act (RFRA), 42 U.S.C. 2000bb *et seq.*, as well as all other applicable Federal civil rights laws and HHS regulations including 45 CFR part 87 (“Equal Treatment for Faith-Based Organizations”). ACF will continue to operate the title IV–E and IV–B programs in compliance with these legal requirements. ACF remains fully committed to thoroughly considering any organization’s assertion that any obligations imposed upon them that are necessitated by this proposed rule as finalized conflicts with their rights under those laws.

If a title IV–E/IV–B provider alleges that any obligation that this proposed rule as finalized requires a state or tribe to impose substantially burdens the provider’s religious exercise, ACF will apply the test set out by RFRA to determine whether an exemption is required. Under RFRA, when Federal action substantially burdens an individual or entity’s exercise of religion, the Federal government must afford that individual or entity an exemption to the rule unless the government can demonstrate that applying the burden in that particular instance furthers a compelling governmental interest and is the least restrictive means of doing so. See 42 U.S.C. 2000bb–1(b). Accordingly, under RFRA, we first assess whether the particular application of the rule substantially burdens the provider’s exercise of religion. If so, we assess whether applying the requirement furthers a compelling interest and whether there are less restrictive alternatives available. Thus, even if the

rule substantially burdens a religious practice, an exemption would not be required if the burden is necessary to the advancement of a compelling government interest through the least restrictive means possible. We will apply RFRA in accordance with the statutory text and applicable case law.

When drafting this proposed rule, ACF has taken these RFRA principles into account, and has endeavored to write each provision to provide states and tribes with the flexibility to implement the measures without imposing any substantial burdens on providers’ religious exercise that we can reasonably anticipate. Most importantly, nearly all of the requirements in this proposed rule would be imposed directly on state and tribal IV–E/IV–B agencies, as opposed to on any private foster care agency, foster parent, kinship caregiver or other provider. The only requirement that would be imposed on private providers by the proposed rule is the requirement to be informed of the procedural requirements to comply with the proposed rule (including the required non-retaliation provisions outlined in paragraph (a)(4)). All other requirements would be responsibilities of the state and tribal IV–E/IV–B agencies, and ACF believes that these responsibilities have been drafted in a manner that the IV–E/IV–B agencies can satisfy without imposing any substantial burden on religious providers that is reasonably foreseeable.

As the Supreme Court has recently made clear, the First Amendment protects faith-based entities that provide foster care services. See *Fulton v. City of Philadelphia*, 593 U.S. \_\_ (2021). Consistent with this protection, the proposed rule, if adopted, would not require any faith-based provider to seek designation as a safe and appropriate provider for LGBTQI+ children as described in this proposed rule if the provider had sincerely held religious objections to doing so. When drafting the text, ACF was cognizant that a foster care requirement that precludes a child welfare provider from participating in the program while adhering to its religious beliefs might substantially burden religious exercise. Rather than placing requirements on child welfare providers, this rule as proposed would require agencies to ensure that their child welfare networks as a whole include sufficient numbers of providers that are willing to supply safe and appropriate placements for LGBTQI+ children so that all children who request such a placement will receive an appropriate one. To the extent that current networks are insufficient, the Department believes that IV/B/IV–E

agencies will be able to meet this requirement through outreach, training and other supply-building activities to build their provider networks, and can do so without imposing substantial burdens on religious exercise of providers. When states and tribes select organizations to participate in the child welfare program, ACF would recommend that states and tribes do not adopt selection criteria that adversely disadvantages any faith-based organizations that express religious objections to providing safe and appropriate placements for LGBTQI+ children.

While this proposed rule would require title IV–E/IV–B agencies to establish processes for children to receive notification concerning the availability of safe and appropriate placements, how to request them and the means of reporting any concerns about such placements, ACF expects agencies would adopt these notice requirements without substantially burdening the religious exercise of any child welfare providers that expressed religious objections to disseminating the notices in any reasonably foreseeable way. For example, under the proposed rule, a title IV–E/IV–B agency may provide the notices directly through agency staff. Alternatively, state and tribal agencies may require the providers in their child welfare network to disseminate the notices as a general matter while exempting any entities that express religious objections to doing so and utilizing agency staff in those limited instances. In addition, HHS is not aware of any instances in which a faith-based organization has requested a religious exemption from an HHS notice requirement that is generally applicable to social service providers notwithstanding the fact that the notice informs beneficiaries of alternative providers.

This proposed rule similarly would enable title IV–E/IV–B agencies to retain discretion when determining how to ensure that contracted caseworkers and supervisors who are responsible for placing children in foster care, making placement decisions or providing services, as well as placement providers who choose not to seek designation as safe and appropriate placements are informed of the requirements of this rule. To be clear, this proposed regulatory requirement only requires that contractors/subrecipients and those placement providers who are not seeking designation as safe and appropriate placements for LGBTQI+ children are informed of the procedural requirements, including the non-retaliation provision.

This proposed rule enables title IV–E/IV–B agencies to retain flexibility to determine how title IV–E/IV–B agencies will ensure that LGBTQI+ children will upon request be transferred from any entity that will not provide a safe and appropriate placement as described by the finalized rule to one that will. ACF expects agencies to adopt transfer processes that minimize the extent of any obligations on faith-based providers that need to transfer children as a result of this proposed rule as finalized. ACF notes that it has no historical basis to anticipate religious objections to cooperating with such transfers, as HHS has not received any religious objections in other instances in which HHS required faith-based grantees to refer third parties impacted by religious objections to alternative providers.

As we have explained, we have crafted this proposed rule to minimize the likelihood that it will impose substantial burdens on religious exercise in violation of the Constitution or RFRA. Nevertheless, should any child welfare service provider incur any unforeseen religious objections to compliance with an obligation that is necessitated by this proposed rule as finalized (as opposed to any discretionary measure imposed by a state or tribe) ACF will consider requests for accommodation on a case-by-case basis in accordance with the Constitution and Federal statutes. ACF recognizes that RFRA requires a fact-specific case-by-case analysis of whether any specific obligation necessitated by this proposed rule imposes a substantial burden on religious exercise, and, if so, whether that obligation is in the particular case the least restrictive means of furthering a compelling government interest. *See Gonzales v. Centro*, 546 U.S. 418 (2006). This case-by-case analysis will allow ACF to consider whether any substantial burden imposed on the provider's exercise of religion is in furtherance of a compelling governmental interest, and is the least restrictive means of advancing that interest. This will involve considering any harm an exemption could have on third parties involved in the child welfare program. *See Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005). This process provides an opportunity for service providers to raise with ACF any concerns regarding obligations necessitated by this proposed rule as finalized, which would enable ACF to determine whether an exemption or modification of the application of the provision at issue is appropriate under

the Federal religious freedom law at issue.

As to the process for filing any requests for religious accommodation, state and tribal child welfare agencies must continue to notify sub-awardees of their religious freedom rights. As required under 45 CFR 87.3(a) and (k), state and tribal child welfare agencies must continue to ensure that their notices or announcements of award opportunities include language that is substantially similar to that in section (a) of appendix A to part 87. Similarly, notices of award or contract must include language that is substantially similar to that in section (a) of appendix B to part 87. In relevant part, these appendices require that sub-awards and contracts inform sub-awardees of their right to carry out child welfare programs consistent with religious freedom, nondiscrimination, and conscience protections in Federal law, including the Free Speech and Free Exercise Clauses of the First Amendment of the U.S. Constitution, RFRA, or any related or similar Federal laws or regulations; and that religious accommodations may also be sought under many of these religious freedom, nondiscrimination, and conscience protection laws.

A provider requesting any religious accommodation would submit the request to their state's or tribe's title IV–E/IV–B agency. If the request concerns a religious objection to an obligation that is required or necessitated by this proposed rule as finalized, the title IV–E/IV–B agency must promptly forward the request to ACF, which will consider the request in collaboration with the Office of the General Counsel.

#### Kinship Caregivers

A significant body of evidence demonstrates that when children in the foster care system are placed with kinship caregivers that they have better outcomes.<sup>56</sup> We note that a title IV–E agency shall consider giving preference to an adult relative over a non-related caregiver when determining an out-of-home placement for a child, provided that the relative caregiver meets all relevant state or tribal child protection standards (section 471(a)(19) of the Act). HHS invites public comment on how agencies can best comply with the requirements of this proposed rule and prioritize placements with kinship caregivers. In particular, HHS invites public comment on what resources

<sup>56</sup> Child Welfare Information Gateway. (2022). Kinship care and the child welfare system. U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. <https://www.childwelfare.gov/pubs/f-kinshi/>.

agencies may need from HHS to support kinship caregivers in caring for an LGBTQI+ child.

#### Recruitment of Safe and Appropriate Providers

In order to comply with the requirements in this proposed rule, we anticipate that a majority of states would need to expand their efforts to recruit and identify providers and foster families that the state or tribe could designate as safe and appropriate placements for a LGBTQI+ child to ensure that the totality of their child welfare system includes enough safe and appropriate placements to meet the needs of LGBTQI+ children in care. To support states and tribes in meeting these recruitment needs, ACF allows sharing costs between the Federal Government and state and tribal governments, providing Federal title IV-E funding for 50 to 75 percent of the administrative, recruitment and training costs of this NPRM. HHS invites public comment on how best we can support states and tribes in recruiting providers to provide safe and appropriate placements.

#### V. Regulatory Process Matters

##### *Regulatory Planning and Review* *Executive Orders 12866, 13563, and 14094*

Executive Orders 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). Executive Order 13563 is supplemental to, and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866, emphasizing the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines “a significant regulatory action” as an action that is likely to result in a rule that may: (1) have an annual effect on the economy of \$200 million or more (adjusted every 3 years by the Administrator of the Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, territorial, or tribal

governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise legal or policy issues for which centralized review would meaningfully further the President’s priorities or the principles set forth in the order. OIRA has determined that this proposed rule does meet the criteria for a significant regulatory action under section 3(f) of Executive Order 12866. Thus, it was subject to Office of Management and Budget (OMB) review.

#### Costs and Benefits

The benefits of this NPRM are that placing children in foster care with providers the agencies designate as safe and appropriate for LGBTQI+ children will reduce the negative experiences of such children by allowing them to have access to needed care and services and to be placed in nurturing placement settings with caregivers who have received appropriate training. Ensuring such placements may also reduce LGBTQI+ foster children’s high rates of homelessness, housing instability and food insecurity.<sup>57</sup> As thoroughly documented by SAMHSA, “[s]upportive family, caregivers, community, school, child welfare, and healthcare environments have been shown to positively impact both the short- and long-term health and well-being of LGBTQI+ youth.”<sup>58</sup> This proposed rule promotes a supportive environment for children in foster care who self-identify as LGBTQI+.

ACF acknowledges that there will be a cost to implement changes made by this proposed rule as we anticipate that a majority of states would need to expand their efforts to recruit and identify providers and foster families that the state or tribe could designate as safe and appropriate placements for a

LGBTQI+ child. This cost would vary depending on an agency’s available resources to implement an eventual final rule. To inform the final rule, ACF intends to seek comments on whether state and tribal agencies are likely to incur additional substantial costs.

#### Alternatives Considered

As an alternative to this NPRM, ACF considered providing sub-regulatory guidance requiring agencies to implement the provisions of the NPRM for children who identify as LGBTQI+. However, this alternative was rejected because it would not have the force of law and thus could not effectively ensure that LGBTQI+ children and youth in foster care receive appropriate placements and services. ACF has already provided extensive resources and sub-regulatory guidance to agencies about improving the health and wellbeing of LGBTQI+ children in foster care, but those resources alone have not been sufficient to ensure that LGBTQI+ youth are protected from mistreatment in foster care.<sup>59</sup>

#### *Regulatory Flexibility Analysis*

The Regulatory Flexibility Act (RFA) (see 5 U.S.C. 605(b) as amended by the Small Business Regulatory Enforcement Fairness Act) requires Federal agencies to determine, to the extent feasible, a rule’s impact on small entities, explore regulatory options for reducing any significant impact on a substantial number of such entities, and explain their regulatory approach. The term “small entities,” as defined in the RFA, 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. HHS considers a rule to have a significant impact on a substantial number of small entities if it has at least a 3 percent impact on revenue on at least 5 percent of small entities. However, the Secretary certifies, under 5 U.S.C. 605(b), as enacted by the RFA (Pub. L. 96–354), that this proposed rule will not result in a significant impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required for this document.

#### *Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) was enacted to avoid imposing unfunded Federal mandates on state, local, and

<sup>57</sup> DeChants, J.P., Green, A.E., Price, M.N., & Davis, C.K. (2021), *Homelessness and Housing Instability Among LGBTQ Youth*. West Hollywood, CA: The Trevor Project, <https://www.thetrevorproject.org/wp-content/uploads/2022/02/Trevor-Project-Homelessness-Report.pdf>; Amy Dworsky, 2013. “The Economic Well-Being of Lesbian, Gay, and Bisexual Youth Transitioning Out of Foster Care,” Mathematica Policy Research Reports b2f4fb67aab149f9a5e75f558, Mathematica Policy Research; [https://www.acf.hhs.gov/sites/default/files/documents/opre/opre\\_lgbt\\_brief\\_01\\_04\\_2013.pdf](https://www.acf.hhs.gov/sites/default/files/documents/opre/opre_lgbt_brief_01_04_2013.pdf).

<sup>58</sup> Substance Abuse and Mental Health Services Administration (SAMHSA): *Moving Beyond Change Efforts: Evidence and Action to Support and Affirm LGBTQI+ Youth*. SAMHSA Publication No. PEP2203–12–001. Rockville, MD: Center for Substance Abuse Prevention. Substance Abuse and Mental Health Services Administration, 2023.

<sup>59</sup> Children’s Bureau, *Guidance for Title IV–B and IV–E Agencies When Serving LGBTQI+ Children and Youth*, March 2, 2022, <https://www.acf.hhs.gov/cb/policy-guidance/im-22-01>.



tribal governments, or on the private sector. Section 202 of UMRA requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2022, that threshold is approximately \$177 million. This proposed rule does not contain mandates that will impose spending costs on state, local, or tribal governments in the aggregate, or on the private sector, in excess of the threshold.

#### *Assessment of Federal Regulations and Policies on Families*

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. ACF believes it is not necessary to prepare a family policymaking assessment (see Pub. L. 105–277) because this proposed rule will not have a negative impact on the autonomy or integrity of the family as an institution.

#### *Executive Order 13132*

Executive Order 13132 requires Federal agencies to consult with state and local government officials if they develop regulatory policies with federalism implications. Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government close to the people. ACF conducted a regulatory impact analysis (RIA) to estimate costs, transfers, and benefits of provisions in the proposed rule. The cost of implementing changes made by this proposed rule would vary depending on a state's specific situation and implementation choices. This proposed rule would not have substantial direct impact on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. However, we anticipate that this proposed rule will have a substantial direct impact on the cost that title IV–E agencies will incur to implement administrative procedures and recruit and train their workforce and providers. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this action has sufficient federalism implications that warrants the preparation of a federalism summary impact statement.

#### *Federalism Summary Impact Statement*

The Social Security Act requires agencies to provide children in foster care with safe and appropriate placements and services (42 U.S.C. 675(1)(b)) and ensure that prospective foster parents are prepared adequately with the appropriate knowledge and skills to provide for the needs of the child (42 U.S.C. 671(a)(24)). ACF believes this proposed regulation is necessary to ensure children in foster care who identify as LGBTQI+ are provided appropriate placements and access to support services that address the well documented disparities that LGBTQI+ youth in foster care face. LGBTQI+ youth are overrepresented in the child welfare system, far too often experience trauma, including being placed in foster care or congregate care settings that are hostile to their identity, or lacking access to health care and mental health services to support them. This proposal may have federalism implications due to the substantial direct financial impact on state or local governments. Although ACF has not consulted directly with state or local governments prior to issuing this NPRM, ACF has spent years reviewing research and agency practices, and supporting pilot programs in this area. For example, the National Quality Improvement Center (QIC) on Tailored Services, Placement Stability, and Permanency for Lesbian, Gay, Bisexual, Transgender, Questioning, and Two-Spirit Children and Youth in Foster Care (LGBTQ2S+ QIC) was led by the Institute for Innovation & Implementation at the University of Maryland School of Social Work in Baltimore along with participating core partners: Human Service Collaborative, National Indian Child Welfare Association, Ruth Ellis Center, Tufts University, and Youth M.O.V.E. National.<sup>60 61</sup> State and local governments may be concerned about the cost imposed by the NPRM. ACF has attempted to meet this concern by sharing costs between the Federal government and state governments, providing Federal title IV–E funding for 50 to 75 percent of the administrative, recruitment and training costs of this NPRM. We also believe that after the first 3 years of implementation, the financial impact on state governments

would be minimal. To inform the final rule, ACF will seek to further consult with state and local governments and request that such governments provide comments on provisions in the proposed rule and on whether state and local governments are likely to incur additional substantial costs.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (Pub. L. 104–13) seeks to minimize government-imposed burden from information collections on the public. In keeping with the notion that government information is a valuable asset, it also is intended to improve the practical utility, quality, and clarity of information collected, maintained, and disclosed. The Paperwork Reduction Act defines “information” as any statement or estimate of fact or opinion, regardless of form or format, whether numerical, graphic, or narrative form, and whether oral or maintained on paper, electronic, or other media (5 CFR 1320.3(h)). This includes requests for information to be sent to the government, such as forms, written reports and surveys, recordkeeping requirements, and third-party or public disclosures (5 CFR 1320.3(c)).

Information collection requirements for case plans required under title IV–E and IV–B are currently authorized under OMB number #0970–0428. This NPRM does not require changes to the existing information collection as there will be minimal burden associated with the proposed case plan requirements. Any additional costs would be minimal because agencies are already required to provide case review protections to children in foster care, and the NPRM simply provides more specificity for an LGBTQ child. While agencies will need to develop policies to comply with some of the provisions in the NPRM, the casework to provide safe placements, consult with children, and notify them of the procedures for reporting concerns or requests for placement changes is part of the agency's ongoing work with a child in foster care.

Information collection for the CFSR is currently authorized under OMB # is 0970–0214. This NPRM does not significantly change or add burden to existing information collection requirements because the CFSR already includes reviewing case plan requirements for safe and appropriate placements and collecting information on the state's case review system under the statewide assessment. Therefore, no revisions are needed in that collection.

<sup>60</sup> See QIC LGBTQ2S About the QIC, <https://qiclbgtq2s.org/about-the-qic/>.

<sup>61</sup> Also see Sexual & Gender Minority Youth in Foster Care: Assessing Disproportionality and Disparities in Los Angeles, 2014, <https://www.acf.hhs.gov/cb/report/sexual-gender-minority-youth-foster-care-assessing-disproportionality-and-disparities-los>, a project which received Children's Bureau funding.



### *Annualized Cost to the Federal Government*

ACF estimated that the proposed regulatory changes would cost the Federal Government \$9,712,740 over three fiscal years (2025–2027). ACF estimated that the combined total Federal and agency costs over three fiscal years would be \$40,834,548.

The estimate for this NPRM was derived using fiscal year (FY) 2021 data from the Adoption and Foster Care Analysis and Reporting System (AFCARS) on children in foster care, FY 2022 claiming data from the Form CB–496 “Title IV–E Programs Quarterly Financial Report (Foster Care, Adoption Assistance, Guardianship Assistance, Prevention Services and Kinship Navigator Programs),” National Child Abuse and Neglect Data System (NCANDS) child protection caseworker data collected between FY 2003 and FY 2014, state surveys, and the U.S. Department of Labor Bureau of Labor Statistics (BLS).

The portions of this NPRM’s requirements determined to have an identifiable impact on title IV–E/IV–B agency costs were as follows:

- To comply with the requirement that all LGBTQI+ children in foster care have access to a safe and appropriate placement, agencies will likely need to increase the recruitment of providers who are qualified to provide safe and appropriate care.
- Training agency caseworkers and supervisors on the procedural requirements in the NPRM and on how to adequately serve LGBTQI+ foster children, and training placement providers seeking to become designated as safe and appropriate placement providers on how to meet the needs of LGBTQI+ children in foster care, as required in the proposal.

**Assumptions:** ACF made several assumptions when calculating administrative and training costs for this proposed rule.

ACF assumes that quantifiable incremental costs with respect to the above activities will largely be incurred on behalf of children in foster care who are age 14 and older. ACF expects the population of children under age 14 who meet the proposed requirements of paragraph (a)(2)(i)(A) or (B) to be relatively small, and therefore not likely to have a significant impact on cost. We are, however, accounting for the cost to recruit and train sufficient safe and appropriate placement providers to serve all children in need of such a placement regardless of age. This is accomplished by calculating recruitment and training costs using the

maximum expected level of affirmative placement needs for children ages 14 and older.

We assume that states and tribes will not be able to use title IV–B funding to implement this NPRM if it becomes a final rule. Children in foster care who are not title IV–E eligible are also subject to the proposed requirements based on the proposed rule’s applicability to title IV–E and IV–B agencies. Title IV–B funding is available for 75 percent Federal financial participation (FFP) for recruitment and training of placement providers (42 U.S.C. 624(a)). However, those funds are limited to an annual allotment provided to each title IV–B agency. Therefore, we assume agencies will likely need to cover 100 percent of the safe and appropriate placement provision costs on behalf of non-title IV–E eligible children in foster care.

ACF assumes an overall annual one percent caseload growth rate in the foster care population based on our current title IV–E budgetary projections. Since this NPRM focuses on older children in foster care, we increased this growth rate slightly (to an average of 1.4 percent annually) to consider an expected further growth in the age 18 and older foster care population, as more states opt to extend foster care through age 20.

ACF assumes that if the proposal becomes final, the requirements will become effective at the beginning of FY 2025 and thus will apply to the entire population of children in foster care who are age 14 and older in that FY. This will result in the majority of incremental costs for the NPRM activities occurring in FY 2025. We expect costs in FYs 2026 and 2027 to be about half of those for FY 2025 since the required activities will affect primarily those children in care who are turning age 14 in the FY, or who are newly entering care at age 14 and older. After the third year of implementation, we anticipate that incremental costs will largely be eliminated as available safe and appropriate placement providers are recruited and the proposed policies, procedures, and training requirements are implemented.

**Federal cost estimate for implementation of safe and appropriate placements:** The table below displays the individual calculations by line. All entries in the table and the narrative below are rounded to the nearest whole number. The calculations to obtain these amounts, however, were performed without applying rounding to the involved factor(s).

**Line 1. National number of children in foster care (FC).** Line 1 of the table

below displays the actual number of children in FC at the beginning of FY 2022 (baseline), which was 391,098. Line 1 also displays estimates of the annual number of children in FC in the subsequent FYs 2025, 2026, and 2027.

**Line 2. National number of children in FC age 14 and older.** Line 2 of the table below displays the actual number of children in FC who were age 14 and older at the beginning of FY 2022 (baseline) which was 92,852. We also provide estimates of the number of children in FC age 14 and older in the following subsequent FYs 2025, 2026, and 2027. In 2027 the caseload is estimated at 104,705.

**Line 3. National average monthly number of children in title IV–E FC age 14 and older.** Line 3 of the table below displays the actual number of title IV–E eligible children in FC age 14 or older at the beginning of FY 2022 (baseline), which was 36,817. This number is calculated by applying the percentage of all children in FC (title IV–E and non-IV–E eligible) that are age 14 or older to the reported count of title IV–E eligible children receiving FC administrative cost services. For example, in FY 2022 the title IV–E FC caseload for administrative costs was 155,075 and the percentage of all children in FC who were age 14 or older was 23.74 percent. Therefore, the calculated count of title IV–E eligible children in FC age 14 and older is 36,817 ( $155,075 \times 23.74\%$ ). We also provide estimates of the number of children in FC age 14 and older in the following subsequent years: FYs 2025, 2026, and 2027.

**Line 4. National number of children to be notified of safe and appropriate (S&A) placement requirements.** Line 4 of the table below provides an estimate of the number of children in FC who must be notified of the safe and appropriate placement provisions in proposed § 1355.22(a)(2)(i). For the first year of implementation (FY 2025) this number is the same as the Line 2 number (national number of children in foster care age 14 and older) since all of these children are required to be so notified. For FYs 2026 and 2027, we multiplied the national number of children in FC age 14 and older (Line 2) by the proportion of this population that entered care in that FY based on baseline year AFCARS data showing 40.64 percent. This step avoids counting children that are likely to have already received the notification in a prior FY. For example, in FY 2027 the national number of children that must be notified of safe and appropriate placement requirements is 42,552 ( $104,705$  (Line 2)  $\times$   $40.64\%$  (Line 4) =  $42,552$ ).

*Line 5. Percentage of national foster care placements for children needing S&A placements.* Line 5 of the table below displays the estimated percentage of national foster care safe and appropriate placements needed for children who identify as LGBTQI+. For each FY, we divided the number of children in foster care ages 14 and older (Line 4) by the expected total annual number of children entering foster care. Data available through surveys shows that about 30 percent of older children in foster care identify as LGBTQI+. For example, a 2014 survey of children ages 12 through 21 in foster care in Los Angeles County, California, found that 19 percent of children in foster care identified as LGBTQI+. <sup>62</sup> Similarly, a 2021 study of foster children ages 12 through 21 in Cuyahoga County, Ohio, found that 32 percent identified as LGBTQI+. <sup>63</sup> For the purposes of this cost estimate, ACF's estimate of children age 14 and over in foster care who identify as LGBTQI+ is 30 percent. For example, in FY 2025 on Line 4, the national number of children to be notified of safe and appropriate placement provisions is 97,973 and the base year total foster care entries is 206,812. ACF estimated 30 percent of older children in foster care identify as LGBTQI+. Therefore, Line 5, the percentage of national foster care placements for LGBTQI+ children needing safe and appropriate placements, is 14.2 percent  $((97,973 \times 30\%) \div 206,812)$ . This estimate is purposefully high to account for some children under age 14 who may also need such safe and appropriate placements.

*Line 6. Total incremental costs (Federal and non-Federal) for recruiting safe and appropriate foster care placements.* Line 6 of the table below displays the estimated total cost of recruiting placement providers to meet the proposed requirements for safe and appropriate placement providers for LGBTQI+ children in the foster care system. This estimate for each FY is based on data collected from ten title IV-E/IV-B agencies across the Nation

with respect to their current annual budgets for foster care recruitment activities. We used this data to calculate a nationwide total estimated annual foster care recruitment cost of \$185,998,176 based on an extrapolation of the provided data using FY 2022 foster care caseload information. This figure was then multiplied by the calculated portion of the FC caseload ages 14 and older, and then further reduced to 30 percent of that number (estimated LGBTQI+ identification percentage) to reflect the maximum anticipated need for new safe and appropriate placements in each FY. The resulting amount was then reduced by another 50 percent to reflect the likelihood that a significant portion of the safe and appropriate placement recruitment budget would be obtained by refocusing the existing budget for recruitment costs towards safe and appropriate placements. This would promote the agency's ability to comply with the proposed requirement in paragraph (a)(1), given agency recruitment budgets may be limited.

For example, in FY 2025 we estimate that up to 30 percent of notified children (Line 4) as a percentage of all newly placed children in that FY may require the availability of a placement that is designated by the agencies as safe and appropriate. This percentage for FY 2025 of 14.2 percent  $(29,392 \div 206,812)$  is then multiplied by the national estimated foster care recruitment cost budget (\$185,998,176) resulting in a total of \$26,433,752. This figure is then reduced by 50 percent to reflect the anticipated incremental cost for safe and appropriate placement provider recruitment efforts of \$13,216,876. This estimate is purposefully high to account for some children under age 14 who may also need safe and appropriate placements. The total cost for FYs 2025, 2026, and 2027 is \$24,521,626.

*Line 7. Total costs (Federal and non-Federal) for safe and appropriate placement training (caseworkers, supervisors & providers).* Line 7 of the table below provides the estimated total cost of training required for safe and appropriate placements. This estimate for each FY is derived by first identifying the baseline cost of providing a model SOGIE training curriculum developed by the National Quality Improvement Center on Tailored Services, Placement Stability, and Permanency for LGBTQ2S Children and Youth in Foster Care (QIC-LGBTQ2S); a project funded by ACF. This curriculum provides for a two-hour training that can be conducted in-person or remotely for an average group of 30 participants. The identified average cost

of delivering this training is \$300 plus overhead of 100 percent bringing the total cost to \$600 or \$20 per participant. Our estimate increases this figure by three percent per year to account for inflation.

We estimate the number of caseworker and casework supervisor (staff) in FY 2025 to be 100 percent of individuals in these positions. National foster care caseworker staffing level data was obtained from reports provided by six state title IV-E/IV-B agencies representing about 16 percent of the national FY 2021 foster care population. This data was then extrapolated using FC caseloads to obtain an estimate of the total number of national FC caseworkers in FY 2021. An estimated annual caseworker growth rate of +2.2 percent was also computed using national NCANDS child protection caseworker data collected between FY 2003 and FY 2014. This data results in an estimated FY 2025 national total of 38,374 FC caseworkers. The casework supervisor count uses the generally applied ratio of one supervisor for five workers resulting in an FY 2025 number of 7,675. The provider trainee population is calculated by using the count of children to be notified of safe and appropriate placement provisions (Line 4) multiplied by 30 percent (maximum expected portion of these children identifying as LGBTQI+) and is then further reduced by the expectation that each provider will, on average, serve 1.5 children. This results in an FY 2025 safe and appropriate placement provider trainee population of 22,044. The expected number of trainees for subsequent FYs is lower based on the expected number of newly placed children in each of these FYs.

Other costs included in the training estimate are staff participation costs and travel and per diem for in-person trainings conducted outside of the local area. Staff participation costs include salary and overhead for each worker spent in the training (two hours). Caseworker title average salary data (as of May 2022) sourced from the U.S. Department of Labor; Bureau of Labor Statistics (BLS) was used in the calculation along with an estimated overhead cost rate of 100 percent. This results in an FY 2022 (baseline) hourly cost (salary + overhead) of \$55.98. The cost for two hours of activity is thus \$111.97 per participant. A cost-of-living adjustment of +2 percent per year is then added for each subsequent year. Travel and per diem costs are estimated in FY 2022 (base year) as \$100 per participant at in-person trainings which are expected to constitute 50 percent of total trainings. An inflation factor of

<sup>62</sup> Wilson, B.D.M., Cooper, K., Kastanis, A., & Nezhad, S. (2014). Sexual and Gender Minority Youth in Foster care: Assessing Disproportionality and Disparities in Los Angeles, The Williams Institute, UCLA School of Law <https://williamsinstitute.law.ucla.edu/wp-content/uploads/SGM-Youth-in-Foster-Care-Aug-2014.pdf>.

<sup>63</sup> Matarese, M., Greeno, E., Weeks, A., Hammond, P. (2021). The Cuyahoga youth count: A report on LGBTQ+ youth's experience in foster care. Baltimore, MD: The Institute for Innovation & Implementation, University of Maryland School of Social Work. <https://theinstitute.umaryland.edu/media/ssw/institute/Cuyahoga-Youth-Count.6.8.1.pdf>.

three percent per year is applied to these costs for later FYs. For example, in FY 2025 we expect a total of 68,092 trainees (caseworkers, supervisors & foster care providers). Therefore, the 50 percent of that total expected to have travel & per diem costs is 34,046 trainees. At an average cost of \$109 per participant the total cost in this category is \$3,711,035. The total FY 2025 estimate for safe and appropriate placement training is \$10,137,404. This amount lowers to \$3,180,036 for FY 2027. The total cost for FYs 2025, 2026, and 2027 is \$16,312,223.

*Line 8. Total costs (Federal and non-Federal) for all safe and appropriate placement activities.* Line 8 displays the annual estimated total (Federal + non-Federal) costs for all recruitment and training activities for LGBTQI+ children. This is the sum of lines 6 and 7. We estimate these total costs in FY 2025 as \$23,354,280 and the total cost for FYs 2025, 2026, and 2027 is \$40,834,548.

*Line 9. Total title IV-E FFP for all safe and appropriate placement activity costs.* Line 9 displays the annual estimated total title IV-E Federal share of costs for all placement activities for LGBTQI+ children. This is calculated by applying the applicable match rate and the estimated title IV-E participation (eligibility) rate that is generally used to allocate foster care administrative costs. Title IV-E agencies may claim FFP for 50 percent of the administrative costs that agencies incur to provide for activities performed on behalf of title IV-E eligible children in foster care, recruitment of foster homes and CCIs, and certain other administrative activities identified in 45 CFR 1356.60. The agency must pay the remaining 50

percent non-Federal share of title IV-E administrative costs with state or tribal funds.

Title IV-E agencies may claim reimbursement for 75 percent of allowable training costs to provide for activities performed on behalf of title IV-E eligible children in foster care including training of agency caseworkers and supervisors (including staff participation costs) and training of foster care providers providing care to title IV-E eligible children. The title IV-E agency must pay the remaining 25 percent non-Federal share of title IV-E training costs with state or tribal funds. For example, the FY 2025 amount is calculated by using the FY 2025 estimated title IV-E foster care participation rate of 39.65 percent along with the applicable FFP rates of 50 percent for administrative costs and 75 percent for training costs. We estimate these total title IV-E FFP costs beginning in FY 2025 as \$5,635,017 and the total cost for FYs 2025, 2026, and 2027 is \$9,712,740.

*Line 10. Total title IV-E non-Federal share for all safe and appropriate placement activity costs.* Line 10 displays the annual estimated total title IV-E non-Federal (state or tribe) share of costs for all safe and appropriate placement activities for LGBTQI+ children. This is calculated by applying the applicable non-Federal share match rate and the estimated non-IV-E participation (eligibility) rate that is generally used to allocate foster care administrative costs. For example, the FY 2025 amount is calculated by using the FY 2025 estimated title IV-E foster care participation rate of 39.65 percent along with the applicable non-Federal share matching rates of 50 percent for

administrative costs and 25 percent for training costs. We estimate these total title IV-E non-Federal share costs beginning in FY 2025 as \$3,625,219 and the total cost for FYs 2025, 2026, and 2027 is \$6,478,612.

*Line 11. Total title IV-B non-Federal share for all safe and appropriate placement activity costs.* Line 11 displays the annual estimated total title IV-B non-Federal (state or tribe) share of costs for all safe and appropriate placement activities. This is calculated by deducting such placement activity costs that are allocable to title IV-E from such total costs. Although costs allocated to title IV-B are subject to Federal matching at the 75 percent rate, as explained previously we assume that none of these costs will be federally reimbursed through title IV-B due to the limited annual allotments for the title IV-B program. Therefore, agencies may need to fund the cost entirely from state or tribal funds or other sources of funding. We estimate these total title IV-B non-Federal share costs beginning in FY 2025 as \$14,094,043 and the total cost for FYs 2025, 2026, and 2027 is \$24,643,197.

*Line 12. Total title IV-E and IV-B non-Federal share for all safe and appropriate placement activity costs.* Line 12 displays the annual estimated total title IV-E and IV-B non-Federal share of costs for all safe and appropriate placement activities. This is the sum of amounts on Lines 10 and 11. We estimate these total title IV-E and IV-B non-Federal share costs beginning in FY 2025 as \$17,719,263 and the total cost for FYs 2025, 2026, and 2027 is \$31,121,809.

| Year                                                                                                             | 2022<br>(baseline) | 2025         | 2026        | 2027        | Three-year<br>total |
|------------------------------------------------------------------------------------------------------------------|--------------------|--------------|-------------|-------------|---------------------|
| 1. National number of children in foster care (FC) .....                                                         | 391,098            | 404,273      | 410,541     | 416,548     | .....               |
| 2. National number of children in FC age 14 and older .....                                                      | 92,852             | 97,973       | 101,482     | 104,705     | .....               |
| 3. National average monthly number of children in title IV-E FC age 14 and older .....                           | 36,817             | 38,847       | 40,239      | 41,517      | .....               |
| 4. National number of children to be notified of safe and appropriate (S&A) placement provisions .....           | N/A                | 97,973       | 41,244      | 42,554      | .....               |
| 5. Percentage of national FC placements for children needing S&A placements .....                                | N/A                | 14.2%        | 6.0%        | 6.2%        | .....               |
| 6. Total incremental costs (Federal and non-Federal) for S&A placement recruitment ..                            | N/A                | \$13,216,876 | \$5,564,006 | \$5,740,744 | \$24,521,626        |
| 7. Total costs (Federal and non-Federal) for S&A placement training (caseworkers, supervisors & providers) ..... | N/A                | \$10,137,404 | \$2,995,483 | \$3,180,036 | \$16,312,223        |
| 8. Total Federal and non-Federal costs for all S&A placement activities (Lines 6+7) .....                        | N/A                | \$23,354,280 | \$8,559,488 | \$8,920,780 | \$40,834,548        |
| 9. Total title IV-E FFP for all S&A placement activity costs .....                                               | N/A                | \$5,635,017  | \$1,993,899 | \$2,083,823 | \$9,712,740         |
| 10. Total title IV-E non-Federal share for S&A placement activity costs .....                                    | N/A                | \$3,625,219  | \$1,400,029 | \$1,453,364 | \$6,478,612         |
| 11. Total title IV-B non-Federal share for S&A placement activity costs .....                                    | N/A                | \$14,094,043 | \$5,165,561 | \$5,383,593 | \$24,643,197        |
| 12. Total titles IV-E and IV-B non-Federal share for S&A placement activity costs (Lines 10+11) .....            | N/A                | \$17,719,263 | \$6,565,589 | \$6,836,957 | \$31,121,809        |

## VI. Tribal Consultation Statement

Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, requires agencies to consult with Indian tribes when regulations have substantial direct

effects 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 and

either impose substantial direct compliance costs on tribes or preempt tribal law. Similarly, ACF's Tribal Consultation Policy says that consultation is triggered for a new rule adoption that significantly affects tribes,

meaning the new rule adoption has substantial direct effects on one or more Indian Tribes, on the amount or duration of ACF program funding, on the delivery of ACF programs or services to one or more Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This proposed rule does not meet either standard for consultation.

Some title IV–E/IV–B tribal agencies may need to amend their practices to ensure that a placement is available for and provided to an LGBTQI+ child in foster care that supports the child's identity. However, we do not expect the costs to be substantial. Tribal title IV–E agencies may claim FFP for title IV–E foster care administrative and training costs for a portion of the administrative costs incurred. We intend to notify tribal title IV–E/IV–B agency leadership about the opportunity to provide comment on the NPRM no later than the day of publication. In addition, we intend to engage in consultation with tribes during the comment period of this NPRM.

Jeff Hild, Acting Assistant Secretary of the Administration for Children & Families, approved this document on September 22, 2023.

(Catalog of Federal Domestic Assistance Program Number 93.658, Foster Care Maintenance; 93.645, Child Welfare Services—State Grants).

#### List of Subjects in 45 CFR Part 1355

Adoption and foster care, Child welfare, Grant programs—social programs.

Dated: September 25, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, ACF proposes to amend 45 CFR part 1355 as follows:

#### PART 1355—GENERAL

■ 1. The authority citation for part 1355 continues to read as follows:

**Authority:** 42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.*; 42 U.S.C. 1302.

■ 2. Add § 1355.22 to read as follows:

**§ 1355.22 Placement requirements under titles IV–E and IV–B for children who identify as lesbian, gay, bisexual, transgender, queer or questioning, intersex, as well as children who are non-binary or have non-conforming gender identity or expression.**

(a) *Protections.* The title IV–E/IV–B agency must meet the following requirements for each child in foster care who identifies as lesbian, gay,

bisexual, transgender, queer or questioning, or intersex, as well as each child who is non-binary or has non-conforming gender identity or expression (LGBTQI+).

(1) *Safe and appropriate placement.* The title IV–E/IV–B agency must ensure that a safe and appropriate placement is available for and provided to all children in foster care, including those who identify as LGBTQI+. As used in this section, for a placement to be considered safe and appropriate for an LGBTQI+ child, the agency must place such child with a placement provider that:

(i) Will establish an environment free of hostility, mistreatment, or abuse based on the child's LGBTQI+ status;

(ii) Is trained to be prepared with the appropriate knowledge and skills to provide for the needs of the child related to the child's self-identified sexual orientation, gender identity, and gender expression. The training must reflect evidence, studies, and research about the impacts of rejection, discrimination, and stigma on the safety and wellbeing of LGBTQI+ children, and provide information for providers about practices that promote the safety and wellbeing of LGBTQI+ children; and

(iii) Will facilitate the child's access to age-appropriate resources, services, and activities that support their health and well-being.

(2) *Process for requesting safe and appropriate placement.* The IV–E/IV–B agency must implement a process by which a child identifying as LGBTQI+ may request a safe and appropriate placement, as described in paragraph (a)(1) of this section. The title IV–E/IV–B agency must consult with such child to provide an opportunity to provide input into their safe and appropriate placement. The process must safeguard the privacy and confidentiality of the child, consistent with section 471(a)(8) of the Act and 45 CFR 205.50, and must include the following components:

(i) Notice of the availability of safe and appropriate placements must be provided to, at minimum:

- (A) All children age 14 and over; and
- (B) Children under age 14 who:

(1) Have been removed from their home due, in whole or part, to familial conflict about their sexual orientation, gender identity, or sex characteristics; or

(2) Have disclosed their LGBTQI+ identity or whose LGBTQI+ identity is otherwise known to the agency;

(ii) The notice must be provided in an age-appropriate manner, both verbally and in writing; and

(iii) The notice must inform the child of how they may request a safe and appropriate placement.

(3) *Process for reporting concerns about placements.* The title IV–E/IV–B agency must implement a process for children identifying as LGBTQI+ to report concerns about any placements that fail to meet the requirements of paragraph (a)(1) of this section. The process must safeguard the privacy and confidentiality of the child, consistent with section 471(a)(8) of the Act and 45 CFR 205.50, and must include the following components:

(i) The title IV–E/IV–B agency must notify all children who meet the requirements of paragraphs (a)(2)(i)(A) and (B) of this section of the availability of this process;

(ii) The notice must be provided in an age-appropriate manner, both verbally and in writing; and

(iii) The title IV–E/IV–B agency must respond promptly to an LGBTQI+ child's reported concern, consistent with the agency's timeframes for investigating child abuse and neglect reports depending on the nature of the child's report.

(4) *Retaliation prohibited.* The title IV–E/IV–B agency must have a procedure to ensure that no LGBTQI+ child in foster care experiences retaliation for the child disclosing their LGBTQI+ identity, for requesting a safe and appropriate placement as described in paragraph (a)(1) of this section, or for reporting concerns that their current placement is not safe and appropriate. Retaliation includes unwarranted placement changes including unwarranted placements in congregate care facilities, restriction of access to LGBTQI+ peers, or attempts to undermine, suppress, or change the sexual orientation or gender identity of a child, or other activities that stigmatize a child's LGBTQI+ identity.

(5) *Access to supportive and age-appropriate services.* The title IV–E/IV–B agency must ensure that children who identify as LGBTQI+ have access to age-appropriate services that are supportive of their sexual orientation and gender identity, including clinically appropriate mental and behavioral health supports.

(b) *Placement of transgender and gender non-conforming children in foster care.* When considering placing a transgender, gender non-conforming or intersex child in sex segregated child-care institutions, the title IV–E/IV–B agency must place the child consistent with their gender identity. The IV–E/IV–B agency must also consult with the transgender, gender non-conforming, or intersex child to provide an opportunity

to voice any concerns related to placement when the agency is considering a placement in such a facility.

(c) *Training and notification requirements.* In addition to meeting the requirements of paragraph (a)(1)(ii) of this section, the title IV–E–/IV–B agency must:

(1) Ensure that its employees who have responsibility for placing children in foster care, making placement decisions, or providing services:

(i) Are trained to implement the procedural requirements of this section; and

(ii) Are adequately prepared with the appropriate knowledge and skills to serve an LGBTQI+ child related to their sexual orientation, gender identity, and gender expression.

(2) Ensure that all of its contractors and subrecipients who have responsibility for placing children in foster care, making placement decisions, or providing services are informed of the procedural requirements to comply with this section, including the required non-retaliation provisions outlined in paragraph (a)(4) of this section.

(3) Ensure that any placement providers who have not chosen to become designated as safe and appropriate placements for LGBTQI+ children are informed of the procedural requirements to comply with this section, including the required non-retaliation provision outlined in paragraph (a)(4) of this section.

(d) *Severability.* Any provision of this section held to be invalid or unenforceable as applied to any person or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of this section is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this section and shall not affect the remainder thereof.

■ 3. In § 1355.34, revise paragraph (c)(2)(i) to read as follows:

**§ 1355.34 Criteria for determining substantial conformity.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) Provide, for each child, a written case plan to be developed jointly with the child's parent(s) that includes provisions for placing the child in the least restrictive, most family-like placement appropriate to his/her needs, including placements described in

§ 1355.22(a)(1), and in close proximity to the parents' home where such placement is in the child's best interests; for visits with a child placed out of State/Tribal service area at least every 12 months by a caseworker of the agency or of the agency in the State/Tribal service area where the child is placed; and for documentation of the steps taken to make and finalize an adoptive or other permanent placement when the child cannot return home (sections 422(b)(8)(A)(ii) and 471(a)(16) 475(5)(A) of the Act and § 1355.22(a)(1));

\* \* \* \* \*

[FR Doc. 2023–21274 Filed 9–27–23; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**45 CFR Part 1356**

**RIN 0970–AC89**

**Foster Care Legal Representation**

**AGENCY:** Children's Bureau (CB), Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** ACF proposes to allow a title IV–E agency to claim Federal financial participation (FFP) for the administrative cost of an attorney providing legal representation in foster care proceedings of a title IV–E agency or any other public agency or tribe that has an agreement in effect under which the other agency has placement and care responsibility of a title IV–E eligible child; independent legal representation of a child who is either a candidate for title IV–E foster care, or in title IV–E foster care (hereafter, referred to as a child “who is eligible for title IV–E foster care”), the child's parent(s), and the child's relative caregiver(s) in foster care and other civil legal proceedings when such legal representation is found necessary by the Secretary to carry out the requirements in the title IV–E agency's title IV–E foster care plan; and legal representation of an Indian child's tribe, when the child's tribe intervenes in any state court proceeding for the foster care placement or termination of parental rights of an Indian child who is in title IV–E foster care or an Indian child who is a candidate for title IV–E

foster care when such legal representation is found necessary by the Secretary to carry out the requirements in the title IV–E agency's title IV–E foster care plan.

**DATES:** In order to be considered, ACF must receive written comments on this NPRM on or before November 27, 2023.

**ADDRESSES:** ACF encourages the public to submit comments electronically to ensure they are received in a timely manner. Please be sure to include identifying information on any correspondence. To download an electronic version of the proposed rule, please go to <https://www.regulations.gov/>.

You may submit comments, identified by docket number, by any of the following methods:

- *Federal Rulemaking Portal:* <https://www.regulations.gov/>. Follow the instructions for submitting comments.

- *Email:* [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov). Include [docket number and/or RIN number] in subject line of the message.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to [www.regulations.gov](https://www.regulations.gov/), including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Kathleen McHugh, Director, Policy Division, Children's Bureau, (202) 205–8618. Telecommunications Relay users may dial 711 first. Email inquiries to [cbcomments@acf.hhs.gov](mailto:cbcomments@acf.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. Statutory Authority To Issue NPRM
- II. Background
- III. Section-by-Section Discussion of Proposed Regulatory Changes
- IV. Regulatory Process Matters
- V. Tribal Consultation Statement

**I. Statutory Authority**

This NPRM is published under the authority granted to the Secretary of Health and Human Services (the Secretary) by section 1102 of the Social Security Act (the Act), 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, as may be necessary for the efficient administration of the functions for which the Secretary is responsible under the Act. Section 474(a)(3) of the Act authorizes Federal reimbursement for title IV–E foster care program administrative costs, which are defined as costs “found necessary by the Secretary for the provision of child placement services and for the proper and efficient administration of the State

[title IV–E] plan.” This authorization applies to an Indian tribe, tribal organization, or tribal consortium that has an approved title IV–E plan, in the same manner as it applies to states.

## II. Background

Many families that come to the attention of a child welfare agency are in the midst of or recovering from familial, health, housing, or economic challenges or crises. These obstacles can impede a family’s ability to provide a safe and stable environment for their children. Access to independent legal representation can help stabilize families and reduce the need for more formal child welfare system involvement, including foster care. For families with children that have been placed in foster care, independent legal representation can expedite reunification and improve permanency or help provide access to needed supports for youth transitioning out of the child welfare system. For Indian children that have been placed in foster care, and their families, early representation of an Indian child’s tribe in foster care proceedings promotes stability for the child by minimizing unnecessary separation of children and their parents, and by maximizing placements of the child with extended family and other preferred placements.

The Indian Child Welfare Act (ICWA) and regulations allow an Indian child’s tribe to intervene in any state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child (25 U.S.C. 1911(c)). “Indian child,” means any unmarried person who is under age eighteen and is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe (25 U.S.C. 1903(4)). An “Indian child’s tribe” means the Indian tribe in which an Indian child is a member or eligible for membership or, in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts (25 U.S.C. 1903(5)).

The regulation at 45 CFR 1356.60(c) details cost-sharing requirements for the Federal and non-Federal share of title IV–E foster care program expenditures for the cost of administrative activities. A title IV–E agency may claim FFP at the rate of 50 percent for allowable title IV–E foster care administrative costs. A title IV–E agency may also claim FFP for allowable administrative costs incurred by any other public agency or tribe which has an agreement in effect under which the other agency has placement

and care responsibility of a title IV–E eligible child pursuant to 472(a)(2)(B)(ii) of the Act. Another “public agency” is child placing agency authorized by state/tribal law to operate a program of services to children and families, with supervision by the title IV–E agency (CWPM 8.1G #1). Examples of other public agencies may be found in section G of the Child Welfare Policy Manual, and could include the state/tribal juvenile justice agency, a court, or state/tribal mental health agency. The regulation at § 1356.60(c)(2) provides examples of allowable title IV–E foster care administrative expenditures that are necessary for the administration of the title IV–E agency’s plan, such as preparation for and participation in judicial determinations, referral to services, development of the case plan, case reviews, and case management and supervision.

ACF policy historically allowed title IV–E agencies to claim FFP for the foster care administrative costs of “preparation for and participation in judicial determinations” as described in § 1356.60(c)(2)(ii), only for the title IV–E agency’s (and if applicable, the tribe or other public agency’s) legal representation. However, in 2019, ACF revised the policy to allow title IV–E agencies to also claim FFP for the administrative costs of independent legal representation provided by attorneys representing children who are candidates for title IV–E foster care, children who are in title IV–E foster care (hereafter, “child who is eligible for title IV–E foster care” refers to both a child who is a candidate and child who is in foster care), and the children’s parent(s) in all stages of foster care legal proceedings (Child Welfare Policy Manual [CWPM] 8.1B #30, 31, and 32). This policy was revised to ensure that reasonable efforts are made to prevent removal and finalize the permanency plan; and parents and youth are engaged in and complying with case plans. A “candidate” for title IV–E foster care is a child who is potentially eligible for title IV–E foster care maintenance payments and is at serious risk of removal from home as evidenced by the title IV–E agency either pursuing the child’s removal from the home or making reasonable efforts to prevent such removal (section 472(i) of the Act). Further, the agency must document the child’s candidacy for title IV–E foster care maintenance payments through one of the three acceptable methods identified in the Child Welfare Policy Manual, such as a case plan. (CWPM 8.1D #2) A child is not considered a candidate for title IV–E foster care when

the title IV–E agency has no formal involvement with the child or simply because the child has been described as “at risk” due to circumstances such as social or interpersonal problems or a dysfunctional home environment (CWPM 8.1D). This policy change was well received and generated positive interest from title IV–E agencies and child welfare and legal stakeholders.

This NPRM proposes to codify and expand the policy in CWPM 8.1B #30, 31, and 32. Recent research, as described in the Section-by-Section, demonstrates that providing independent legal representation early in foster care proceedings and other civil legal proceedings can help prevent children from entering foster care, and for youth already in foster care, can improve the rate of reunification and result in more permanent outcomes for the child and the family. Therefore, this NPRM proposes that providing independent legal representation to a child who is eligible for title IV–E foster care, their parent(s), and their relative caregiver(s) to prepare for and participate in civil legal proceedings is an allowable administrative cost when necessary to carry out the requirements in the agency’s title IV–E foster care plan in accordance with section 471(a) of the Act.

## III. Section-by-Section Discussion of Proposed Regulatory Changes

### Section 1356.60

ACF proposes to revise § 1356.60(c) to add a new paragraph (4) providing examples of allowable administrative costs for legal representation and add a new paragraph (c)(2)(xi) to include a reference to paragraph (4).

In a new paragraph (4)(i), we propose to clarify that a title IV–E agency may claim administrative costs for legal representation when incurred by the title IV–E agency, or any other public agency or tribe that has an agreement with the title IV–E agency for placement and care responsibility of a title IV–E eligible child under section 472(a)(2)(B)(ii) of the Act in foster care proceedings. This proposal is not new as regulations currently allow this cost under the example of preparing for and participating in judicial determinations. We are specifying this type of legal representation for agency attorneys as a separate example of allowable costs and to make clear that it encompasses public agencies and tribes that have an agreement under section 472(a)(2)(B)(ii) of the Act with the title IV–E agency.

In a new paragraph (4)(ii), we propose that a title IV–E agency may claim FFP for administrative costs of independent

legal representation provided by an attorney representing a child who is eligible for title IV–E foster care, their parent(s), and their relative caregiver(s), to prepare for and participate in foster care and other civil legal proceedings necessary to carry out the requirements in the agency's title IV–E foster care plan. We are also proposing that legal representation in civil legal proceedings may include facilitating, arranging, brokering, advocating, or otherwise linking clients with providers and services as identified in the child's case plan pursuant to section 475(1) of the Act. Consistent with Children's Bureau policy, a title IV–E agency may claim title IV–E administrative costs of paralegals, investigators, peer partners or social workers that support an attorney providing such independent legal representation to the extent that they are necessary to support the attorney. Under title IV–E of the Act, the term "parent(s)" means a biological or adoptive parent(s) or legal guardian(s), as determined by applicable state or tribal law (section 475(2) of the Act). The term "legal guardianship" means a judicially created relationship between child and caretaker (legal guardian) which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision making (section 475(7) of the Act). Therefore, this NPRM proposes that title IV–E agencies may claim allowable administrative costs of independent legal representation for a legal guardian(s) of a child eligible for title IV–E foster care, if state or tribal law considers a legal guardian(s) a parent(s), and consistent with Federal law, such legal guardian(s) is intended to be the permanent caretaker of the child.

Under this proposal, title IV–E agencies will also be allowed to claim administrative costs for independent legal representation provided to relative caregivers, even when those relative caregivers are not a foster child's legal guardian. For purposes of claiming the cost of independent legal representation provided to the relative caregiver of a child who is eligible for title IV–E foster care, the title IV–E agency may define the term "relative." For example, a title IV–E agency may define relative to include kin and "fictive-kin."

Finally, in paragraph (c)(2) we propose to add a new paragraph (xi) referencing the proposed new paragraph (4) to clarify that such legal representation is an allowable administrative cost.

This NPRM proposes that the title IV–E agency may determine what 'independent' means for purposes of providing such legal representation. However, at a minimum, such legal representation should be provided by an attorney who: does not have a concurrent conflict of interest, such as when the representation of one client will be directly adverse to the lawyer's responsibilities to another client, a former client or a third person; does not accept compensation for representing a client from someone other than the client unless the client gives informed consent; and there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship.

Many families involved in the child welfare system encounter barriers to accessing services that can help them overcome family, health, or economic challenges or crises. Such challenges or crises may include loss of employment, inadequate income, unstable housing or homelessness, food insecurity, mental health and/or substance misuse disorders, and family violence. These crises can impede a family's ability to provide a safe and stable environment for their children (ACYF–CB–IM–21–02, p.2; ACYF–CB–IM–21–06 p. 12), which can lead to placement in foster care or delayed permanency when the family is not prepared for a child to return home. For example, of all children that entered foster care in Federal fiscal year (FY) 2021, 63 percent of removals were related to neglect (including failure to provide adequate food, clothing, shelter, and supervision or care by a person who is responsible for the child's welfare). Nine percent were experiencing housing issues at the time of removal (Adoption and Foster Care Analysis and Reporting System (AFCARS) FY 2021 Report). In 2020, a peer-reviewed journal article conducted a systematic search of peer-reviewed studies conducted in the U.S. regarding the association of housing stress with child maltreatment. The literature indicates that "housing stress is associated with an increased likelihood of caregiver or child self-reported maltreatment, child protective services (CPS) reports, investigated and substantiated CPS reports, out-of-home placements, and maltreatment death (Chandler CE, Austin AE, Shanahan ME. Association of Housing Stress With Child Maltreatment: A Systematic Review. *Trauma Violence Abuse*. 2022 Apr;23(2):639–659. doi: 10.1177/1524838020939136. Epub 2020 Jul 17. PMID: 32677550; PMCID: PMC7855012).

Preventing a child from being removed from their home is critical to a child's well-being because removal, even for a short period of time, exposes the child to a range of trauma and stress (Sankaran, Vivek. "Using Preventive Legal Advocacy to Keep Children from Entering Foster Care." *Wm. Mitchell L. Rev.* 40, (3): 1036–1047, 2014). A child who is at risk of entering foster care has better outcomes when they remain at home compared to when they are placed into foster care (Joseph J. Doyle, Jr. "Causal Effects of Foster Care: An Instrumental Variables Approach." *Children and Youth Services Review* 35(7): 1143–1151, 2013.).

Research demonstrates that providing independent legal representation in foster care and other civil legal proceedings can minimize some of these barriers that contribute to bringing families with children at risk of entering foster care in contact with the child welfare system and may help prevent children from entering foster care (Sankaran, Vivek. "Using Preventive Legal Advocacy to Keep Children from Entering Foster Care." *Wm. Mitchell L. Rev.* 40, (3): 1036–1047, 2014). One recent study showed that when parents are represented by an interdisciplinary law office with legal specialists to assist with immigration, benefits, criminal, housing, or other concerns, children placed in foster care were safely returned to their families about 43 percent more often in the first year, children's time in foster care was reduced by nearly four months, and families were no more likely to experience a subsequent substantiated report of maltreatment (Gerber, Lucas A., Pang, Yuk C., Ross, Timothy, Guggenheim, Martin, Pecora, Peter J., & Miller, Joel. "Effects of an interdisciplinary approach to parental representation in child welfare," *Children and Youth Services Review*, Volume 102, 2019, Pages 42–55, ISSN 0190–7409, <https://doi.org/10.1016/j.childyouth.2019.04.022>).

Outcome data from legal service programs and pilot projects demonstrate that providing independent legal representation to address a family's civil legal issues results in a high success rate for preventing children from entering foster care and for children who are in foster care, expediting permanency (American Bar Association Center on Children and the Law & National Council of Juvenile and Family Court Judges. *Supporting Early Legal Advocacy before Court Involvement in Child Welfare Cases* (March, 2021). For example:

- The Detroit Center for Family Advocacy conducted a pilot program to



provide independent legal representation to address civil legal issues for families in which a child has been found abused or neglected. Typically, lawyers filed for a restraining order, drafted a power of attorney, filed for a guardianship, applied for public benefits, or helped with special-education entitlements. Of the 55 families who were caring for 110 children served, none of the children entered foster care. (Detroit Center for Family Advocacy Pilot Evaluation report July 2009–June 2012; Sankaran, Vivek. *Case Closed: Addressing Unmet Legal Needs and Stabilizing Families*. M.L. Raimon, co-author. Center for the Study of Social Policy [2014] [Detroit model project])

- Iowa Legal Aid is piloting an early representation program for parents before petitions are filed. The program assists with private guardianship, custody, protective orders, landlord/tenant disputes, and appeals of denials of public benefits. Outcome data from 2018 show the program, in four counties, prevented over 100 children from becoming court involved (Family Justice Initiative. *Implementing FJI System Attributes, Attribute 4: Timing of Appointment, 2020.*; Iowa Legal Aid. *Parent Representation Project*, undated.).

- Legal Services of New Jersey has operated a pre-petition representation program since 2018. The cases are referred by the child welfare agency and typically involve representation around public benefits and access to affordable housing, child support and custody issues, and school-related issues. Outcome data indicate that by 2020, the program had prevented 200 removals (Implementing FJI System Attributes, Attribute 4: Timing of Appointment, 2020.).

- The Washington Family Intervention Response to Stop Trauma Clinic provides pre-petition representation to parents of substance-exposed infants. The program often works with the parent to identify and obtain temporary custody with relatives or others. Attorneys also advocate around services for parents with substance use disorders, including for programs that allow continued placement of the child with the parent. While this is a small and relatively new program, initial outcome data suggests the majority of the parents working with the program can avoid a dependency filing and, thus, prevent the removal of their children from the home (Family Justice Initiative, 2020; Wall, Tonya and Adam Ballout. “Using Legal Services to Keep Children in Families: The

F.I.R.S.T. Clinic.” *Children’s Rights Litigation*, October 3, 2019.).

- The Vermont Parent Representation Center provides legal representation in civil matters in cases where a child faces a significant risk of being removed from his or her home. In 78 percent of cases, children did not enter foster care. In cases in which children entered foster care, 50 percent went home to their families expeditiously (*VPRC’s Performance Measures*, Vermont Parent Representation Center, Inc.) (*Why VPRC Is Important to Vermont Families*, Vermont Parent Representation Center, Inc.).

- Children’s Law Center of California (CLC) provides pre-court legal advocacy to expecting and parenting youth who have a dependency case. Case managers and attorneys address issues such as drug use, child trafficking and exploitation, mental health and domestic violence. The project has successfully prevented filings in cases involving domestic violence by counseling clients and helping them obtain restraining orders once a referral was triggered.

- Legal Aid Services of Oklahoma operates an early legal advocacy project. In cases where the state will not reunify a child in foster care because of domestic abuse, attorneys provide legal representation in divorce, guardianship and landlord tenant issues. The benefit of this early advocacy project is that it avoids removal of children.

- In New York, the Bronx Defenders provide legal representation for parents in abuse and neglect cases in Bronx Family Court, advocates for families during the child protection investigation before a legal case is filed and advises pregnant women who are at risk of child protection involvement. Attorneys advise parents of their rights, accompany them to meetings and conferences with the Administration for Children’s Services, refer them to community-based services, and work with parents to identify family supports.

Under the revision proposed in this NPRM, we specify that allowable administrative costs of an attorney providing independent legal representation in other civil legal proceedings may include facilitating, arranging, brokering, advocating, or otherwise linking clients with providers and services as identified in the child’s case plan. For example, a family may need to secure safe and stable housing to prevent the unnecessary removal of a child from the home, or a youth aging out of foster care may need access to stable housing to finalize a case plan in support of their permanency goal as required by, respectively, sections

471(a)(15) and 475(5)(H) of the Act. Allowable civil legal representation may include preparing for or participating in a legal proceeding to advocate with a housing authority to help a family or a youth aging out of foster care secure a housing voucher, appealing a denial of a housing voucher, or suing a landlord whose housing has unsafe conditions in order to execute the child’s case plan.

Additional examples of legal representation in civil legal proceedings that may be necessary to carry out the title IV–E foster care plan include:

- An attorney providing independent legal representation to an eligible child/parent to prepare for and participate in a legal proceeding to establish paternity when it is necessary to establish title IV–E eligibility or meet the requirement for the agency to file for termination of parental rights when a child has been in foster care for 15 of the most recent 22 months (section 475(5)(E) of the Act).

- An attorney providing independent legal representation to an eligible child/parent/relative caregiver to prepare for and participate in a legal proceeding to help a victim of family violence obtain an order of protection against the abuser to maintain or secure custody of their child(ren), secure stable housing, secure public benefits, or establish custody or guardianship, when it is necessary to meet the plan requirement to make reasonable efforts to prevent the unnecessary removal of a child from the home or to finalize a case plan in support of a child’s permanency goal as required by section 471(a)(15) of the Act.

- An attorney providing independent legal representation to an eligible child/parent/relative caregiver to prepare for and participate in a legal proceeding to enroll a child in school or access education records when it is necessary to meet plan requirements to ensure the educational stability of the child while in foster care, taking into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement in foster care; provide a copy of educational records to a child at no cost at the time the child leaves foster care; and ensure a child is enrolled in school per sections 471(a)(30) and 475(1)(G) and (5)(D) of the Act.

- An attorney providing independent legal representation to an eligible child to prepare for and participate in a proceeding to establish a health care power of attorney, health care proxy, or other similar document recognized under State law when it is necessary to meet the requirement to develop a transition plan in the 90-day period



immediately prior to the date on which the child will age out of foster care, per section 475(5)(H) of the Act.

- An attorney providing independent legal representation to an eligible child/parent/relative caregiver to prepare for and participate in a proceeding to resolve inaccuracies in a youth's credit report when it is necessary to meet the plan requirement to provide a youth a copy of any consumer report each year until the child is discharged from care, and provide assistance (including, when feasible, from any court-appointed advocate for the child) in interpreting and resolving any inaccuracies in the report, per section 475(5)(I) of the Act.

- An attorney providing independent legal representation to an eligible child/parent/relative caregiver to prepare for and participate in a proceeding to help a child obtain, change, or correct official documentation when it is necessary to meet the plan requirements to provide youth discharged from foster care an official or certified copy of the United States birth certificate of the child, a social security card issued by the Commissioner of Social Security, health insurance information, a copy of the child's medical records, and a driver's license or identification card issued by a State in accordance with the requirements of section 202 of the REAL ID Act of 2005, and any official documentation necessary to prove that the child was previously in foster care per sections 475(5)(I) and 471(a)(27) of the Act.

- An attorney providing independent legal representation to an eligible child/parent/relative caregiver to prepare for and participate in a proceeding to help a youth aging out of foster care access public benefits, housing, health insurance, and education when it is necessary to meet the plan requirement to develop a transition plan 90-days immediately prior to the date on which the child will age out of foster care, per section 475(5)(H) of the Act.

In a new paragraph (4)(iii), ACF proposes that a title IV-E agency with placement and care responsibility for an Indian child may claim FFP for administrative costs of legal representation provided by an attorney representing an Indian child's tribe (as defined by 25 U.S.C. 1903(5)), when the child's tribe intervenes in any state court proceeding for the foster care placement or termination of parental rights of an Indian child who is in title IV-E foster care or an Indian child who is a candidate for title IV-E foster care when such legal representation is found necessary by the Secretary to carry out the requirements in the title IV-E agency's title IV-E state plan. The ICWA

was passed by Congress in 1978 to address the long history of failing "to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families." (25 U.S.C. 1901(5)). ICWA protects the "best interests of Indian children and promotes the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs." (25 U.S.C. 1902).

As one tribal leader told Congress, tribes cannot long survive as "self-governing" communities if they cannot pass their "heritage" on to the next generation. *Holyfield* at 34 (citation omitted). Congress thus recognized that, by severing that connection to future generations, the breakup of Indian families threatens "the continued existence and integrity of Indian tribes." 25 U.S.C. 1901(3). The Federal Government has an interest in ensuring that Indian tribes, vested with a statutory right to intervene in state foster care placement proceedings in accordance with 25 U.S.C. 1911(c), have legal representation to preserve and protect the continued existence and integrity of Indian tribes. As the Supreme Court noted in a case interpreting ICWA, "Congress [] found that the breakup of Indian families harmed not only Indian children and their parents, but also their tribes." *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30 at 33–34 (1989).

This proposal supports the goal of tribal self-governance by supporting Indian families, both by minimizing unnecessary separations of Indian children from their parents and by maximizing their placement with extended family, other tribal members, or other tribal families when they cannot remain with their parents. It is well documented that for Indian children who have been placed in foster care, and their families, early representation of an Indian child's tribe in foster care placement proceedings promotes stability for the child by minimizing unnecessary separation of children and their parents, and by maximizing placements of the child with extended family and other preferred placements (Frequently Asked Questions Bureau of Indian Affairs Final Rule: Indian Child Welfare Act (ICWA) Proceedings, June 17, 2016).

The information provided by the tribe's attorney provides the cultural and social standards of the child's tribe that are necessary for the court to make essential determinations that reasonable efforts were made as required under the title IV-E plan. For example, the Act requires the court to determine whether the agency made reasonable efforts to finalize a permanency plan. The tribal attorney's representation of the cultural and social standards for family connection, reunification and what permanency looks like in the child's tribe, may be necessary to finalize the permanency plan for an Indian child. For example, if adoption is the permanency plan for an Indian child, the tribal attorney can provide information on customary adoption, which ensures "the same stability and permanence of traditional adoption without terminating parental rights." As with all allowable administrative costs, it is the option of the title IV-E agency with placement and care responsibility of the child whether or not to implement this option to claim FFP for this purpose.

ACF is making this proposal because legal representation provided by an attorney to an Indian child's tribe intervening in state court proceedings as described above, would be an allowable administrative cost necessary for the proper and efficient administration of the title IV-E plan when it fulfills a specific title IV-E plan requirement. Such representation also avoids unintended consequences adverse to a child's interests, such as loss of tribal membership and benefits (ICWA Compliance Task Force Report to the California Attorney General's Bureau of Children's Justice. 2017).

#### *Equity Impact*

This NPRM is consistent with the administration's priority of advancing equity for those historically underserved and adversely affected by persistent poverty and inequality (Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* [Jan. 20, 2021]). Research well-documented the overrepresentation of certain racial and ethnic groups in foster care relative to their representation in the general population. African American and American Indian or Alaska Native children are at greater risk than other children of being confirmed for maltreatment and placed in out-of-home care. They stay in foster care longer and have disparate outcomes. For example, they are less likely to reunify with their families (Child Welfare Information Gateway. (2021). Child welfare practice

to address racial disproportionality and disparity. U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. <https://www.childwelfare.gov/pubs/issue-briefs/racialdisproportionality/>. Access to legal representation for an Indian child's tribe promotes equity for those historically and adversely affected by inequality by minimizing unnecessary separation of children and their parents, and by maximizing placements of the child with extended family, within the tribal community, and other preferred placements. Research also documents the overrepresentation of children and parents with disabilities in foster care relative to their representation in the general population. As many as 60 percent of children in foster care have disabilities. Parents with disabilities are more likely than nondisabled parents to have child welfare system involvement. Children with disabilities are institutionalized at higher rates and for longer periods of time. Children of parents with disabilities have higher out-of-home placement than other children. Studies have also found disabled parents have high rates of termination of parental rights (Albert SM, Powell RM. Supporting disabled parents and their families: perspectives and recommendations from parents, attorneys, and child welfare professionals. *J Public Child Welf*. 2020;15(5):529. doi: 10.1080/15548732.2020.1751771. PMID: 37220548; PMCID: PMC10202498.).

Access to independent legal representation early in foster care and other civil legal proceedings necessary to carry out the requirements in the agency's title IV–E foster care plan may prevent children of color from entering foster care. For children in foster care, it may increase the rate of reunification and provide a quicker timeframe for achieving permanency. For young adults aging out of foster care, such legal representation may provide access to services and supports needed to achieve permanency and long-term stability.

This proposed change can also help low-income families adversely affected by persistent poverty who are struggling with unemployment, inadequate income, unstable housing, evictions or homelessness, and food insecurity when confronted with potential removal of a child from the home, or when a relative is caring for a child in their home. According to a 2017 study, 71 percent of low-income households experienced at least one civil legal problem in the previous year, including problems with health care, housing conditions, disability access, veterans' benefits, and

domestic violence. Of the low-income households reporting civil legal problems, 86 percent received inadequate or no legal help; (Washington, D.C.: The University of Chicago for Legal Services Corporation, 2017). As previously explained, studies also show that when a child is removed from the home, having access to legal representation not only for child welfare proceedings but also for other civil legal issues earlier in a case can improve the rate of reunification, halve the amount of time needed to secure legal guardianship or adoption, and result in more permanent outcomes for the child and the family (Thornton, Elizabeth, & Gwin, Betsy. *High-Quality Legal Representation for Parents in Child Welfare Cases Results in Improved Outcomes for Families and Potential Cost Savings*. 46 Fam. L.Q. 139 (2012)). That means that parents without independent legal representation in child welfare proceedings and in other civil legal proceedings are at a disadvantage in having their children returned to them. Therefore, providing families adversely affected by poverty with independent legal representation in foster care and other civil legal proceedings necessary to carry out the requirements in the agency's title IV–E foster care plan may improve outcomes related to reunification and permanency.

In addition, access to legal representation for an Indian child's tribe promotes equity for those historically and adversely affected by inequality by minimizing unnecessary separation of children and their parents, and by maximizing placements of the child with extended family, within the tribal community, and other preferred placements.

#### IV. Regulatory Process Matters

##### *Regulatory Planning and Review Executive Order 12866 and Executive Order 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 is supplemental to, and reaffirms the principles, structures, and definitions governing regulatory review as established in E.O. 12866, as amended by Executive Order 14094, emphasizing the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules,

and of promoting flexibility. Section 3(f) of E.O. 12866, as modified by 14094, defines “a significant regulatory action” as an action that is likely to result in a rule (1) having an annual effect on the economy of \$200 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, and tribal governments or communities; (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles set forth in the Executive order. This proposed rule is a significant rule and the Regulatory Impact Analysis for this proposed rule identifies economic impacts that exceed the threshold for significance under section 3(f)(1) of Executive Order 12866. The estimated cost and transfer impacts of this regulatory proposal are provided below. As described in the Section-by-Section discussion above, providing legal representation in foster care proceedings and other civil legal proceedings minimize barriers that contribute to bringing families with children at risk of entering foster care in contact with the child welfare system and may help prevent children from entering foster care. For youth already in foster care, such legal representation can improve the rate of reunification resulting in more permanent outcomes for the child and the family. For young adults transitioning out of foster care, such legal representation may provide access to services and supports needed to achieve permanency and for long-term stability.

**Alternatives Considered:** In 2019, ACF revised the Child Welfare Policy Manual to allow title IV–E agencies to claim FFP for the administrative costs of independent legal representation provided by attorneys representing children who are candidates for title IV–E foster care, children who are in title IV–E foster care, and the children's parent(s) in all stages of foster care legal proceedings. As an alternative to this NPRM, we considered only codifying this policy (see CWPM 8.1B #30, 31, and 32). However, this alternative would not meet our goals for two reasons. First, the alternative would not allow an agency to claim such costs in non-foster care civil legal proceedings, meaning that an

agency could only continue using state/tribal or local funds for legal representation in civil legal proceedings. As described in the Section-by-Section, allowing administrative costs for legal representation in civil legal proceedings can help prevent children from entering foster care, and for youth already in foster care, can improve the rate of reunification and result in more permanent outcomes for the child and the family. Second, the alternative would only allow independent legal representation for the child's parent(s) and not the child's relative caregiver(s) as proposed. However, such legal representation for the growing number of relative caregivers, who often lack advance preparation and struggle with similar legal barriers as a parent(s), will reduce the need for more formal child welfare system involvement. For children in foster care, providing legal representation to relative caregivers would minimize some of the barriers that prevent a child from being placed with a relative caregiver, enable more children to maintain family connections, stabilize placements and result in more permanent outcomes for the child and the family.

We also considered narrowly defining the activities an attorney may perform to prepare for and participate in civil legal proceedings for which a title IV–E agency may claim FFP. However, as described in the Section-by-Section, legal service programs and pilot projects that provided legal representation in a wide range of civil legal issues demonstrated a high success rate for preventing children from entering foster care and for children who are in foster care, expediting permanency. Therefore, the proposal broadens “preparation for and participation in civil legal proceedings” to include facilitating, arranging, brokering, advocating, or otherwise linking clients with providers and services as identified in the child's case plan.

We further considered whether the statute would permit the proposal to be mandatory for title IV–E agencies. However, title IV–E does not provide authority to require agencies to provide such representation or to claim FFP for administrative costs. This is because title IV–E agencies determine the costs necessary to administer the title IV–E Foster Care Program, and in turn, Federal reimbursement for allowable costs is permitted at 50 percent FFP.

Without this proposal codified, title IV–E agencies may continue to claim FFP for the administrative costs of independent legal representation provided by attorneys, representing

children who are eligible for title IV–E foster care, and the children's parent(s) only in foster care legal proceedings.

Finally, as an alternative to this NPRM, we considered continuing to not allow title IV–E agencies to claim FFP for the administrative cost of independent legal representation provide by an Indian child's tribe when the tribe intervenes in state court child welfare proceedings. However, such legal representation promotes stability for the child by minimizing unnecessary separation of children and their parents, and by maximizing placements of the child with extended family, tribal community, and other preferred placements.

#### *Regulatory Flexibility Analysis*

The Regulatory Flexibility Act (RFA) (see 5 U.S.C. 605(b) as amended by the Small Business Regulatory Enforcement Fairness Act) requires Federal agencies to determine, to the extent feasible, a rule's impact on small entities, explore regulatory options for reducing any significant impact on a substantial number of such entities, and explain their regulatory approach. The term “small entities,” as defined in the RFA, 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. HHS considers a rule to have a significant impact on a substantial number of small entities if it has at least a 3 percent impact on revenue on at least 5 percent of small entities. However, the Secretary certifies, under 5 U.S.C. 605(b), as enacted by the RFA (Pub. L. 96–354), that this rulemaking will not result in a significant impact on a substantial number of small entities. This proposed rule does not affect small entities because it is applicable only to state and tribal title IV–E agencies. Therefore, an initial regulatory flexibility analysis is not required for this document.

#### *Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) was enacted to avoid imposing unfunded Federal mandates on state, local, and tribal governments, or on the private sector. Section 202 of UMRA requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2022, that threshold is approximately \$165 million. This rulemaking does not contain mandates that will impose spending costs on state, local, or tribal

governments in the aggregate, or on the private sector, in excess of the threshold.

#### *Congressional Review*

The Congressional Review Act (CRA) allows Congress to review major rules issued by Federal agencies before the rules take effect (see 5 U.S.C. 801(a)(1)(A)). The CRA defines a “major rule” as one that has resulted, or is likely to result, in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (see 5 U.S.C. chapter 8). Based on our estimates of the impact of this rulemaking, the Office of Information and Regulatory Affairs (OIRA) in OMB anticipates that a final rule would be ‘major’ under the CRA.

#### *Assessment of Federal Regulations and Policies on Families*

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. ACF believes it is not necessary to prepare a family policymaking assessment, see Public Law 105–277, because the action it takes in this NPRM will not have any impact on the autonomy or integrity of the family as an institution.

#### *Executive Order 13132*

Executive Order 13132 requires Federal agencies to consult with state and local government officials if they develop regulatory policies with federalism implications. Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government close to the people. This rulemaking will not have substantial direct impact on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this

action does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (Pub. L. 104–13) seeks to minimize government-imposed burden from information collections on the public. In keeping with the notion that government information is a valuable asset, it also is intended to improve the practical utility, quality, and clarity of information collected, maintained, and disclosed.

The Paperwork Reduction Act defines “information” as any statement or estimate of fact or opinion, regardless of form or format, whether numerical, graphic, or narrative form, and whether oral or maintained on paper, electronic, or other media (5 CFR 1320.3(h)). This includes requests for information to be sent to the government, such as forms, written reports and surveys, recordkeeping requirements, and third-party or public disclosures (5 CFR 1320.3(c)). Collection requirements for title IV–E foster care administrative costs are currently authorized under OMB number 0970–0510 and include administrative costs for independent legal representation. This action does not include any new information collection requirements or changes to existing information collection requirements.

#### *Annualized Cost to the Federal Government*

The Federal cost of the NPRM over ten fiscal years (2023–2032) is estimated to be \$2,936,285,160 (\$2,099,154,001 (foster care legal proceedings (FC)) + \$631,567,527 (civil legal proceedings) + \$205,563,632 (FC proceedings in which an Indian child’s tribe has intervened)). The combined total for Federal and agency costs over ten fiscal years is estimated to be \$5,872,570,319 (\$4,198,308,001 for FC legal proceedings + \$1,263,135,054 for civil legal proceedings + \$411,127,264 for FC proceedings in which an Indian child’s tribe has intervened). It is optional for a title IV–E agency to claim the administrative cost of providing independent legal representation in foster care and civil legal proceedings to eligible children, their parents, and their relative caregivers, and for legal representation to an Indian child’s tribe that intervenes in state court proceedings for the foster care placement and termination of parental rights of an eligible child.

*Assumptions:* ACF made several assumptions when calculating title IV–E administrative costs:

- FY 2021 title IV–E foster care administrative cost claims are used as the base year amounts for projection purposes in this NPRM and were sourced from Form CB–496 FC part 1. These are actual claims, and not estimates. For the purposes of these burden estimates, we will use the phrase “candidates” to refer to the number of children claimed as title IV–E candidates and “IV–E FC” for children who are in title IV–E foster care, the two populations of children (and their parents and relative caregivers) to which the costs of this NPRM apply.
- AFCARS data provides the number of title IV–E eligible children who identified as “American Indian\AK Native Alone Or In Combination.” We assume that this population of children is potentially subject to ICWA requirements in state court foster care placement proceedings. We further assume that each such Indian child’s tribe will intervene in state court foster care placement proceedings.
- Title IV–E agencies may claim reimbursement for 50 percent of the administrative costs to provide legal representation in foster care proceedings, including those in which an Indian child’s tribe has intervened in state court foster care placement proceedings, and civil proceedings, and the title IV–E agency must pay its share with state or tribal funds. This non-Federal share will be an equal percentage of 50 percent because a title IV–E agency must match the same amount of funds for which it seeks Federal reimbursement.
- We assume an overall annual 1 percent caseload growth rate in the population of candidates for title IV–E foster care and IV–E FC for whom title IV–E administrative costs will be claimed in civil legal proceedings and in FC legal proceedings, including those in which an Indian child’s tribe has intervened in state court foster care placement proceedings. This is based on current title IV–E budgetary projections.
- We assume an annual FFP claims growth factor of 4.7 percent for FY 2023 and 2.3 percent from FY 2024 to FY 2032 for the administrative costs of independent legal representation in FC and in other civil legal proceedings. This is based on current title IV–E budgetary projections of the percentage of change in title IV–E administrative cost claims annually. We assume the calculated FY 2021 title IV–E foster care administration eligibility rate for children classified as American

Indian\AK Native Alone Or In Combination will remain unchanged for the ten FY (FYs 2023–2032) project period.

- An implementation level is used in the calculations for the chart below as an estimated projection for the growth in the number of children (either directly or on behalf of a parent or relative caregivers) receiving independent legal representation in foster care legal proceedings or civil legal proceedings. Similarly, an implementation level is used in the calculations for the chart below as an estimated projection for the growth in the number of children whose tribe is receiving legal representation in state foster care placement and termination of parental rights legal proceedings. The implementation level is different for the cost estimates for foster care legal proceedings and civil legal proceedings, and state court foster care placement legal proceedings in which an Indian child’s tribe has intervened as explained below:

- For independent legal representation in foster care legal proceedings, the implementation level is measured separately for children who are candidates and IV–E FC. The base year (FY 2021) implementation levels are calculated from Form CB–496 FC part 1 which identifies for each title IV–E agency on a quarterly basis the average monthly number of children where independent legal representation for foster care proceedings is being provided for a candidate or IV–E FC. For FY 2021, the independent legal representation for foster care proceedings implementation level is 15.4 percent for IV–E FC and 7.9 percent for candidates. For FYs 2023–2032, the implementation levels are derived from the experience observed in the reported caseload data between FY 2020 and FY 2021 where a 24 percent growth rate occurred for children in title IV–E foster care. We assume that the growth rate will peak in the year this NPRM is finalized and then gradually diminish as more title IV–E agencies take up the option to claim for these costs, and more children are receiving this representation.

- For legal representation by an Indian child’s tribe in state court foster care placement proceedings a single implementation level is measured for children who are candidates and in IV–E FC. The base year (FY 2021) implementation level is set at zero percent since Federal funding for this service will not be available until this NPRM is finalized. Although there is no known data on the extent to which we anticipate title IV–E agencies will begin

providing legal representation by tribes to intervene in state court foster care placement proceedings, we anticipate that this administrative cost will be made available to 5 percent of potentially eligible children in FY 2023 and that most of the growth will occur in years 2–5 (FYs 2024–2027). In FY 2027 we anticipate 35 percent of potentially eligible tribes will receive legal representation. In subsequent FYs, the implementation rate growth will gradually diminish as more title IV–E agencies take up the option to claim for these costs, and more children on whose behalf a tribe is receiving this representation.

○ For independent legal representation in civil legal proceedings, the implementation level presumes that administrative cost claims will be limited to those children on whose behalf independent legal representation in foster care legal proceedings are claimed. Not all children receiving legal representation in FC proceedings need representation related to civil matters because the reasons for child welfare involvement vary. Additionally, not all title IV–E agencies providing independent legal representation in foster care legal proceedings will opt to also provide such legal representation in civil proceedings. We have no estimate for FY 2021 costs for legal representation in civil legal proceedings as these will be new costs as a result of finalizing this NPRM. We assume that the proportion of children receiving legal representation for civil legal proceedings (for both candidates and IV–E FC) will be derived from among those receiving representation for foster care legal proceedings. We estimate that the civil legal proceedings title IV–E caseload will grow gradually each FY from 20 percent in FY 2023, to 45 percent in FY 2027 and up to 56 percent in FY 2032 of the children on whose behalf representation is also being provided for foster care legal proceedings. While there is a great deal of interest in providing legal representation in civil legal proceedings, our projections take into account that, in most instances, new or revised protocols will need to be developed with various organizations to implement a final rule. There will also be a need to secure state or tribal funds for the non-Federal share of funding, which often requires legislative approvals.

#### Federal Cost Estimate for Independent Legal Representation in Foster Care Legal Proceedings

Here we describe the individual calculations by line that are in the following chart. All entries in the chart and the narrative below are rounded to the nearest whole number. The calculations to obtain these amounts, however, were performed without applying rounding to the involved factor(s).

*Line 1. National number of children (candidates and IV–E FC) receiving legal representation in foster care legal proceedings.* Line 1 of the table below provides that the actual number of children receiving independent legal representation in FC proceedings in FY 2021 (baseline) was 10,477 candidates and 26,092 IV–E FC. Line 1 also includes estimates of the annual number of children receiving independent legal representation in foster care proceedings in the following subsequent years: FYs 2023, 2024, 2025, 2027 and in 2032, the estimated number of children is 29,525 candidates and 73,530 IV–E FC.

*Line 2. National average FFP claim per child (candidates and IV–E FC) for independent legal representation in foster care proceedings.* Line 2 of the table below displays that in FY 2021, the actual average title IV–E administrative cost claim per child receiving independent legal representation in foster care legal proceedings was \$742 for title IV–E candidates and \$2,709 for children in title IV–E foster care. We also provide estimates of the average title IV–E claim per child in the following subsequent years: FYs 2023, 2024, 2025, 2027 and in 2032 the per child average claim is estimated at \$3,481 (IV–E FC) and \$954 (candidates).

*Line 3. Average FFP claims for candidates and children in title IV–E foster care for independent legal representation in foster care legal proceedings.* Line 3 of the table below displays that in FY 2021, the actual FFP for children receiving independent legal representation in foster care legal proceedings was \$7,777,621 for candidates and \$70,689,345 for children in IV–E FC. We also provide estimates of the average annual claims for these children in the following subsequent years: FYs 2023, 2024, 2025, 2027 and in 2032 the estimated cost is \$28,160,009 (candidates) and \$255,941,062 (IV–E FC).

*Line 4. Total Federal costs for independent legal representation in foster care legal proceedings (candidates and IV–E FC).* Line 4 of the table below provides that the actual

total FFP in FY 2021 was \$78,466,966, which is the sum of the costs of independent legal representation in foster care legal proceedings for candidates and IV–E FC. We also provide estimates of the total FFP for these costs in the following subsequent years: FYs 2023, 2024, 2025, 2027 and in 2032 the estimated annual cost is \$284,101,071. The estimates for these subsequent FYs were calculated by multiplying line 1 by line 2 for candidates and IV–E FC.

*Line 5. Non-Federal costs for independent legal representation in foster care legal proceedings.* Line 5 of the table below displays the total FY 2021 non-Federal costs of independent legal representation in foster care proceedings for candidates and IV–E FC was \$78,466,966. This number is the same as line 4 because the FFP rate used in these estimates is 50 percent, thus we estimate the costs for Federal and non-Federal to be the same. We also provide estimates of the total non-Federal costs of independent legal representation in foster care legal proceedings in the following subsequent years: FYs 2023, 2024, 2025, 2027 and in 2032 the estimated annual cost is \$284,101,071.

*Line 6. Total Federal and non-Federal costs of independent legal representation in foster care legal proceedings.* Line 6 of the table below is the sum of lines 4 and 5 for the total Federal and non-Federal costs of independent legal representation in foster care legal proceedings for candidates and IV–E FC. The total FY 2021 costs were \$156,933,932. We also provide estimates of these total Federal and non-Federal costs in the following subsequent years: FYs 2023, 2024, 2025, 2027 and in 2032 the estimated annual cost is \$568,202,142.

#### Federal Cost Estimate of Independent Legal Representation in Other Civil Legal Proceedings

*Line 7. Number of children (candidates and IV–E FC) receiving independent legal representation in civil legal proceedings.* Line 7 of the table below displays the estimated number of children who will receive independent legal representation in civil legal proceedings either directly, or on behalf of a parent or relative caregiver in FY 2023 as 10,137 children. There is no estimate for FY 2021 in the chart because these costs were not claimed; these will be new costs as a result of finalizing this NPRM. We also provide estimates for subsequent years: FYs 2024, 2025, 2027 and in 2032 the estimated number of children is 63,482. This is based on the implementation level which is the percentage of

children receiving independent legal representation in foster care legal proceedings who are projected to also receive independent legal representation in civil legal proceedings in the year.

*Line 8. National average title IV–E administrative cost claim per child for independent legal representation in civil legal proceedings.* Line 8 of the table below displays that in FY 2021, we assumed the average FFP claim per child (candidates and IV–E FC) receiving independent legal representation in civil proceedings to be \$1,262. We also provide estimates for these costs for the following subsequent years: FYs 2023, 2024, 2025, 2027 and in 2032, we estimate the average FFP claim per child to be \$1,621. These cost estimates were derived from data provided by the “Detroit Model” legal services program in which legal representation in civil issues for child welfare clients was calculated as an average yearly amount of \$2,524 gross (\$1,262 50 percent FFP title IV–E Federal share) per client. We used the Detroit model project because we do not have current title IV–E administrative cost claims reported on the Form CB–496 for civil proceedings that we can use for an estimate of the cost of providing independent legal representation in civil legal proceedings in this NPRM. This is the only program model known to us providing civil legal representation in pre-petition cases for which average cost data is available, thus the only way for us to estimate these costs (Detroit Center for Family Advocacy Pilot Evaluation report July 2009–June 2012; Sankaran, Vivek. Case Closed: Addressing Unmet Legal Needs and Stabilizing Families. M.L. Raimon, co-author. Center for the Study of Social Policy [2014] [Detroit model project]).

Pursuant to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards, title IV–E agencies must, among other things, ensure costs are reasonable (45 CFR 1335.30(i) applying 45 CFR 75.404). A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The title IV–E agency must describe how the administrative costs of allowable legal representation are allocated in a public assistance cost allocation plan that is reviewed and approved by HHS (45 CFR 1355.30(k) applying 45 CFR 95.507). To the extent that a title IV–E agency contracts with another public or private agency to provide or assist in title IV–E allowable

activities, the title IV–E agency may claim reasonable costs consistent with their cost allocation plan and supported by a written agreement that, among other things, includes the specific service(s) being purchased, and the basis for billing (45 CFR 95.507(b)(6)). Many title IV–E agencies already have contracts with attorneys providing independent legal representation in foster care related hearings on behalf of children and their parent(s) where the child is either a candidate for or in foster care. Such agencies have experience identifying reasonable rates and appropriate categories of costs for allowable legal representation. We encourage title IV–E agencies to share comments on these experiences. We also specifically request comments from the public on what a prudent person under the circumstances would reasonably pay for attorney fees in civil legal proceedings.

*Line 9. Federal costs of independent legal representation in civil legal proceedings.* Line 9 of the table below provides the estimated Federal administrative costs at 50 percent FFP for independent legal representation in civil legal proceedings for candidates and IV–E FC. These costs were calculated by multiplying the expected average monthly caseload (line 7) by the expected average annual claim per child (line 8). We provide estimated Federal costs of \$13,393,972 for FY 2023 and in subsequent years: FYs 2024, 2025, 2027 and in 2032 the estimated Federal cost is \$102,928,630.

*Line 10. Non-Federal costs of independent legal representation in civil legal proceedings.* Line 10 provides the estimated non-Federal share of administrative costs for independent legal representation in civil legal proceedings for candidates and IV–E FC, which is 50 percent of the total on line 11. This number is the same as line 9 because the FFP rate used in these estimates is 50 percent, thus we estimate the costs for Federal and non-Federal to be the same. We provide estimated non-Federal costs of \$13,393,972 beginning in FY 2023 and in subsequent FYs: 2024, 2025, 2027 and in 2032 the estimated non-Federal cost is \$102,928,630. There is no estimate for FY 2021 in the chart because these costs were not claimed; these will be new costs as a result of finalizing this NPRM.

*Line 11. Total Federal and non-Federal cost of independent legal representation in civil legal proceedings.* Line 11 displays the annual estimated total (Federal + non-Federal) costs for independent legal representation for candidates and IV–E FC in civil legal

proceedings. This is the sum of lines 9 and 10. We estimate these total costs beginning in FY 2023 as \$26,787,943 and in subsequent FYs: 2024, 2025, 2027 and in 2032, the estimate is \$205,857,260. There is no estimate for FY 2021 in the chart because these costs were not claimed; these will be new costs as a result of finalizing this NPRM.

*Line 12. Number of Indian children on whose behalf a tribe may receive legal representation in foster care legal proceedings (candidates and IV–E FC).* Line 12 of the table below provides the estimated number of Indian children for whom legal representation may be received by their tribe in FC proceedings. In FY 2021 (baseline) candidates and IV–E FC are not listed since this administrative cost was not available. We estimate that the total number, beginning in 2023 and subsequent FYs 2024, 2025, 2027 and 2032 is 3,342 for candidates and 7,814 for IV–E FC.

*Line 13. National average FFP claim per child (candidates and IV–E FC) for tribal representation in foster care legal proceedings.* Line 13 of the table below provides the average title IV–E claim per child for the tribal representation in foster care proceedings. In FY 2021 (baseline), the average title IV–E administrative cost claim per child receiving legal representation in foster care legal proceedings was \$1,262 (estimated) for title IV–E candidates and \$2,709 (actual) for children in title IV–E foster care. We estimate the total per child claim for subsequent FYs 2023, 2024, 2025, 2027, and 2032 is \$1,621(candidates) and \$3,481 (IV–E FC).

*Line 14. Average FFP for IV–E FC and candidate itemized for tribal representation in foster care legal proceedings.* Line 14 of the table below displays estimates for the average annual claims for children whose tribe is receiving legal representation. In FY 2021, there was no actual FFP for children receiving tribal legal representation in foster care legal proceedings. For subsequent FYs 2023, 2024, 2025, 2027 and 2032 the estimated cost is \$5,419,446 (candidates) and \$27,200,314 (IV–E FC).

*Line 15. Total FFP for tribal representation in foster care legal proceedings.* Line 15 of the table below provides the total FFP for tribal representation in foster care legal proceedings by multiplying line 12 for candidates by line 13 for IV–E FC. For FY 2021 (base year), there was no actual FFP for children receiving tribal legal representation in foster care legal proceedings. Estimates of the total annual FFP for these costs in FYs 2023,

2024, 2025, 2027 and 2032 is \$32,619,760.

*Line 16. Total non-Federal cost for tribal representation in foster care legal proceedings.* Line 16 provides the estimated non-Federal share of administrative costs for tribal legal representation in foster care legal proceedings for candidates and IV-E FC by multiplying line 1 by line 2, which is 50 percent of the total on line 17. This number is the same as line 15 because the FFP rate used in these estimates is 50 percent, therefore we estimate the costs for Federal and non-Federal to be the same. We provide estimated non-Federal costs of \$2,641,921 beginning in FY 2023 and in subsequent FYs 2024, 2025, 2027 and 2032, the estimated non-Federal cost is \$32,619,760. There is no

estimate for FY 2021 in the chart because these costs were not claimed; these will be new costs as a result of finalizing this NPRM.

*Line 17. Total cost for foster care legal proceedings.* Line 17 displays the annual estimated total Federal and non-Federal costs for tribal legal representation for candidates and IV-E FC in foster care legal proceedings. This is the sum of lines 15 and 16. We estimate these total costs beginning in FY 2023 as \$5,283,842 and in subsequent FYs 2024, 2025, 2027 and 2032, the estimate is \$65,239,520. There is no estimate for FY 2021 in the chart because these costs were not claimed; these will be new costs as a result of finalizing this NPRM.

ACF understands that representation for a child's tribe in foster care legal proceedings in practice may not always be by an attorney. Some states allow non-attorneys to represent a child's tribe if they are a member of and authorized to represent the child's tribe. We are considering allowing the cost of a non-attorney to represent a child's tribe when it is necessary for the administration of the title IVE plan. We are seeking comments on this proposal and are especially interested in any evidence that non-attorneys would effectively provide the information that courts need, and any recommendations for how ACF would ensure that non-attorneys adequately represent the child's tribe.

| Year                                                                                                                             | 2021<br>(Baseline)                                | 2023                                               | 2024                                                | 2025                                                | 2027<br>(Year 5)                                    | 2032<br>(Year 10)                                   |
|----------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|----------------------------------------------------|-----------------------------------------------------|-----------------------------------------------------|-----------------------------------------------------|-----------------------------------------------------|
| 1. National number of children receiving legal representation in foster care legal proceedings (candidates and IV-E FC).         | 10,447 (candidates), 26,092 (IV-E FC).            | 13,201 (candidates), 32,876 (IV-E FC).             | 15,973 (candidates), 39,779 (IV-E FC).              | 19,328 (candidates), 48,133 (IV-E FC).              | 24,886 (candidates), 61,976 (IV-E FC).              | 29,525 (candidates), 73,530 (IV-E FC).              |
| 2. National average FFP claim per child (candidates and IV-E for foster care legal proceedings).                                 | \$742 (candidates), \$2,709 (IV-E FC).            | \$777 (candidates), \$2,837 (IV-E FC).             | \$795 (candidates), \$2,902 (IV-E FC).              | \$813 (candidates), \$2,969 (IV-E FC).              | \$851 (candidates), \$3,107 (IV-E FC).              | \$954 (candidates), \$3,481 (IV-E FC).              |
| 3. Average FFP for IV-E FC and candidate itemized for foster care legal proceedings.                                             | \$7,777,621 (candidates), \$70,689,345 (IV-E FC). | \$10,260,393 (candidates), \$93,254,798 (IV-E FC). | \$12,700,622 (candidates), \$115,433,586 (IV-E FC). | \$15,721,212 (candidates), \$142,887,156 (IV-E FC). | \$21,184,501 (candidates), \$192,541,977 (IV-E FC). | \$28,160,009 (candidates), \$255,941,062 (IV-E FC). |
| 4. Total FFP (line 1 × line 2 for combined IV-E FC child and candidate) for foster care legal proceedings.                       | \$78,466,966                                      | \$103,515,191                                      | \$128,134,209                                       | \$158,608,368                                       | \$213,726,479                                       | \$284,101,071.                                      |
| 5. Total non-Federal cost (line 1 × line 2 for combined IV-E FC and candidates) for foster care legal proceedings.               | \$78,466,966                                      | \$103,515,191                                      | \$128,134,209                                       | \$158,608,368                                       | \$213,726,479                                       | \$284,101,071.                                      |
| 6. Total cost for foster care legal proceedings (line 4 + line 5).                                                               | \$156,933,932                                     | \$207,030,382                                      | \$256,268,417                                       | \$317,216,735                                       | \$427,452,958                                       | \$568,202,142.                                      |
| 7. Number of children receiving legal representation in civil legal proceedings.                                                 | N/A                                               | 10,137                                             | 18,398                                              | 25,972                                              | 42,997                                              | 63,482.                                             |
| 8. National average FFP claim per child for civil legal proceedings.                                                             | \$1,262 (baseline)                                | \$1,321                                            | \$1,352a                                            | \$1,383                                             | \$1,447                                             | \$1,621.                                            |
| 9. Total FFP for civil legal proceedings (line 7 × line 8).                                                                      | N/A                                               | \$13,393,972                                       | \$24,869,190                                        | \$35,914,468                                        | \$62,222,311                                        | \$102,928,630.                                      |
| 10. Total non-Federal costs for civil legal proceedings (line 7 × line 8).                                                       | N/A                                               | \$13,393,972                                       | \$24,869,190                                        | \$35,914,468                                        | \$62,222,311                                        | \$102,928,630.                                      |
| 11. Total Federal + non-Federal costs for civil legal proceedings (line 9 + line 10).                                            | N/A                                               | \$26,787,943                                       | \$49,738,380                                        | \$71,828,936                                        | \$124,444,623                                       | \$205,857,260.                                      |
| 12. Number of children whose tribe may receive legal representation in foster care legal proceedings (candidates and IV-E FC).   | N/A                                               | 332 (candidates), 777 (IV-E FC).                   | 1,007 (candidates), 2,353 (IV-E FC).                | 1,694 (candidates), 3,961 (IV-E FC).                | 2,420 (candidates), 5,657 (IV-E FC).                | 3,342 (candidates), 7,814 (IV-E FC).                |
| 13. National average FFP claim per child (candidates and IV-E FC) for a tribe in foster care legal proceedings.                  | N/A                                               | \$1,321 (candidates), \$2,837 (IV-E FC).           | \$1,352 (candidates), \$2,902 (IV-E FC).            | \$1,383 (candidates), \$2,969 (IV-E FC).            | \$1,447 (candidates), \$3,107 (IV-E FC).            | \$1,621 (candidates), \$3,481 (IV-E FC).            |
| 14. Average FFP for IV-E FC and candidate itemized for a tribe in foster care legal proceedings.                                 | N/A                                               | \$438,929 (candidates), \$2,202,993 (IV-E FC).     | \$1,360,543 (candidates), \$6,828,594 (IV-E FC).    | \$2,342,923 (candidates), \$11,759,180 (IV-E FC).   | \$3,501,709 (candidates), \$17,575,152 (IV-E FC).   | \$5,419,446 (candidates), \$27,200,314 (IV-E FC).   |
| 15. Total FFP (line 12 × line 13 for combined IV-E FC child and candidate) for a tribe in foster care legal proceedings.         | N/A                                               | \$2,641,921                                        | \$8,189,137                                         | \$14,102,103                                        | \$21,076,861                                        | \$32,619,760.                                       |
| 16. Total non-Federal cost (line 12 × line 13 for combined IV-E FC and candidates) for a tribe in foster care legal proceedings. | N/A                                               | \$2,641,921                                        | \$8,189,137                                         | \$14,102,103                                        | \$21,076,861                                        | \$32,619,760.                                       |
| 17. Total cost for a tribe in foster care legal proceedings (line 15 + line 16).                                                 | N/A                                               | \$5,283,842                                        | \$16,378,274                                        | \$28,204,206                                        | \$42,153,722                                        | \$65,239,520.                                       |



Accounting Statement

From a society-wide perspective, many of the effects estimated above are

transfers. We seek comment on estimation of the portion that represents new resource use attributable to the proposed rule. Preliminarily, as shown

in the table below, the full amounts are categorized as transfers—from either the Federal Government or title IV–E agencies to title IV–E participants.

| Category                                    | Primary estimate (millions) | Units                                            |                   |                        |
|---------------------------------------------|-----------------------------|--------------------------------------------------|-------------------|------------------------|
|                                             |                             | Year dollars                                     | Discount rate (%) | Period covered (years) |
| Federal Budget Transfers (annualized) ..... | \$119<br>98                 | 2021<br>2021                                     | 7<br>3            | 10<br>10               |
| From/To .....                               | From: Federal Government    | To: children eligible for title IV–E foster care |                   |                        |
| Other Transfers (annualized) .....          | 119<br>98                   | 2021<br>2021                                     | 7<br>3            | 10<br>10               |
| From/To .....                               | From: Title IV–E agencies   | To: children eligible for title IV–E foster care |                   |                        |

V. Tribal Consultation Statement

Executive Order 13175 *Consultation and Coordination With Indian Tribal Governments* requires agencies to consult with Indian tribes when regulations have substantial direct effects 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 and either impose substantial direct compliance costs on tribes or preempt state law. Similarly, ACF’s Tribal Consultation Policy says that consultation is triggered for a new rule adoption that significantly affects tribes, meaning the new rule adoption has substantial direct effects on one or more Indian Tribes, on the amount or duration of ACF program funding, on the delivery of ACF programs or services to one or more Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This final rule does not meet either standard for consultation. Since it is the option of the tribal title IV–E agency whether or not to claim FFP for independent legal representation in foster care and other civil legal proceedings necessary to carry out the requirements in the agency’s title IV–E foster care plan, Executive Order 13175 does not apply. However, we plan to conduct tribal consultation during the public comment period. We believe that tribes will have great interest in our proposal to claim FFP for the administrative costs of legal representation for an attorney representing an Indian child’s tribe when the child’s tribe intervenes in specified state court proceedings.

Jeff Hild, Acting Assistant Secretary of the Administration for Children &

Families, approved this document on June 13, 2023.

List of Subjects in 45 CFR Part 1356

Administrative costs, Adoption and foster care, Child welfare, Fiscal requirements (title IV–E), Grant programs—social programs, Statewide information systems.

(Catalog of Federal Domestic Assistance Program Number 93.658, Foster Care Maintenance; 93.659, Adoption Assistance; 93.645, Child Welfare Services—State Grants).

Dated: September 21, 2023.

**Xavier Becerra,**  
*Secretary, Department of Health and Human Services.*

For the reasons set forth in the preamble, ACF proposes to amend 45 CFR part 1356 as follows:

**PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV–E**

■ 1. The authority citation for part 1356 continues to read as follows:

**Authority:** 42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.*, 42 U.S.C. 1302.

■ 2. Amend § 1356.60 by revising paragraphs (c)(2)(viii) and (x) and adding paragraphs (c)(2)(xi) and (c)(4) to read as follows:

**§ 1356.60 Fiscal requirements (title IV–E).**

- \* \* \* \* \*
- (c) \* \* \*
- (2) \* \* \*
- (viii) Rate setting;
- \* \* \* \* \*
- (x) Costs related to data collection and reporting; and
- (xi) Costs related to legal representation described in paragraph (c)(4) of this section.
- \* \* \* \* \*

- (4) The following are allowable administrative costs of legal representation:
- (i) Legal representation in foster care proceedings provided by an attorney representing the title IV–E agency or any other public agency which has an agreement in effect under which the other agency has placement and care responsibility of a title IV–E eligible child pursuant to 472(a)(2)(B)(ii) of the Act;
- (ii) Independent legal representation provided by an attorney representing a child in title IV–E foster care, a child who is a candidate for title IV–E foster care, the child’s parent(s), and the child’s relative caregiver in foster care and other civil legal proceedings as necessary to carry out the requirements in the agency’s title IV–E foster care plan. Independent legal representation in civil proceedings includes facilitating, arranging, brokering, advocating, or otherwise linking clients with providers and services as identified in the child’s case plan pursuant to sections 422, 471(a)(16), and 475 of the Act; and
- (iii) Legal representation provided by an attorney representing an Indian child’s tribe (as defined by 25 U.S.C.1903(5)), when the child’s tribe intervenes in any state court proceeding for the foster care placement or termination of parental rights of an Indian child who is in title IV–E foster care or an Indian child who is a candidate for title IV–E foster care.
- \* \* \* \* \*
- [FR Doc. 2023–20932 Filed 9–27–23; 8:45 am]
- BILLING CODE P**



## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[GN Docket No. 20–32; FCC 23–74; FR ID 175020]

### Establishing a 5G Fund for Rural America

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission or FCC) makes proposals and seeks comment on a limited set of issues to refresh the record and continue its implementation of the 5G Fund for Rural America.

**DATES:** Comments are due on or before October 23, 2023; reply comments are due on or before November 21, 2023.

**ADDRESSES:** Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All comments must be filed in GN Docket No. 20–32. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). You may submit comments, identified by GN Docket No. 20–32, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial Overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Dr., Annapolis Junction, Annapolis, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19.

- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format) send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

#### FOR FURTHER INFORMATION CONTACT:

Kelly Quinn of the Office of Economics and Analytics, Auction Division, at (202) 418–0660 or [Kelly.Quinn@fcc.gov](mailto:Kelly.Quinn@fcc.gov), Valerie Barrish of the Office of Economics and Analytics, Auction Division, at (202) 418–0354 or [Valerie.Barrish@fcc.gov](mailto:Valerie.Barrish@fcc.gov), or Mary Lovejoy of the Office of Economics and Analytics, Auction Division, at (202) 418–2024 or [Mary.Lovejoy@fcc.gov](mailto:Mary.Lovejoy@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in GN Docket No. 20–32, FCC 23–74, adopted on September 21, 2023 and released on September 22, 2023. The full text of this document is available for public inspection at the following internet address: <https://www.fcc.gov/document/fcc-seeks-further-comment-5g-fund-rural-america>.

### Synopsis

#### I. Introduction

1. Armed with the new, granular, and improved mobile coverage data obtained in the Broadband Data Collection (BDC) and reflected on its new National Broadband Map, the Commission continues the implementation of the 5G Fund for Rural America (5G Fund) and advance its efforts to ensure the deployment of high-speed, 5G mobile service in areas of the country where, absent subsidies, it will continue to be lacking. The Commission undertakes this effort in recognition that those living, working, and travelling in unserved areas must have access to high-speed, 5G mobile service. The need for high-speed mobile services has never been more critical, yet there are many areas of its country that continue to lack access to 5G service. In fact, some areas continue to lack access to any mobile broadband service at all. Moreover, moving forward with the 5G Fund will allow the Commission to proceed with its plan to transition from mobile legacy high-cost support, which continues to be distributed inefficiently.

2. Accordingly, with this narrowly tailored Further Notice of Proposed Rulemaking (FNPRM), the Commission seeks to refresh the record and reignite the Commission's plan to expand the deployment of 5G service to those rural communities that remain trapped on the wrong side of the digital divide. To that

end, the Commission seeks comment on a limited set of issues that are critical to the 5G Fund's success, namely: (1) defining the areas that will be eligible for 5G Fund support; (2) reassessing the budget for the 5G Fund; (3) potentially reconsidering the use of adjusted square kilometers as the metric for accepting bids and identifying winning bids in a 5G Fund auction; (4) aggregating areas eligible for 5G Fund support to minimum geographic areas for bidding; (5) measuring a 5G Fund support recipient's compliance with its public interest obligations and performance requirements based on any modified metric for accepting bids and identifying winning bids; (6) modifying the schedule for transitioning from mobile legacy high-cost support to 5G Fund support consistent with recent legislative amendments; (7) a proposal to require each 5G Fund Phase I auction applicant to certify, under penalty of perjury, that it has read the public notice adopting procedures for the auction, and that it has familiarized itself with those procedures and any requirements related to the support made available for bidding in the auction; (8) whether to require 5G Fund support recipients to implement cybersecurity and supply chain risk management plans; and (9) determining whether and how this proceeding might create an opportunity to support further deployment of Open Radio Access Network (Open RAN) technologies.

3. The entire country benefits when everyone, including those living and working in rural areas, can communicate and innovate equally through access to high-speed, mobile broadband services. Access to high-speed, mobile services allows connections to essential civic, economic, and social opportunities. It touches almost all aspects of daily life, including work and education, access to news and entertainment, public safety information and services, and healthcare, and allows interconnection in times of national crisis. The importance of expanding access to high-speed, 5G services in rural communities cannot be overstated. The Commission therefore issues this Further Notice of Proposed Rulemaking (FNPRM) mindful that full participation in American society requires us to make 5G service available to everyone, no matter where they live.

#### II. Background

4. In its October 2020 *5G Fund Report and Order*, 85 FR 75770 (Nov. 25, 2020), the Commission established the 5G Fund as a replacement for Mobility Fund Phase II. The 5G Fund would use

multi-round reverse auctions to distribute up to \$9 billion, in two phases, to retarget mobile universal service in the high-cost program to bring voice and 5G broadband service to rural areas of the country unlikely to otherwise see unsubsidized deployment of 5G-capable networks. The Commission decided that it would use new, more precise, verified mobile coverage data gathered through the BDC to determine the areas eligible for support in a 5G Fund auction. The Commission defined the areas eligible for support in the 5G Fund Phase I auction as those that lack unsubsidized 4G LTE and 5G broadband service by at least one service provider based on BDC data. The Commission also decided that it would accept bids and identify winning bids in a 5G Fund auction using a support price per adjusted square kilometer. Under this approach, each eligible area will have an associated number of square kilometers that will be adjusted by an adjustment factor that will assign a weight to each geographic area and apply that adjustment factor to bidding for support amounts, and support amounts for an area will be determined by multiplying an area's associated adjusted square kilometers by the relevant price per square kilometer. For example, an area with 100 square kilometers and an adjustment factor of 1.2 would have  $100 \times 1.2$  or 120 adjusted square kilometers.

5. The Commission recognized from the outset that waiting for the collection of new, more precise, verified mobile coverage data obtained in the BDC would not be the fastest path to holding a 5G Fund auction, but reasoned that this would allow the Commission to better target 5G Fund support to those areas of the country where support is most needed and where the funds could be spent most efficiently. The Commission explained that waiting for the development of a National Broadband Map was critical to the success of the 5G Fund, even though at the time it lacked the congressional appropriation necessary to implement the BDC. The Commission also reasoned that any risk of delay in holding a 5G Fund auction was further mitigated by the public interest obligations it was adopting for competitive eligible telecommunications carriers (ETCs) to continue receiving legacy high-cost support for mobile wireless services.

6. In this regard, the Commission adopted requirements for both competitive ETCs receiving legacy high-cost support for mobile wireless service and 5G Fund auction support recipients to meet public interest obligations to

provide voice and 5G broadband service, and to satisfy distinct, measured performance requirements as a condition of receiving support. Pursuant to the rules adopted in the *5G Fund Report and Order*, recipients of both legacy mobile high-cost support and 5G Fund auction support are required to meet minimum baseline performance requirements for data speed, latency, and data allowance, including: (1) deploying 5G networks that meet at least the 5G-NR (New Radio) technology standards developed by the 3rd Generation Partnership Project with Release 15 (or any successor release that may be adopted by the Office of Economics and Analytics (OEA) and Wireline Competition Bureau (WCB) after appropriate notice and comment) with median download and upload speeds of at least 35 Mbps and 3 Mbps with minimum cell edge download and upload speeds of 7 Mbps and 1 Mbps; (2) meeting end-to-end round trip data latency measurements of 100 milliseconds or below; and (3) offering at least one service plan that includes a minimum monthly data allowance that is equivalent to the average United States subscriber data usage. The Commission explained that these performance requirements, along with public interest obligations for reasonably comparable rates, collocation, and voice and data roaming, will ensure that rural areas receive service reasonably comparable to high-speed, mobile broadband service available in urban areas.

7. To make certain that 5G Fund support recipients meet their public interest obligations and performance requirements in areas where they receive support, the Commission adopted interim and final service deployment milestones along with reporting requirements to monitor their progress. Specifically, the Commission adopted milestones requiring a 5G Fund support recipient to offer 5G service meeting established performance requirements to at least 40% of the total square kilometers associated with the eligible areas for which it is authorized to receive 5G Fund support in a state by the end of the third full calendar year following authorization of support, to at least 60% of the total square kilometers by the end of the fourth full calendar year, and to at least 80% of the total square kilometers by the end of the fifth full calendar year. Moreover, the Commission adopted a final service deployment milestone that would require a 5G Fund support recipient to offer 5G service that meets the established 5G Fund performance

requirements to at least 85% of the total square kilometers associated with the eligible areas for which it is authorized to receive 5G Fund support in a state by the end of the sixth full calendar year following authorization of support. Additionally, a 5G Fund support recipient is required to demonstrate by the end of the sixth full calendar year following authorization of support that it provides service that meets the established 5G performance requirements to at least 75% of the total square kilometers within each of its individual biddable areas.

8. In May 2023, the Commission released the latest version of its new National Broadband Map, which reflects the most granular and accurate mobile coverage data it has gathered through the BDC to date. The Commission will release major updates to this map twice a year, overlaying available data from service providers in these updates to ensure that the National Broadband Map is current. Based on the mobile coverage data the Commission has collected in the BDC, its understanding of where mobile service remains lacking has improved significantly, and therefore, the Commission is proceeding with its plans for the 5G Fund. Accordingly, the Commission seeks comment on a limited set of issues in the FNPRM to ensure that it meets its obligation of ensuring that those in rural America have access to services reasonably comparable to those provided in urban areas and to achieve its policy goal of ensuring that everyone who lives, works, and travels throughout the country experiences the benefits of high-speed, mobile 5G technology.

### III. Identifying Areas Eligible for 5G Fund Support

#### A. Defining the Areas Eligible for 5G Fund Support

9. In the *5G Fund Report and Order*, the Commission decided to determine the areas eligible for support in the 5G Fund Phase I auction based on where new mobile coverage data submitted in the BDC show a lack of both unsubsidized 4G LTE and unsubsidized 5G broadband service by at least one service provider. The Commission noted in the *5G Fund Report and Order* that while most providers were then still in the early stages of deploying their 5G networks in rural areas, it expected that the data collected in the BDC would show significant 5G broadband deployments. The Commission concluded that consistent with its longstanding policy of avoiding overbuilding competitive networks, it would exclude areas with unsubsidized

5G broadband deployment from eligibility for 5G Fund support. At the time it established the 5G Fund, the Commission noted that because nationwide providers had already begun to deploy 5G service in more populated parts of the country, many urban and suburban areas had already benefitted from the evolution to 5G networks, and that even more widely-available 5G service was expected in the near future. The Commission also decided to exclude from eligibility for 5G Fund support those areas where BDC data show the deployment of unsubsidized 4G LTE networks, reasoning that subsidizing 5G deployments where unsubsidized 4G LTE networks already have been deployed would be unnecessary and risk preempting 5G deployments the Commission expected in those areas. The Commission based this belief on the combination of the then-rapid state of competitive deployment in the marketplace and T-Mobile's enforceable transaction commitments. Moreover, the Commission adopted restrictions on the use of 5G Fund support to fulfill enforceable commitments to deploy 5G, concluding that it would be inefficient to allow any provider with enforceable 5G deployment obligations to use universal service support to fund those deployments. In light of T-Mobile's extensive rural 5G deployment commitments relating to its acquisition of Sprint, the Commission said it would allow T-Mobile to make binding pre-auction commitments to identify the areas in which it will deploy 5G to fulfill its transaction commitments so that such areas can be removed from the auction inventory. The Commission directed OEA and WCB to establish specific procedures for making such pre-auction binding commitments that would cover, as appropriate, qualifications and restrictions on participating in the pre-selection process.

10. Throughout this proceeding, some parties have taken issue with the definition of areas eligible for 5G Fund support. These parties maintain that the Commission incorrectly presumed that an area that has unsubsidized 4G LTE service will see the deployment of 5G service without the need for subsidies, and/or ask the Commission to define the areas eligible for 5G Fund support as those where BDC mobile coverage data show a lack of unsubsidized 5G broadband service. Furthermore, the Commission received two petitions seeking reconsideration of its decision to exclude from eligibility for 5G Fund support areas where BDC mobile

coverage data show the existence of unsubsidized 4G LTE or 5G broadband service by at least one provider, each of which asks us to instead define as eligible for 5G Fund support any area that lacks unsubsidized 5G broadband service. *See* 86 FR 6611 (Jan. 22, 2021).

11. Today, the Commission's new National Broadband Map reflects the most recently available data concerning mobile broadband service availability and provides the Commission with a substantially improved understanding of where service is available and where it remains lacking. The Updated National Broadband Map released on May 30, 2023, shows the Fabric Version 2 location data and broadband availability data as of December 31, 2022. The new map provides an improved picture of where mobile broadband service is available, the type(s) of service available, the speeds available, and the environment(s) in which service is available. Historically, mobile data collected in FCC Form 477 suffered from a lack of any standardized parameters for the submission of propagation maps. The Commission remedied this issue in the *BDC Second Report and Order*, 85 FR 50886 (Aug. 18, 2020), by adopting certain uniform minimum parameter values that it believed to be equally important for demonstrating 3G and 5G NR coverage as well as voice coverage, as recommended by the Rural Broadband Auctions Task Force in the *Mobility Fund Phase II Coverage Maps Investigation Staff Report*. The Commission stated that in addition to requiring mobile broadband providers to use propagation modeling to generate and to submit maps showing their 4G LTE coverage, such providers are additionally required to submit information, data, and coverage maps for existing 3G networks and next-generation 5G-NR networks. The new map allows the Commission to more accurately target universal service funding to expand broadband to unserved and underserved areas.

12. Figure 1 in the FNPRM, titled "Areas Without Unsubsidized Mobile Broadband Service," shows areas where mobile coverage data submitted in the BDC show a lack of unsubsidized 5G mobile broadband service at speeds of at least 7/1 Mbps by at least one service provider, and areas where the data show a lack of unsubsidized 5/1 Mbps 4G LTE mobile broadband service or higher by at least one service provider. Figure 1 was created using overlapping provider-reported BDC mobile availability data as of December 31, 2022 (updated August 16, 2023), depicting coverage based on an outdoor stationary environment.

Figure 2 in the FNPRM, titled "USAC Mobile CETC Service Area Boundaries Map," shows a picture of the USAC's online map delineating the boundaries of the subsidized service areas of each competitive ETC receiving mobile legacy high-cost support used in determining which areas are subsidized for this purpose. The Commission stated in the *5G Fund Report and Order* that it will use Geographic Information Systems (GIS) data from the USAC delineating the boundaries of the subsidized service areas of each competitive ETC receiving mobile legacy high-cost support in determining which areas are subsidized for this purpose. The FNPRM notes that California, Connecticut, Delaware, Florida, Hawaii, Indiana, Maryland, Massachusetts, Minnesota, New Jersey, Ohio, Pennsylvania, Rhode Island, Vermont, and Washington, DC do not have any mobile legacy high-cost support service areas.

13. Figure 3 in the FNPRM, titled "Percent of a State's Total Area Within a Subsidized CETC Area and the Percent of Total High-Cost Subsidy Directed to That State," and Figure 4 in the FNPRM, titled "Percent of a State's Total Area Within the Subsidized Area of 1, 2, 3, or 4 CETCs," provide more detail about the distribution of mobile legacy high-cost support by state.

14. With data collected in the BDC and currently reflected on the National Broadband Map, the Commission is better able to assess where mobile broadband services are—and are not—available. In the nearly three years since the adoption of the *5G Fund Report and Order*, the deployment of high-speed 5G mobile services has significantly expanded. However, even with this expansion of 5G coverage, the digital divide remains, and numerous "broadband deserts" continue to exist. Indeed, based on BDC data as of December 2022, the Commission estimates that there are over 14 million broadband serviceable locations (locations) that lack mobile 5G coverage at speed thresholds of at least 7/1 Mbps in an in-vehicle environment. This estimate is based on overlapping provider-reported BDC mobile availability data as of December 31, 2022, depicting coverage based on in-vehicle, mobile environment, on broadband serviceable locations. The Broadband Serviceable Location Fabric (Fabric) is a dataset of all locations in the United States and its Territories where fixed broadband internet access service can be installed. Specifically, service providers express fixed broadband availability in the BDC in terms of which particular Fabric

locations can be served. The Fabric therefore represents the universe of locations to which fixed broadband service can be provided, and the semi-annual BDC tells us which locations have fixed broadband service available, and which do not. Locations are treated as lacking coverage if they fall outside (the latitude/longitude coordinates are not covered by) the areas reported by providers as having coverage available with the relevant technology, speed, and environment. Mobile availability based on coverage in an outdoor stationary environment results in a smaller number of locations, 6 million, that lack 5G coverage at speed thresholds of 7/1 Mbps. Given how mobile broadband coverage has evolved over the past three years and the Commission's improved understanding of mobile coverage based on data gathered through the BDC, the Commission seeks comment on how to ensure that the 5G Fund most efficiently promotes the deployment of 5G mobile broadband service in areas where it would not be offered absent subsidies. To that end, the Commission seeks comment on whether it should continue to use the definition adopted by the Commission in the *5G Fund Report and Order* to determine areas eligible for the 5G Fund Phase I auction, or whether it should modify the definition to base the determination of eligible areas on where mobile coverage data submitted in the BDC show a lack of unsubsidized 5G broadband service by at least one service provider.

15. As the map in Figure 1 in the FNPRM shows, the Commission expects that using the definition of eligible areas adopted in the *5G Fund Report and Order* would result in fewer areas being eligible for support in the 5G Fund Phase I auction than if the Commission modified the definition to be based on areas that lack unsubsidized 5G coverage. Given its objective of ensuring that it targets its finite budget to where it is most needed to promote the deployment of 5G mobile broadband service, the Commission seeks comment on whether using an eligible areas definition that is more likely to limit, or more likely to expand, the number of areas that would be eligible for support in the 5G Fund Phase I auction serves the public interest. If the Commission modifies the definition of eligible areas as discussed above, would 5G Fund support be more likely to end up in areas that do not have 5G service but do have unsubsidized 4G LTE service?

16. The Commission seeks comment on what motivations there are for unsubsidized providers of 4G LTE service to upgrade their networks to 5G technology in rural areas. Does the

provision of unsubsidized 4G LTE service in rural areas serve as an indicator that 5G mobile broadband service will be deployed in those areas absent subsidies? What metrics can the Commission consider to reliably identify rural areas that will not see unsubsidized 5G mobile broadband service? Over what time period should the Commission expect to see an unsubsidized 4G LTE network be replaced by 5G technology in rural areas, absent subsidies? Commenters should specifically address why subsidies are, or are not, necessary in areas that already have unsubsidized 4G LTE coverage. The Commission also seeks comment on how it can balance its objective to provide support for the provision of 5G mobile broadband service in all areas where people live, work, and travel with its obligation to be a fiscally responsible steward of its limited universal service funds and the Commission's commitment to prevent overbuilding. What are the costs and benefits of deployment of 5G mobile broadband service in areas lacking both 4G LTE and 5G mobile broadband service relative to deployment of 5G to areas lacking only 5G service? The Commission seeks comment on which definition of eligible areas best ensures that the Commission will not subsidize areas that will otherwise see competitive, market-based deployments of 5G mobile broadband networks.

17. The Commission also seeks comment on the appropriate 4G LTE and 5G speed thresholds to use as the benchmark for determining areas eligible for support in the 5G Fund Phase I auction under either the previously adopted or a modified definition of eligible areas. Specifically, the Commission seeks comment on using speed thresholds of 5/1 Mbps with respect to 4G LTE service and 7/1 Mbps for 5G service as the benchmark when determining areas eligible for support in the 5G Fund Phase I auction. The BDC collects 4G LTE coverage areas based on speed thresholds of 5/1 Mbps in accordance with the Broadband DATA Act, and collects 5G coverage areas based on speed thresholds of both 7/1 Mbps and 35/3 Mbps. In the *5G Fund Report and Order*, the Commission adopted a minimum baseline performance requirement for 5G Fund support recipients to deploy 5G-NR service with median speeds of at least 35/3 Mbps and speeds of 7/1 Mbps at the cell edge. Consistent with the Commission's rationale in the *Mobility Fund Phase II Report and Order* with respect to determining eligible areas, the Commission does not believe it would

be advisable to use the same 35/3 Mbps speed thresholds for determining areas eligible for 5G Fund support that it will require of 5G Fund support recipients for determining compliance with their performance requirements. Moreover, the Commission expects that a speed threshold of 7/1 Mbps reflects the minimum desired typical mobile user experience across broad 5G coverage areas. Under this approach, if the Commission continues to use the definition of eligible areas adopted in the *5G Fund Report and Order*, it would exclude from eligibility for 5G Fund support areas where unsubsidized 4G LTE service and unsubsidized 5G service is available at speed thresholds of at least 5/1 Mbps and at least 7/1 Mbps, respectively. Or, if the Commission modifies the definition of eligible areas to be those that lack unsubsidized 5G service, it would exclude from eligibility for 5G Fund support areas where unsubsidized 5G service is available at speed thresholds of at least 7/1 Mbps. The Commission seeks comment on using these speed thresholds.

18. The Commission requires that the coverage maps submitted by providers in the BDC predict 4G LTE and 5G coverage based on both outdoor stationary and in-vehicle mobile environments. An outdoor stationary environment typically results in a larger coverage footprint than an in-vehicle mobile environment. The Commission seeks comment on which environment to use when determining the areas eligible for 5G Fund support under whichever definition it uses to determine areas eligible for the 5G Fund Phase I auction.

19. Because it seeks to direct 5G Fund Phase I support to areas where people live, work, and travel, regardless of the definition used to identify the areas eligible for the 5G Fund Phase I auction, the Commission seeks comment on limiting eligible areas to those that contain locations and/or roads. The Commission would determine the areas that contain locations using the Fabric; having the Fabric through the BDC enables the Commission to do this at a granular level. The Commission seeks comment on limiting eligible areas to those that contain locations as identified through the BDC and/or roads. Under this approach, the Commission would use road data from OpenStreetMap, and seeks comment on which categories of roads should be considered in determining eligible areas. The Commission also seeks comment on whether it should use an alternate source of road data and why. In order to limit eligible areas in this manner, the

Commission would need to designate the geographic areas that contain locations and/or roads.

20. Under this approach, the Commission would use the H3 hexagonal geospatial indexing system (H3 system) to identify specific geographic areas eligible for 5G Fund support. H3 is an open-source GIS dataset developed by Uber Technologies, Inc., that overlays the globe with hexagonal cells of different sizes at various resolutions, from 0 to 15. The smallest hexagonal cells are at resolution 15, in which the average hexagonal cell has an area of approximately 0.9 square meters, and the largest are at resolution 0, in which the average hexagonal cell has an area of approximately 4.25 million square kilometers. The H3 system is designed with a nested structure wherein a lower resolution cell (the “parent” hexagon) contains approximately seven hexagonal cells at the next higher resolution (its “children” where each “child” is a smaller, nested hexagon), which fit approximately within the “parent” hexagon. In the *BDC Mobile Technical Requirements Order*, 87 FR 21476 (Apr. 11, 2022), the Wireless Telecommunications Bureau (WTB), OEA, and the Office of Engineering and Technology (OET) adopted the H3 system to identify geographic areas where a challenge to a provider’s mobile BDC availability data can be created based on the point locations of on-the-ground challenger speed tests. The H3 system has also been adapted to the Commission’s National Broadband Map to divide the map into specific geographic areas and show the percentage of a hexagon that is “covered” (i.e., where a provider has claimed it can make broadband available) at different resolutions and levels of granularity as a user zooms in or out on the map. Mobile broadband coverage is displayed down to the resolution-9 hexagon level (hex-9) on the map, and data on such coverage is made available for download based on hex-9s. Because of its nested structure, using the H3 system allows the Commission to categorize geographic areas at multiple levels of granularity.

21. The Commission would then convert the areas eligible for 5G Fund support to, and make them available in the form of, H3 hexagonal units, specifically as hexagons at resolution 9. As opposed to “raw” coverage footprints based on propagation model output, which do not conform to any defined boundary, hex-9s are standardized and can be clearly identified and referenced. Because hex-9s are relatively small, with an average

area of approximately 0.1 square kilometer, any reduction in map resolution when converting from raw propagation model output (as filed by providers) to hex-9s is minimal. The Commission believes the use of hex-9s can strike the appropriate balance between the benefits of their use and this loss in granularity, particularly given that the data as filed are based on models of coverage. As is the case with the data available on the National Broadband Map, if any part of the hex-9 is overlapped by the relevant mobile coverage area, then the Commission would consider the entire hex-9 as covered or served by that coverage area for purposes of generating the areas eligible for 5G Fund support. The Commission seeks comment on this approach, as well as the use of the H3 geospatial indexing system generally, and the hex-9 resolution specifically, as the basis for identifying specific geographic areas that are eligible for 5G Fund support.

22. The Commission also seeks comment on other factors it should consider in determining the areas eligible for 5G Fund support, such as whether to include Urbanized Areas, water-only areas, and/or inaccessible areas.

23. Regardless of how the Commission defines eligible areas, it proposes to use as the basis for the final eligible areas the version of the mobile availability data published on the National Broadband Map no later than 30 days prior to the start of bidding. This version will reflect updates filed by providers as the result of resolved challenges and other corrections and published on the map by that date.

#### *B. Puerto Rico and the U.S. Virgin Islands*

24. As a result of the devastation to the communication networks in Puerto Rico and the U.S. Virgin Islands caused by Hurricanes Irma and Maria in September 2017, the Commission took immediate steps to make emergency funding available for the restoration of mobile communications on these islands, and subsequently adopted funding mechanisms to restore and rebuild mobile networks there. In the *5G Fund Report and Order*, the Commission therefore excluded areas in Puerto Rico and the U.S. Virgin Islands from eligibility for 5G Fund support because the Commission was already providing high-cost support, including support for 5G mobile broadband, through the Bringing Puerto Rico Together Fund and the Connect USVI Fund.

25. In its 2019 *PR-USVI Stage 2 Order*, 84 FR 59937 (Nov. 7, 2019), the Commission adopted a three-year funding period and budgets for Stage 2 of the Bringing Puerto Rico Together Fund and the Connect USVI Fund pursuant to which carriers could elect to receive up to 75% of the support for which they are eligible to restore, harden, and expand their networks using 4G LTE or better technology capable of providing service at speeds of at least 10/1 Mbps, and up to 25% of the support for which they are eligible to deploy 5G mobile networks capable of providing service at speeds of at least 35/3 Mbps. The Commission noted that it expected to establish a competitive funding mechanism for the long-term expansion of advanced telecommunications access and next generation wireless services for Puerto Rico and the U.S. Virgin Islands by the conclusion of Stage 2. Stage 2 mobile support under the Bringing Puerto Rico Together Fund and the Connect USVI Fund was scheduled to conclude at the end of June 2023; however, in its April 2023 *Transitional Support Report and Order*, 88 FR 28993 (May 5, 2023), the Commission adopted a transitional support period of up to 24 months to allow eligible mobile carriers currently receiving Stage 2 mobile support to continue receiving support to harden their networks as the Commission works to develop a long-term funding mechanism. The Commission stated in the *Transitional Support Report and Order* that transitional support would end sooner than 24 months if such a long-term funding mechanism were established before the transition period ends.

26. At the time of Hurricanes Irma and Maria, the Mobility Fund Phase II auction had not yet taken place. Moreover, the Commission has since replaced Mobility Fund Phase II with the 5G Fund. Accordingly, now, as the Commission transitions from providing restorative support to mobile carriers in Puerto Rico and the U.S. Virgin Islands to repair and harden their networks to offering support to mobile carriers to deploy high-speed 5G mobile services in areas that that would otherwise not see such services absent subsidies, the Commission seeks comment on whether to make 5G Fund support available to areas in Puerto Rico and the U.S. Virgin Islands meeting the eligible areas definition, subject to the same terms and conditions as 5G Fund support awarded in other eligible areas. Alternatively, should the Commission instead explore a dedicated long-term funding mechanism for support for mobile

services on these islands? Commenters should explicitly explain whether, having been provided support under a dedicated mechanism for the last several years, it is now appropriate to view the funding needs for support for mobile broadband services in Puerto Rico and the U.S. Virgin Islands through the same lens as other areas eligible for mobile support.

#### IV. 5G Fund Budget

27. In the *5G Fund Report and Order*, the Commission adopted a budget of \$9 billion for the 5G Fund, which incorporated and repurposed the \$4.53 billion originally budgeted for Mobility Fund Phase II. In establishing the 5G Fund budget, the Commission recognized that extending deployment of 5G networks would require significant expenditures. Nonetheless, the Commission was mindful of its obligation to balance the objectives of the 5G Fund with its obligation to exercise fiscal responsibility by avoiding excessive subsidization, recognizing that the cost of subsidies distributed under the 5G Fund would ultimately be borne by consumers and businesses. Accordingly, the Commission adopted a reverse auction mechanism to ensure that funds from the available budget would be spent as efficiently and effectively as possible.

28. The Commission takes this opportunity to ask if there are significant reasons to modify the budget, and if so, by how much. The Commission notes that none of the parties that commented on the *5G Fund NPRM*, 85 FR 31616 (May 26, 2020), proposed an alternative amount for the 5G Fund budget, and no party sought reconsideration of the \$9 billion budget that the Commission adopted. Some commenters, however, suggested that the 5G Fund budget should be increased to an amount that would be sufficient to deploy 5G networks to all eligible areas. Subsequently, other parties, in *ex parte* communications and other filings, echoed the assertion that the budget was insufficient, with several citing to a 5G mobility cost model placed in the record by the Competitive Carriers Association.

29. The Commission asks those commenting on the budget to keep in mind the reasons underlying the Commission's adoption of a reverse auction—the auction uses competition across areas and within areas to determine which areas will receive support, in what amounts, and which entities will receive that support, all within the available budget. This ensures that as many units as possible can be covered within the budget at prices the winning bidders have agreed

to accept, consistent with the Commission's fiscal responsibilities. As a threshold matter, basing the budget on the estimated cost of serving all areas (however estimated, according to a model such as that submitted in the record or any other method) conflicts with the rationale for using a reverse auction—that is, of spending available funds cost-effectively. Even if the Commission was willing to increase universal service contributions to raise such funds—and it is not—establishing a budget based on total estimated costs would not result in support amounts that are competitive but still acceptable to the providers, as a reverse auction does. With respect to using a cost model to determine reserve amounts, *i.e.*, maximum bid amounts, also as suggested in the record, the Commission does not believe such a process is needed to determine a uniform starting clock price in dollars per adjusted square kilometer that would apply to all areas. Moreover, the Commission disagrees with the assertion in the record that a reverse auction without area-specific reserve prices is likely to provide excessive support in areas with few applicants. The reverse auction format previously used by the Commission and adopted for the 5G Fund incorporates competition across areas, which lowers the support price for all areas before assigning support to any areas. Further, even if there is only one other bidder for a given area, the support price will be lowered still further. That is, under the basic reverse auction format, the support clock price applicable to all areas would begin high and descend in discrete rounds. In each round, bidders will indicate their willingness to accept support for an area at iteratively lower clock prices. When the total amount of support requested by bidders (counting an area only once) falls to an amount that can be accommodated within the budget, the areas that still have bids will receive support. Areas with a single remaining bidder will be supported at the “clearing price.” If there are areas where more than one bidder is still competing, the support clock price will continue descending until a single bidder remains, which will be supported at that price.

30. In seeking comment on the budget, the Commission asks commenters to provide specific examples of any fundamental factors that have changed since the *5G Fund Report and Order* was adopted. Commenters should also explain how any such factors are significant enough to warrant allocating more Universal

Service Fund (USF) monies to the 5G Fund. Should any change in the budget affect both phases of the 5G Fund, and if so, how? The Commission also asks, if the budget is modified, whether the size of the Tribal reserve budget as previously adopted should also change, and if so, how.

31. The Commission reminds those commenting on the 5G Fund budget that the Commission is obligated to distribute universal service funds in the most cost-efficient way possible and that arguments that focus solely on estimates do not take into account the Commission's obligation to balance the cost of subsidies with the additional burden that such increased expenditures would impose on the consumers and businesses that fund the subsidies. Therefore, commenters advocating for an increased budget should consider and address the source of any funds potentially allocated to the 5G Fund.

32. The Commission also seeks comment on whether any adjustments to the 5G Fund budget would be necessary if the 5G Fund were to become the long-term funding mechanism for Puerto Rico and the U.S. Virgin Islands and areas in Puerto Rico and the U.S. Virgin Islands meeting the eligible areas definition are eligible for 5G Fund support.

#### V. Accepting Bids and Identifying Winning Bids

##### A. Metric for Accepting Winning Bids and Identifying Winning Bids

33. In the *5G Fund Report and Order*, the Commission decided that it would accept bids and identify winning bids in the 5G Fund auctions using a support price per adjusted square kilometer. Under this metric, each eligible area would be associated with a number of units equal to the square kilometers of the area multiplied by an adjustment factor based on a number of area-specific characteristics, including terrain and elevation, and demand-related factors, such as income, gross domestic product (GDP), and population density. Adjustment factor values adopted in the *Adjustment Factor Values Public Notice*, 86 FR 11149 (Feb. 24, 2021), ranged from 1 to 3.8, with higher adjustment factors associated with more sparsely populated areas and/or forested and mountainous areas and lower average incomes. However, the Commission also determined that the 5G Fund auction would wait for the more precise data on “areas of the country where support is most needed and will be spent most efficiently” that would be forthcoming from the BDC.

34. The Commission seeks comment in the FNPRM on limiting eligible areas to resolution-9 H3 hexagons that have locations and/or roads. If the Commission were to limit eligible areas to resolution-9 H3 hexagons that have locations and/or roads, it would use a bidding and support price metric based on dollars per square kilometer for those eligible areas. Accordingly, the support amount for an area would be determined as the number of square kilometers associated with the area times the price at which support is assigned. The Commission seeks comment on whether to use the adjustment factor as previously adopted. The adjustment factor was designed to equalize the cost of serving all areas, so that it would be equally likely that particularly costly areas (defined, in part, by low population density and difficult terrain) and areas that can be served more cost-effectively would win support. Moreover, the Commission seeks comment on whether a support unit in terms of square kilometers alone—absent the adjustment that would have given priority to areas with low incomes, low population density, and costly terrain—would, to the greatest extent possible, promote its goal of providing 5G coverage to places where people live, work, and travel. The Commission also seeks comment on whether it should adopt an alternative approach that would provide some advantage to particularly costly areas that nonetheless are areas with a considerable number of homes, business, and other locations, and/or roads that are frequently travelled. Could parameters for an alternative approach be determined without unduly delaying the auction?

35. As an alternative to using dollars per square kilometer as the bidding and support price metric, the Commission also seeks comment on using a bidding and support price metric based on the number of locations in the eligible areas. If the Commission were to adopt this metric, eligible areas would be associated with a number of such locations in the area; the clock would announce prices in terms of dollars per location; and support amounts would be calculated as the number of locations in the area times the support price per location.

36. The Commission also seeks comment on potentially incorporating the number of unserved road miles in an area, as well as the number of locations, into the bidding and support price metric. What source of road data and which road categories should the Commission use? How could the Commission do so in a way that would

appropriately balance unserved road miles and unserved locations in a single metric? For example, could the Commission adjust the number of locations upward by a fraction, *e.g.*, 25%, in an area with a moderate number of unserved road miles, and by a larger fraction, *e.g.*, 40%, if the area has a large number of unserved road miles? Or, would a metric that is a weighted sum of unserved locations and unserved road miles be appropriate? For example, a metric might be the total of the number of unserved locations and one half of the number of unserved road miles. If the Commission were to use such a hybrid metric, would covering an unserved road mile be more or less preferred than covering a location? How would the Commission determine the appropriate weights? Commenters should keep in mind that the weights would not have to be precisely calculated, but simply represent the extent to which the auction mechanism would put a “finger on the scale.”

37. Limiting eligible areas to those areas that have unserved road miles and/or unserved locations would reflect the Commission’s goal of providing support to areas where people live, work, and travel. If the Commission uses a bidding and support metric of dollars per square kilometer, are there other ways to incorporate incentives to bid for areas covering unserved locations and road miles, such as by requiring winning bidders’ support obligations to include unserved locations and road miles? A bidder would know the extent of its obligations in advance of the auction and could adjust accordingly the amount of support in terms of dollars per square kilometer that it is willing to accept. Are there other ways to encourage coverage of locations and road miles without explicitly incorporating them into the metric? Commenters should consider that a suggested approach should be transparent and straightforward to measure.

38. The Commission also seeks comment on a possible metric based on predicted usage from serving eligible areas. This metric would consider all measurable factors that can affect mobile usage, such as unserved locations, road miles, and areas with parks or wilderness where devices are likely to be used. For such an approach, the Commission would need to consider what data are available that would enable us to make useful predictions of usage. If the Commission were to use this usage-based approach, how should usage be measured? One possible measure of usage would be the average number of connected 5G devices in 15-

minute periods throughout the day. Another possible measure of usage would be total megabytes of data usage during a reporting period. Similar to the approaches used to generate the adjustment factor that was adopted in the *5G Fund Report and Order*, such data could be used in a regression or another modeling approach to generate weights for each eligible area based on predicted usage.

#### *B. Minimum Geographic Area for Bidding*

39. In the *5G Fund Report and Order*, the Commission concluded that “the minimum geographic area for bidding—*i.e.*, the geographic area by which areas eligible for support for 5G Fund support will be grouped for bidding—in a 5G Fund auction will be no larger than a census tract and no smaller than a census block group, as designated by the U.S. Census Bureau.” Census tracts and census block groups are practical units for aggregation when starting with census blocks, as, for example, in the Rural Digital Opportunity Fund. As discussed in the FNPRM, the Commission would convert the areas eligible for the 5G Fund to, and make them available in the form of, hex-9s. The Commission could then group the eligible hex-9s into larger geographic areas for purposes of bidding. For example, the Commission could have the geographic bidding unit be all of the eligible hex-9s that overlap a census tract or census block group. Alternatively, eligible hex-9s could be aggregated to another geographic area, such as the H3 hexagonal geospatial indexing system resolution-5 hexagon level (hex-5s). The Commission seeks comment on what aggregation scheme would be an efficient and appropriate way to group eligible hex-9s for bidding.

### **VI. Compliance With 5G Fund Public Interest Obligations and Performance Requirements**

#### *A. Metric for Measuring Compliance With 5G Fund Public Interest Obligations and Performance Requirements*

40. The Commission adopted interim and final service deployment milestones for 5G Fund support recipients in the *5G Fund Report and Order* to ensure that they meet their public interest obligations and performance requirements in areas where they receive support. The Commission’s proposal to use dollars per square kilometer as the bidding and support price metric is consistent with this approach. If the Commission decides to modify the bidding and support price



metric for the 5G Fund auctions to use a metric that targets locations (and possibly road miles), as discussed above, the Commission would need to make corresponding modifications to the rules adopted in the *5G Fund Report and Order* concerning the metric that would be used to measure a 5G Fund support recipient's compliance with its public interest obligations and performance requirements.

41. Under this approach, if the Commission adopts a different bidding and support price metric, it would likely adopt the same metric for measuring compliance. For example, if the Commission were to use a locations-based metric without a road miles component, the Commission would measure compliance based on a support recipient deploying service that meets the 5G Fund performance requirements to a specified percentage of the total locations within the eligible areas for which it is authorized to receive 5G Fund support in a state by the relevant interim service milestone and the final service milestone. Or, if the Commission were to use a hybrid metric that incorporates locations and road miles, it would measure compliance based on a support recipient deploying service that meets the 5G Fund performance requirements to a specified percentage of the total unserved locations and a specified percentage of the total unserved road miles within the eligible areas for which it is authorized to receive 5G Fund support in a state by the relevant interim service milestone and the final service milestone. However, an exception to the approach of adopting the same metric for measuring compliance if the Commission adopts a different bidding and support price metric would be if the Commission were to adopt an alternative approach to encouraging coverage of unserved road miles by using a metric based on locations alone, but require coverage of road miles as well as locations as part of the winner's obligations.

42. The Commission seeks comment on its approach to harmonizing the metric it uses to measure a 5G Fund support recipient's compliance with its public interest obligations and performance requirements should the Commission decide to modify the bidding and support price metric adopted in the *5G Fund Report and Order*.

43. The Commission also seeks comment on whether, in determining the metric it uses to measure a 5G Fund support recipient's compliance with its public interest obligations and performance requirements, the

Commission should also consider how any such metric might allow us to account for the impact of the Broadband Equity, Access, and Deployment (BEAD) Program and other Federal and state broadband infrastructure investments, if any, on the deployment of mobile broadband. Given that the BEAD Program does not provide funding for mobile broadband deployment, the Commission seeks comment on whether its proposals herein, together with the rules and procedures already adopted for the 5G Fund, are sufficient to ensure that the Commission efficiently and effectively facilitates the deployment of mobile broadband service to those areas where support is most needed. Furthermore, the Commission seeks comment on whether the use of a metric that targets locations and/or road miles to measure a 5G Fund support recipient's compliance with its public interest obligations and performance requirements provides us with the ability to determine if, and how, mobile broadband deployment supported through the 5G Fund complements other federally funded buildout efforts and investments in broadband infrastructure. Finally, the Commission seeks comment on steps it can take to ensure that any final decision here is taken in coordination and with due consideration for the other various broadband infrastructure funding initiatives underway.

#### *B. Methodologies for Demonstrating Compliance With 5G Fund Performance Requirements*

44. In the *5G Fund Report and Order*, the Commission decided to generally align the framework for 5G Fund support recipients' demonstration of compliance with their 5G Fund interim and final performance requirement milestones with the BDC, concluding that standardizing the data required for compliance reporting was likely to ease the burden on support recipients throughout universal service programs, while collecting sufficient data to confirm that the 5G Fund's requirements have been met. To that end, the Commission adopted a requirement that 5G Fund support recipients certify at the established interim and final service deployment milestones that their 5G mobile broadband coverage data reflects deployments in the eligible areas for which they are authorized to receive 5G Fund support, and also adopted a requirement that 5G Fund support recipients conduct on-the-ground measurement tests to substantiate their 5G broadband coverage data pursuant to methodologies for conducting such

testing and validating the test results and file that data in the BDC portal. Rather than adopting customized 5G Fund testing requirements, the Commission decided to adopt test metrics, data specifications, and permitted testing applications that are at least as stringent as those adopted for governmental and third party challenges in the BDC as a minimum for the on-the-ground tests required for the 5G Fund. With respect to the methodologies for conducting on-the-ground tests, the Commission decided that a 5G Fund support recipient must submit on-the-ground measurement tests with at least three tests conducted per square kilometer, measured by overlaying a uniform grid of one square kilometer (1 km by 1 km) on its submitted 5G coverage maps within the area for which 5G Fund support was awarded in a percentage of all drive-testable grid cells where the recipient reports deployment of 5G service by the applicable service deployment milestone. The minimum percentage of drive-testable grid cells tested must equal the minimum percentage of coverage required for each service buildout milestone (*i.e.*, 40%, 60%, 80%, 85%).

45. The Commission proposes to modify the methodologies that support recipients would use to substantiate their 5G broadband coverage certifications in the areas for which they receive 5G Fund support in order to be consistent with both its proposal to use hexagonal areas as the basis for the areas eligible for 5G Fund support and the Commission's decision in the *5G Fund Report and Order* to generally align the framework for demonstrating compliance with 5G Fund performance requirement milestones with the BDC. Specifically, the Commission proposes requiring 5G Fund support recipients to use the methodologies adopted for the BDC mobile verification process as the basis for substantiating coverage and demonstrating compliance with the 5G Fund interim and final deployment milestones adopted in the *5G Fund Report and Order*. Under the requirements for the BDC mobile verification process, mobile providers can submit either on-the-ground test data or infrastructure data to verify coverage in response to a mobile verification request from the Commission. The Commission may then use the infrastructure data to generate a predicted coverage area using propagation modeling software. The Commission seeks comment on this proposal and, in particular, whether 5G Fund support recipients should be required to submit on-the-ground test



data for areas that are accessible and infrastructure data for areas that are inaccessible. Should they submit infrastructure data sufficient to generate a “core coverage area,” as defined in the BDC mobile verification process, and on-the-ground test data for areas outside of such a core coverage area? Alternatively, should providers be allowed to submit either type of data regardless of the type of area in which they are deploying service?

46. If a provider chooses to submit on-the-ground test data in response to a BDC mobile verification request, it must provide such data based on a sample of on-the-ground tests that is statistically appropriate for the area tested. The sampled area is based on H3 resolution-8 hexagonal areas, and the provider must submit the results of at least two tests within each hexagon, and the time of the tests must be at least four hours apart, irrespective of date. The BDC rules provide that a provider must submit the results of at least two tests “unless, for any sampled hexagon, the provider has and submits alongside its speed tests actual cell loading data for the cell(s) covering the hexagon sufficient to establish that median loading, measured in 15-minute intervals, did not exceed the modeled loading factor for the one-week period prior to the verification inquiry, in which case the provider is required to submit only a single test for the sampled hexagon.” See 47 CFR 1.7006(c). The tests are then evaluated to confirm, using a one-sided 95% statistical confidence interval, that the cell coverage is 90% or higher. The Commission proposes to use a methodology for support recipients to demonstrate compliance with their 5G Fund performance requirement milestones that is similar to that adopted for the BDC mobile verification process, except that 5G Fund support recipients would not submit speed data based on a *sample* of areas, but for *all* supported areas subject to the on-the-ground testing requirement, and the area would be hex-9 instead of a hex-8. Under this approach, a 5G Fund support recipient’s cumulative test data will be required to show that at least 90% of measurements report 5G service at download and upload speeds of at least 7/1 Mbps and median download and upload speeds of at least 35/3 Mbps, and that at least 90% of tests record data latency of 100 milliseconds or less at the cell edge, as adopted in the *5G Fund Report and Order* for each of the support recipient’s interim and final deployment milestones. The Commission seeks comment on this

approach. Do commenters believe that more tests or fewer tests should be required within a hexagonal area? Should the tests be spaced further than four hours apart or closer together?

47. If a provider chooses to submit infrastructure data in response to a BDC mobile verification request, it must submit additional information beyond what is submitted as part of its biannual BDC availability data (propagation modeling details, as well as link budget and clutter data), including cell-site and antenna data for the targeted area. The Commission proposes to require 5G Fund support recipients to submit the same additional infrastructure data as is required in the BDC mobile verification process to substantiate coverage in the areas for which they receive 5G Fund support. The Commission seeks comment on this approach.

#### **VII. Schedule for Transitioning From Mobile Legacy High-Cost Support to 5G Fund Support**

48. In the *5G Fund Report and Order*, as part of its determination that the 5G Fund constitutes a comprehensive mechanism for mobile high-cost support that would serve as the alternative to Mobility Fund Phase II, the Commission concluded that it would commence the phase down of legacy mobile high-cost support in areas that are ineligible for 5G Fund support as soon as those areas were finalized. In the Consolidated Appropriations Act of 2023, Public Law 117–328, Div. E, Title VI 624, 136 Stat. 4459, 4702, however, Congress amended the language that allowed the Commission to consider support mechanisms as alternatives to Mobility Fund Phase II to further provide that any such alternative mechanism maintain existing high-cost support to competitive eligible telecommunications carriers until support under such mechanism commences. Accordingly, the Commission proposes to treat the release of the public notice announcing the close of the 5G Fund Phase I auction to be the point at which support under the 5G Fund commences. The Commission seeks comment on this proposal. The Commission also seeks comment on whether the appropriations rider requires the Commission to modify or consider any other changes to aspects of its plan for transitioning from mobile legacy high-cost support to 5G Fund support. Commenters should provide support for any interpretation they offer and how the public interest is best served by any such interpretation.

#### **VIII. Certification of Notice of 5G Fund Phase I Auction Requirements and Procedures**

49. The Commission proposes to adopt a requirement for the 5G Fund Phase I auction that each auction applicant certify, under penalty of perjury, that it has read the public notice adopting procedures for the auction, and that it has familiarized itself with those procedures and any requirements, terms, and conditions associated with receipt of 5G Fund support. As with other required certifications, an auction applicant’s failure to make the required certification in its short-form application by the applicable filing deadline would render its application unacceptable for filing, and its application would be dismissed with prejudice.

50. Prior to the deadline by which an interested party must submit a short-form application to participate in a given auction, a public notice is released announcing the procedures for the auction. This “Procedures Public Notice” describes in detail both the requirements for participating in the auction and the procedures that will be used to conduct all stages of the auction. The Commission has a longstanding policy that expressly places a burden upon each applicant to be thoroughly familiar with the procedures, terms, and conditions contained in the relevant Procedures Public Notice and any future public notices that may be released in the auction proceeding. In recent spectrum auctions the Commission and OEA, in conjunction with the WTB and the Media Bureau, have reinforced this policy by adopting, as part of the procedures for those auctions, a requirement that each auction participant certify, under penalty of perjury, that it has read the Procedures Public Notice for the auction in question, and that it has familiarized itself with the auction procedures and with the requirements related to the licenses made available for bidding. In adopting this certification requirement for prior Commission auctions, the Commission noted that it was intended to bolster applicants’ efforts to educate themselves to the greatest extent possible about the procedures for auction participation and to ensure that, prior to submitting their short-form applications, applicants understood their obligation to stay abreast of relevant, forthcoming information. The Commission further reasoned that familiarity with the Commission’s rules and procedures governing the auctions would help bidders avoid the consequences to them associated with

defaults, which also cause harm to other applicants and the public by reducing the efficiency of the auction process and reducing the likelihood that the license or construction permit will be assigned to the bidder that values it the most. The Commission has also previously expressed in the context of spectrum auctions that the certification requirement will help ensure that an auction applicant has investigated and evaluated those technical and marketplace factors that may have a bearing on its potential use of any licenses won at auction.

51. The Commission believes that applicants for universal service support in the 5G Fund Phase I auction would benefit from a similar certification because, as is the case with its spectrum auctions, familiarity with the rules and procedures governing the 5G Fund Phase I auction would help bidders avoid the consequences to them associated with defaults, which also cause harm to other applicants and the public by reducing the efficiency of the auction process. The Commission also believes that such certification would promote the integrity of and public confidence in the Commission's auction processes as well as ensure that 5G Fund Phase I support recipients are aware of and better prepared to comply with their public interest obligations and performance requirements. The Commission therefore proposes to adopt this requirement for the 5G Fund Phase I auction and seeks comment on this proposal. The Commission seeks comment on any alternative procedures that could be implemented that would better ensure that an applicant has thoroughly reviewed the auction's procedures and considered all relevant factors that may affect its participation in the auction and use of any support for which it is the winning bidder.

#### **IX. Cybersecurity and Supply Chain Risk Management**

52. The Commission seeks comment on whether to require 5G Fund support recipients to implement cybersecurity and supply chain risk management plans as a condition of receiving 5G Fund support. In the *Enhanced Alternative Connect America Cost Model Report and Order*, 88 FR 55918 (Aug. 17, 2023) (*Enhanced A-CAM Report and Order*), the Commission adopted a requirement that wireline providers receiving funds through the Enhanced Alternative Connect America Cost Model (Enhanced A-CAM) program implement such plans prior to the start of the program's support term, and that they submit their plans to USAC and certify that they have done

so by the established deadline; a failure to submit the plans and make the certification will result in 25% of monthly support being withheld until the carrier comes into compliance. The Commission sought comment in the *Enhanced Alternative Connect America Cost Model Notice of Proposed Rulemaking*, 87 FR 36283 (June 16, 2022), on whether to adopt cybersecurity and supply chain risk management requirements for Enhanced A-CAM carriers or, alternatively, for all carriers receiving high-cost support, but decided to adopt cybersecurity and supply chain risk management requirements only for Enhanced A-CAM carriers in the *Enhanced A-CAM Report and Order* because the record contained sparse comment on whether to extend these requirements to other high-cost programs. In adopting this requirement for Enhanced A-CAM carriers, the Commission stated that its actions emphasize the critical importance of cybersecurity and supply chain risk management in modern broadband networks, consistent with broader initiatives across the Federal Government, and reasoned that a risk management requirement was necessary to ensure that the program does not deprive rural consumers in high-cost areas of broadband service that is as secure as the service deployed pursuant to other Federal funding initiatives. Specifically, the Commission seeks comment on whether 5G Fund support recipients should be required to implement a cybersecurity risk management plan that reflects the latest version of the NIST Framework for Improving Critical Infrastructure Cybersecurity, and that reflects an established set of cybersecurity best practices, such as the standards and controls set forth in the Cybersecurity & Infrastructure Security Agency (CISA) Cybersecurity Cross-sector Performance Goals and Objectives or the Center for Internet Security Critical Security (CIS) Controls. The Commission also seeks comment on whether these carriers should be required to implement supply chain risk management plans that incorporate the key practices discussed in NISTIR 8276, Key Practices in Cyber Supply Chain Risk Management Observations from Industry, and related supply chain risk management guidance from NIST 800-161. Would it be appropriate for 5G Fund recipients to submit to USAC their updated cybersecurity and supply chain risk management plans within 30 days of making a substantive modification thereto, as Enhanced A-CAM recipients must? What are the differences (if any)

between 5G Fund recipients and Enhanced A-CAM recipients that might warrant different approaches to ensuring cybersecurity?

#### **X. Use of Open Radio Access Network Technologies in 5G Fund Supported Networks**

53. The Commission seeks comment on whether it should use the 5G Fund to encourage the deployment of Open RAN, and if so, how. In its March 2021 *Open RAN NOI*, 86 FR 16349 (Mar. 29, 2021), the Commission sought input on whether, and if so, how, deployment of Open RAN-compliant networks could further the Commission's policy goals and statutory obligations, advance legislative priorities, and benefit American consumers by making state-of-the-art wireless broadband available faster and to more people in additional parts of the country. Soon after the *Open RAN NOI* was adopted, the President signed Executive Order 14036, E.O. 14036, 86 FR 36987 (Jul. 14, 2021), which encouraged the Commission to consider providing support for the continued development and adoption of 5G Open Radio Access Network protocols and software. The Commission has since sought comment in its *Enhanced Competition Incentive Program Further Notice of Proposed Rulemaking*, 86 FR 74024 (Dec. 29, 2021), on whether and how the Commission should factor the use of Open RAN technologies into the Enhanced Competition Incentive Program, noting that Open RAN has the potential to allow carriers to promote the security of their networks while driving innovation, in particular in next-generation technologies like 5G, lowering costs, increasing vendor diversity, and enabling more flexible network architecture.

54. The Commission considers here whether and if so, how, this 5G Fund proceeding should promote the continued deployment of Open RAN technologies in networks built with 5G Fund support. The Radio Access Network (RAN) is the portion of the wireless telecommunication system that connects user devices (e.g., mobile phones) with the core network that performs routing or delivery of content. Open RAN is a term that describes a general disaggregation of RAN functionality built using open interface specifications between elements instead of proprietary specifications. Open RAN can be implemented in vendor-neutral hardware and software-defined technology based on open interfaces and community-developed standards providing a flexible and interoperable deployment architecture across multiple

vendors. As noted above, the Commission seeks comment on whether it should use the 5G Fund to encourage the deployment of Open RAN, and if so, how. The Commission also seeks comment on whether the 5G Fund could be an appropriate vehicle by which to further the goals outlined in Executive Order 14036 and if so, what the best mechanism(s) for doing so might be. For example, would deploying Open RAN networks require more time such that the Commission should afford a 5G Fund support recipient an extension of the interim and/or final service milestone deadlines if it demonstrates that it is using Open RAN in its network deployment? If the Commission does adopt such an incentive to encourage the use of Open RAN technologies, how would a support recipient demonstrate compliance with a requirement to implement those technologies, and how would the Commission measure a support recipient's continued compliance with such a requirement? Would supporting the deployment of Open RAN be consistent with the Commission's objective to efficiently and effectively distribute finite universal service support?

#### **XI. Promoting Digital Equity and Inclusion**

55. The Commission, as part of its continuing effort to advance digital equity for all, including for people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. The term "equity" is used here consistent with Executive Order 13985, E.O. 13985 (Jan. 20, 2021), as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. Specifically, the Commission seeks comment on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the

Commission's relevant legal authority to address any such issues.

#### **XII. Procedural Matters**

56. *Paperwork Reduction Act.* This FNPRM does not contain proposed new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, this FNPRM does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, 44 U.S.C. 3506(c)(4).

57. *Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 603, the Commission has prepared a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on a substantial number of small entities from the policies and rules proposed in the FNPRM to supplement the Commission's Regulatory Flexibility Analyses completed in the *5G Fund NPRM* and *5G Fund Report and Order*. The Commission requests written public comment on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the deadlines for comments on the FNPRM. The Commission will send a copy of the FNPRM, including the Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and Supplemental IRFA (or summaries thereof) will be published in the **Federal Register**.

58. The new, granular, and more accurate mobile coverage data obtained in the BDC and reflected on the Commission's new National Broadband Map allows the Commission to continue the implementation of the 5G Fund and advance its efforts to ensure the deployment of high-speed 5G service in areas of the country where, absent subsidies, it will continue to be lacking. The Commission undertakes this effort in the FNPRM in recognition that those living, working, and travelling in unserved and underserved areas must have access to high-speed 5G service. Mobile services that may have once been considered a luxury by some have become a necessity for all Americans. The need for such services has never been more critical, yet not only are there people in many areas of the country that continue to lack access to 5G services, Americans in some rural areas still lack access to any broadband service at all.

59. In its narrowly tailored FNPRM, the Commission seeks to refresh the record and reignite the Commission's plan to expand the deployment of 5G service to those rural communities that remain trapped on the wrong side of the digital divide. The Commission seeks comment on a limited set of proposals and other issues that are critical to the 5G Fund's success, including: (1) defining the areas that will be eligible for 5G Fund support; (2) reassessing the budget for the 5G Fund; (3) potentially reconsidering the use of adjusted square kilometers as the metric for accepting bids and identifying winning bids in a 5G Fund auction; (4) aggregating areas eligible for 5G Fund support to minimum geographic areas for bidding; (5) measuring a 5G Fund support recipient's compliance with its public interest obligations and performance requirements based on any modified metric for accepting bids and identifying winning bids; (6) modifying the schedule for transitioning from mobile legacy high-cost support to 5G Fund support consistent with recent legislative amendments; (7) a proposal to require each 5G Fund Phase I auction applicant to certify, under penalty of perjury, that it has read the public notice adopting procedures for the auction, and that it has familiarized itself with those procedures and any requirements related to the support made available for bidding in the auction; (8) whether to require 5G Fund support recipients to implement cybersecurity and supply chain risk management plans; and (9) determining whether and how this proceeding might create an opportunity to support further deployment of Open RAN technologies.

60. Based on data obtained in the BDC and currently reflected on the National Broadband Map, the Commission's understanding of where mobile service remains lacking has improved significantly and it now seeks comment on whether to modify the definition of eligible areas adopted in the *5G Fund Report and Order*. Specifically, the Commission seeks comment on whether it should continue to use the definition adopted by the Commission in the *5G Fund Report and Order* to determine areas eligible for the 5G Fund Phase I auction, or whether it should modify the definition to base the determination of eligible areas on where mobile coverage data submitted in the BDC show a lack of unsubsidized 5G broadband service by at least one service provider. Regardless of how the Commission defines the areas eligible for 5G Fund support, it proposes to use as the basis for the final eligible areas the version of

the mobile availability data published on the National Broadband Map approximately 30 days prior to the start of bidding. Because the Commission seeks to direct 5G Fund support to areas where people live, work, and travel, regardless of the definition used to identify the areas eligible for the 5G Fund Phase I auction, it seeks comment on limiting eligible areas to those that contain locations and/or roads that lack unsubsidized 5G service. The Commission would then use the H3 hexagonal geospatial indexing system (H3 system) to identify specific geographic areas eligible for 5G Fund support, limiting eligible areas to resolution-9 H3 hexagons that have locations and/or roads. If the Commission were to limit eligible areas to resolution-9 H3 hexagons that have locations and/or roads, it would use a bidding and support price metric based on dollars per square kilometer for those eligible areas and seek comment on whether to use the adjustment factor as previously adopted.

61. The Commission also proposes to modify the methodologies that support recipients would use to substantiate their 5G broadband coverage certifications in the areas for which they receive 5G Fund by requiring 5G Fund support recipients to use the methodologies adopted for the BDC mobile verification process as the basis for substantiating coverage and demonstrating compliance with the 5G Fund interim and final deployment milestones. Finally, the Commission proposes to treat the release of the public notice announcing the close of the 5G Fund Phase I auction to be the point at which support under the 5G Fund commences. The Commission believes these proposals make the best use of its National Broadband Map and will facilitate its policy goals of achieving ubiquitous high-speed broadband coverage, providing rural areas with access to mobile services reasonably comparable to those provided in urban areas, and ensuring that all Americans have access to 5G service where they live, work, and travel.

62. Additionally, the Commission proposes to require each 5G Fund Phase I auction applicant to certify, under penalty of perjury, that it has read the public notice adopting procedures for the auction, and that it has familiarized itself with those procedures and any requirements related to the support made available for bidding in the auction. The Commission believes that such a certification would promote the integrity of and public confidence in the Commission's auction processes as well

as ensure that 5G Fund Phase I support recipients are aware of and better prepared to comply with their public interest obligations and performance requirements.

63. Access to high-speed, mobile services touches almost all aspects of daily life and is essential to civic, economic, and social opportunities for those living and working in rural areas as well as in big cities and suburban areas. The ability to communicate and innovate through access to high-speed, mobile broadband services is a necessity for work, education, healthcare, news and entertainment, public safety information and services, and communication during a national emergency or other crisis. Thus, the importance of expanding access to high-speed 5G services in rural communities cannot be overstated. With this in mind, the Commission issued the FNPRM cognizant that full participation in American society requires us to make 5G service available to everyone no matter where they live.

64. The legal basis for any action that may be taken pursuant to the FNPRM is authorized pursuant to sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 214, 254, 303(r), and 403, and §§ 1.1 and 1.421 of the Commission's rules, 47 CFR 1.1 and 1.421.

65. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act. A "small-business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

66. Regulatory Flexibility Analyses were incorporated into the *5G Fund NPRM* and *5G Fund Report and Order*. In those analyses, the Commission described in detail the small entities that might be significantly affected. In this Supplemental IRFA, the Commission hereby incorporates by reference the descriptions and estimates of the number of small entities from the previous Regulatory Flexibility Analyses in the *5G Fund NPRM* and *5G Fund Report and Order*.

67. Possible modification to some of the compliance requirements adopted in

the *5G Fund Report and Order* that may be necessary based on the proposals and/or the other issues on which the Commission seeks comment in the FNPRM could impact the reporting, recordkeeping, and other compliance requirements for small and other providers that receive 5G Fund support.

68. In the *5G Fund Report and Order*, the Commission decided that it would accept bids and identify winning bids in the 5G Fund auctions using a support price per adjusted square kilometer, and adopted interim and final service deployment milestones for small and other 5G Fund support recipients to ensure that all support recipients meet their public interest obligations and performance requirements in areas where they receive support. If the Commission decides to modify the bidding and support price metric for the 5G Fund auctions to use a metric other than square kilometers and makes corresponding modifications to the rules adopted in the *5G Fund Report and Order* concerning the metric that would be used to measure a 5G Fund support recipient's compliance with its public interest obligations and performance requirements, small and other providers that receive 5G Fund support will be required to use a different metric than what was adopted in the *5G Fund Report and Order* for purposes of measuring and reporting compliance with the 5G Fund public interest obligations and performance requirements.

69. The Commission decided to generally align the framework for 5G Fund support recipients' demonstration of compliance with their 5G Fund interim and final performance requirement milestones with the BDC in the *5G Fund Report and Order*, concluding that standardizing the data required for compliance reporting was likely to ease the burden on support recipients throughout universal service programs, while collecting sufficient data to confirm that the 5G Fund's requirements have been met. With respect to the methodologies for conducting on-the-ground tests, the Commission decided in the *5G Fund Report and Order* that a 5G Fund support recipient must submit on-the-ground measurement tests with at least three tests conducted per square kilometer, measured by overlaying a uniform grid of one square kilometer (1 km by 1 km) on its submitted 5G coverage maps within the area for which 5G Fund support was awarded in a percentage of all drive-testable grid cells where the recipient reports deployment of 5G service by the applicable service deployment milestone. The minimum

percentage of drive-testable grid cells tested must equal the minimum percentage of coverage required for each service buildout milestone (*i.e.*, 40%, 60%, 80%, 85%). In the FNPRM, the Commission proposes to modify the methodologies that support recipients would use to substantiate their 5G broadband coverage certifications in the areas for which they receive 5G Fund support in order to be consistent with both its proposal to use hexagonal areas as the basis for the areas eligible for 5G Fund support and the Commission's decision in the *5G Fund Report and Order* to generally align the framework for demonstrating compliance with 5G Fund performance requirement milestones with the BDC. If this proposal is adopted, small and other providers that receive 5G Fund support will be required to use different methodologies than were adopted in the *5G Fund Report and Order* for purposes of demonstrating compliance.

70. The FNPRM also seeks comment on whether to adopt a requirement that each 5G Fund support recipient implement cybersecurity risk management and supply-chain risk management plans as a condition of receiving 5G Fund support, similar to the requirement adopted for the Enhanced Alternative Connect America Cost Model program. In that program, support recipients are required to implement such plans prior to the start of the program's support term, and to submit the plans to the USAC and certify that they have done so.

71. In assessing the cost of compliance for small entities, at this time the Commission is not in a position to determine whether small entities will be required to hire professionals, and cannot quantify the cost of compliance with its proposals related to the above-described possible modifications to the metric and methodologies for demonstrating and reporting compliance with the 5G Fund public interest obligations and performance requirements. The Commission anticipates, however, that the comments it receives will discuss any potential changes to compliance costs and/or administrative burdens for small entities, and may help the Commission identify and evaluate other relevant issues for small entities associated with the matters discussed in the FNPRM.

72. The FNPRM also seeks comment on a proposal to add to the existing certifications that are required under the Commission's competitive bidding rules a requirement that each applicant in the 5G Fund Phase I auction certify, under penalty of perjury, that it has read the public notice adopting procedures for

the auction, which will be released in advance of the auction's short-form deadline, and it has familiarized itself both with the auction procedures and with any requirements related to the authorizations or support made available for bidding in the auction. Consistent with other certifications required in an auction application, a failure to make these certifications would render an application unacceptable for filing, and the applicant will not be found qualified to bid.

73. Typically, the auction procedures inform prospective applicants that they should familiarize themselves with the Commission's general competitive bidding rules, Commission decisions regarding competitive bidding procedures, application requirements, obligations of Commission licensees, construction permit holders, and support recipients, and the Commission's service rules for the frequency band available in the auction or for construction permits or universal service support, and that they must be thoroughly familiar with the procedures, terms, and conditions contained in the public notice adopting procedures for the auction. The Commission therefore does not expect that the certification requirement proposed in this FNPRM will increase the need for small entities to hire attorneys, engineers, consultants, or other professionals because it does not increase the level of education or due diligence beyond what was required of applicants prior to the adoption of the certification requirement, and thus it should not increase an applicant's burden in complying with the additional certification requirement. Additional public notices adopting the procedures for any auction will be released before the auction's short-form filing deadline and made publicly available on each auction's web page. The Commission believes that this is sufficient to ensure that applicants in each auction can certify truthfully that they have read the auction procedures and familiarized themselves with the relevant rules and requirements.

74. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule

for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

75. The Commission believes that the proposed modification to the metric for measuring compliance that may be necessary depending on the metric that it will use to accept bids and identify winning bids will also benefit small entities as corresponding changes to the metric that will be used to measure compliance will ensure that small entities would not be required to undertake separate analyses to determine how, and where they wish to bid, to identify the areas for which they are awarded support, and to measure and report compliance with their public interest obligations.

76. In the FNPRM, an alternative the Commission considered to its proposal to use dollars per square kilometer as the bidding and support price metric, which it seeks comment on, is whether to adopt an alternative approach that would provide some advantage to particularly costly areas that nonetheless are areas with a considerable number of homes, businesses, and other locations, and/or roads that are frequently travelled. The Commission inquires whether parameters for such an alternative approach could be determined without unduly delaying the auction. Another alternative considered is to use a bidding and support price metric based on the number of locations in the eligible areas. Additionally, the Commission seeks comment on potentially incorporating the number of unserved road miles in an area, as well as the number of locations, into the bidding and support price metric. The Commission inquires whether there is an approach that would appropriately balance unserved road miles and unserved locations in a single metric. For example, the Commission asks whether it could adjust the number of locations upward by a fraction, *e.g.*, 25%, in an area with a moderate number of unserved road miles, and by a larger fraction, *e.g.*, 40%, if the area has a large number of unserved road miles, or whether a metric that is a weighted sum of unserved locations and unserved road miles would be appropriate, such as a metric that is the total of the number of unserved locations and one half of the number of unserved road miles. The Commission also considered and seeks comment on a possible metric based on predicted usage from serving eligible areas. This metric would consider all measurable factors that can affect mobile usage,

such as unserved locations, road miles, and areas with parks or wilderness where devices are likely to be used. Possible options the Commission raises for discussion to measure usage are using the average number of connected 5G devices in 15-minute periods throughout the day or the total megabytes of data usage during a reporting period.

77. The discussion of the approach the Commission should take to harmonize the metric it uses to measure a 5G Fund support recipient's compliance with its public interest obligations and performance requirements should the Commission decide to modify the bidding and support price metric adopted in the *5G Fund Report and Order* looked at two potential options upon which the FNPRM seeks comment. If the Commission was to use a locations-based metric without a road miles component, it would measure compliance based on a support recipient deploying service that meets the 5G Fund performance requirements to a specified percentage of the total locations within the eligible areas for which it is authorized to receive 5G Fund support in a state by the relevant interim service milestone and the final service milestone. Alternatively, if the Commission was to use a hybrid metric that incorporates locations and road miles, it would measure compliance based on a support recipient deploying service that meets the 5G Fund performance requirements to a specified percentage of the total unserved locations and a specified percentage of the total unserved road miles within the eligible areas for which it is authorized to receive 5G Fund support in a state by the relevant interim service milestone and the final service milestone.

78. With respect to the proposed certification requirement for short-form auction applications, the Commission has taken steps to minimize any economic impact of the certification requirement on small entities through the many free resources the Commission provides to potential auction participants. The public notice adopting the procedures for each auction will be posted to the auction's website prior to the opening of the application window, and other relevant orders are available through EDOCS, the Commission's online document database ([www.fcc.gov/edocs](http://www.fcc.gov/edocs)). The Commission believes that reading these materials will be sufficient for applicants to certify that they have familiarized themselves with the relevant auction procedures and other requirements. The Commission also makes available

additional educational materials to help potential auction participants understand the auction process, including short-form filing instructions and a tutorial. The Commission makes this information publicly available and easily accessible and without charge to benefit all potential auction applicants, including small entities, thereby lowering their administrative costs to comply with the Commission's competitive bidding rules.

79. Small entities and other auction participants also may seek clarification of, or guidance regarding, auction procedures, the competitive bidding rules, and any requirements related to the authorizations or support to be made available through the auction from Commission staff prior to the auction's application window. Additionally, an FCC Auctions Hotline provides small entities one-on-one access to Commission staff for information about the auction process and procedures. The FCC Auctions Technical Support Hotline is another resource that provides technical assistance to applicants, including small entities, on issues such as access to or navigation within the electronic short-form application and use of the bidding system.

80. Additionally, in the FNPRM the Commission also considered and seeks comment whether, and to what extent, if any, it can or should use the 5G Fund to encourage the deployment of Open RAN, and if so, how. The Commission considered, as an example, whether deploying Open RAN networks requires more time such that it should afford a 5G Fund support recipient an extension of the interim and/or final service milestone deadlines if it demonstrates that it is using Open RAN in its network deployment. This approach could benefit small providers by allowing them the flexibility to choose an option that may provide an extension of compliance deadlines.

81. The issues on which the Commission seeks comment in the FNPRM are designed to ensure the Commission has a complete understanding of the costs, benefits, and potential burdens associated with the different actions and methods. The Commission seeks to continue to learn from the experience of small entities so that it can balance its responsibility to monitor the use of universal service funds with minimizing administrative and compliance costs and burdens on 5G Fund participants. The Commission expects to more fully consider the economic impact on small entities, as identified in comments filed in response to the FNPRM and this Supplemental

IRFA, in reaching its final conclusions and taking final action in this proceeding.

82. There are no Federal rules that duplicate, overlap, or conflict with the rules proposed herein.

83. *Ex Parte Rules—Permit-But-Disclose.* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b), 47 CFR 1.1206(b). In proceedings governed by rule 1.49(f), 47 CFR 1.49(f), or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

### XIII. Ordering Clauses

84. Accordingly, *it is ordered*, pursuant to the authority contained in sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 214, 254, 303(r), and 403, and §§ 1.1 and 1.421 of the Commission's rules, 47 CFR 1.1 and

1.421, that this Further Notice of Proposed Rulemaking is *adopted*.

85. *It is further ordered* that, pursuant to the authority contained in sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 214, 254, 303(r), and 403, and §§ 1.1 and 1.421 of the Commission's rules, 47 CFR 1.1 and 1.421, *notice is hereby given* of the proposals described in this Further Notice of Proposed Rulemaking.

86. *It is further ordered* that, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the Further Notice of Proposed Rulemaking in the captioned docket on or before the date shown on the first page of this document, and reply comments on or before the date shown on the first page of this document.

87. *It is further ordered* that the Office of the Secretary, Reference Information Center, *shall send* a copy of this Further Notice of Proposed Rulemaking, including the Supplemental Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

[FR Doc. 2023–21476 Filed 9–27–23; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### 49 CFR Part 675

[Docket No. FTA–2023–0018]

RIN 2132–AB46

#### Transit Worker Hours of Service and Fatigue Risk Management Listening Session; Public Meeting

**AGENCY:** Federal Transit Administration (FTA), Department of Transportation (DOT).

**ACTION:** Notice of public listening session.

**SUMMARY:** The Federal Transit Administration (FTA) announces that it will host a listening session concerning the topics of hours of service and fatigue risk management programs for transit workers. The listening session will allow interested persons to present comments, views, and relevant research on those topics. All comments will be summarized and placed in the rulemaking docket for FTA's consideration.

**DATES:** The listening session will be held on October 8, 2023, in Orlando, Florida, from 11:15 a.m. to 12:45 p.m. ET.

**ADDRESSES:** The listening session will be held in person at the Hyatt Regency Orlando, 9801 International Drive, Orlando, FL 32819. The session will take place during the American Public Transportation Association's TRANSform Conference and EXPO.

**FOR FURTHER INFORMATION CONTACT:** For information on the listening session, contact Valerie Beck, Office of Transit Safety and Oversight, FTA, telephone at (202) 366–9178 or [Valerie.Beck@FTA.DOT.gov](mailto:Valerie.Beck@FTA.DOT.gov)

[FTA.DOT.gov](mailto:FTA.DOT.gov). Office hours are from 7:30 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

FTA plans to issue an Advance Notice of Proposed Rulemaking (ANPRM) seeking public input in two areas: (1) hours of service; and (2) fatigue risk management programs. At present, there are no Federal minimum standards for hours of service and fatigue risk management programs in the transit industry. The listening session will allow interested persons to present comments, views, and relevant research on those topics. FTA would like to hear from members of the public on their views on transit worker fatigue and whether they would support FTA adopting mandatory federal hours of service and fatigue risk management requirements for transit workers. FTA seeks information to understand better current industry practices, priorities, requirements, and the costs and benefits of Federal requirements.

##### II. Meeting Participation

The listening session is open to the public.

##### III. Future Meetings

FTA plans to hold additional listening sessions in the future for those unable to attend this in-person listening session. The details of those listening sessions will be published in the **Federal Register**.

(Authority: 49 U.S.C. 5329; 49 CFR 1.91)

**Nuria I. Fernandez,**  
*Administrator.*

[FR Doc. 2023–21120 Filed 9–27–23; 8:45 am]

**BILLING CODE 4910–57–P**



# Notices

Federal Register

Vol. 88, No. 187

Thursday, September 28, 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

### Food and Nutrition Service

#### Agency Information Collection

**Activities: Pandemic EBT (OMB #0584-0660)**

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is a revision of a currently approved information collection for Pandemic EBT (P-EBT) for the reporting burden associated with administering P-EBT. This revision is limited in nature and only includes collection activities essential to facilitating the orderly wind-down and close-out of the P-EBT program.

**DATES:** Written comments must be received on or before November 27, 2023.

**ADDRESSES:** Comments may be sent to: J. Kevin Maskornick, Director, Community Meals Policy Division, Food and Nutrition Service, U.S. Department of Agriculture, Braddock Metro Center II, 1320 Braddock Place, Alexandria, VA 22314. Comments may also be submitted via email to [SM.FN.PEBT@usda.gov](mailto:SM.FN.PEBT@usda.gov). Comments will also be accepted through the Federal eRulemaking Portal. Go to <https://www.regulations.gov>, and follow the online instructions for submitting comments electronically. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this information collection

should be directed to J. Kevin Maskornick at 703-305-2537 or via email to [SM.FN.PEBT@usda.gov](mailto:SM.FN.PEBT@usda.gov).

**SUPPLEMENTARY INFORMATION:** Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Title:* Pandemic EBT.

*Form Number:* FNS-292B, FNS-388, FNS-46, FNS-366A, and SF-425 (under OMB Control Number 0584-0594) is associated with this collection.

*OMB Number:* 0584-0660.

*Expiration Date:* November 30, 2023.

*Type of Request:* Revision of a currently approved collection.

*Abstract:* The Pandemic Electronic Benefit Transfer (P-EBT) is part of the U.S. government response to the COVID-19 pandemic. The Families First Coronavirus Response Act of 2020 (Pub. L. 116-127), as amended by the Consolidated Appropriations Act 2021 (Pub. L. 116-260), the American Rescue Plan Act of 2021 (Pub. L. 117-2), and the Consolidated Appropriations Act 2023 (Pub. L. 117-328) provides the Secretary of Agriculture authority to administer, through State agencies, the PEBT programs.

Per Public Law 116-159, each State must submit an operational plan to FNS Regional Office for approval. With the expiration of the COVID-19 public health emergency (PHE) on May 11, 2023, States will not receive approval for operational plans submitted after federal Fiscal Year (FY) 2023 (*i.e.*, September 30, 2023), although States may issue some benefits retroactively to households after September 30, 2023, based on prior plan approvals. However, FNS proposes an extension for limited elements of the currently approved information collection to facilitate the

orderly wind-down and close-out of the P-EBT program.

Once operational plans are approved, each State SNAP agency will also be required to provide monthly reports via the FNS-292B (*Disaster Relief*) to the FNS Regional Office, regarding the number of eligible children receiving P-EBT benefits, number of households receiving such benefits, and the total value of the benefits.

Each State is also expected to separately identify P-EBT participation and benefit issuance on the FNS-388 (*State Issuance and Participation Estimates*) and FNS-46 (*Issuance Reconciliation Report*) reports. There is no additional burden associated with this requirement, as the States already report participation data to FNS on the FNS-388 and FNS-46 on a monthly basis.

FNS will provide funding to each State's SNAP State agency for 100% of P-EBT-related administrative costs. Such funding will be available for the necessary, allowable, and reasonable State agency costs associated with the administration of P-EBT incurred during FY 2023 and through FY 2024. This includes administrative costs associated with the issuance of retroactive FY 2020-2023 benefits incurred in FY 2024. States interested in the 100% funding will be expected to submit a FY 2023 P-EBT administrative cost plan for the intended period of operations for USDA approval using the FNS-366A (*Program and Budget Summary Statement: Budget Projection*) by September 30, 2023. The period of performance for the FY 2023 administrative cost plan will end on March 31, 2024, and FNS will consider well-supported requests for period of performance extensions past this date, not to exceed September 30, 2024. During the period of performance of the 100% funding, the SNAP State agency will be expected to aggregate obligation and outlay data from all State agencies utilizing the 100% funding and report quarterly to USDA using a P-EBT specific instance of the SF-425 (*Federal Financial Report*).

The current burden for a State agency to submit FNS-292B, FNS-388, FNS-46, FNS-366A and SF-425 reports is currently captured under the information collection for the Food Programs Reporting System (FPRS), OMB Control Number 0584-0594



(expiration date 9/30/26). The Food Programs Reporting System is the Federal system State agencies use to report FNS Program data to FNS. Therefore, this information collection estimates burden hours associated with P-EBT that are above the currently approved hours in 0584–0594 for forms FNS–292B, FNS–366A, and SF–425 for normal Program operations.

In order to determine eligibility and benefit levels for P-EBT, State agencies must collect data from schools, including lists of students that have been determined eligible for free and reduced price meals. This information is used to determine the benefit levels children are eligible to receive, which will vary depending on the FY of the approved plan. Per Public Law 117–2, during the summer months all children eligible for free or reduced price meals that are enrolled in schools that participate in the National School Lunch Program are considered eligible for P-EBT. This requires all schools to provide the State agency with a list of children who have been determined eligible for free and reduced price meals.

FNS will provide funding to each State's SNAP State agency for 100% of P-EBT-related school level

administrative costs. Such funding will be available for the necessary, allowable, and reasonable State agency costs associated with the administration of P-EBT incurred during FY 2020–2023. In order to receive this funding, schools must report to their State agency on the school level costs incurred to administer P-EBT.

This submission seeks OMB approval of this revision to an existing collection (OMB Control #0584–0660, expiration 11/30/2023) for activities associated with administering P-EBT.

The currently approved burden for this collection is 3,684,928 burden hours. Because the majority of State and territories are expected to have completed normal issuance of benefits by November 30, 2023, FNS estimates the new burden at 20,109 burden hours, which is a decrease of approximately 3,664,849 hours. Only one State has an approved plan that entails data collection and eligibility verification from schools past November 30, 2023; the burdens of the remaining States past this date are only for monthly reporting of benefit issuances due to contingencies or corrections.

The currently approved total annual responses are 10,379,211; we are requesting 20,109, which is a decrease of 10,359,102 total annual responses.

*Affected Public:* State Government, Schools, Individual/Households. Respondents include State agencies (including District of Columbia, and Territories), schools, and participants.

*Estimated Number of Respondents:* The total estimated number of respondents is 114,336. This includes: State agencies (49), schools (287), Individuals/Households (114,000 participants).

*Estimated Number of Responses per Respondent:* The total estimated number of responses per respondent for this collection is 8.

*Estimated Total Annual Responses:* The total estimated number of annual responses for this collection is 115,374.

*Estimated Time per Response:* The estimated time per response averages approximately 10.6 minutes (0.176 hours) for all participants.

*Estimated Total Annual Burden on Respondents:* The estimated total annual burden on respondents for this collection is 20,109 hours.

See the table below for the estimated total annual burden for each type of respondent.

**Tameka Owens,**  
Assistant Administrator, Food and Nutrition Service.

TABLE—ESTIMATED TOTAL ANNUAL BURDEN ON RESPONDENTS

| Respondent category     | Instruments                                                | Form         | Number of respondents | Frequency of response | Total annual responses | Responses per respondent | Hours per response | Annual burden (hours) |
|-------------------------|------------------------------------------------------------|--------------|-----------------------|-----------------------|------------------------|--------------------------|--------------------|-----------------------|
| Individuals/Households. | P-EBT Application Submission.                              | N/A .....    | 114,000               | 1                     | 114,000                | 1                        | 0.166666667        | 19,038                |
| Schools .....           | Student Eligibility Data.                                  | N/A .....    | 287                   | 1                     | 287                    | 1                        | 0.5                | 143.5                 |
|                         | P-EBT Local Level Administrative Cost Reporting to State.  | N/A .....    | 287                   | 1                     | 287                    | 1                        | 1                  | 143.5                 |
| Schools Subtotal        | .....                                                      | .....        | 287                   | 2                     | 574                    | 2                        | 1.5                | 287                   |
| State Agencies .....    | Monthly P-EBT Reporting to FNS.                            | FNS–292B ..  | 49                    | 12                    | 588                    | 1                        | 1                  | 588                   |
|                         | P-EBT Quarterly Administrative Cost Report (100% funding). | SF–425 ..... | 49                    | 4                     | 196                    | 4                        | 1                  | 196                   |
| SA Subtotal .....       | .....                                                      | .....        | 49                    | 16                    | 800                    | 5                        | 2                  | 784                   |
| Grand Total             | .....                                                      | .....        | 114,336               | 19                    | 115,374                | 8                        | 3.67               | 20,109                |

[FR Doc. 2023–21515 Filed 9–27–23; 8:45 am]

BILLING CODE 3410–30–P

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

[Docket #: RUS–23–WATER–0013]

### Notice of Funding Opportunity for Calendar Year 2022 Disaster Circuit Rider Technical Assistance Grants Program; Water and Environmental Programs

AGENCY: Rural Utilities Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Rural Utilities Service (RUS or the Agency), a Rural Development (RD) mission area of the United States Department of Agriculture (USDA), announces acceptance of applications under the Calendar Year (CY) 2022 Disaster Circuit Rider Technical Assistance (CY 2022 Disaster CRTA) Grants Program. The Agency will have up to \$8,000,000 in grant funding

provided through the Disaster Relief Supplemental Appropriations Act, 2023. Grant funds will be made available to qualified organizations to provide technical assistance on a national basis to rural communities and federally recognized tribes with water infrastructure systems damaged by CY 2022 Presidentially declared disasters. Purposes include supporting eligible communities, including federally recognized tribes, identified through the Presidential disaster declarations by providing on-site technical assistance to support post-disaster mitigation of eligible events, to identify and evaluate solutions to impacted water, wastewater, stormwater and solid waste challenges, help communities develop and prepare applications for water and waste loans and grants, deliver training and other resources to operators, managers, and other system personnel, and pay certain expenses associated with the provision of such services. Applicants are responsible for any expenses incurred in developing their application.

**DATES:** Electronic applications must be submitted between September 28, 2023 and 11:59 p.m. Eastern Time on October 30, 2023. Late or incomplete applications will not be accepted.

**ADDRESSES:** Applications and supporting information must be submitted electronically through [Grants.gov](https://www.grants.gov) via <https://www.grants.gov>. Instructions and additional resources, to include an application guide, are available at <https://www.rd.usda.gov/programs-services/water-environmental-programs/calendar-year-2022-disaster-circuit-rider-technical-assistance-grants-program> under the "To Apply" tab.

**FOR FURTHER INFORMATION CONTACT:** Penny Douglas, Grant Manager, Water and Environmental Programs, RUS, USDA, by phone at (202) 253-0504 or by email at [Water-RD@usda.gov](mailto:Water-RD@usda.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Overview**

*Federal Awarding Agency Name:* Rural Utilities Service.

*Funding Opportunity Title:* Calendar Year 2022 Disaster Circuit Rider Technical Assistance Grants Program.

*Announcement Type:* Notice of Funding Opportunity (NOFO).

*Funding Opportunity Number:* RD-RUS-CY22DisasterCRTA.

*Assistance Listing:* 10.761, *Technical Assistance and Training Grants*.

*Dates:* Completed electronic applications must be submitted through [www.grants.gov](https://www.grants.gov) between September 28, 2023 and 11:59 p.m. Eastern Time on

October 30, 2023. Late or incomplete applications will not be accepted.

*Rural Development Key Priorities:* The Agency encourages applicants to consider projects that will advance the following key priorities:

- Assisting rural communities recover economically through more and better market opportunities and through improved infrastructure;
- Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects; and
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

#### **A. Program Description**

1. *Purpose of the Program.* The CY 2022 Disaster CRTA Grants Program is designed to award funding to qualified organizations that will provide technical assistance on a national basis to water, wastewater, stormwater, and solid waste systems in rural areas with populations of up to 35,000. Grant funds must be used to support water infrastructure systems damaged by Presidentially declared disasters in CY 2022. Eligible uses of funds include providing on-site technical assistance to support post-disaster mitigation of eligible events, to identify and evaluate solutions to water, wastewater, stormwater, and solid waste challenges, help communities develop and prepare applications for water and waste loans and grants, deliver training and other resources to operators, managers, and other system personnel, and pay certain expenses associated with the provision of such services. For the most current list of Presidentially declared disasters, visit the United States (U.S.) Department of Homeland Security, Federal Emergency Management Agency (FEMA) website at: <https://www.fema.gov/disaster/declarations>.

2. *Statutory and Regulatory Authority.* The CY22 CRTA Grants Program is authorized pursuant to section 306(a)(22) of the *Consolidated Farm and Rural Development Act* (Pub. L. 87-128); Division N of the *Consolidated Appropriations Act, 2023* (Pub. L. 117-328); and 2 CFR parts 200 and 400, *Uniform and Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. This program is implemented under the provisions of 7 CFR 1775, *Technical Assistance Grants, Subpart A, General Provisions*, and B, *Grant Application Processing*, and this NOFO. Other federal statutes and regulations are listed at 7 CFR 1775.8, *Other Federal statutes*.

3. *Definitions.* The definitions applicable to this notice are published at 7 CFR 1775.2, *Definitions*, and this Notice. The terms and conditions provided in this Notice are applicable to and for purposes of this Notice only. This Notice takes precedence related to any definition found both within both 7 CFR 1775 and this Notice.

*Actual Capacity.* Possess the necessary resources to provide technical assistance to water infrastructure systems through its own staff or be assisted by an affiliate or member organization which has such background and experience, and which agrees in writing that it will provide the assistance for the duration of the grant performance period, or contract with a nonaffiliated organization for not more than 49 percent of the grant to provide the proposed assistance.

*Affiliated Organization.* A company that is related to another company, usually by being in the position of a member or a subordinate role (must be verified by organizational documentation). Two companies may be affiliated if one company has control over the other or if both are controlled by a third company. One corporation can be affiliated with another corporation by shareholdings, by holding a minority interest, or one corporation might be a subsidiary of another.

*Agency.* RUS or its successors, and the USDA RD employees acting on behalf of RUS in accordance with the appropriate delegations of authority.

*Calendar Year 2022.* The dates beginning January 1, 2022, and ending December 31, 2022.

*Federally Recognized Tribe.* Any Indian or Alaska Native tribe, band, nation, pueblo, village or community as defined by the Federally Recognized Indian Tribe List Act (List Act) of 1994 (Pub. L. 103-454).

*Prefabricated Homes Communities.* Mobile, manufactured, and modular homes that share a private public water and/or sewer system.

*Presidentially Declared Disaster.* A declaration made in accordance with applicable statutes by the President that a disaster exists, necessitating assistance in the recovery of the impacted area.

*Rural or Rural Area.* Any area in a city, town, or unincorporated area with a population not in excess of 35,000 inhabitants, according to the latest Agency-implemented decennial census of the United States. The population of the community is as adjusted by the exclusion of individuals incarcerated on a long-term or regional basis, and the exclusion of the first 1,500 individuals who reside in housing located on a

military base. The area to be served may be made up of combinations of these eligible areas. If the applicable population figure cannot be obtained from the most recent decennial Census, RUS will determine the applicable population figure based on available population data. Facilities receiving technical assistance under this grant program may be located in non-rural areas. However, funds may be used to benefit only that portion of the facility serving rural areas, regardless of facility location.

4. *Application of Awards.* The Agency will review, evaluate, and score applications received in response to this Notice as indicated here and with further clarification found in the CY 2022 Disaster CRTA Grants Program Application Guide. Awards under the CY 2022 Disaster CRTA Grants Program will be made on a competitive basis using specific selection criteria contained in the Notice and further detailed in the Application Guide. The Agency advises all interested parties that the applicant bears the full burden in preparing and submitting an application in response to this notice.

#### *B. Federal Award Information*

*Type of Award:* Grant.

*Fiscal Year Funds:* FY 2023.

*Available Funds:* Up to \$8,000,000. RUS may at its discretion increase the total level of funding available in this funding round from any available source provided the awards meet the requirements of the statute which made the funding available to the Agency.

*Award Amounts:* No minimum or maximum award amount.

*Anticipated Award Date:* September 30, 2023.

*Performance Period:* Projects begin as denoted in the Grant Agreement and may go up to 24 months. Applicant must reference the performance period in its project narrative.

*Renewal or Supplemental Awards:* This is a new program; no prior grants have been awarded under the CY 2022 CRTA Grants Program.

*Type of Assistance Instrument:* Grant Agreement.

#### *C. Eligibility Information*

1. *Eligible Applicants.* CY 2022 Disaster CRTA grant funding is available to associations, including corporations not operated for profit, Indian tribes on Federal and State reservations and other federally recognized Indian tribes, and public and quasi-public agencies. Additionally, an applicant must:

(a) Be legally established prior to submitting the application and be

located within a State as defined in § 1775.2, and

(b) Possess and document legal authority to receive and administer a federal award, and to provide the proposed technical assistance on a national basis, to eligible communities, including federally recognized tribes, and

(c) Document proven technical, managerial and financial capacity and experience to carry out the objectives of this program and to comply with state and federal laws and regulations, as evidenced by the applicant's satisfactory accomplishment of technical assistance similar to that proposed, and

(d) Have no delinquent debt to the federal government or outstanding judgments to repay a federal debt, and

(e) Not be a corporation that has been convicted of a felony or had an officer or agent acting on behalf of the corporation convicted of a felony, within the past 24 months. Any corporation that has any unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability is not eligible.

2. *Eligible Grant Purposes.* Technical assistance that may be provided to eligible communities, including federally recognized tribes, through the CY 2022 Disaster CRTA Grants program includes:

(a) Short-term disaster and emergency assistance, including on-site technical assistance and troubleshooting;

(b) Identifying and evaluating long-term solutions, inclusive of Risk and Resilience Assessments, Emergency Response Plans, and other planning documentation;

(c) Providing training and other resources to operators and management; and,

(d) Application development, including any technical work such as feasibility, engineering, and environmental reports.

(e) Certain other technical assistance efforts that support the resiliency and capacity of eligible systems.

3. *Cost Sharing or Matching.* No cost sharing or matching requirement is associated with this grant.

#### *D. Application and Submission Information*

1. *Address to Request Application Package.* Application information is available at [www.grants.gov](http://www.grants.gov) and <https://www.rd.usda.gov/programs-services/water-environmental-programs/calendar-year-2022-disaster-circuit->

[rider-technical-assistance-grants-program](https://www.rd.usda.gov/programs-services/water-environmental-programs/calendar-year-2022-disaster-circuit-rider-technical-assistance-grants-program).

2. *Content and Form of Application Submission.* To be considered for funding, applicants must meet the eligibility criteria outlined in this notice and must submit a complete application by the deadline date. Applicants should consult the cost principles and general administrative requirements found in 2 CFR part 200 for grants pertaining to their organizational type to prepare the budget and complete other parts of the application. Applications should be prepared in conformance with program regulations, and departmental and other applicable regulations including 2 CFR parts 180, 182, 200, 400, 417, 418, and 421, or any successor regulations.

Applications should be prepared in accordance with the requirements of this Notice, further elaborated on in the CY 2022 Disaster CRTA Grants Application Guide (Application Guide). The Application Guide provides specific, detailed instructions for each item of a complete application. The Agency emphasizes the importance of including every item and strongly encourages applicants to follow the instructions carefully, using examples and illustrations in the Application Guide. Applicants should ensure they are using the most updated version of the application guide before submitting an application. Any updates to the application guide will be posted at [www.Grants.gov](http://www.Grants.gov) and <https://www.rd.usda.gov/programs-services/water-environmental-programs/calendar-year-2022-disaster-circuit-rider-technical-assistance-grants-program>. The items at 7 CFR 1775.10(c)(3), (4), and (5) are no longer required to be separately submitted as part of the application, as they are covered under the Financial Assistance General Certifications and Representations referenced in item 3(c) of this notice.

3. *System for Award Management and Unique Entity Identifier.*

(a) At the time of application, each applicant must have an active registration in the System for Award Management (SAM) before submitting its application in accordance with 2 CFR part 25. In order to register in SAM, entities will be required to obtain a Unique Entity Identifier (UEI). Instructions for obtaining the UEI are available at <https://sam.gov/content/entity-registration>.

(b) Applicant must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active Federal award or an application under

consideration by a Federal awarding agency.

(c) Applicant must ensure the Financial Assistance General Certifications and Representations are completed in SAM.

(d) Applicant must provide a valid UEI in its application, unless determined exempt under 2 CFR 25.110.

(e) The Agency will not make an award until the applicant has complied with all SAM requirements including providing the UEI. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. *Submission Dates and Times.* Completed applications must be submitted through [www.grants.gov](http://www.grants.gov) between September 28, 2023 and 11:59 p.m. Eastern Time on October 30, 2023. Late or incomplete applications will not be accepted. If the submission deadline falls on Saturday, Sunday, or a Federal holiday, the application is due the next business day.

The Agency will not solicit or consider new scoring or eligibility information that is submitted after the application deadline. RUS also reserves the right to ask applicants for clarifying information and additional verification of assertions in the application.

5. *Intergovernmental Review.* Executive Order (E.O.) 12372, *Intergovernmental Review of Federal Programs*, does not apply to this program.

6. *Funding Restrictions.* Applications must be for eligible purposes as defined above, and in consideration of any restrictions found within 7 CFR 1775.5, Limitations and this Notice. Funds under this program must be used to address impacts from Presidentially declared disasters that occurred in Calendar Year 2022.

7. *Other Submission Requirements.*

Applications must be submitted electronically through <https://www.Grants.gov>. RUS may request original signatures later for any electronically signed documents. All electronic documents must be submitted in Excel, Word, or PDF format. If system errors or technical difficulties occur, use the customer support resources available at the [Grants.gov](https://www.Grants.gov) website.

#### E. Application Review Information

1. *Criteria.* All applications that are complete and eligible will be scored and ranked competitively. The categories for scoring criteria used are the following:

(a) *Applicant's Experience:* Experience level in developing and implementing successful technical assistance or training programs similar to the proposed project (up to 15 points).

More than ten years (15 points)

Six to ten years (10 points)

Up to five years (5 points)

No experience (0 points)

(b) *Applicant's Actual Capacity:* Use of grant funds for grantee's staff versus contract personnel to carry out the technical assistance or training (up to 15 points).

At least 75 percent staff (15 points)

50 percent to 74.99 percent staff (10 points)

Fewer than 50 percent staff (0 points)

(c) *Population of the proposed area or areas to be served*—based on the 2010 U.S. Census, available at this link: <https://go.usa.gov/xMwbH> (up to 15 points).

Fewer than 5,500 (15 points)

5,500 to 9,999 (10 points)

10,000 or more (0 points)

(d) *Application Development.* Technical Assistance is for pre-development or activities related to an application filed under the CY 2022 Disaster Water Grant Program (RD-RUS-CY22DISASTER available at <https://www.grants.gov/web/grants/view-opportunity.html?oppld=348809>). (up to 15 points)

(e) *Needs assessment.* Clearly addresses and defines the need(s) and is supported by data. (up to 10 points)

(f) *Goals and objectives.* Establishes and defines clear measurable goals and objectives, which are tied to the need as defined in the Needs Assessment. (up to 10 points)

(g) *Work Plan.* Clearly articulates a well-thought-out approach to accomplishing objectives and clearly identifies who will be benefitted by the technical assistance. Includes a timeframe for completing the goals and objectives. (up to 30 points possible)

(h) *Evaluation Methods.* Outlines evaluation method(s) specific to each activity, which are clearly defined, measurable, and stipulate expected project outcome(s). (up to 10 points)

(i) *Administrative Discretionary Points.* In order to be considered for Administrator Discretionary Points, the applicant must provide adequate documentation to address that the project is located in a Disadvantaged Community or a Distressed Community. A Disadvantaged Community will be determined by the Agency by using the Council on Environmental Quality's Climate and Economic Justice Screening

Tool (which is incorporated into the USDA look-up map) which identifies communities burdened by climate change and environmental injustice. Additionally, all communities within the boundaries of Federally Recognized Tribes and Alaska Native Villages will also be determined to be Disadvantaged Communities by the Agency. A Distressed Community will be determined by the Agency by using the Economic Innovation Group's Distressed Communities Index (which is incorporated into the USDA look-up map), which uses several socio-economic measures to identify communities with low economic well-being. To determine if your project is located in a Disadvantaged Community or a Distressed Community, please use the following USDA look-up map: <https://ruraldevelopment.maps.arcgis.com/apps/webappviewer/index.html?id=4acf083be4c44bb7864d90f97de0c788>. The Administrator Discretionary Points will be awarded solely on these criteria. (15 points)

2. *Review and Selection Process.* RUS will acknowledge the application's receipt via an email to the applicant within 30 days of the closing of the application window. The following actions will be taken:

(a) Incomplete or ineligible applications as of the deadline for submission will not be considered. If an application is determined to be incomplete or ineligible, the applicant will be notified in writing.

(b) Complete, eligible applications will be evaluated competitively by a review team, composed of at least three RUS employees. They will make overall recommendations based on the program elements found in 7 CFR part 1775 and this Notice, including review criteria presented in Section E above. They will award points as described in the scoring criterion within this notice. Each application will receive a score based on the averages of the reviewers' scores and discretionary points awarded by the RUS Administrator. RUS reserves the right to request additional information once an application is determined to be complete to minimize the risk of duplication of other federal efforts.

(c) Applications will be ranked, and grants awarded based upon the scoring results and funding availability. RUS reserves the right to offer the applicant less than the grant funding requested. At RUS's discretion, projects scoring too low may not be awarded funding even if funding remains available.

(d) Regardless of the score an application receives, if RUS determines that the project is technically infeasible, RUS will notify the applicant, in

writing, and no further action will be taken.

#### *F. Federal Award Administration Information*

##### 1. Federal Award Notices

(a) *Application Outcomes.* There are four possible outcomes following the submission of an application under the CY 2022 Disaster CRTA Grant Program. RUS reserves the right to make no grant awards if all applications are ineligible, incomplete or do not meet the established program objectives and priorities. RUS may determine that the application is:

(1) Eligible and selected for funding at the requested amount,

(2) Eligible but offered fewer funds than requested,

(3) Eligible but not selected for funding, or

(4) Ineligible for the grant.

(b) *Award Notices.* Applicants selected for funding will be sent an award letter, accompanied by a grant agreement, which outlines the terms and conditions of the award, and other applicable documents. Pursuant to the grant agreement, grant funds may be released over the course of the grant period in reimbursement for the performance of eligible, approved activities which do not duplicate similar federal efforts or tasks. The grant agreement may also include reporting and pre-approval requirements which if not met, may result in a delay in reimbursement, disallowance of expense, or a suspension of the grant.

(c) *Payments/Reimbursements.* Grantees will be reimbursed as delineated at 7 CFR 1775.18, this Notice, and the Grant Agreement.

(d) *Scope of Services.* Any change in the scope of the project, budget adjustments of more than 10 percent, or other modifications must get written prior approval in accordance with 7 CFR 1775.19, this Notice, and the Grant Agreement.

(e) *Prevailing Wages.* All laborers, apprentices and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with United States Code, Title 40, Chapter 31, Subchapter IV (also known as the Davis-Bacon Act). Further details on eligible applicants and projects may be found in the relevant regulations listed in Section C of this Notice.

2. *Administrative and National Policy Requirements.* This Notice is subject to the terms and requirements of Departmental and other regulations, including 2 CFR parts 180, 182, 200, 400, 417, 418, 421 and any successor regulations implementing the appropriate administrative and national policy requirements.

3. *Reporting.* Performance reporting, including applicable forms, narratives, and other documentation, are to be completed and submitted in accordance with the provisions of 7 CFR 1775.20, this Notice, and the Grant Agreement. Further, all grantees must submit an audit or financial information covering the defined period of performance as outlined in 7 CFR 1775.21, this Notice, and the Grant Agreement.

#### **G. Federal Awarding Agency Contacts**

For general questions about this notice please see point of contact listed in **FOR FURTHER INFORMATION CONTACT** section of this notice.

#### **H. Other Information**

1. *Paperwork Reduction Act.* In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection requirements associated with this program, as covered in this notice, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0572-0138.

2. *National Environmental Policy Act.* All recipients under this notice are subject to the requirements of 7 CFR part 1970. However, awards for technical assistance under this notice are classified as a Categorical Exclusion in accordance with 7 CFR 1970.53(b), and usually do not require any additional documentation. RUS will review each grant application to determine its compliance with 7 CFR part 1970. The applicant may be asked to provide additional information or documentation to assist RUS with this determination.

3. *Federal Funding Accountability and Transparency Act.* All applicants, in accordance with 2 CFR part 25, must be registered in SAM and have a UEI number as stated in Section D.3 of this notice. All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

4. *Civil Rights Act.* All grants made under this notice are subject to Title VI of the Civil Rights Act of 1964 as required by USDA (7 CFR part 15 subpart A, *Nondiscrimination in Federally-Assisted Programs of the*

*Department of Agriculture*, which is the effectuation of title VI of the Civil Rights Act of 1964) and section 504 of the Rehabilitation Act of 1973, title VIII of the Civil Rights Act of 1968, title IX of the Education Amendments Act of 1972, Executive Order 13166 (Limited English Proficiency), Executive Order 11246 (Equal Employment Opportunity), and the Equal Credit Opportunity Act of 1974.

5. *Nondiscrimination Statement.* In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office, or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.usda.gov/sites/default/files/documents/ad-3027.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation.

The completed Form AD-3027 or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; or

(2) *Fax:* (833) 256-1665 or (202) 690-7442; or

(3) Email: [program.intake@usda.gov](mailto:program.intake@usda.gov).  
USDA is an equal opportunity provider, employer, and lender.

**Christopher A. McLean,**

*Acting Administrator, Rural Utilities Service,  
USDA Rural Development.*

[FR Doc. 2023–21129 Filed 9–27–23; 8:45 am]

**BILLING CODE 3410–15–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Order No. 2151]

#### Reorganization of Foreign-Trade Zone 29 (Expansion of Service Area) Under Alternative Site Framework; Louisville, Kentucky

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, the Foreign-Trade Zones (FTZ) Act provides for “. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,” and authorizes the Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

*Whereas*, the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

*Whereas*, the Louisville & Jefferson County Riverport Authority, grantee of Foreign-Trade Zone 29, submitted an application to the Board (FTZ Docket B–3–2023, docketed January 9, 2023) for authority to expand the service area of the zone to include Christian, Todd, Logan, Simpson, Warren, Allen, and Barren Counties, Kentucky and to include two additional subzones (for Southern Kentucky Warehousing & Fulfillment, LLC and Envision AESC Bowling Green LLC), as described in the application, adjacent to the Nashville Customs and Border Protection port of entry;

*Whereas*, notice inviting public comment was given in the **Federal Register** (88 FR 2322–2323, January 13, 2023) and the application has been processed pursuant to the FTZ Act and the Board’s regulations; and,

*Whereas*, the Board adopts the findings and recommendations of the examiner’s report, and finds that the requirements of the FTZ Act and the Board’s regulations would be satisfied if

approval is limited to the proposed subzone for Envision AESC Bowling Green LLC;

Now, therefore, the Board hereby approves subzone status at the facility of Envision AESC Bowling Green LLC, located in Bowling Green, Kentucky (Subzone 29T), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board’s regulations, including section 400.13.

Dated: September 22, 2023.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 2023–21188 Filed 9–27–23; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### Order Renewing Temporary Denial of Export Privileges; UTair Aviation JSC, Khanty-Mansiysk Airport, Tyumen Region, Russia 628012

Pursuant to section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (“EAR” or “the Regulations”),<sup>1</sup> I hereby grant the request of the Office of Export Enforcement (“OEE”) to renew the temporary denial order (“TDO”) issued in this matter on October 3, 2022. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the Regulations and that renewal for an extended period is appropriate because UTair Aviation JSC (“UTair”) has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR.

#### I. Procedural History

On April 7, 2022, I signed an order denying UTair’s export privileges for a period of 180 days on the ground that issuance of the order was necessary in

<sup>1</sup> On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (“ECRA”). While section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. App. 2401 *et seq.* (“EAA”), (except for three sections which are inapplicable here), section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* (“IEEPA”), and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to section 766.24(a) of the Regulations and was effective upon issuance.<sup>2</sup> This temporary denial order was subsequently renewed in accordance with section 766.24(d) of the Regulations.<sup>3</sup> The renewal order issued on October 3, 2022 and was effective upon issuance.<sup>4</sup> A second renewal order issued on March 29, 2023 and was also effective upon issuance.<sup>5</sup>

On September 5, 2023, BIS, through OEE, submitted a written request for renewal of the TDO that issued on March 29, 2023. The written request was made more than 20 days before the TDO’s scheduled expiration and, given the temporary suspension of international mail service to Russia, OEE has attempted to deliver a copy of the renewal request to UTair by alternative means in accordance with sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received.

#### II. Renewal of the TDO

##### A. Legal Standard

Pursuant to section 766.24, BIS may issue an order temporarily denying a respondent’s export privileges upon a showing that the order is necessary in the public interest to prevent an “imminent violation” of the Regulations, or any order, license or authorization issued thereunder. 15 CFR 766.24(b)(1) and 766.24(d). “A violation may be ‘imminent’ either in time or degree of likelihood.” 15 CFR 766.24(b)(3). BIS may show “either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.” *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge “is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]” *Id.* A “lack of information establishing the precise

<sup>2</sup> The TDO was published in the **Federal Register** on April 12, 2022 (87 FR 21616).

<sup>3</sup> At the time of the renewal, section 766.24(d) provided that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods, if it believes that renewal is necessary in the public interest to prevent an imminent violation. Renewal requests are to be made in writing no later than 20 days before the scheduled expiration date of a temporary denial order.

<sup>4</sup> The October 3, 2022 renewal order was published in the **Federal Register** on October 7, 2022 (87 FR 60987).

<sup>5</sup> The March 29, 2023 renewal order was published in the **Federal Register** on April 4, 2023 (88 FR 19911).

time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.” *Id.*

If BIS believes that renewal of a denial order is necessary in the public interest to prevent an imminent violation, it may file a written request for renewal, with any modifications if appropriate. 15 CFR 766.24(d)(1). The written request, which must be filed no later than 20 days prior to the TDO’s expiration, should set forth the basis for BIS’s belief that renewal is necessary, including any additional or changed circumstances. *Id.* “In cases demonstrating a pattern of repeated, ongoing and/or continuous apparent violations, BIS may request the renewal of a temporary denial order for an additional period not exceeding one year.” <sup>6</sup> *Id.*

#### B. The TDO and BIS’s Request for Renewal

The U.S. Commerce Department, through BIS, responded to the Russian Federation’s (“Russia’s”) further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia’s access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia’s defense, aerospace, and maritime sectors and are intended to cut off Russia’s access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia’s strategic ambitions to exert influence on the world stage. Effective February 24, 2022, BIS imposed expansive controls on aviation-related (e.g., Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts

specified in Export Control Classification Number (“ECCN”) 9A991 (section 746.8(a)(1) of the EAR).<sup>7</sup> BIS will review any export or reexport license applications for such items under a policy of denial. *See* section 746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft (“AVS”) (section 740.15 of the EAR).<sup>8</sup> Accordingly, any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license requirement before it can travel to Russia.

OEE’s request for renewal for a period of one year is based upon the facts underlying the issuance of the initial TDO and the renewal order subsequently issued in this matter on October 3, 2022, as well as other evidence developed during this investigation. These facts and evidence demonstrate that UTair has continued, and continues, to act in blatant disregard for U.S. export controls and the terms of previously issued TDOs. Specifically, the initial TDO, issued on April 7, 2022, was based on evidence that UTair engaged in conduct prohibited by the Regulations by operating multiple aircraft subject to the EAR and classified under ECCN 9A991.b on flights into Russia after March 2, 2022 from destinations including, but not limited to, Jeddah, Saudi Arabia, Yerevan, Armenia, and Tashkent, Uzbekistan, without the required BIS authorization.<sup>9</sup> Further evidence submitted by BIS indicated that UTair was continuing to operate

aircraft subject to the EAR domestically on flights within Russia, potentially in violation of section 736.2(b)(10) of the Regulations.

As discussed in the October 3, 2022 and March 29, 2023 renewal orders, evidence presented by BIS indicated that, after the initial order issued, UTair continued to operate aircraft subject to the EAR and classified under ECCN 9A991.b on flights both into and out of Russia, in violation of the Regulations and the TDO itself.<sup>10</sup> Specifically, the October 3, 2022 renewal order detailed UTair’s continued operation of aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia from/to Yerevan, Armenia, Baku, Azerbaijan, and Tashkent, Uzbekistan.<sup>11</sup> Similarly, the March 29, 2023 renewal order detailed UTair’s continued operation of aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia from/to Yerevan, Armenia, Baku, Azerbaijan, Dushanbe, Tajikistan, and Dubai, United Arab Emirates.<sup>12</sup>

Since that time, UTair has continued to engage in conduct prohibited by the applicable TDO and Regulations. In its September 5, 2023 request for renewal of the TDO, BIS submitted evidence that UTair is operating aircraft subject to the EAR and classified under ECCN 9A991.b, both on flights into and within Russia, in violation of the March 29, 2023 TDO and/or the Regulations. Specifically, BIS’s evidence and related investigation demonstrates that UTair has continued to operate aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia from/to Yerevan, Armenia, Baku, Azerbaijan, Dushanbe, Tajikistan, Istanbul, Turkey, Tashkent, Uzbekistan, and Dubai, United Arab Emirates. Information about those flights includes, but is not limited to, the following:

| Tail No. | Serial No. | Aircraft type        | Departure/arrival cities       | Dates              |
|----------|------------|----------------------|--------------------------------|--------------------|
| RA-73089 | 37552      | 737-8GU (B738) ..... | Dushanbe, TJ/Moscow, RU .....  | August 28, 2023.   |
| RA-73089 | 37552      | 737-8GU (B738) ..... | Khujand, TJ/Moscow, RU .....   | August 29, 2023.   |
| RA-73089 | 37552      | 737-8GU (B738) ..... | Tashkent, UZ/Ufa, RU .....     | August 31, 2023.   |
| RA-73089 | 37552      | 737-8GU (B738) ..... | Istanbul, TR/Grozny, RU .....  | September 2, 2023. |
| RA-73089 | 37552      | 737-8GU (B738) ..... | Istanbul, TR/Grozny, RU .....  | September 4, 2023. |
| RA-73089 | 37552      | 737-8GU (B738) ..... | Samarkand, UZ/Moscow, RU ..... | September 5, 2023. |

<sup>6</sup> 88 FR 59791 (Aug. 30, 2023).

<sup>7</sup> 87 FR 12226 (Mar. 3, 2022). Additionally, BIS published a final rule effective April 8, 2022, which imposed licensing requirements on items controlled on the Commerce Control List (“CCL”) under Categories 0–2 that are destined for Russia or Belarus. Accordingly, now all CCL items require export, reexport, and transfer (in-country) licenses if destined for or within Russia or Belarus. 87 FR 22130 (Apr. 14, 2022).

<sup>8</sup> 87 FR 13048 (Mar. 8, 2022).

<sup>9</sup> Publicly available flight tracking information shows that on March 5, 2022, serial number (SN) 36387 flew from Jeddah, Saudi Arabia to Grozny, Russia, and on March 30, 2022, SN 28907 flew from Yerevan, Armenia to Tyumen, Russia. In addition, on March 31, 2022, SN 30437 flew from Tashkent, Uzbekistan to Moscow, Russia.

<sup>10</sup> Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

<sup>11</sup> Publicly available flight tracking information shows that on September 19, 2022, SN 30437 flew from Tashkent, Uzbekistan to Moscow, Russia, and

SN 30435 flew from Yerevan, Armenia to Moscow, Russia. In addition, on September 21, 2022, SN 28912 flew from Baku, Azerbaijan to Moscow, Russia.

<sup>12</sup> Publicly available flight tracking information shows that SN 37752 flew from Yerevan, Armenia to Moscow, Russia on March 23, 2023 and from Dubai, United Arab Emirates to Grozny, Russia on March 28, 2023. In addition, on March 29, 2023, SN 30437 flew from Dushanbe, Tajikistan to Moscow Russia and on March 7, 2023, SN 28912 flew from Baku, Azerbaijan to Ufa, Russia.



| Tail No. | Serial No. | Aircraft type        | Departure/arrival cities             | Dates               |
|----------|------------|----------------------|--------------------------------------|---------------------|
| RA-73089 | 37552      | 737-8GU (B738) ..... | Istanbul, TR/Grozny, RU .....        | September 19, 2023. |
| RA-73087 | 29936      | 737-8AS (B738) ..... | Dushanbe, TJ/Moscow, RU .....        | August 28, 2023.    |
| RA-73087 | 29936      | 737-8AS (B738) ..... | Baku, AZ/Moscow, RU .....            | September 1, 2023.  |
| RA-73087 | 29936      | 737-8AS (B738) ..... | Samarkand, UZ/Moscow, RU .....       | September 2, 2023.  |
| RA-73087 | 29936      | 737-8AS (B738) ..... | Yerevan, AM/St. Petersburg, RU ..... | September 5, 2023.  |
| RA-73087 | 29936      | 737-8AS (B738) ..... | Baku, AZ/St. Petersburg, RU .....    | September 7, 2023.  |
| RA-73087 | 29936      | 737-8AS (B738) ..... | Antalya, TR/Surgut, RU .....         | September 11, 2023. |
| RA-73087 | 29936      | 737-8AS (B738) ..... | Yerevan, AM/Moscow, RU .....         | September 15, 2023. |
| RA-73085 | 32779      | 737-8AS (B738) ..... | Baku, AZ/Moscow, RU .....            | August 28, 2023.    |
| RA-73085 | 32779      | 737-8AS (B738) ..... | Baku, AZ/Moscow, RU .....            | August 30, 2023.    |
| RA-73085 | 32779      | 737-8AS (B738) ..... | Dubai, AE/Tyumen, RU .....           | September 1, 2023.  |
| RA-73085 | 32779      | 737-8AS (B738) ..... | Baku, AZ/Moscow, RU .....            | September 6, 2023.  |
| RA-73085 | 32779      | 737-8AS (B738) ..... | Bukhara, UZ/Moscow, RU .....         | September 12, 2023. |
| RA-73085 | 32779      | 737-8AS (B738) ..... | Baku, AZ/Moscow, RU .....            | September 15, 2023. |
| RA-73086 | 32780      | 737-8AS (B738) ..... | Samarkand, UZ/Moscow, RU .....       | August 26, 2023.    |
| RA-73086 | 32780      | 737-8AS (B738) ..... | Istanbul, TR/Grozny, RU .....        | August 29, 2023.    |
| RA-73086 | 32780      | 737-8AS (B738) ..... | Baku, AZ/Moscow, RU .....            | September 3, 2023.  |
| RA-73086 | 32780      | 737-8AS (B738) ..... | Samarkand, UZ/Moscow, RU .....       | September 6, 2023.  |
| RA-73086 | 32780      | 737-8AS (B738) ..... | Dushanbe, TJ/Moscow, RU .....        | September 8, 2023.  |
| RA-73086 | 32780      | 737-8AS (B738) ..... | Yerevan, AM/St. Petersburg, RU ..... | September 12, 2023. |
| RA-73086 | 32780      | 737-8AS (B738) ..... | Baku, AZ/Moscow, RU .....            | September 16, 2023. |

### III. Findings

Under the applicable standard set forth in section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that UTair has acted in violation of the Regulations and the TDO; that such violations have been significant and deliberate; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Moreover, I find that renewal for an extended period is appropriate because UTair has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR. Therefore, renewal of the TDO for one year is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with UTair, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

### IV. Order

*It is therefore ordered:*

*First*, UTair Aviation JSC, Khanty-Mansiysk Airport, Tyumen Region, Russia 628012, when acting for or on their behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the

EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations.

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

A. Export, reexport, or transfer (in-country) to or on behalf of UTair any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by UTair of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a

transaction whereby UTair acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from UTair of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

D. Obtain from UTair in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by UTair, or service any item, of whatever origin, that is owned, possessed or controlled by UTair if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

*Third*, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to UTair by ownership, control, position of



responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of sections 766.24(e) of the EAR, UTair may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by UTair as provided in section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to UTair, and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for one year.

**Matthew S. Axelrod,**

*Assistant Secretary of Commerce for Export Enforcement.*

[FR Doc. 2023–21171 Filed 9–27–23; 8:45 am]

**BILLING CODE 3510-DT-P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### Order Renewing Temporary Denial of Export Privileges; Azur Air, Sharypovo Airport, 404/1 Kozhevnikheskiy Land, Moscow, Russia

Pursuant to section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (“EAR” or “the Regulations”),<sup>1</sup> I hereby grant the

<sup>1</sup> On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (“ECRA”). While section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. App. 2401 *et seq.* (“EAA”), (except for three sections which are inapplicable here), section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* (“IEEPA”), and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

request of the Office of Export Enforcement (“OEE”) to renew the temporary denial order (“TDO”) issued in this matter on March 29, 2023. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the Regulations and that renewal for an extended period is appropriate because Azur Air (“Azur”) has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR.

#### I. Procedural History

On April 7, 2022, I signed an order denying Azur’s export privileges for a period of 180 days on the grounds that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to section 766.24(a) of the Regulations and was effective upon issuance.<sup>2</sup> This temporary denial order was subsequently renewed in accordance with section 766.24(d) of the Regulations.<sup>3</sup> The renewal order issued on October 3, 2022 and was effective upon issuance.<sup>4</sup> A second renewal order issued on March 29, 2023 and was also effective upon issuance.<sup>5</sup>

On September 5, 2023, BIS, through OEE, submitted a written request for renewal of the TDO that issued on March 29, 2023. The written request was made more than 20 days before the TDO’s scheduled expiration and, given the temporary suspension of international mail service to Russia, OEE has attempted to deliver a copy of the renewal request to Azur by alternative means in accordance with sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received.

#### II. Renewal of the TDO

##### A. Legal Standard

Pursuant to section 766.24, BIS may issue an order temporarily denying a respondent’s export privileges upon a showing that the order is necessary in the public interest to prevent an “imminent violation” of the

Regulations, or any order, license or authorization issued thereunder. 15 CFR 766.24(b)(1) and 766.24(d). “A violation may be ‘imminent’ either in time or degree of likelihood.” 15 CFR 766.24(b)(3). BIS may show “either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.” *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge “is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]” *Id.* A “lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.” *Id.*

If BIS believes that renewal of a denial order is necessary in the public interest to prevent an imminent violation, it may file a written request for renewal, with any modifications if appropriate. 15 CFR 766.24(d)(1). The written request, which must be filed no later than 20 days prior to the TDO’s expiration, should set forth the basis for BIS’s belief that renewal is necessary, including any additional or changed circumstances. *Id.* “In cases demonstrating a pattern of repeated, ongoing and/or continuous apparent violations, BIS may request the renewal of a temporary denial order for an additional period not exceeding one year.”<sup>6</sup> *Id.*

##### B. The TDO and BIS’s Request for Renewal

The U.S. Commerce Department, through BIS, responded to the Russian Federation’s (“Russia’s”) further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia’s access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia’s defense, aerospace, and maritime sectors and are intended to cut off Russia’s access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia’s strategic ambitions to exert influence on the world stage. Effective February 24, 2022, BIS imposed expansive controls on aviation-related (e.g., Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control

<sup>2</sup> The TDO was published in the **Federal Register** on April 12, 2022 (87 FR 21614).

<sup>3</sup> At the time of the renewal, section 766.24(d) provided that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods, if it believes that renewal is necessary in the public interest to prevent an imminent violation. Renewal requests are to be made in writing no later than 20 days before the scheduled expiration date of a temporary denial order.

<sup>4</sup> The October 3, 2022 renewal order was published in the **Federal Register** on October 7, 2022 (87 FR 60983).

<sup>5</sup> The March 29, 2023 renewal order was published in the **Federal Register** on April 4, 2023 (88 FR 19908).

<sup>6</sup> 88 FR 59791 (Aug. 30, 2023).

Classification Number (“ECCN”) 9A991 (section 746.8(a)(1) of the EAR).<sup>7</sup> BIS will review any export or reexport license applications for such items under a policy of denial. *See* section 746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft (“AVS”) (section 740.15 of the EAR).<sup>8</sup> Accordingly, any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license requirement before it can travel to Russia.

OEE’s request for renewal for a period of one year is based upon the facts underlying the issuance of the initial TDO and the renewal order subsequently issued in this matter on October 3, 2022, as well as other evidence developed during this investigation. These facts and evidence

demonstrate that Azur has continued, and continues, to act in blatant disregard for U.S. export controls and the terms of previously issued TDOs. Specifically, the initial TDO, issued on April 7, 2022, was based on evidence that Azur engaged in conduct prohibited by the Regulations by operating multiple aircraft subject to the EAR and classified under ECCN 9A991.b on flights into Russia after March 2, 2022, from destinations including, but not limited to, Nha Trang, Vietnam, Dubai, United Arab Emirates, and Antalya, Turkey, without the required BIS authorization.<sup>9</sup>

As discussed in the October 3, 2022 and March 29, 2023 renewal orders, evidence presented by BIS indicated that, after the renewal orders issued, Azur continued to operate aircraft subject to the EAR and classified under ECCN 9A991.b on flights both into and out of Russia, in violation of the Regulations and the TDO itself.<sup>10</sup> Specifically, the October 3, 2022 renewal order detailed Azur’s continued operation of aircraft subject to the EAR, including, but not limited to, on flights

into and out of Russia from/to Antalya, Turkey, Dalaman, Turkey, and Bodrum, Turkey.<sup>11</sup> Similarly, the March 29, 2023 renewal order detailed Azur’s continued operation of aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia from/to Sharm el-Sheikh, Egypt, Goa, India, Male, Maldives, Rayong, Thailand, and Adana, Turkey.<sup>12</sup>

Since that time, Azur has continued to engage in conduct prohibited by the applicable TDO and Regulations. In its September 5, 2023 request for renewal of the TDO, BIS submitted evidence that Azur is operating aircraft subject to the EAR and classified under ECCN 9A991.b, both on flights into and within Russia, in violation of the March 29, 2023 TDO and/or the Regulations. Specifically, BIS’s evidence and related investigation demonstrates that Azur has continued to operate aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia from/to Hurghada, Egypt, Phuket, Thailand, and Antalya, Turkey. Information about those flights includes, but is not limited to, the following:

| Tail No. | Serial No. | Aircraft type     | Departure/arrival cities              | Dates               |
|----------|------------|-------------------|---------------------------------------|---------------------|
| RA-73071 | 29377      | 757-2Q8 (B752)    | Phuket, TH/Vladivostok, RU            | August 9, 2023.     |
| RA-73071 | 29377      | 757-2Q8 (B752)    | Phuket, TH/Vladivostok, RU            | August 15, 2023.    |
| RA-73071 | 29377      | 757-2Q8 (B752)    | Hurghada, EG/Moscow, RU               | August 19, 2023.    |
| RA-73071 | 29377      | 757-2Q8 (B752)    | Phuket, TH/Irkutsk, RU                | September 7, 2023.  |
| RA-73071 | 29377      | 757-2Q8 (B752)    | Hurghada, EG/Moscow, RU               | September 11, 2023. |
| RA-73071 | 29377      | 757-2Q8 (B752)    | Sharm el-Sheikh, EG/Moscow, RU        | September 14, 2023. |
| RA-73071 | 29377      | 757-2Q8 (B752)    | Antalya, TR/Moscow, RU                | September 19, 2023. |
| RA-73071 | 29377      | 757-2Q8 (B752)    | Hurghada, EG/Moscow, RU               | September 20, 2023. |
| RA-73075 | 26271      | 757-2Q8 (B757)    | Hurghada, EG/Moscow, RU               | August 31, 2023.    |
| RA-73075 | 26271      | 757-2Q8 (B757)    | Hurghada, EG/Moscow, RU               | September 3, 2023.  |
| RA-73075 | 26271      | 757-2Q8 (B757)    | Hurghada, EG/Perm, RU                 | September 6, 2023.  |
| RA-73075 | 26271      | 757-2Q8 (B757)    | Antalya, TR/Moscow, RU                | September 9, 2023.  |
| RA-73075 | 26271      | 757-2Q8 (B757)    | Sharm el-Sheikh, EG/Perm, RU          | September 18, 2023. |
| RA-73075 | 26271      | 757-2Q8 (B757)    | Sharm el-Sheikh, EG/Perm, RU          | September 20, 2023. |
| RA-73077 | 30045      | 757-2Q8 (B752)    | Sharm el-Sheikh, EG/Moscow, RU        | August 27, 2023.    |
| RA-73077 | 30045      | 757-2Q8 (B752)    | Antalya, TR/Moscow, RU                | August 27, 2023.    |
| RA-73077 | 30045      | 757-2Q8 (B752)    | Sharm el-Sheikh, EG/Samara, RU        | August 31, 2023.    |
| RA-73077 | 30045      | 757-2Q8 (B752)    | Sharm el-Sheikh, EG/Yekaterinburg, RU | September 4, 2023.  |
| RA-73077 | 30045      | 757-2Q8 (B752)    | Sharm el-Sheikh, EG/Moscow, RU        | September 5, 2023.  |
| RA-73079 | 24947      | 767-3Y0 (ER) B763 | Antalya, TR/Moscow, RU                | August 25, 2023.    |
| RA-73077 | 30045      | 757-2Q8 (B752)    | Sharm el-Sheikh, EG/Moscow, RU        | August 29, 2023.    |
| RA-73077 | 30045      | 757-2Q8 (B752)    | Phuket, TH/Irkutsk, RU                | September 3, 2023.  |
| RA-73077 | 30045      | 757-2Q8 (B752)    | Phuket, TH/Moscow, RU                 | September 4, 2023.  |
| RA-73079 | 24947      | 767-3Y0 (ER) B763 | Antalya, TR/Moscow, RU                | September 8, 2023.  |
| RA-73079 | 24947      | 767-3Y0 (ER) B763 | Dalaman, TR/Yekaterinburg, RU         | September 12, 2023. |
| RA-73079 | 24947      | 767-3Y0 (ER) B763 | Hurghada, EG/Moscow, RU               | September 18, 2023. |

<sup>7</sup> 87 FR 12226 (Mar. 3, 2022). Additionally, BIS published a final rule effective April 8, 2022, which imposed licensing requirements on items controlled on the Commerce Control List (“CCL”) under Categories 0–2 that are destined for Russia or Belarus. Accordingly, now all CCL items require export, reexport, and transfer (in-country) licenses if destined for or within Russia or Belarus. 87 FR 22130 (Apr. 14, 2022).

<sup>8</sup> 87 FR 13048 (Mar. 8, 2022).

<sup>9</sup> Publicly available flight tracking information shows that on March 6, 2022, serial number (SN)

27612 flew from Nha Trang, Vietnam to Moscow, Russia and on March 10, 2022, SN 27909 flew from Dubai, UAE to Vladivostok, Russia. In addition, on March 17, 2022, SN 21614 flew from Antalya, Turkey to Kazan, Russia.

<sup>10</sup> Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

<sup>11</sup> Publicly available flight tracking information shows that SN 29377 flew from Antalya, Turkey to Moscow, Russia on September 21, 2022. In addition, on September 20, 2022, SN 26271 flew

from Bodrum, Turkey to Moscow, Russia and SN 30045 flew from Dalaman, Turkey to Yekaterinburg, Russia.

<sup>12</sup> Publicly available flight tracking information shows that SN 29377 flew from Adana, Turkey to Moscow, Russia on March 13, 2023 and from Sharm el-Sheikh, Egypt to Moscow, Russia on March 14, 2023. In addition, SN 30045 flew from Goa, India to Perm, Russia on March 3, 2023 and from Rayong, Thailand to Kemerovo, Russia on March 6, 2023. On February 18, 2023, SN 24947 flew from Male, Maldives to Moscow, Russia.

### III. Findings

Under the applicable standard set forth in section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that Aeroflot has acted in violation of the Regulations and the TDO; that such violations have been significant and deliberate; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Moreover, I find that renewal for an extended period is appropriate because Azur has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR. Therefore, renewal of the TDO for one year is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with Azur, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

### IV. Order

*It is therefore ordered:*

First, Azur Air, Sharypovo Airport, 404/1 Kozhevnikheskiy Lane, Moscow, Russia, when acting for or on their behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported

or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations.

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

A. Export, reexport, or transfer (in-country) to or on behalf of Azur any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by Azur of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby Azur acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from Azur of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

D. Obtain from Azur in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by Azur, or service any item, of whatever origin, that is owned, possessed or controlled by Azur if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Azur by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or

business may also be made subject to the provisions of this Order.

In accordance with the provisions of sections 766.24(e) of the EAR, Azur may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Azur as provided in section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Azur, and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for one year.

**Matthew S. Axelrod,**

*Assistant Secretary of Commerce for Export Enforcement.*

[FR Doc. 2023–21172 Filed 9–27–23; 8:45 am]

**BILLING CODE 3510-DT-P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### Order Renewing Temporary Denial of Export Privileges; PJSC Aeroflot, 1 Arbat St., 119019, Moscow, Russia

Pursuant to section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (“EAR” or “the Regulations”),<sup>1</sup> I hereby grant the request of the Office of Export Enforcement (“OEE”) to renew the temporary denial order (“TDO”) issued

<sup>1</sup> On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (“ECRA”). While section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. App. 2401 *et seq.* (“EAA”), (except for three sections which are inapplicable here), section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* (“IEEPA”), and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

in this matter on March 29, 2023. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the Regulations and that renewal for an extended period is appropriate because PJSC Aeroflot (“Aeroflot”) has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR.

### I. Procedural History

On April 7, 2022, I signed an order denying Aeroflot’s export privileges for a period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to section 766.24(a) of the Regulations and was effective upon issuance.<sup>2</sup> This temporary denial order was subsequently renewed in accordance with section 766.24(d) of the Regulations.<sup>3</sup> The renewal order issued on October 3, 2022 and was effective upon issuance.<sup>4</sup> A second renewal order issued on March 29, 2023 and was also effective upon issuance.<sup>5</sup>

On September 5, 2023, BIS, through OEE, submitted a written request for renewal of the TDO that issued on March 29, 2023. The written request was made more than 20 days before the TDO’s scheduled expiration and, given the temporary suspension of international mail service to Russia, OEE has attempted to deliver a copy of the renewal request to Aeroflot by alternative means in accordance with sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received.

### II. Renewal of the TDO

#### A. Legal Standard

Pursuant to section 766.24, BIS may issue an order temporarily denying a respondent’s export privileges upon a showing that the order is necessary in the public interest to prevent an “imminent violation” of the Regulations, or any order, license or authorization issued thereunder. 15 CFR 766.24(b)(1) and 766.24(d). “A violation may be ‘imminent’ either in time or degree of likelihood.” 15 CFR

766.24(b)(3). BIS may show “either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.” *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge “is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]” *Id.* A “lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.” *Id.*

If BIS believes that renewal of a denial order is necessary in the public interest to prevent an imminent violation, it may file a written request for renewal, with any modifications if appropriate. 15 CFR 766.24(d)(1). The written request, which must be filed no later than 20 days prior to the TDO’s expiration, should set forth the basis for BIS’s belief that renewal is necessary, including any additional or changed circumstances. *Id.* “In cases demonstrating a pattern of repeated, ongoing and/or continuous apparent violations, BIS may request the renewal of a temporary denial order for an additional period not exceeding one year.”<sup>6</sup> *Id.*

#### B. The TDO and BIS’s Request for Renewal

The U.S. Commerce Department, through BIS, responded to the Russian Federation’s (“Russia’s”) further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia’s access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia’s defense, aerospace, and maritime sectors and are intended to cut off Russia’s access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia’s strategic ambitions to exert influence on the world stage. Effective February 24, 2022, BIS imposed expansive controls on aviation-related (e.g., Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number (“ECCN”) 9A991 (section 746.8(a)(1) of the EAR).<sup>7</sup> BIS

will review any export or reexport license applications for such items under a policy of denial. *See* section 746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft (“AVS”) (section 740.15 of the EAR).<sup>8</sup> Accordingly, any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license requirement before it can travel to Russia.

OEE’s request for renewal for a period of one year is based upon the facts underlying the issuance of the initial TDO, the renewal orders subsequently issued in this matter, and evidence that continues to develop during this investigation. These facts and evidence demonstrate that Aeroflot has continued, and continues, to act in blatant disregard for U.S. export controls and the terms of previously issued TDOs. Specifically, the initial TDO, issued on April 7, 2022, was based on evidence that Aeroflot engaged in conduct prohibited by the Regulations by operating multiple aircraft subject to the EAR and classified under ECCN 9A991.b on flights into Russia after March 2, 2022, from destinations including, but not limited to, Beijing, China, Delhi, India, and Dubai, United Arab Emirates, without the required BIS authorization.<sup>9</sup> Further evidence submitted by BIS indicated that Aeroflot was also continuing to operate aircraft subject to the EAR domestically on flights within Russia, potentially in violation of section 736.2(b)(10) of the Regulations.

As discussed in the October 3, 2022 and March 29, 2023 renewal orders, evidence presented by BIS indicated that, after the renewal orders issued, Aeroflot continued to operate aircraft subject to the EAR and classified under ECCN 9A991.b on flights both into and within Russia, in violation of the

<sup>2</sup> The TDO was published in the **Federal Register** on April 12, 2022 (87 FR 21611).

<sup>3</sup> At the time of the renewal, section 766.24(d) provided that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods, if it believes that renewal is necessary in the public interest to prevent an imminent violation.

<sup>4</sup> The October 3, 2022 renewal order was published in the **Federal Register** on October 7, 2022 (87 FR 60985).

<sup>5</sup> The March 29, 2023 renewal order was published in the **Federal Register** on April 3, 2023 (88 FR 19609).

<sup>6</sup> 88 FR 59791 (Aug. 30, 2023).

<sup>7</sup> 87 FR 12226 (Mar. 3, 2022). Additionally, BIS published a final rule effective April 8, 2022, which imposed licensing requirements on items controlled

on the Commerce Control List (“CCL”) under Categories 0–2 that are destined for Russia or Belarus. Accordingly, now all CCL items require export, reexport, and transfer (in-country) licenses if destined for or within Russia or Belarus. 87 FR 22130 (Apr. 14, 2022).

<sup>8</sup> 87 FR 13048 (Mar. 8, 2022).

<sup>9</sup> Publicly available flight tracking information shows that on March 6, 2022, serial number (SN) 65309 flew from Beijing, China to Moscow, Russia, and SN 41690 flew from Dubai, UAE to Moscow, Russia. In addition, on March 7, 2022, SN 63511 flew from Delhi, India to Moscow, Russia.

Regulations and the TDO itself.<sup>10</sup> Specifically, the October 3, 2022 renewal order detailed Aeroflot's continued operation of aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia from/to Minsk, Belarus, Delhi, India, and Istanbul, Turkey, as well as within Russia.<sup>11</sup> Similarly, the March 29, 2023 renewal order detailed Aeroflot's continued operation of aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia from/to Yerevan, Armenia, Shanghai,

China, Bangkok, Thailand, and Urgench, Uzbekistan, as well as domestically within Russia.<sup>12</sup>

Since that time, Aeroflot has continued to engage in conduct prohibited by the TDO and Regulations. In its September 5, 2023, request for renewal of the TDO, BIS submitted evidence that Aeroflot continues to operate aircraft subject to the EAR and classified under ECCN 9A991.b, both on flights into and within Russia, in violation of the March 29, 2023 TDO and/or the Regulations. Specifically,

BIS's evidence and related investigation demonstrates that Aeroflot has continued to operate aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia from/to Yerevan, Armenia, Beijing, China, Delhi, India, Male, Maldives, Istanbul, Turkey, Phuket, Thailand, Dubai, Sharm el-Sheikh, Egypt, United Arab Emirates, and Tashkent, Uzbekistan, as well as domestically within Russia. Information about those flights includes, but is not limited to, the following:

| Tail No. | Serial No. | Aircraft type       | Departure/arrival cities        | Dates               |
|----------|------------|---------------------|---------------------------------|---------------------|
| RA-73126 | 41214      | 737-8LJ (B738)      | Yerevan, AM/Moscow, RU          | September 12, 2023. |
| RA-73126 | 41214      | 737-8LJ (B738)      | Moscow, RU/St. Petersburg, RU   | September 13, 2023. |
| RA-73126 | 41214      | 737-8LJ (B738)      | Istanbul, TR/St. Petersburg, RU | September 13, 2023. |
| RA-73126 | 41214      | 737-8LJ (B738)      | Dubai, AE/Moscow, RU            | September 15, 2023. |
| RA-73126 | 41214      | 737-8LJ (B738)      | Yerevan, AM/Moscow, RU          | September 18, 2023. |
| RA-73126 | 41214      | 737-8LJ (B738)      | Istanbul, TR/Moscow, RU         | September 19, 2023. |
| RA-73144 | 41690      | 777-3M0 (ER) (B77W) | Beijing, CN/Moscow, RU          | August 7, 2023.     |
| RA-73144 | 41690      | 777-3M0 (ER) (B77W) | Moscow, RU/Vladivostok          | August 7, 2023.     |
| RA-73144 | 41690      | 777-3M0 (ER) (B77W) | Phuket, TH/Moscow, RU           | August 12, 2023.    |
| RA-73144 | 41690      | 777-3M0 (ER) (B77W) | Moscow, RU/Vladivostok, RU      | August 13, 2023.    |
| RA-73144 | 41690      | 777-3M0 (ER) (B77W) | Phuket, TH/Khabarovsk, RU       | August 14, 2023.    |
| RA-73144 | 41690      | 777-3M0 (ER) (B77W) | Antalya, TR/Moscow, RU          | August 24, 2023.    |
| RA-73144 | 41690      | 777-3M0 (ER) (B77W) | Beijing, CN/Moscow, RU          | August 31, 2023.    |
| RA-73144 | 41690      | 777-3M0 (ER) (B77W) | Delhi, IN/Moscow, RU            | September 2, 2023.  |
| RA-73146 | 65309      | 777-300 (ER) (B77W) | Bangkok, TH/Moscow, RU          | September 3, 2023.  |
| RA-73146 | 65309      | 777-300 (ER) (B77W) | Moscow, RU/Vladivostok, RU      | September 6, 2023.  |
| RA-73146 | 65309      | 777-300 (ER) (B77W) | Shanghai, CN/Moscow, RU         | September 11, 2023. |
| RA-73146 | 65309      | 777-300 (ER) (B77W) | Male, MV/Moscow, RU             | September 13, 2023. |
| RA-73146 | 65309      | 777-300 (ER) (B77W) | Moscow, RU/Vladivostok, RU      | September 16, 2023. |
| RA-73146 | 65309      | 777-300 (ER) (B77W) | Vladivostok, RU/Moscow, RU      | September 17, 2023. |
| RA-73146 | 65309      | 777-300 (ER) (B77W) | Shanghai, CN/Moscow, RU         | September 18, 2023. |
| RA-73146 | 65309      | 777-300 (ER) (B77W) | Delhi, IN/Moscow, RU            | September 19, 2023. |
| RA-73150 | 65307      | 777-3M0 (ER) (B77W) | Hurghada, EG/Moscow, RU         | August 12, 2023.    |
| RA-73150 | 65307      | 777-3M0 (ER) (B77W) | Sharm el-Sheikh, EG/Moscow, RU  | August 14, 2023.    |
| RA-73150 | 65307      | 777-3M0 (ER) (B77W) | Hurghada, EG/Moscow, RU         | September 5, 2023.  |
| RA-73150 | 65307      | 777-3M0 (ER) (B77W) | Moscow, RU/Vladivostok, RU      | September 6, 2023.  |
| RA-73150 | 65307      | 777-3M0 (ER) (B77W) | Tashkent, UZ/Moscow, RU         | September 8, 2023.  |
| RA-73150 | 65307      | 777-3M0 (ER) (B77W) | Sharm el-Sheikh, EG/Moscow, RU  | September 13, 2023. |
| RA-73150 | 65307      | 777-3M0 (ER) (B77W) | Hurghada, EQ/Moscow, RU         | September 14, 2023. |
| RA-73150 | 65307      | 777-3M0 (ER) (B77W) | Antalya, TR/Moscow, RU          | September 17, 2023. |

### III. Findings

Under the applicable standard set forth in section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that Aeroflot has acted in violation of the Regulations and the TDO; that such violations have been significant, deliberate and covert; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Moreover, I find that renewal for an extended period is appropriate because

Aeroflot has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR. Therefore, renewal of the TDO for one year is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with Aeroflot, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

### IV. Order

*It is therefore ordered:*

First, PJSC Aeroflot, 1 Arbat St., 119019, Moscow, Russia, when acting for or on their behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

<sup>10</sup> Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

<sup>11</sup> Publicly available flight tracking information shows that SN 41690 flew from Istanbul, Turkey to Moscow, Russia on September 20, 2022 and from Delhi, India to Moscow, Russia on September 23,

2022. In addition, on September 1, 2022, SN 41214 flew from Minsk, Belarus to Moscow, Russia. On September 13, 2022, SN 41214 flew from Moscow, Russia to Sochi, Russia.

<sup>12</sup> Publicly available flight tracking information shows that SN 41214 flew from Yerevan, Armenia to Moscow, Russia on February 16, 2023 and from

Urgench, Uzbekistan to Moscow, Russia on March 1, 2023. In addition, on March 2, 2023, SN 41214 flew from Moscow, Russia to Sochi, Russia. On February 4, 2023, SN 41690 flew from Bangkok, Thailand to Moscow, Russia. On March 5, 2023 and March 19, 2023, respectively, SNs 65309 and 41690 flew from Shanghai, China to Moscow, Russia.

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations.

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

A. Export, reexport, or transfer (in-country) to or on behalf of Aeroflot any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by Aeroflot of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby Aeroflot acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from Aeroflot of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

D. Obtain from Aeroflot in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned,

possessed or controlled by Aeroflot, or service any item, of whatever origin, that is owned, possessed or controlled by Aeroflot if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

*Third*, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Aeroflot by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of sections 766.24(e) of the EAR, Aeroflot may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022.

In accordance with the provisions of section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Aeroflot as provided in section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Aeroflot, and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for one year.

**Matthew S. Axelrod**,  
*Assistant Secretary of Commerce for Export Enforcement*.

[FR Doc. 2023-21173 Filed 9-27-23; 8:45 am]

**BILLING CODE 3510-DT-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration [A-570-904]

#### Certain Activated Carbon From the People's Republic of China: Final Results of Expedited Third Sunset Review of the Antidumping Duty Order

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

**SUMMARY:** The U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty order on certain activated carbon from the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping at the levels indicated in the "Final Results of Review" section of this notice.

**DATES:** Applicable September 28, 2023.

**FOR FURTHER INFORMATION CONTACT:** Robert Palmer, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-9068.

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 1, 2023, Commerce initiated the third sunset review of the antidumping duty order on certain activated carbon from China, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.218(c)(2).<sup>1</sup> On June 9, 2023, Commerce received a timely notice of intent to participate from Calgon Carbon Corporation, Norit Americas, Inc., and ADA Carbon Solutions LLC (collectively, the domestic interested parties) within the deadline specified in 19 CFR 351.218(d)(1)(i).<sup>2</sup> The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers of a domestic like product in the United States.

We received a complete substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).<sup>3</sup> We received no responses from respondent interested parties. As a result, Commerce conducted an expedited sunset review of the Order, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

##### Scope of the Order

The merchandise subject to the Order is certain activated carbon. For a complete description of the scope of this

<sup>1</sup> See *Initiation of Five-Year (Sunset) Review*, 88 FR 35832 (June 1, 2023); see also *Notice of Antidumping Duty Order: Certain Activated Carbon from the People's Republic of China*, 72 FR 20988 (April 27, 2007) (Order).

<sup>2</sup> See Domestic Interested Parties' Letter, "Five-Year ("Sunset") Review of the Antidumping Order on Certain Activated Carbon from the People's Republic of China—Domestic Interested Parties' Notice of Intent to Participate," dated June 9, 2023.

<sup>3</sup> See Domestic Interested Parties' Letter, "Five-Year ("Sunset") Review of the Antidumping Order on Certain Activated Carbon from the People's Republic of China—Domestic Industry's Substantive Response," dated June 30, 2023.

Order, see the Issues and Decision Memorandum.<sup>4</sup>

### Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum. The issues discussed in the Issues and Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the dumping margin likely to prevail if the Order was to be revoked. A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

### Final Results of Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, we determine that revocation of the antidumping duty order on certain activated carbon from China would likely lead to continuation or recurrence of dumping and that the magnitude of the dumping margin likely to prevail would be weighted-average dumping margins up to 228.11 percent.

### Notification to Interested Parties

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218.

<sup>4</sup> See Memorandum, "Issues and Decision Memorandum for the Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order on Certain Activated Carbon from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Dated: September 22, 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 Dumping
  - 2. Magnitude of the Dumping Margin Likely To Prevail
- VII. Final Results of Sunset Review
- VIII. Recommendation

[FR Doc. 2023–21199 Filed 9–27–23; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment

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

**SUMMARY:** The U.S. Department of Commerce (Commerce) seeks public comment on any subsidies, including stumpage subsidies, provided by certain countries exporting softwood lumber or softwood lumber products to the United States during the period January 1, 2023, through June 30, 2023.

**DATES:** Comments must be submitted within 30 days after publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Kristen Johnson, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4793.

### SUPPLEMENTARY INFORMATION:

#### Background

Pursuant to section 805 of title VIII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008), the Secretary of Commerce is mandated to submit to the appropriate Congressional committees a report every 180 days on any subsidy provided by countries exporting softwood lumber or softwood lumber products to the United States, including stumpage subsidies. Commerce submitted its last subsidy report to the Congress on June 20, 2023.

### Request for Comments

Given the large number of countries that export softwood lumber and softwood lumber products to the United States, we are soliciting public comment only on subsidies provided by countries which had exports accounting for at least one percent of total U.S. imports of softwood lumber by quantity, as classified under Harmonized Tariff Schedule of the United States (HTSUS) codes 4407.1100, 4407.1200, 4407.1300, 4407.1400, and 4407.1900, during the period January 1, 2023, through June 30, 2023. Official U.S. import data, published by the United States International Trade Commission's DataWeb, indicate that six countries (Austria, Brazil, Canada, Germany, Romania, and Sweden) exported softwood lumber to the United States during that time period in amounts sufficient to account for at least one percent of U.S. imports of softwood lumber products. We intend to rely on similar six-month periods to identify the countries subject to future reports on softwood lumber subsidies. For example, we intend to rely on U.S. imports of softwood lumber and softwood lumber products during the period July 1, 2023, through December 31, 2023, to select the countries subject for the next report.

Under U.S. trade law, a subsidy exists where an authority: (i) provides a financial contribution; (ii) provides any form of income or price support within the meaning of article XVI of the GATT 1994; or (iii) makes a payment to a funding mechanism to provide a financial contribution to a person, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments, and a benefit is thereby conferred.<sup>1</sup>

Parties should include in their comments: (1) the country which provided the subsidy; (2) the name of the subsidy program; (3) a brief description (no more than 3–4 sentences) of the subsidy program; and (4) the government body or authority that provided the subsidy.

### Submission of Comments

As specified above, to be assured of consideration, comments must be received no later than 30 days after the publication of this notice in the **Federal Register**. All comments must be submitted through the Federal

<sup>1</sup> See section 771(5)(B) of the Tariff Act of 1930, as amended.



eRulemaking Portal at <http://www.regulations.gov>, Docket No. ITA–2023–0009. The materials in the docket will not be edited to remove identifying or contact information, and Commerce cautions against including any information in an electronic submission that the submitter does not want publicly disclosed. Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF formats only.

All comments should be addressed to Abdelali Elouaradia, Deputy Assistant Secretary for Enforcement and Compliance, at U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

Dated: September 22, 2023.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2023–21193 Filed 9–27–23; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Announcement of Approved International Trade Administration Trade Mission

**AGENCY:** International Trade Administration, Department of Commerce.

**SUMMARY:** The United States Department of Commerce, International Trade Administration (ITA), is announcing one upcoming trade mission that will be recruited, organized, and implemented by ITA. This mission is: Global Diversity Export Initiative (GDEI) Education Trade Mission to South India—February 12–20, 2024. A summary of the mission is found below. Application information and more detailed mission information, including the commercial setting and sector information, can be found at the trade mission website: <https://www.trade.gov/trade-missions>. For each mission, recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (<https://www.trade.gov/trade-missions-schedule>) and other internet websites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Odum, Events Management Task Force, International Trade

Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230; telephone: (202) 482–6397 or email [Jeffrey.Odum@trade.gov](mailto:Jeffrey.Odum@trade.gov).

#### SUPPLEMENTARY INFORMATION:

##### The Following Conditions for Participation Will Be Used for the Mission

Applicants must submit a completed and signed mission application and supplemental application materials, including adequate information on their products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may either: reject the application, request additional information/clarification, or take the lack of information into account when evaluating the application. If the requisite minimum number of participants is not selected for a particular mission by the recruitment deadline, the mission may be canceled.

Each applicant must also certify that programs and services it seeks to export through the mission are either produced in the United States, or, if not, are marketed under the name of a U.S. institution and have at least 51% U.S. content by value. In the case of a trade association or organization, the applicant must certify that, for each institution or service provider to be represented by the association/organization, the products and/or services the represented institution or service provider seeks to export are either produced in the United States or, if not, marketed under the name of a U.S. institution and have at least 51% U.S. content by value.

A Study State Consortia or other government education stakeholder applicant must certify to the above for all of the institutions it seeks to represent on the mission.

In addition, each applicant must:

- Certify that the products and services that it wishes to market through the mission would be in compliance with U.S. export controls and regulations.
- Certify that it has identified any matter pending before any bureau or office in the Department of Commerce.
- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and
- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with an institution's/participant's involvement

in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

In the case of a Study State Consortia or other government education stakeholder, the applicant must certify that each institution or service provider to be represented by the association/organization can make the above certifications.

##### The Following Selection Criteria Will Be Used for the Mission

Targeted mission participants are appropriately accredited U.S. educational institutions, services providers, Study State Consortia, and other government education stakeholders providing or promoting U.S. programs and services that have an interest in entering or expanding their business in the mission's destination country. The following criteria will be evaluated in selecting participants:

- Suitability of the applicant's (or in the case of a Study State Consortia or other government education stakeholder, represented institution's or service provider's) programs or services to these markets.
- The applicant's (or in the case of a Study State Consortia or other government education stakeholder, represented institution's or service provider's) potential for business in the markets, including the likelihood of exports resulting from the mission; and
- Consistency of the applicant's (or in the case of a Study State Consortia or other government education stakeholder, represented institution's or service provider's) goals and objectives with the stated scope of the mission.

Balance of institution size and location may also be considered during the review process.

Referrals from a political party or partisan political group or any information, including on the application, containing references to political contributions or other partisan political activities will be excluded from the application and will not be considered during the selection process. The sender will be notified of these exclusions.

*Mission List:* (additional information about trade missions can be found at <https://www.trade.gov/trade-missions>).

#### GDEI Education Trade Mission to South India—February 12–20, 2024

##### Summary

The U.S. Department of Commerce, International Trade Administration, U.S. Commercial Service in India, in collaboration with the U. S. Department of State, EducationUSA Chennai



Advising Center in India, is organizing an Education Trade Mission to promote U.S. higher education in Bengaluru and four southern Indian secondary markets—Mangaluru, Manipal, Kochi, and Coimbatore from February 12–20, 2024. This mission will target U.S. Higher Educational Institutions (HEIs) offering graduate programs and which are New-to-Export (NTE) or New-to-Market (NTM), such as Historically Black Colleges and Universities (HBCUs) and Minority Serving Institutions (MSIs), Study State Consortia (composed of colleges and universities, community programs, and similar entities representing education within U.S. states) and other government education stakeholders (e.g., Governor's offices, state trade offices, economic development organizations, etc.) that are interested in connecting with local Higher Education Institutes (HEIs), and educational consultants, and will assist in recruiting Indian students from these markets to the United States. The mission will include Consulate and industry market briefings, one-on-one appointments with potential partners, and student fairs in Bengaluru, Mangaluru, Manipal, Kochi, and Coimbatore.

Recruitment and consideration will be extended to all export-ready institutions, Study State Consortia, and other government educational stakeholders that meet the established criteria for participation in the mission. ITA is seeking to improve outreach to HEIs that have not previously participated in GDEI Education Trade Missions and/or have not previously engaged in fulsome international graduate recruiting. This mission is in alignment with Executive Order 13985 on Advancing Racial Equity and Support for Underserved Communities

Through the Federal Government (January 25, 2021) (E.O. 13985), the U.S. Department of Commerce Equity Action Plan, and the Global Diversity Export Initiative of the U.S. Commercial Service. For the purposes of the trade mission, ITA adopts the definition of “underserved communities” in E.O. 13985: “populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the preceding definition of ‘equity.’” “Equity” is defined by E.O. 13985 as “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.” This trade mission is also designed to be responsive to the priorities stated by Secretary of Commerce Gina Raimondo and outlined in the Equity Action Plan released in April 2022 which includes “[s]trengthen[ing] small businesses in underserved communities by helping them be successful exporters”.

The goals of the Education Trade Mission to South India are:

(1) Gain market exposure and introduce participants to the vibrant South India market. U.S. educational institutions will find potential partners in Bengaluru and four secondary

markets—Mangaluru, Manipal, Kochi and Coimbatore—covering three Indian states in South India.

(2) Assess current and future business prospects by establishing valuable contacts with prospective study-abroad consultants, potential students, and educational institutions.

(3) Develop market knowledge and relationships leading to effective student recruitment, strategies, and potential partnerships.

During the mission, the delegation will be guided by Commercial Service officers, commercial specialists, and EducationUSA advisors at each stop. Trade mission participants who are already doing business in India will have the opportunity to further advance their business relationships and explore new opportunities.

Participation in the mission will include the following:

- Pre-travel briefings;
- Market briefings by U.S. Consulate, Local Government officials and industry leaders;
- Pre-scheduled meetings with university heads/counselors, educational consultants;
- Student fairs in Bengaluru, Mangaluru, Manipal, Kochi, and Coimbatore;
- Airport transfers and ground transportation in these cities; and
- University visits in all five stops.

The final schedule will depend on the specific goals and objectives of the mission participants.

#### Proposed Timetable

\* *Note:* The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.

|                   |                                                                                                                                                                                                                                                                                  |
|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| February 11 ..... | Travel Day/Arrival in Bengaluru.                                                                                                                                                                                                                                                 |
| February 12 ..... | <ul style="list-style-type: none"> <li>• Briefings.</li> <li>• One-on-one matchmaking meetings.</li> <li>• Student fair.</li> </ul>                                                                                                                                              |
| February 13 ..... | <ul style="list-style-type: none"> <li>• Half day visit to a university for institutional collaboration and meet with students interested in studying in the U.S.</li> <li>• Late afternoon departure for Mangaluru by air.</li> <li>• Remain overnight in Mangaluru.</li> </ul> |
| February 14 ..... | <ul style="list-style-type: none"> <li>• Morning visit to Manipal Academy of Higher Education (located near Mangaluru) by bus.</li> <li>• Prescheduled meetings with institutional leadership.</li> <li>• Student fair.</li> <li>• Return to Mangaluru.</li> </ul>               |
| February 15 ..... | <ul style="list-style-type: none"> <li>• Market briefings.</li> <li>• Visit to HEIs for one-on-one meetings and meet with students interested in studying in the U.S.</li> <li>• Late afternoon depart for Kochi by air.</li> </ul>                                              |
| February 16 ..... | <ul style="list-style-type: none"> <li>• Market briefings.</li> <li>• Student fair in Kochi.</li> </ul>                                                                                                                                                                          |
| February 17 ..... | <ul style="list-style-type: none"> <li>• Visit to HEIs for one-on-one meetings and meet with students interested in studying in the U.S.</li> </ul>                                                                                                                              |

|                                        |                                                                                                                                                                                                                                                                                   |
|----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| February 18 .....                      | <ul style="list-style-type: none"> <li>• Sunday—Travel Day. Depart Kochi for Coimbatore by bus. On the way stop at Palghat Indian Institute of Technology (TBD).</li> <li>• Remain overnight in Coimbatore.</li> </ul>                                                            |
| February 19 .....                      | <ul style="list-style-type: none"> <li>• Briefings.</li> <li>• One-on-one matchmaking meetings.</li> </ul>                                                                                                                                                                        |
| Note: President's Day in the U.S ..... | <ul style="list-style-type: none"> <li>• Student fair.</li> </ul>                                                                                                                                                                                                                 |
| February 20 .....                      | <ul style="list-style-type: none"> <li>• Visit to local HEIs for institutional partnerships and meet with students interested in studying in the U.S.</li> <li>• End of Program.</li> <li>• Depart Coimbatore at leisure (per delegate's individual travel itinerary).</li> </ul> |

### Participation Requirements

All parties interested in participating in the U.S. Department of Commerce Education Trade Mission to South India must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below.

A minimum of 18 and a maximum of 20 educational institutions, Study State Consortia, and/or other government education stakeholders (e.g., Governor's offices, state trade offices, economic development organizations, etc.) will be selected to participate in the mission from the applicant pool. The Trade Mission is open to U.S. HEIs that are new-to-market and educational institutions with existing business in India who are seeking to expand their market share.

### Fees and Expenses

After an educational institution, Study State Consortia, or other government education stakeholders (e.g., Governor's offices, state trade offices, economic development organizations, etc.) has been selected to participate in the trade mission, a payment to the Department of Commerce in the form of a participation fee is required.

The participation fee for the Education Trade Mission to South India will be \$5,500 for public/private, non-profit institution or small or medium-sized enterprise (SME)\*; and \$7,000 for large, private for-profit institution. The fee for additional institution representative (large private for-profit institution or private/public non-profit institution or SME/trade organization) is \$750. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Interpreter and driver services can be arranged for additional cost. Delegation members will be able to take advantage of U.S. Embassy rates for hotel rooms.

The mission registration fee includes market briefings, lunch and coffee breaks during the conference and

transportation associated to visit local HEIs, participation in student fairs, and U.S. Consulate Chennai officers' consultations.

When an applicant is selected to participate on a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee below is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government rates for hotel rooms. If a mission is canceled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a canceled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

If a visa is required to travel on a particular mission, applying for and obtaining such a visa will be the responsibility of the mission participant. Government fees and processing expenses to obtain such a visa are not included in the participation fee. However, the Department of Commerce will provide instructions to each participant on the procedures required to obtain business visas.

Trade Mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation in each foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at <https://travel.state.gov/content/passports/en/alertswarnings.html>. Any question regarding insurance coverage must be

resolved by the participant and its insurer of choice.

Travel and in-person activities are contingent upon the safety and health conditions in the United States and the mission countries. Should safety or health conditions not be appropriate for travel and/or in-person activities, the Department will consider postponing the event or offering a virtual program in lieu of an in-person agenda. In the event of a postponement, the Department will notify the public and applicants previously selected to participate in this mission will need to confirm their availability but need not reapply. Should the decision be made to organize a virtual program, the Department will adjust fees accordingly, prepare an agenda for virtual activities, and notify the previously selected applicants with the option to opt-in to the new virtual program.

### Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar on [www.trade.gov](http://www.trade.gov), and other internet websites, press releases to the general and trade media, direct mail and broadcast fax, notices by industry trade associations and other multiplier groups and announcements at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin immediately and conclude no later than December 15, 2023. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis until the maximum of 20 participants are selected. After, educational institutions will be considered only if space and scheduling constraints permit.

### Contacts

Gabriel Zelaya, Global Education Team Leader, U.S. Commercial Service—San Jose/Silicon Valley, U.S. Department of Commerce, [Gabriela.Zelaya@trade.gov](mailto:Gabriela.Zelaya@trade.gov), Tel: 408-335-9202

Pinki Thakker, International Trade Specialist, U.S. Commercial Service—Kansas City, MO, U.S. Department of Commerce, [Pinki.Thakker@trade.gov](mailto:Pinki.Thakker@trade.gov), Tel: 816–266–3853

Carey Arun, Principal Commercial Officer, U.S. Commercial Service—U.S. Consulate General, Chennai, [Caey.Arun@trade.gov](mailto:Caey.Arun@trade.gov)

Mala Venkat, Senior Commercial Specialist, U.S. Commercial Service—U.S. Consulate General, Chennai, [Mala.Venkat@trade.gov](mailto:Mala.Venkat@trade.gov)

**Gemal Brangman,**

Director, Trade Events Management Task Force.

[FR Doc. 2023–21170 Filed 9–27–23; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648–XD406]

#### Marine Mammals; File No. 27424

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that Point Blue Conservation Science, 3820 Cypress Drive No. 11, Petaluma, CA 94954, (Responsible Party: Grant Ballard, Ph.D.), has applied in due form for a permit to conduct research on five species of pinnipeds.

**DATES:** Written, telefaxed, or email comments must be received on or before October 30, 2023.

**ADDRESSES:** The application and related documents are available for review by selecting “Records Open for Public Comment” from the “Features” box on the Applications and Permits for Protected Species (APPS) home page, <https://apps.nmfs.noaa.gov>, and then selecting File No. 27424 from the list of available applications. These documents are also available upon written request via email to [NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov).

Written comments on this application should be submitted via email to [NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov). Please include File No. 27424 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to [NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov). The request should set forth the specific reasons why a hearing on this application would be appropriate.

#### FOR FURTHER INFORMATION CONTACT:

Courtney Smith, Ph.D., or Shasta McClenahan, Ph.D., (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant requests a 5-year scientific research permit to study and monitor population trends, health, diet, ecology, and physiology of pinnipeds in the greater Gulf of the Farallones and San Francisco Bay region of California. Up to 210 northern elephant seals (*Mirounga angustirostris*) and 500 northern fur seals (*Callorhinus ursinus*) may be captured annually for marking, morphometrics, and biological sampling. An additional 1,355 elephant seals may be marked and swabbed without capture. Up to 1,500 harbor seals (*Phoca vitulina*), 800 northern elephant seals, 5,320 California sea lions (*Zalophus californianus*), 155 Steller sea lions (*Eumetopias jubatus*; Eastern distinct population segment), and 1,500 northern fur seals may be taken or unintentionally harassed annually during ground or unmanned aircraft system surveys, for counts, observation, and scat collection. The applicant also requests up to five unintentional mortalities of northern elephant seals over the duration of the permit, with no more than two annually.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: September 22, 2023.

**Amy Sloan,**

Acting Division Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–21225 Filed 9–27–23; 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; Electronic Logbook for the Commercial Shrimp Fishery in the Gulf of Mexico

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 June 9, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

**Agency:** National Oceanic & Atmospheric Administration (NOAA), Commerce.

**Title:** Electronic Logbook for the Commercial Shrimp Fishery in the Gulf of Mexico.

**OMB Control Number:** 0648–0543.

**Form Number(s):** None.

**Type of Request:** Regular submission—extension of a current information collection.

**Number of Respondents:** 610.

**Average Hours per Response:** 2 hours.

**Total Annual Burden Hours:** 1,220.

**Needs and Uses:** This request is for extension of a current information collection. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Gulf of Mexico Fishery Management Council (Council) to prepare and amend fishery management plans for any fishery in waters under its jurisdiction. NOAA's National Marine Fisheries Service (NMFS) manages the commercial shrimp fishery in Federal waters of the Gulf of Mexico (Gulf) under the Fishery Management Plan for the Shrimp Fishery of the Gulf. The electronic logbook (ELB) regulations for the Gulf shrimp fishery may be found at 50 CFR 622.51(a)(2). The ELB is a device that records the position of the vessel every ten minutes. The tracks of the vessels can be examined to determine when and where shrimp trawling is occurring.

As of May 1, 2023, there are approximately 1,319 valid or renewable Federal permits to commercially harvest shrimp from the exclusive economic zone (EEZ) in the Gulf. Monitoring shrimp vessels, operating together with many other fishing vessels of differing sizes, gears types used, and fishing capabilities, is made even more challenging by seasonal variability in shrimp abundance and price, and the broad geographic distribution of the fleet. ELBs provide a precise means of estimating the amount of shrimp fishing effort. Using ELBs to estimate fishing effort serves an important role to help estimate bycatch in the Gulf shrimp fleet.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* Twice Annually (every 6 months).

*Respondent's Obligation:* Required to Obtain or Retain a Service or Benefit.

*Legal Authority:* Fishing Regulation 50 CFR 622.51(a)(2).

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 0648–0543.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.*

[FR Doc. 2023–21176 Filed 9–27–23; 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; NMFS Alaska Region Vessel Monitoring System (VMS) Program

**AGENCY:** National Oceanic & Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of information collection, request for comment.

**SUMMARY:** The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

**DATES:** To ensure consideration, comments regarding this proposed information collection must be received on or before November 27, 2023.

**ADDRESSES:** Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at [NOAA.PRA@noaa.gov](mailto:NOAA.PRA@noaa.gov). Please reference OMB Control Number 0648–0445 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 Gabrielle Aberle, National Marine Fisheries Service, P.O. Box 21668, Juneau AK 99802–1668, or 907–586–7356.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The National Marine Fisheries Services (NMFS), Alaska Regional Office, is requesting extension of a currently approved information collection for the NMFS Alaska Region Vessel Monitoring System (VMS) Program. There are no proposed changes to this information collection.

NMFS requires the owners and operators of selected vessels participating in federally managed groundfish and crab fisheries off Alaska to obtain, install, and maintain an operational, NMFS-approved Vessel Monitoring System (VMS). VMS units automatically transmit the location of a vessel several times per hour using a Global Positioning System satellite. The VMS unit is passive and automatic, requiring no reporting effort by the vessel operator. A communications service provider receives the transmission and relays it to NMFS Office for Law Enforcement (OLE).

Tracking vessel location using VMS is required to monitor compliance with area-specific catch allocations, to monitor compliance with requirements to redeploy or remove fishing gear from commercial fishing grounds, and to monitor compliance with complicated time and area closures in the Gulf of

Alaska (GOA) and Bering Sea and Aleutian Islands (BSAI) designed to protect Steller sea lion or essential fish habitat. The VMS requirements are found at 50 CFR parts 679 and 680.

VMS is an essential component of monitoring and management for complicated, geographically widespread fishing closures. Given the large size and remoteness of the area in which Alaska fisheries occur, and the limited enforcement infrastructure available, determining a vessel's location depends crucially on VMS reports. When a VMS track is examined, information can be inferred about whether a vessel is actively fishing, the type of gear being used, and the fisheries that are open. NMFS uses information from VMS to identify where vessels are operating, to organize patrols so as to increase the number of fishing vessels visually examined, or to focus examination of vessels of greatest concern, and as evidence in prosecutions.

##### II. Method of Collection

Automatic GPS position reporting starts after VMS transceiver installation and power activation on board the vessel. The unit is pre-configured and tested for NMFS VMS operations. The VMS unit is passive and automatic, requiring no reporting effort by the vessel operator.

##### III. Data

*OMB Control Number:* 0648–0445.

*Form Number(s):* None.

*Type of Review:* Regular submission (extension of a current information collection).

*Affected Public:* Individuals or households; Business or other for-profit organizations.

*Estimated Number of Respondents:* 550.

*Estimated Time per Response:* VMS installation, maintenance, and troubleshooting, 12 hours.

*Estimated Total Annual Burden Hours:* 2,476 hours.

*Estimated Total Annual Cost to Public:* \$812,668.

*Respondent's Obligation:* Required to Obtain or Retain Benefits.

*Legal Authority:* 16 U.S.C.1801 *et. seq.*; 16 U.S.C. 773–773k.

##### IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection,

including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.*

[FR Doc. 2023–21288 Filed 9–27–23; 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; Tilefish Individual Fishing Quota Program

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 April 21, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* National Oceanic and Atmospheric Administration, Commerce.

*Title:* Tilefish Individual Fishing Quota Program.

*OMB Control Number:* 0648–0590.

*Form Number(s):* None.

*Type of Request:* Regular submission—extension of a current information collection.

*Number of Respondents:* 12.

*Average Hours per Response:* 0.33.

*Total Annual Burden Hours:* 18.

*Needs and Uses:* This request is for an extension of a currently approved information collection.

NMFS Greater Atlantic Region manages the golden tilefish fishery of the Exclusive Economic Zone (EEZ) of the Northeastern United States, through the Tilefish Fishery Management Plan (FMP). The Mid-Atlantic Fishery Management Council prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The regulations implementing the FMP are specified at 50 CFR part 648 subpart N.

The recordkeeping and reporting requirements at § 648.294 form the basis for this collection of information. NMFS requests information from tilefish individual fishing quota (IFQ) permit holders to process applications that ensure IFQ allocation holders are provided a statement of their annual catch quota, and for enforcement purposes, to ensure vessels are not exceeding an individual quota allocation. In conjunction with the application, NMFS also collects IFQ share accumulation information to ensure that IFQ allocation holders do not acquire an excessive share of the total limited access privileges, as required by section 303A(d)(5)(C) of the Magnuson-Stevens Act.

NMFS requests transfer application information to process and track requests from allocation holders to transfer quota allocation (permanent and temporary) to another entity. NMFS also collects information for cost recovery purposes as required under the Magnuson-Stevens Act. Cost recovery is used to collect fees to recover the costs directly related to management, data collection and analysis, and enforcement of IFQ programs. Lastly, NMFS collects landings information to ensure that the amounts of tilefish landed and ex-vessel prices are properly recorded for quota monitoring purposes and the calculation of IFQ fees. Having this information results in an increasingly more efficient and accurate database for management and monitoring of fisheries of the Northeastern U.S. EEZ.

*Affected Public:* Individuals or households; Business or other for-profit organizations.

*Frequency:* Annual and as requested.  
*Respondent's Obligation:* Required to Obtain or Retain Benefits.

*Legal Authority:* Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.* Section 303).

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 0648–0590.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.*

[FR Doc. 2023–21178 Filed 9–27–23; 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; Alaska Pacific Halibut Fisheries; Charter

**AGENCY:** National Oceanic & Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of Information Collection, request for comment.

**SUMMARY:** The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

**DATES:** To ensure consideration, comments regarding this proposed information collection must be received on or before November 27, 2023.

**ADDRESSES:** Interested persons are invited to submit written comments to

Adrienne Thomas, NOAA PRA Officer, at [NOAA.PRA@noaa.gov](mailto:NOAA.PRA@noaa.gov). Please reference OMB Control Number 0648–0575 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 Gabrielle Aberle, 709 W 9th Street, Juneau, AK 99801, 907–586–7356, [gabrielle.aberle@noaa.gov](mailto:gabrielle.aberle@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The National Marine Fisheries Service (NMFS), Alaska Region, is requesting extension of a currently approved information collection for the Pacific halibut charter fishery off Alaska.

Management of and regulations for Pacific halibut (*Hippoglossus stenolepis*) in Alaska are developed on the international, Federal, and state levels by the International Pacific Halibut Commission (IPHC), the North Pacific Fishery Management Council, the NMFS Alaska Region, and the State of Alaska Department of Fish and Game (ADF&G). The IPHC and NMFS manage fishing for Pacific halibut through regulations established under authority of the Convention between the United States Halibut Fishery of the Northern Pacific Ocean and Bering Sea, the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773), and section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

NMFS manages the charter halibut fishery off Alaska under the Charter Halibut Limited Access Program (CHLAP; 75 FR 554, January 5, 2010) and the Pacific Halibut Catch Sharing Plan (CSP; 78 FR 75844, December 12, 2013). This information collection is necessary for NMFS to manage and administer the charter halibut fishery under the CHLAP and the CSP. Regulations that implement this information collection are at 50 CFR 300 subpart E and 50 CFR 679.5(l)(7). Information on the CHLAP and the CSP is on the NMFS Alaska Region website at <https://www.fisheries.noaa.gov/alaska/resources-fishing/sport-halibut-fishing-alaska>.

The CHLAP established new Federal Charter Halibut Permits (CHPs) for operators in the sport charter halibut fishery in IPHC regulatory Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). All charter halibut vessel operators in Areas 2C and 3A with clients on board must have a valid CHP

on board during every charter vessel fishing trip. As the period to obtain a CHP, other than a military CHP or community CHP, ended in 2010, CHPs may now only be obtained through transfer. This information collection contains the applications used to annually register CHPs, to apply for new military CHPs, and to transfer CHPs. The application for a community CHP is approved under OMB Control Number 0648–0665. Information collected by these applications includes permit holder information or applicant information, and depending on the form, may include CHP identification, CHP ownership information and affiliation, a survey question on the use of the CHP, and transaction information for transfer of a CHP.

The CSP authorizes annual transfers of commercial halibut individual fishing quota (IFQ) as guided angler fish (GAF) to qualified CHP holders for harvest by charter vessel anglers in Area 2C or 3A. GAF enables CHP holders to lease a limited amount of IFQ from commercial quota share holders to allow charter vessel anglers to harvest halibut in addition to, or instead of, the halibut harvested under the daily bag limit for charter anglers.

This information collection includes the application used to transfer Area 2C or 3A commercial halibut IFQ to a CHP holder for use as GAF or for the CHP holder to return unused GAF to the IFQ permit holder from which it was obtained. Information collected by this application includes permit holder information, IFQ permit information, CHP information, GAF permit information, and transaction information. NMFS, on approving the transfer of IFQ to GAF, issues a GAF permit, which authorizes the holder to allow charter vessel anglers to retain GAF halibut caught in the IPHC regulatory area specified on the permit.

This information collection also includes the GAF landing report and the GAF permit log. The GAF landing report is submitted by GAF permit holders and collects information on each GAF halibut retained by an angler on a charter vessel fishing trip in Area 2C or 3A. The GAF permit log is printed on the back of each GAF permit and is used by the permit holder to record the GAF landing report confirmation number and information on GAF halibut after a trip in which GAF halibut were retained.

This information collection includes the logbook reporting requirements for the charter halibut fishery. The charter halibut sector in Areas 2C and 3A is managed to charter catch limits established under the CSP. Charter operators are required to record all

halibut caught and kept by charter vessel anglers in the ADF&G Saltwater Charter Logbook. Logbook reporting is the basis for estimating annual charter harvests of halibut relative to the charter catch limits.

**II. Method of Collection**

The information is collected by mail, fax, and electronically. The forms are available on the NMFS Alaska Region website at <https://www.fisheries.noaa.gov/permit/alaska-sport-charter-halibut-applications-and-reporting-forms>.

**III. Data**

*OMB Control Number:* 0648–0575.

*Form Number(s):* None.

*Type of Review:* Regular submission (extension of a current information collection).

*Affected Public:* Business or other for profit organizations; Individuals or households.

*Estimated Number of Respondents:* 656.

*Estimated Time per Response:*

Application for Annual Registration of CHPs: 15 minutes; Application for Military CHP: 30 minutes; Application for Transfer of CHP: 2 hours; Application for Transfer (Lease) Between IFQ and GAF: 1.5 hours; GAF Landing Report: 5 minutes; GAF Permit Log: 2 minutes; ADF&G Saltwater Sport Fishing Charter Trip Logbook: 4 minutes; and Appeals: 4 hours.

*Estimated Total Annual Burden*

*Hours:* 3,494 hours.

*Estimated Total Annual Cost to*

*Public:* \$84,090 in recordkeeping and reporting costs.

*Respondent's Obligation:* Required to Obtain or Retain Benefits; Mandatory.

*Legal Authority:* The Northern Pacific Halibut Act of 1982 (16 U.S.C. 773c); Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

**IV. Request for Comments**

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.*

[FR Doc. 2023–21179 Filed 9–27–23; 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; Alaska American Fisheries Act (AFA) Permits

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 June 27, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* National Oceanic and Atmospheric Administration (NOAA), Commerce.

*Title:* Alaska American Fisheries Act (AFA) Permits.

*OMB Control Number:* 0648–0393.

*Form Number(s):* None.

*Type of Request:* Regular submission (extension of a current information collection).

*Number of Respondents:* 27.

*Average Hours per Response:* AFA Permit: Rebuilt, Replacement, or

Removed Vessel Application, 1 hour; Application for Transfer of Bering Sea Chinook Salmon PSC Allocations, 1 hour; Application for AFA Inshore Catcher Vessel Cooperative Permit, 2 hours; AFA Inshore Vessel Contract Fishing Notification, 4 hours; Application for Approval as an Entity to Receive Transferable Chinook Salmon PSC Allocation, 8 hours.

*Total Annual Burden Hours:* 246 hours.

*Needs and Uses:* The National Marine Fisheries Service (NMFS), Alaska Regional Office, is requesting extension of a currently approved information collection that contains applications for permits and transfers necessary for NMFS to manage the Bering Sea and Aleutian Islands (BSAI) pollock fishery under the American Fisheries Act (AFA).

NMFS manages the BSAI pollock fishery under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and the AFA (16 U.S.C. 1851). The regulations implementing the AFA Program are at 50 CFR part 679, subpart F. The reporting requirements at 50 CFR part 679 form the basis for this collection of information.

The AFA was signed into law in October 1998. The purpose of the AFA was to tighten U.S. ownership standards that had been exploited under the Anti-reflagging Act, and to provide the BSAI pollock fleet the opportunity to conduct their fishery in a more rational manner while protecting non-AFA participants in the other fisheries. The AFA established sector allocations in the BSAI pollock fishery, determined eligible vessels and processors, allowed the formation of cooperatives, set limits on the participation of AFA vessels in other fisheries, and imposed special catch weighing and monitoring requirements on AFA vessels.

Any vessel used to engage in directed fishing for a non-western Alaska community development quota (non-CDQ) allocation of pollock in the Bering Sea and any shoreside processor, stationary floating processor, or mothership that receives pollock harvested in a non-CDQ directed pollock fishery in the Bering Sea must have a valid AFA permit on board the vessel or at the facility location at all times while non-CDQ pollock is being harvested or processed.

Permanent AFA permits (AFA catcher vessel, AFA catcher/processor, AFA mothership, and AFA inshore processor) for the BSAI pollock fishery had a one-time application deadline of December 1, 2000, and were issued with

an indefinite expiration date. Therefore, except for participants that require annual or replacement permits, all AFA entities required to have a permit are already permitted.

The type of information collected in this collection includes information on the applicants, transferors, transferees, permits, vessels, and Chinook salmon PSC transfer data. This information collection contains the following AFA permitting and transfer requirements:

- The AFA Permit: Rebuilt, Replacement, or Removed Vessel Application is used by an owner of an AFA vessel to notify NMFS the vessel has been rebuilt; to request an AFA permit for a replacement catcher vessel, catcher/processor, or mothership; or to request removal of an AFA catcher vessel that is a member of an inshore cooperative and assign its catch history to another vessel or vessels in the same cooperative.

- The Application for AFA Inshore Catcher Vessel Cooperative Permit is used annually by each AFA inshore catcher vessel cooperative to obtain an AFA Inshore Catcher Vessel Cooperative Permit and identify the vessels and processors that will be participating in the BSAI pollock fishery prior to the start of each fishing year.

- The AFA Inshore Vessel Contract Fishing Notification is used by an AFA inshore cooperative that intends to contract with a non-member vessel to harvest a portion of the cooperative's annual pollock allocation to notify NMFS of vessels that might be reporting with an alternative cooperative ID.

- The Application for Approval as an Entity to Receive Transferable Chinook Salmon Prohibited Species Catch (PSC) Allocation is used by an entity representing the catcher/processor sector or the mothership sector to request approval to receive transferable Chinook salmon PSC allocations on behalf of members of the sector. Once approved, an entity is not required to reapply for or renew its status. Entities also use this form to update their contact and other information related to the entity and its members.

- The Application for Transfer of Bering Sea Chinook Salmon PSC Allocations is used by an authorized representative of the catcher/processor sector, the mothership sector, an inshore cooperative, or a CDQ group to transfer Chinook salmon PSC allocations to another entity's account.

*Affected Public:* Individuals or households; Business or other for-profit organizations; Not-for-profit institutions.

*Frequency:* Annually; As needed.



*Respondent's Obligation:* Required to Obtain or Retain Benefits; Mandatory.

*Legal Authority:* Magnuson-Stevens Fishery and Conservation Act; American Fisheries.

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 0648–0393.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.*

[FR Doc. 2023–21196 Filed 9–27–23; 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; Reporting Requirements for the Ocean Salmon Fishery Off the Coasts of Washington, Oregon, and California

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 June 26, 2023 (88 FR 41388) during a 60-day comment period, no comments were received. This notice allows for an additional 30 days for public comments.

*Agency:* National Oceanic and Atmospheric Administration (NOAA), Commerce.

*Title:* Reporting Requirements for the Ocean Salmon Fishery Off the Coasts of Washington, Oregon, and California.

*OMB Control Number:* 0648–0433.

*Form Number(s):* None.

*Type of Request:* Regular submission (extension of a current information collection).

*Number of Respondents:* 40.

*Average Hours per Response:* 15 minutes.

*Total Annual Burden Hours:* 10 hours.

*Needs and Uses:* Ocean salmon fisheries conducted in the U.S. exclusive economic zone, 3–200 nautical miles off the West Coast states of Washington, Oregon, and California are managed by the Pacific Fishery Management Council (Council) and NOAA's NMFS under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Management measures for the ocean salmon fisheries are set annually, consistent with the Council's Pacific Coast Salmon Fishery Management Plan (FMP). The FMP provides a framework for managing the ocean salmon fisheries in a sustainable manner, as required under the MSA, through the use of conservation objectives, annual catch limits, and other reference points and status determination criteria described in the FMP. To meet these criteria, annual management measures, published in the **Federal Register** by NMFS, specify regulatory areas, catch restrictions, and landing restrictions based on the annual stock abundance forecasts. These catch and landing restrictions include area-time- and species-specific quotas for the commercial ocean salmon fishery, and generally require catch and landings to be reported to the appropriate state and tribal agencies to allow for timely and accurate accounting of the season's catch (50 CFR 660.404 and 50 CFR 660.408(o)). The best available catch and effort data and projections are presented by the state fishery managers in telephone conference calls involving the NMFS Regional Administrator and representatives of the Council. However, NMFS acknowledges that unsafe weather or mechanical problems could prevent commercial fishermen from making their landings at the times and places specified, and the MSA requires conservation and management measures to promote the safety of human life at sea.

The annual management measures will specify the contents and procedure of the notifications, and the entities receiving the notifications (e.g., U.S. Coast Guard). Absent this requirement by the Council, the state reporting systems would not regularly collect this

specific type of in-season radio report. These provisions, and this federal collection of information, promote safety at sea and provide practical utility for sustainably managing the fishery, and ensure regulatory consistency across each state by implementing the same requirements in the territorial waters off each state. This information collection is intended to be general in scope by leaving the specifics of the contents and procedure of the notifications for annual determination, thus providing flexibility in responding to salmon management concerns in any given year.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* Reporting under this emergency provision is infrequent.

*Respondent's Obligation:* Mandatory.

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

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 0648–0433.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.*

[FR Doc. 2023–21280 Filed 9–27–23; 8:45 am]

**BILLING CODE 3510–22–P**

## CONSUMER FINANCIAL PROTECTION BUREAU

[Docket No. CFPB–2023–0048]

### Agency Information Collection Activities: Comment Request

**AGENCY:** Consumer Financial Protection Bureau.

**ACTION:** Notice and request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (CFPB) is requesting the Office of Management and Budget's (OMB's) approval for a new information collection titled "Making Ends Meet Survey".



**DATES:** Written comments are encouraged and must be received on or before October 30, 2023 to be assured of consideration.

**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. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Anthony May, Paperwork Reduction Act Officer, at (202) 435-7278, or email: [CFPB\\_PRA@cfpb.gov](mailto:CFPB_PRA@cfpb.gov). If you require this document in an alternative electronic format, please contact [CFPB\\_Accessibility@cfpb.gov](mailto:CFPB_Accessibility@cfpb.gov). Please do not submit comments to these email boxes.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Making Ends Meet Survey.

*OMB Control Number:* 3170-00XX.

*Type of Review:* New collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 4,500.

*Estimated Total Annual Burden Hours:* 1,375.

**Abstract:** The Dodd-Frank Wall Street Reform and Consumer Protection Act charges the Consumer Financial Protection Bureau with researching, analyzing, and reporting on topics relating to the CFPB’s mission including consumer behavior, consumer awareness, and developments in markets for consumer financial products and services. To improve its understanding of how consumers engage with financial markets, the CFPB has successfully used surveys under its “Making Ends Meet” program. The “Making Ends Meet” program has also used the CFPB’s Consumer Credit Information Panel (CCIP) as a frame to survey people about their experiences in consumer credit markets. The CFPB seeks approval for two yearly surveys under the Making Ends Meet program. These surveys solicit information on the consumer’s experience related to household financial shocks, particularly shocks related to the economic effects of the COVID-19 pandemic, how households respond to those shocks,

and the role of savings to help provide a financial buffer.

The first survey will be a follow-up to respondents from the CFPB’s 2023 “Making Ends Meet” survey to better understand household financial experiences dealing with medical debt as well as consumers’ interactions with various financial products. The second survey will go to a new sample of consumers from the CCIP and will address a several topics of interest to the CFPB possibly including the impact of natural disasters and other environmental events, credit shopping behavior, additional follow-up regarding debt collection, and the assessment of various fees throughout the financial services ecosystem.

**Request for Comments:** The CFPB published a 60-day **Federal Register** notice on May 16, 2023 (88 FR 31251) under Docket Number: CFPB-2023-0034. The CFPB is publishing this notice and soliciting comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the CFPB, including whether the information will have practical utility; (b) The accuracy of the CFPB’s estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

**Anthony May,**

*Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.*

[FR Doc. 2023-21273 Filed 9-27-23; 8:45 am]

**BILLING CODE 4810-AM-P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

**[Docket DARS-2023-0032; OMB Control Number 0704-0248]**

### Information Collection Requirement; Defense Federal Acquisition Regulation Supplement (DFARS); Inspection and Receiving Report

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

**ACTION:** Notice and request for comments regarding a proposed extension of an approved information collection requirement.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of DoD’s estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use under Control Number 0704-0248 through January 31, 2024. DoD proposes that OMB approve an extension of the information collection requirement, to expire three years after the approval date.

**DATES:** DoD will consider all comments received by November 27, 2023.

**ADDRESSES:** You may submit comments, identified by OMB Control Number 0704-0248, using any of the following methods:

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

○ *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include OMB Number 0704-0248 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jon Snyder, 703-945-5341.

**SUPPLEMENTARY INFORMATION:**

*Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS), Appendix F, Material Inspection and Receiving Report; OMB Control Number 0704-0248.

*Affected Public:* Businesses or other for-profit and not-for profit institutions.

*Respondent’s Obligation:* Required to obtain or retain benefits.

*Respondents:* 126,047.

*Responses per Respondent:* 21, approximately.

*Annual Responses:* 2,643,899.

*Hours per response:* 0.05.

*Estimated Hours:* 132,195

*Reporting Frequency:* On occasion.

*Needs and Uses:* This information collection is necessary to process shipping and receipt documentation for contractor-provided goods and services and permit payment under DoD contracts. This information collection includes the requirements of DFARS Appendix F, Material Inspection and Receiving Report. Appendix F contains procedures and instructions for submission of contractor payment requests and receiving reports using Wide Area WorkFlow (WAWF). 10 U.S.C. 2227(c) requires electronic submission and processing of claims for contract payments under DoD contracts. DoD has designated WAWF as the designated platform for contractors to submit payment requests and supporting documentation, including receiving reports. WAWF supports the preparation and distribution of electronic equivalents for the DD Form 250, Material Inspection and Receiving Report, and DD Form 250 series equivalents for repair of Government property and energy-related overland or waterborne shipments.

**Jennifer D. Johnson,**  
Editor/Publisher, Defense Acquisition  
Regulations System.

[FR Doc. 2023-21228 Filed 9-27-23; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

[Docket Number: DARS-2023-0034; OMB  
Control Number 0704-0272]

### Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Occupational Safety, Drug-Free Work Force and Related Clauses

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

**ACTION:** Notice and request for  
comments regarding a proposed  
extension of an approved information  
collection requirement.

**SUMMARY:** In compliance with the  
Paperwork Reduction Act of 1995, DoD  
announces the proposed extension of a  
public information collection  
requirement, and seeks public comment  
on the provisions thereof. DoD invites  
comments on: whether the proposed  
collection of information is necessary  
for the proper performance of the  
functions of DoD, including whether the  
information will have practical utility;  
the accuracy of DoD's estimate of the

burden of the proposed information  
collection; ways to enhance the quality,  
utility, and clarity of the information to  
be collected; and ways to minimize the  
burden of the information collection on  
respondents, including through the use  
of automated collection techniques or  
other forms of information technology.  
The Office of Management and Budget  
(OMB) has approved this information  
collection for use under Control Number  
0704-0272 through January 31, 2024.  
DoD proposes that OMB approve an  
extension of the information collection  
requirement, to expire three years after  
the approval date.

**DATES:** DoD will consider all comments  
received by November 27, 2023.

**ADDRESSES:** You may submit comments,  
identified by OMB Control Number  
0704-0272, using any of the following  
methods:

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

○ *Email:* *osd.dfars@mail.mil.* Include  
OMB Control Number 0704-0272 in the  
subject line of the message.

Comments received generally will be  
posted without change to *https://*  
*www.regulations.gov*, including any  
personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr.  
David Johnson, 202-913-5764.

#### SUPPLEMENTARY INFORMATION:

*Title and OMB Number:* Environment,  
Energy and Water Efficiency, Renewable  
Energy Technologies, Occupational  
Safety, and Drug-free Workplace—DoD  
FAR Supplement Part 223; OMB Control  
Number 0704-0272.

*Affected Public:* Businesses or other  
for-profit and not-for-profit institutions.

*Respondent's Obligation:* Required to  
obtain or retain benefits.

*Respondents:* 4,527.

*Responses per Respondent:* 15.3,  
approximately.

*Annual Responses:* 69,239.

*Hours per Response:* 8.4

approximately.

*Annual Burden Hours:* 581,147 hours.

*Reporting Frequency:* On occasion.

*Needs and Uses:* This information  
collection requires that an offeror or  
contractor submit information to DoD in  
response to DFARS solicitation four  
contract clauses relating to occupational  
safety and drug-free work force program.  
DoD contracting officers use this  
information to—

○ Verify compliance with  
requirements for labeling of hazardous  
materials;

○ Ensure contractor compliance and  
monitor subcontractor compliance with  
DoD 4145.26-M, DoD Contractors'  
Safety Manual for Ammunition and

Explosives, and minimize risk of  
mishaps;

○ Identify the place of performance of  
all ammunition and explosives work;  
and

○ Ensure contractor compliance and  
monitor subcontractor compliance with  
DoD 5100.76-M, Physical Security of  
Sensitive Conventional Arms,  
Ammunition, and Explosives.

○ Ensure compliance with the clause  
program requirements with regard to  
programs for achieving the objective of  
a drug-free work force; requires  
contractor recordkeeping.

#### Summary of Information Collection

This information collection addresses  
the following requirements:

1. *DFARS 252.223-7001, Hazard  
Warning Labels.* Paragraph (c) requires  
all offerors to list which hazardous  
materials will be labeled in accordance  
with certain statutory requirements  
instead of the Hazard Communication  
Standard. Paragraph (d) requires only  
the apparently successful offeror to  
submit, before award, a copy of the  
hazard warning label for all hazardous  
materials not listed in paragraph (c) of  
the clause.

2. *DFARS 252.223-7002, Safety  
Precautions for Ammunition and  
Explosives.* Paragraph (c)(2) requires the  
contractor, within 30 days of  
notification of noncompliance with DoD  
4145.26-M, to notify the contracting  
officer of actions taken to correct the  
noncompliance. Paragraph (d)(1)  
requires the contractor to notify the  
contracting officer immediately of any  
mishaps involving ammunition or  
explosives. Paragraph (d)(3) requires the  
contractor to submit a written report of  
the investigation of the mishap to the  
contracting officer. Paragraph (g)(4)  
requires the contractor to notify the  
contracting officer before placing a  
subcontract for ammunition or  
explosives.

3. *DFARS 252.223-7003, Changes in  
Place of Performance—Ammunition  
and Explosives.* Paragraph (a) requires  
the offeror to identify, in the Place of  
Performance provision of the  
solicitation, the place of performance of  
all ammunition and explosives work  
covered by the Safety Precautions for  
Ammunition and Explosives clause of  
the solicitation. Paragraphs (b) and (c)  
require the offeror or contractor to  
obtain written permission from the  
contracting officer before changing the  
place of performance after the date set  
for receipt of offers or after contract  
award.

4. *DFARS 252.223-7007,  
Safeguarding Sensitive Conventional  
Arms, Ammunition, and Explosives.*

Paragraph (e) requires the contractor to notify the cognizant Defense Security Service field office within 10 days after award of any subcontract involving sensitive conventional arms, ammunition, and explosives within the scope of DoD 5100.76–M.

5. *DFARS 252.223–7004, Drug-Free Work Force.* The clause requires that certain contractors maintain records necessary to demonstrate reasonable efforts to eliminate the unlawful use by contractor employees of controlled substances. DoD does not regularly collect any information with regard to this clause.

**Jennifer D. Johnson,**

*Editor/Publisher, Defense Acquisition Regulations System.*

[FR Doc. 2023–21230 Filed 9–27–23; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

[Docket Number DARS–2023–0033; OMB Control Number 0704–0252]

#### Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Part 251, Use of Government Sources by Contractors

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

**ACTION:** Notice and request for comments regarding a proposed extension of an approved information collection requirement.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of DoD's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use under Control Number 0704–0252 through January 31, 2024. DoD proposes that OMB approve an

extension of the information collection requirement, to expire three years after the approval date.

**DATES:** DoD will consider all comments received by November 27, 2023.

**ADDRESSES:** You may submit comments, identified by OMB Control Number 0704–0252, using any of the following methods:

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

*Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include OMB Control Number 0704–0252 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided.

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

#### SUPPLEMENTARY INFORMATION:

*Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS), Part 251, Use of Government Sources by Contractors, and related clause at DFARS 252.251; OMB Control Number 0704–0252.

*Affected Public:* Businesses or other for-profit and not-for profit institutions.

*Respondent's Obligation:* Required to obtain or retain benefits.

*Frequency:* On occasion.

*Number of Respondents:* 1,684.

*Responses per Respondent:* 9.1.

*Annual Responses:* 15,347.

*Average Burden per Response:* 0.5.

*Annual Burden Hours:* 7,674.

*Needs and Uses:* This information collection permits contractors to place orders from Government supply sources, including Federal Supply Schedules, requirements contracts, and Government stock. Contractors are required to provide a copy of their written authorization to use Government supply sources with their order. The authorization is used by the Government source of supply to verify that a contractor is authorized to place such orders and under what conditions. The clause at DFARS 252.251–7000, Ordering from Government Supply Sources, requires a contractor to provide a copy of the authorization when placing an order under a Federal Supply Schedule, a Personal Property Rehabilitation Price Schedule, or an Enterprise Software Agreement.

**Jennifer D. Johnson,**

*Editor/Publisher, Defense Acquisition Regulations System.*

[FR Doc. 2023–21229 Filed 9–27–23; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

[Docket Number DARS–2023–0027; OMB Control Number 0704–0332]

#### Information Collection Requirement; DoD Pilot Mentor-Protege Program

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

**ACTION:** Notice.

**SUMMARY:** The Defense Acquisition Regulations System has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by October 30, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

You may also submit comments, identified by docket number and title, by the following method: Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571–372–7574, or [whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil](mailto:whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil).

#### SUPPLEMENTARY INFORMATION:

*Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Appendix I; OMB Control Number 0704–0332.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Businesses or other for-profit and not-for-profit institutions.

*Respondent's Obligation:* Required to obtain or retain benefits.

*Frequency:* On Occasion

*Number of Respondents:* 105.

*Responses per Respondent:* 2, approximately.

*Annual Responses:* 212.

*Average Burden per Response:* 2.41 hours, approximately.

*Annual Burden Hours:* 512.

*Needs and Uses:* Section 831 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1991 (Pub. L. 101–510, 10 U.S.C. 2302 Note, redesignated as 10 U.S.C. 4902) required DoD to establish the DoD Pilot Mentor-

Protege Program (the “Program”). Congress requires DoD to collect certain information from program participants in section 861, paragraph (b)(2), of Public Law 114–92. Thus, the need for this information collection is to comply with existing laws. DoD has incorporated these information collection requirements into the DFARS in section I–112 of Appendix I. Program participants agree to comply with these information collection requirements when they execute their mentor-protege agreements, receiving the program’s benefits in consideration.

This information is necessary to ensure that participants are fulfilling their obligations under the mentor-protege agreements and furthering the purpose of the Mentor-Protege Program as required by section 18(d)(7) of the Small Business Act (15 U.S.C. 637(d)(7)). In accordance with 10 U.S.C. 4902, DoD uses the information to decide whether to approve continuation of the agreement. In addition, the information is necessary for program managers to direct developmental assistance to the most appropriate small business concerns and to ensure the program meets the Congressionally-mandated goal of enhancing the defense industrial base.

*DoD Clearance Officer:* Ms. Angela Duncan. Requests for copies of the information collection proposal should be sent to Ms. Duncan at [whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil](mailto:whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil).

**Jennifer D. Johnson,**  
*Editor/Publisher, Defense Acquisition Regulations System.*

[FR Doc. 2023–21240 Filed 9–27–23; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

[Docket Number DARS–2023–0035; OMB Control Number 0704–0386]

### Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Small Business Programs

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

**ACTION:** Notice and request for comments regarding a proposed extension of an approved information collection requirement.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a

public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of DoD’s estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement under Control Number 0704–0386 through January 31, 2024. DoD proposes that OMB approve an extension of the information collection requirement, to expire three years after the approval date.

**DATES:** DoD will consider all comments received by November 27, 2023.

**ADDRESSES:** You may submit comments, identified by OMB Control Number 0704–0386, using any of the following methods:

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

○ *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include OMB Control Number 0704–0386 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jeanette Snyder, at 703–508–7524.

#### SUPPLEMENTARY INFORMATION:

*Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS), Small Business Programs and associated clauses in Part 252; OMB Control Number 0704–0386.

*Affected Public:* Businesses or other for-profit and not-for-profit institutions.

*Respondent’s Obligation:* Required to obtain or retain benefits.

*Respondents:* 41.

*Responses per respondent:* 1.

*Annual Responses:* 41.

*Hours per response:* 1.

*Estimated Hours:* 41.

*Frequency:* On occasion.

*Needs and Uses:* DoD uses this information to improve administration under the small business subcontracting program and to evaluate a contractor’s past performance in complying with its subcontracting plan. The clause at DFARS 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), is prescribed for use in solicitations and

contracts that include the clause at FAR 52.219–9, Small Business Subcontracting Plan. Paragraph (e) of the clause requires the contractor to notify the contracting officer, in writing, of any substitutions of firms that are not small business firms, for the small business firms specifically identified in the subcontracting plan. The notification is necessary when (1) a prime contractor has identified specific small business concerns in its subcontracting plan, and (2) after contract award, substitutes one of the small businesses identified in its subcontracting plan with a firm that is not a small business. The intent of this information collection is to alert the contracting officer of this situation.

**Jennifer D. Johnson,**  
*Editor/Publisher, Defense Acquisition Regulations System.*

[FR Doc. 2023–21231 Filed 9–27–23; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

[Docket DARS–2023–0036; OMB Control Number 0704–0497]

### Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Part 215 Negotiation

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

**ACTION:** Notice and request for comments regarding a proposed extension of an approved information collection requirement.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of DoD’s estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use under Control Number

0704–0497 through January 31, 2024. DoD proposes that OMB approve an extension of the information collection requirement, to expire three years after the approval date.

**DATES:** DoD will consider all comments received by November 27, 2023.

**ADDRESSES:** You may submit comments, identified by OMB Control Number 0704–0497, using any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include OMB Control Number 0704–0245 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jon Snyder, 703–945–5341.

**SUPPLEMENTARY INFORMATION:**

*Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Part 215 Negotiation; OMB Control Number 0704–0497.

*Respondent's Obligation:* Required to obtain or retain benefits.

*Affected Public:* Businesses or other for-profit and not-for-profit institutions.

*Number of Respondents:* 157.

*Responses per Respondent:* 1.

*Annual Responses:* 157.

*Average Burden per Response:* 4 hours.

*Annual Burden Hours:* 628.

*Frequency:* On Occasion.

*Needs and Uses:* DFARS 215.403–5 provides contractors with guidance for the submittal of forward pricing rate proposals, including a checklist for contractors to use in preparing their proposals. The checklist is submitted to DoD with the forward pricing rate proposal. The purpose of this information collection is to improve the efficiency of the negotiations process by ensuring the submission of thorough, accurate, and complete forward pricing rate proposals. If the contracting officer determines that a forward pricing rate proposal should be obtained pursuant to Federal Acquisition Regulation 42.1701, then contractors following the contract cost principles for commercial organizations in FAR subpart 31.2 will be required to submit a forward pricing rate proposal that complies with Federal Acquisition Regulation 15.408, Table 15–2, and DFARS 215.403–5 and 215.407–5–70. The forward pricing rate proposal adequacy checklist at Table 215.403–1 is used by the contracting officer and the contractor to ensure the proposal is complete. The completed

forward pricing rate proposal adequacy checklist will be submitted to DoD with the forward pricing rate proposal.

**Jennifer D. Johnson,**  
*Editor/Publisher, Defense Acquisition Regulations System.*

[FR Doc. 2023–21232 Filed 9–27–23; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

**[Docket DARS–2023–0031; OMB Control Number 0704–0245]**

### Information Collection Requirement; Defense Federal Acquisition Regulation Supplement (DFARS) Part 247, Transportation and Related Clauses

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

**ACTION:** Notice and request for comments regarding a proposed extension of an approved information collection requirement.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use under Control Number 0704–0245 through January 31, 2024. DoD proposes that OMB approve an extension of the information collection requirement, to expire three years after the approval date.

**DATES:** DoD will consider all comments received by November 27, 2023.

**ADDRESSES:** You may submit comments, identified by OMB Control Number 0704–0245, using any of the following methods:

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

- *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include OMB Control Number 0704–0245 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jon Snyder, 703–945–5341.

**SUPPLEMENTARY INFORMATION:** *Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Part 247, Transportation, and related clauses, OMB Control Number 0704–0245.

*Type of Request:* Extension.

*Affected Public:* Businesses or other for-profit and not-for-profit institutions.  
*Respondent's Obligation:* Required to obtain or retain benefits.

*Respondents:* 18,298.

*Responses per Respondent:* 6.47.

*Annual Responses:* 118,326.

*Hours per response:* 0.57.

*Estimated Hours:* 67,101

*Reporting Frequency:* On occasion.

*Needs and Uses:* DoD contracting officers use this information to verify that prospective contractors have adequate insurance prior to award of stevedoring contracts; to provide appropriate price adjustments to stevedoring contracts; to assist the Maritime Administration in monitoring compliance with requirements for use of U.S.-flag vessels in accordance with the Cargo Preference Act of 1904 (10 U.S.C. 2631); and to provide appropriate and timely shipping documentation and instructions to contractors.

The clause at DFARS 252.247–7000, Hardship Conditions, is prescribed at DFARS 247.270–4(a) for use in all solicitations and contracts for the acquisition of stevedoring services. Paragraph (a) of the clause requires the contractor to notify the contracting officer of unusual conditions associated with loading or unloading a particular cargo, for potential adjustment of contract labor rates; and to submit any associated request for price adjustment to the contracting officer within 10 working days of the vessel sailing time.

The clause at DFARS 252.247–7002, Revision of Prices, is prescribed at DFARS 247.270–4(b) for use in solicitations and contracts when using negotiation to acquire stevedoring services. Paragraph (c) of the clause provides that, at any time, either the contracting officer or the contractor may deliver to the other a written demand that the parties negotiate to revise the prices under the contract. Paragraph (d) of the clause requires that, if either party makes such a demand, the contractor must submit relevant data upon which to base negotiations.

The clause at DFARS 252.247–7007, Liability and Insurance, is prescribed at DFARS 247.270–4(c) for use in all solicitations and contracts for the acquisition of stevedoring services. Paragraph (f) of the clause requires the contractor to furnish the contracting officer with satisfactory evidence of insurance.

The provision at DFARS 252.247–7022, Representation of Extent of Transportation by Sea, is prescribed at DFARS 247.574(a) for use in all solicitations except those for direct purchase of ocean transportation services or those with an anticipated value at or below the simplified acquisition threshold. Paragraph (b) of the provision requires the offeror to represent whether or not it anticipates that supplies will be transported by sea in the performance of any contract or subcontract resulting from the solicitation.

The clause at DFARS 252.247–7023, Transportation of Supplies by Sea, is prescribed at DFARS 247.574(b) for use in all solicitations and contracts except those for direct purchase of ocean transportation services. Paragraph (d) of the clause requires the contractor to submit any requests for use of other than U.S.-flag vessels in writing to the contracting officer. Paragraph (e) of the clause requires the contractor to submit one copy of the rated on board vessel operating carrier's ocean bill of lading. Paragraph (f) of the clause, if the contract exceeds the simplified acquisition threshold, requires the contractor to represent, with its final invoice, that: (1) no ocean transportation was used in the performance of the contract; (2) only U.S.-flag vessels were used for all ocean shipments under the contract; (3) the contractor had the written consent of the contracting officer for all non-U.S.-flag ocean transportation; or (4) shipments were made on non-U.S.-flag vessels without the written consent of the contracting officer. Contractors must flow down these requirements to noncommercial subcontracts and certain types of commercial subcontracts. Subcontracts at or below the simplified acquisition threshold are excluded from the requirements of paragraph (f) stated above. Paragraph (h) of the clause, requires the contractor, after award, to notify the contracting officer if the contractor learns that supplies will be transported by sea and the contractor indicated, in the solicitation, that the contractor did not anticipate transporting any supplies by sea.

The clause at DFARS 252.247–7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to

Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, is prescribed at DFARS 247.574(d) in solicitations that require a covered vessel for carriage of cargo for DoD. Paragraph (c) of the clause requires the offeror to provide information with its offer, addressing all covered vessels for which overhaul, repair, and maintenance work has been performed during the period covering the current calendar year, up to the date of proposal submission, and the preceding four calendar years.

The clause at DFARS 252.247.7028, Application for U.S. Government Shipping Documentation/Instructions, is prescribed at DFARS 247.207(2) for inclusion in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, when shipping under Bills of Lading and Domestic Route Order under FOB origin contract, Export Traffic Release regardless of FOB terms, or foreign military sales shipments. Paragraph (a) of the clause requires contractors to complete DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions to request shipping instructions, unless an automated system is available (paragraph (b) of the clause).

**Jennifer D. Johnson,**  
*Editor/Publisher, Defense Acquisition Regulations System.*

[FR Doc. 2023–21227 Filed 9–27–23; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID: DoD–2023–OS–0090]

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary of Defense, Department of Defense (DoD).

**ACTION:** Notice of a new system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, the DoD is issuing a new system of records titled, “National Guard Youth Challenge Program (NGYCP) Records,” DPR 32. This system of records is being established by the Office of the Under Secretary of Defense for Personnel and Readiness to collect and maintain records on youth ages 15½ to 18 who utilize services provided by the National Guard Youth Challenge Academies in their respective states. The data will

also be used for longitudinal tracking for higher learning placement, employment placement, justice recidivism, and analysis of program effectiveness.

**DATES:** This system of records is effective upon publication; however, comments on the Routine Uses will be accepted on or before October 30, 2023. The Routine Uses are effective at the close of the comment period.

**ADDRESSES:** You may submit comments, identified by docket number and title, by either of the following methods:

\* *Federal Rulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

\* *Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <https://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

### FOR FURTHER INFORMATION CONTACT:

Jessica Levin, Privacy and Civil Liberties Officer, Office of the Under Secretary of Defense for Personnel and Readiness, 4000 Defense Pentagon, Washington, DC 20301–4000, (202) 815–1083.

### SUPPLEMENTARY INFORMATION:

#### I. Background

The National Guard Youth Challenge Program is a preventive at-risk youth program that targets voluntary participants, primarily 15½ to 18 years of age, who have dropped out of school, ceased to continually attend secondary education institutions, or are not satisfactorily progressing, and are willing to become drug-free, and are crime-free. The Youth Challenge Program was established in Section 1076 of the National Defense Authorization Act for Fiscal Year 1998 (32 U.S.C. 509) to address the school dropout crisis by improving education, life skills, and employment potential of participants. This is accomplished by providing military-based training, supervised work experience, and by advancing the program's core components. These core components include life coping skills, leadership, followership, service to community, job

skills, academic excellence, responsible citizenship, health/hygiene and physical education. Academic excellence focuses on helping the participants obtain a high school diploma, an equivalency diploma or valid credits to facilitate their return to finish high school. Job skills training is expanded upon in the optional job challenge phase where participants (or cadets, as they are called) continue, after graduating Youth Challenge, in order to obtain a job certification, credential or apprenticeship.

The Youth Challenge is a residential education and training program. The 22-week residential period is quasi-military, but there is no requirement for military service. After the residential period, trainees participate in a one-year structured mentoring program.

This system of records covers records on all participating youth using the services provided by the National Guard Youth Challenge Program locations in their respective states.

DoD SORNs have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Office of the Assistant to the Secretary for Defense for Privacy, Civil Liberties, and Transparency (OATSD(PCLT)) website at <https://dpcl.d.defense.gov/privacy>.

## II. Privacy Act

Under the Privacy Act, a “system of records” is a group of records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined as a U.S. citizen or lawful permanent resident.

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A-108, OATSD(PCLT) has provided a report of this system of records to the OMB and to Congress.

Dated: September 22, 2023.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

### SYSTEM NAME AND NUMBER:

National Guard Youth Challenge Program (NGYCP) Records, DPR 32.

### SECURITY CLASSIFICATION:

Unclassified.

### SYSTEM LOCATION:

Decentralized State NGYCP Program Offices; National Guard Bureau Directorate of Manpower & Personnel, Office of Youth Programs (NGB-J1-Y),

111 S George Mason Dr., Arlington, VA 22204.

### SYSTEM MANAGER:

Director, Civil-Military Programs, Office of the Assistant Secretary of Defense for Manpower & Reserve Affairs, Office of the Under Secretary of Defense for Personnel and Readiness, 1400 Defense Pentagon, Room 2E565, Washington, DC 20301, email: [ng.ncr.ngb-arng.mbx.ngycp@mail.mil](mailto:ng.ncr.ngb-arng.mbx.ngycp@mail.mil).

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel & Readiness; 32 U.S.C. 509, National Guard Youth Challenge Program of opportunities for civilian youth; DoD Instruction 1025.08, National Guard Youth Challenge Program; and E.O. 9397 (SSN), as amended.

### PURPOSE(S) OF THE SYSTEM:

A. To intervene in and reclaim the lives of 15½ to 18-year-old high school dropouts, producing program graduates with the values, life skills, education, and self-discipline necessary to succeed as productive citizens.

B. To collect and maintain information on NGYCP participants in order to facilitate program participation. The NGYCP program is a 22-week residential preventive program that targets at-risk youth who have dropped out of school, ceased to continually attend secondary education institutions, or are not satisfactorily progressing, are willing to become drug-free, and are crime-free.

C. To facilitate programs to assist participants in earning their high school diploma or high school equivalency diploma, learning personal responsibility and good hygiene/health practices, and receiving employment assistance and responsible adult mentorship.

D. To conduct longitudinal tracking for higher learning placement, employment placement, justice recidivism, and analysis of program effectiveness.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. citizens or legal permanent residents between the ages of 15½ to 18 years of age who apply for or are accepted into the NGYCP program.

### CATEGORIES OF RECORDS IN THE SYSTEM:

A. Biographic Information: name, Social Security Number (SSN), home address, personal telephone number, email address, date of birth, sex, gender, race/ethnicity, parent/guardian information, and educational grade.

B. Health Information, relevant to the individual's program participation and residency, such as allergies, medication instructions, substance abuse history, and psychological or mental health support needs.

C. Educational Information, such as courses, grades, standard test scores, trade certifications, completion diplomas/certificates, disciplinary data, and program completion notes.

D. Employment Information, such as applications, offers, promotions, disciplinary, terminations, wages, industry/occupation of employment, and benefits eligibility.

E. Legal information, such as nature and outcome of past criminal or civil charges or convictions, and parole or probationary status.

F. Other Program Information, such as mentor engagement notes.

### RECORD SOURCE CATEGORIES:

Records and information stored in this system of records are obtained from:

A. Individuals such as participant, parent or legal guardians, and school counselors or other school officials and mentors.

B. Local school districts, adult learning institutes (vocational/technical, community colleges, universities), State departments of education.

C. Federal, State, local health and human services databases, and law enforcement databases.

D. Federal, State, or local employment/labor departments.

### 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, as amended, all or a portion of the records or information contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government when necessary to accomplish an agency function related to this system of records.

B. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

C. To any component of the Department of Justice for the purpose of



representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

D. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

E. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

F. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

G. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (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 DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

H. To another Federal agency or Federal entity, when the DoD 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.

I. To another Federal, State or local agency for the purpose of comparing to the agency's system of records or to non-Federal records, in coordination with an Office of Inspector General in conducting an audit, investigation, inspection, evaluation, or some other review as authorized by the Inspector General Act of 1978, as amended.

J. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

K. To school districts, state departments of education, and adult learning institutions for the purpose of obtaining academic and other relevant data on performance and graduation/completion suitability to facilitate tracking higher level education placement as a measure of NGYCP program success.

L. To Federal, State, and local justice departments to collect information from these organizations to facilitate tracking potential incarcerations as a measure of NGYCP program success.

M. To Federal, State, and local employment/labor departments to obtain academic/vocation and other relevant data on performance, graduation/program completion and employment suitability to facilitate tracking employment placement and/or military service as a measure of NGYCP program success.

#### **POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Records may be stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, or digital media; in agency-owned cloud environments; or in vendor Cloud Service Offerings certified under the Federal Risk and Authorization Management Program (FedRAMP).

#### **POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Records may be retrieved by last name and SSN.

#### **POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Temporary. Cut off annually upon completion of course. Destroy 10 year(s) after removal, withdrawal or completion of the courses.

#### **ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Records are maintained in controlled areas accessible only to authorized personnel. Access to personal information is further restricted by the use of Common Access Cards and user ID/passwords. Paper records are maintained in a controlled facility where physical entry is restricted by the use of locks, a card access control system, staffed reception areas and cameras inside and outside which monitor all doors. Technical controls in place include user identification and passwords, an Intrusion Detection System, encryption, firewalls, Virtual Private Networks and Public Key Infrastructure Certificates. Administrative controls in place include periodic security audits, ensuring only

authorized personnel have access to personally identifiable information, encryption of backups containing sensitive data, and securing backups off-site.

#### **RECORD ACCESS PROCEDURES:**

Individuals seeking access to their records should follow the procedures in 32 CFR part 310. Parents and guardians of minor children must follow the procedures in 32 CFR 310.3(d) to obtain access to records of the child. These procedures require the parent or legal guardian to establish: (1) The identity of the individual who is the subject of the record; (2) the parent/guardian's own identity; (3) that the requester is the parent or guardian of that individual, which may be proven by providing a copy of the individual's birth certificate showing parentage or a court order establishing the guardianship; and (4) that the parent or guardian is acting on behalf of the individual in making the request. Individuals should address written record access requests to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Division, 1155 Defense Pentagon, Washington, DC 20301-1155 Requester Service Center website: <https://www.esd.whs.mil/FOID/>. Signed written requests should contain the name and number of this system of records notice along with full name, SSN, current address, and email address of the individual. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the appropriate format:

If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."

#### **CONTESTING RECORD PROCEDURES:**

The DoD rules for accessing records, contesting contents, and appealing initial Component determinations are contained in 32 CFR part 310, or may be obtained from the system manager.

#### **NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether information about themselves is contained in this system of records should follow the instructions for Record Access Procedures above.



**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

None.

[FR Doc. 2023–21130 Filed 9–27–23; 8:45 am]

**BILLING CODE** 5001–06–P

**DEPARTMENT OF EDUCATION**

[Docket No.: ED–2023–SCC–0168]

**Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application for Grants Under the Talent Search Program (1894–0001)**

**AGENCY:** Office of Postsecondary Education (OPE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

**DATES:** Interested persons are invited to submit comments on or before October 30, 2023.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain) to access the site. Find this information collection request (ICR) by selecting “Department of Education” under “Currently Under Review,” then check the “Only Show ICR for Public Comment” checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the “View Information Collection (IC) List” link. Supporting statements and other supporting documentation may be found by clicking on the “View Supporting Statement and Other Documents” link.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Antoinette Edwards, (202) 453–7121.

**SUPPLEMENTARY INFORMATION:** The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance

the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Application for Grants under the Talent Search Program (1894–0001).

*OMB Control Number:* 1840–0818.

*Type of Review:* Extension without change of a currently approved ICR.

*Respondents/Affected Public:* State, Local, and Tribal Governments; Private Sector.

*Total Estimated Number of Annual Responses:* 1,230.

*Total Estimated Number of Annual Burden Hours:* 43,260.

*Abstract:* The application is needed to conduct future national competitions under the Talent Search (TS) Program. The TS Program provides grants to institutions of higher education, public and private agencies and organizations, community-based organizations with experience in serving disadvantaged youth, combinations of such institutions, agencies and organizations, and secondary schools to operate projects that serve qualified individuals from disadvantaged backgrounds.

This discretionary grant falls under the Streamlined Clearance Process for Discretionary Grant Information Collections, 1894–0001

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Dated: September 25, 2023.

**Kun Mullan,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2023–21181 Filed 9–27–23; 8:45 am]

**BILLING CODE** 4000–01–P

**DEPARTMENT OF EDUCATION**

[Docket No.: ED–2023–SCC–0173]

**Agency Information Collection Activities; Comment Request; Annual State Application Under Part C of the Individuals With Disabilities Act as Amended in 2004**

**AGENCY:** Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

**DATES:** Interested persons are invited to submit comments on or before November 27, 2023.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use <https://www.regulations.gov> by searching the Docket ID number ED–2023–SCC–0173. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <https://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Jennifer Simpson, 202–245–6042.

**SUPPLEMENTARY INFORMATION:** The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and

minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Annual State Application Under Part C of the Individuals with Disabilities Act as Amended in 2004.

*OMB Control Number:* 1820-0550.

*Type of Review:* An extension without change of a currently approved ICR.

*Respondents/Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 56.

*Total Estimated Number of Annual Burden Hours:* 560.

*Abstract:* This is a request for an extension of the Annual State Application under Part C of the Individuals with Disabilities Education Act as Amended in 2004 for Federal fiscal year 2024. The Individuals with Disabilities Education Act, when signed on December 3, 2004, became Public Law 108-446. In order to be eligible for a grant under 20 U.S.C. 1433, a State must provide assurance to the Secretary that the State has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State, infants and toddlers with disabilities who are homeless children and their families, and has in effect a statewide system that meets the requirements of 20 U.S.C. 1435. Some policies, procedures, methods, and descriptions must be submitted to the Secretary.

The review type for this collection is an extension. Additional text was added to the areas of the application template and application instructions that cover Sections III. B, III. C, and III. F to make

the instructions clearer and to minimize confusion as States prepare their application materials.

Dated: September 25, 2023.

**Kun Mullan,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2023-21269 Filed 9-27-23; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

[Docket No.: ED-2023-SCC-0172]

### **Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application for Grants: National Resource Centers Program and Foreign Language and Area Studies Fellowships Program (1894-0001)**

**AGENCY:** Office of Postsecondary Education (OPE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

**DATES:** Interested persons are invited to submit comments on or before October 30, 2023.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain) to access the site. Find this information collection request (ICR) by selecting "Department of Education" under "Currently Under Review," then check the "Only Show ICR for Public Comment" checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the "View Information Collection (IC) List" link. Supporting statements and other supporting documentation may be found by clicking on the "View Supporting Statement and Other Documents" link.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Carolyn Collins, 202-453-7854.

**SUPPLEMENTARY INFORMATION:** The Department is especially interested in

public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Application for Grants: National Resource Centers Program and Foreign Language and Area Studies Fellowships Program (1894-0001).

*OMB Control Number:* 1840-0807.

*Type of Review:* An extension without change of a currently approved ICR.

*Respondents/Affected Public:* Private Sector.

*Total Estimated Number of Annual Responses:* 165.

*Total Estimated Number of Annual Burden Hours:* 4,455.

*Abstract:* This information collection (OMB 1840-0807) includes application instructions and forms for the National Resource Centers (NRC) Program (CFDA Number 84.015A) and the Foreign Language and Area Studies (FLAS) Fellowships Program (CFDA Number 84.015B), authorized under Title VI of the Higher Education Act of 1965, as amended (20 U.S.C. 1122).

This collection is an extension of the previously approved information collection (application). There is no change to the form or instructions, although the burden decreases due to a different way of calculating burden hours.

The NRC Program provides grants to institutions of higher education (IHE) or consortia of IHEs to establish, strengthen, and operate comprehensive and undergraduate foreign language and area or international studies centers. These centers serve as centers of excellence for world language training and teaching, research, and instruction in fields needed to provide full understanding of areas, regions, or countries where the languages are commonly used.

The FLAS Fellowship Program awards allocations of fellowships, through institutions of higher education, to meritorious students enrolled in programs that offer performance-based instruction in world languages in combination with area studies, international studies, or the

international aspects of professional studies.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Dated: September 25, 2023.

**Kun Mullan,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2023–21271 Filed 9–27–23; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### President's Council of Advisors on Science and Technology

**AGENCY:** Office of Science, Department of Energy.

**ACTION:** Notice of renewal.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, and Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the President's Council of Advisors on Science and Technology (PCAST) has been renewed for a two-year period.

**FOR FURTHER INFORMATION CONTACT:** Dr. Reba Bandyopadhyay, Designated Federal Officer, PCAST, email: [PCAST@ostp.eop.gov](mailto:PCAST@ostp.eop.gov); telephone: (202) 881–7163.

**SUPPLEMENTARY INFORMATION:** The Council will provide advice and recommendations to the President on science and technology.

Additionally, the Secretary of Energy has determined that renewal of the PCAST is essential to conduct business and is in the public interest in connection with the performance duties imposed by law upon the Department of Energy. The Council will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act, and the rules and regulations in implementation of these acts.

**Signing Authority:** This document of the Department of Energy was signed on September 22, 2023, by Sarah E. Butler, Committee Management Officer, 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 September 25, 2023.

**Treena V. Garrett,**

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

[FR Doc. 2023–21182 Filed 9–27–23; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Oak Ridge

**AGENCY:** Office of Environmental Management, Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces an in-person/virtual hybrid meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, November 8, 2023; 6:00 p.m.–8:00 p.m. ET.

**ADDRESSES:** This hybrid meeting will be in-person at the Department of Energy (DOE) Information Center (address below) and virtually via Zoom. To attend virtually or to register for in-person attendance, please send an email to: [orssab@orem.doe.gov](mailto:orssab@orem.doe.gov) by 5:00 p.m. ET on Wednesday, November 1, 2023.

DOE Information Center, Office of Science and Technical Information, 1 Science.gov Way, Oak Ridge, Tennessee 37831.

**FOR FURTHER INFORMATION CONTACT:** Melyssa P. Noe, Deputy Designated Federal Officer, U.S. Department of Energy, Oak Ridge Office of Environmental Management (OREM), P.O. Box 2001, EM–942, Oak Ridge, TN 37831; Phone (865) 241–3315; or Email: [Melyssa.Noe@orem.doe.gov](mailto:Melyssa.Noe@orem.doe.gov). Or visit the website at [www.energy.gov/orssab](http://www.energy.gov/orssab).

#### SUPPLEMENTARY INFORMATION:

**Purpose of the Board:** The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental

restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on any EM program components.

#### *Tentative Agenda:*

- OREM Program Overview and Updates
- Work Plan Discussion
- Public Comment Period
- Board Business

**Public Participation:** This meeting is open to the public. The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board via email either before or after the meeting. Public comments received by no later than 5:00 p.m. ET on Wednesday, November 1, 2023, will be read aloud during the meeting. Comments will be accepted after the meeting, by no later than 5:00 p.m. ET on Monday, November 13, 2023. Please submit comments to [orssab@orem.doe.gov](mailto:orssab@orem.doe.gov). Please put “Public Comment” in the subject line. Individuals who wish to make oral statements should contact Melyssa P. Noe at the email address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to submit written public comments should email them as directed above. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

**Minutes:** Minutes will be available by emailing or calling Melyssa P. Noe at the email address and telephone number listed above. Minutes will also be available at the following website: <https://www.energy.gov/orem/listings/oak-ridge-site-specific-advisory-board-meetings>.

Signed in Washington, DC, on September 25, 2023.

**LaTanya Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2023–21237 Filed 9–27–23; 8:45 am]

**BILLING CODE 6450–01–P**

**DEPARTMENT OF ENERGY****Biological and Environmental Research Advisory Committee**

**AGENCY:** Office of Science, Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a virtual meeting of the Biological and Environmental Research Advisory Committee (BERAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, October 19, 2023; 11:00 a.m.–5:00 p.m. EST, Friday, October 20, 2023; 11:00 a.m.–5:00 p.m. EST.

**ADDRESSES:** Public attendance for this meeting will be virtual via webcast using Zoom. Instructions for Zoom, as well as any updates to meeting times or meeting agenda, can be found on the BERAC meeting website at: <https://science.osti.gov/ber/berac/Meetings>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Tristram West, Designated Federal Officer, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, BER/Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585–1290. Phone (301) 903–5155; fax (301) 903–5051 or email: [tristram.west@science.doe.gov](mailto:tristram.west@science.doe.gov).

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Committee:* To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the Biological and Environmental Research Program.

*Tentative Agenda:*

- News from the Office of Biological and Environmental Research
- News from the Biological Systems Science and Earth and Environmental Systems Sciences Divisions
- Update from the BERAC Subcommittee on Unified Data
- Update from the BERAC Subcommittee on Low Dose Radiation
- Briefings from Programs or recent Workshops
- BERAC business and discussion
- Public comment

*Public Participation:* The two-day meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, please send an email request to

both Tristram West at [tristram.west@science.doe.gov](mailto:tristram.west@science.doe.gov) and Andrew Flatness at [andrew.flatness@science.doe.gov](mailto:andrew.flatness@science.doe.gov). You must make your request for an oral statement at least five business days before the meeting. Reasonable provisions will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comments will be limited to five minutes each.

*Minutes:* The minutes of this meeting will be available for public review and copying within 45 days at the BERAC website: <https://science.osti.gov/ber/berac/Meetings/BERAC-Minutes>.

Signed in Washington, DC, on September 25, 2023.

**LaTanya Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2023–21238 Filed 9–27–23; 8:45 am]

**BILLING CODE 6450–01–P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****Combined Notice of Filings #1**

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER21–201–003.

*Applicants:* Atlantic City Electric Company, PJM Interconnection, L.L.C.

*Description:* Compliance filing: Atlantic City Electric Company submits tariff filing per 35: Atlantic City Electric Company Compliance Filing in ER21–201 to be effective 1/27/2020.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922–5077.

*Comment Date:* 5 p.m. ET 10/13/23.

*Docket Numbers:* ER21–203–003.

*Applicants:* Baltimore Gas and Electric Company, PJM Interconnection, L.L.C.

*Description:* Compliance filing: Baltimore Gas and Electric Company submits tariff filing per 35: Baltimore Gas and Electric Co. Compliance Filing in ER21–203 to be effective 1/27/2020.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922–5079.

*Comment Date:* 5 p.m. ET 10/13/23.

*Docket Numbers:* ER21–204–003.

*Applicants:* Commonwealth Edison Company, PJM Interconnection, L.L.C.

*Description:* Compliance filing: Commonwealth Edison Company submits tariff filing per 35: Commonwealth Edison Company Compliance Filing in ER21–204 to be effective 1/27/2020.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922–5081.

*Comment Date:* 5 p.m. ET 10/13/23.

*Docket Numbers:* ER21–205–003.

*Applicants:* Delmarva Power & Light Company, PJM Interconnection, L.L.C.

*Description:* Compliance filing: Delmarva Power & Light Company submits tariff filing per 35: Delmarva Power & Light Compliance Filing in ER21–205 to be effective 1/27/2020.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922–5073.

*Comment Date:* 5 p.m. ET 10/13/23.

*Docket Numbers:* ER21–206–003.

*Applicants:* Potomac Electric Power Company, PJM Interconnection, L.L.C.

*Description:* Compliance filing: Potomac Electric Power Company submits tariff filing per 35: PEPCO Compliance Filing in ER21–206 to be effective 1/27/2020.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922–5075.

*Comment Date:* 5 p.m. ET 10/13/23.

*Docket Numbers:* ER21–209–003.

*Applicants:* PECO Energy Company, PJM Interconnection, L.L.C.

*Description:* Compliance filing: PECO Energy Company submits tariff filing per 35: PECO Compliance Filing in ER21–209 to be effective 1/27/2020.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922–5078.

*Comment Date:* 5 p.m. ET 10/13/23.

*Docket Numbers:* ER23–2517–001.

*Applicants:* Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

*Description:* Tariff Amendment: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.17(b): 2023–09–22\_SA 3028 Ameren IL-Prairie Power Project #39 Macomb Substitute to be effective 9/30/2023.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922–5036.

*Comment Date:* 5 p.m. ET 10/13/23.

*Docket Numbers:* ER23–2813–001.

*Applicants:* Castle Solar, LLC.  
*Description:* Tariff Amendment: Amendment to Market-Based Rate Application to be effective 11/12/2023.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922–5042.

*Comment Date:* 5 p.m. ET 10/13/23.

*Docket Numbers:* ER23–2903–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2023–09–22\_SA 3277 Termination of EDF Renewables—OTP FCA (G359R) to be effective 9/23/2023.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922–5022.

*Comment Date:* 5 p.m. ET 10/13/23.

*Docket Numbers:* ER23–2904–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 5694; Queue No. AF1-022 to be effective 11/21/2023.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922-5027.

*Comment Date:* 5 p.m. ET 10/13/23.

*Docket Numbers:* ER23-2905-000.

*Applicants:* Midcontinent Independent System Operator, Inc., MidAmerican Energy Company.

*Description:* § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 2023-09-22\_SA 2314 MidAmerican Lehigh-Webster 4th Rev FOA to be effective 9/23/2023.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922-5032.

*Comment Date:* 5 p.m. ET 10/13/23.

*Docket Numbers:* ER23-2906-000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 6108; Queue No. AE1-183 to be effective 11/21/2023.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922-5045.

*Comment Date:* 5 p.m. ET 10/13/23.

*Docket Numbers:* ER23-2907-000.

*Applicants:* Pennsylvania Electric Company, PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Pennsylvania Electric Company submits tariff filing per 35.13(a)(2)(iii): PENELEC Amends 10 ECSAs (5437 5438 5507 5508 5511 5512 5514 5515 5567 5568) to be effective 12/31/9998.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922-5051.

*Comment Date:* 5 p.m. ET 10/13/23.

*Docket Numbers:* ER23-2908-000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2023-09-22\_Attachment X, Appendix 6-GIA, True-Up filing to be effective 10/21/2021.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922-5055.

*Comment Date:* 5 p.m. ET 10/13/23.

*Docket Numbers:* ER23-2909-000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2023-09-22\_SA 3241 Termination of Deuel Harvest Wind Energy-NSP-OTP FCA (J526) to be effective 9/23/2023.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922-5059.

*Comment Date:* 5 p.m. ET 10/13/23.

*Docket Numbers:* ER23-2910-000.

*Applicants:* Tri-State Generation and Transmission Association, Inc.

*Description:* § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 354 to be effective 8/25/2023.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922-5063.

*Comment Date:* 5 p.m. ET 10/13/23.

*Docket Numbers:* ER23-2911-000.

*Applicants:* Louisville Gas and Electric Company.

*Description:* Tariff Amendment: Notice of Cancellation KMPA NITSA Non-Conforming to be effective 9/6/2023.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922-5069.

*Comment Date:* 5 p.m. ET 10/13/23.

*Docket Numbers:* ER23-2912-000.

*Applicants:* Alabama Power Company, Georgia Power Company, Mississippi Power Company.

*Description:* Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Camp Lawton Solar LGIA Termination Filing to be effective 9/22/2023.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922-5085.

*Comment Date:* 5 p.m. ET 10/13/23.

*Docket Numbers:* ER23-2913-000.

*Applicants:* Southern California Edison Company.

*Description:* Tariff Amendment: Termination of Baldy Mesa LGIA (TOT851-Q1413/SA No. 256) to be effective 11/22/2023.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922-5086.

*Comment Date:* 5 p.m. ET 10/13/23.

*Docket Numbers:* ER23-2914-000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Original NSA, Service Agreement No. 7077; Queue No. AE2-176 to be effective 11/22/2023.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922-5094.

*Comment Date:* 5 p.m. ET 10/13/23.

*Docket Numbers:* ER23-2915-000.

*Applicants:* Chesapeake Solar Project, LLC.

*Description:* Baseline eTariff Filing: Chesapeake Solar Project, LLC Application for MBR Authorization to be effective 11/1/2023.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922-5108.

*Comment Date:* 5 p.m. ET 10/13/23.

*Docket Numbers:* ER23-2916-000.

*Applicants:* Public Service Electric and Gas Company, PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Public Service Electric and Gas Company submits tariff filing per 35.13(a)(2)(iii): PSE&G Application for Abandoned Plant Incentive to be effective 11/22/2023.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922-5109.

*Comment Date:* 5 p.m. ET 10/13/23.

*Docket Numbers:* ER23-2917-000.

*Applicants:* California Independent System Operator Corporation.

*Description:* § 205(d) Rate Filing: 2023-09-22 Subscriber Participating Transmission Owner Model Tariff Amendment to be effective 12/21/2023.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922-5132.

*Comment Date:* 5 p.m. ET 10/13/23.

*Docket Numbers:* ER23-2918-000.

*Applicants:* Duke Energy Florida, LLC.

*Description:* § 205(d) Rate Filing: DEF-SECI RS No. 423 Reimbursement Agreement to be effective 11/22/2023.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922-5150.

*Comment Date:* 5 p.m. ET 10/13/23.

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, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) 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.

For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659. 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: September 22, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023-21258 Filed 9-27-23; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. IC23–15–000]

**Commission Information Collection Activities (FERC–516H) Comment Request; Extension****AGENCY:** Federal Energy Regulatory Commission, DOE.**ACTION:** Notice of information collection and request for comments.

**SUMMARY:** In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–516H, (Electric Rate Schedules and Tariff Filings, Pro Forma Open Access Transmission Tariff).

**ADDRESSES:** You may submit your comments (identified by Docket No. IC23–4–000) by one of the following methods:

Electronic filing through <https://www.ferc.gov>, is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.

- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:

- *Mail via U.S. Postal Service Only:*

Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

- *Hand (Including Courier) Delivery:*

Deliver to: Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, MD 20852.

**Instructions:** All submissions must be formatted and filed in accordance with submission guidelines at: <https://www.ferc.gov>. For user assistance, contact FERC Online Support by email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or by phone at (866) 208–3676 (toll-free).

*Docket:* Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <https://www.ferc.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Ellen Brown may be reached by email at [DataClearance@FERC.gov](mailto:DataClearance@FERC.gov), telephone at (202) 502–8663.

**SUPPLEMENTARY INFORMATION:**

*Title:* FERC–516H, Electric Rate Schedules and Tariff Filings, Pro Forma Open Access Transmission Tariff.

*OMB Control No.:* 1902–0303.

*Type of Request:* Three-year extension of the FERC–516H information collection requirements with no changes to the current reporting requirements.

*Abstract:* This information collection request pertains to a final rule<sup>1</sup> that, pursuant to section 206 of the Federal Power Act (FPA),<sup>2</sup> requires respondents that are subject to 18 CFR 35.28 to submit compliance filings within 120 days of the effective date of the final rule that add a new Attachment M to their *pro forma* Open Access Transmission Tariffs (OATTs). The effective date of the final rule is March 14, 2022. The OATT compliance filing is due July 12, 2022.

*FERC 516H:* The regulation at 18 CFR 35.28, which pertains to non-discriminatory open access transmission tariffs, applies to:

- Commission-jurisdictional public utilities that own, control, or operate facilities used for the transmission of electric energy in interstate commerce; and
- Non-jurisdictional utilities that seek voluntary compliance with jurisdictional transmission tariff reciprocity conditions.

In Order No. 881, the Commission added 18 CFR 35.28(c)(5) to require any public utility that owns transmission facilities that are not under the public utility's control to, consistent with the *pro forma* OATT required by 18 CFR 35.28(c)(1), share with the public utility that controls such facilities (and its

Market Monitoring Unit(s), if applicable):

(i) Transmission line ratings for each period for which transmission line ratings are calculated for such facilities (with updated ratings shared each time ratings are calculated); and

(ii) Written transmission line rating methodologies used to calculate the transmission line ratings for such facilities provided under subparagraph (i), above.

Additionally, 18 CFR 35.28(c) requires each public utility transmission provider to have on file with the Commission and adhere to the Commission's *pro forma* Open Access Transmission Tariff (OATT). In Order No. 881, the Commission added Attachment M of the Commission's *pro forma* OATT to require each jurisdictional transmission provider to maintain on the password-protected section of its OASIS page or on another password-protected website a database of transmission line ratings and transmission line rating methodologies. Such transmission line ratings and transmission line rating methodologies are to be calculated and provided by transmission owners. The database must include a full record of all transmission line ratings, both as used in real-time operations, and as used for all future periods for which transmission service is offered. Additionally, Attachment M of the Commission's *pro forma* OATT requires transmission providers, as the regulated entities, to share transmission line ratings and methodologies with any transmission provider(s) upon request and in a timely manner.

*Type of Respondent:* Transmission Owners.

*Estimate of Annual Burden:*<sup>3</sup> The Commission estimates the annual public reporting burden for the information collection as below:

<sup>3</sup> “Burden” is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

<sup>1</sup> 87 FR 2244 (January 13, 2022).

<sup>2</sup> 16 U.S.C. 824e.

| Area of modification                                                                                                                                                                                                    | Number of respondents | Annual estimated number of responses per respondent | Annual estimated number of responses (column B × column C) | Average burden hours & cost <sup>1</sup> per response | Total estimated burden hours & total estimated cost (column D × column E) |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|-----------------------------------------------------|------------------------------------------------------------|-------------------------------------------------------|---------------------------------------------------------------------------|
| A.                                                                                                                                                                                                                      | B.                    | C.                                                  | D.                                                         | E.                                                    | F.                                                                        |
| <b>FERC-516H (Control No. 1902-0303)</b>                                                                                                                                                                                |                       |                                                     |                                                            |                                                       |                                                                           |
| Transmission owners update forecasts and ratings, and share transmission line ratings and facility ratings methodologies w/transmission providers and, if applicable, RTOs/ISOs & market monitors (Year 1 and Ongoing). | 289 (TOs)             | 1                                                   | 289                                                        | 176 hrs; \$16,192 ....                                | 50,864 hrs; \$4,679,488.                                                  |

<sup>1</sup> The hourly cost (for salary plus benefits) uses the figures from the Bureau of Labor Statistics (BLS) for three positions involved in the reporting and recordkeeping requirements. These figures include salary (based on BLS data for May 2023, [http://bls.gov/oes/current/naics2\\_22.htm](http://bls.gov/oes/current/naics2_22.htm)) and benefits (based on BLS data issued March 19, 2022, <http://www.bls.gov/news.release/ecec.nr0.htm>) and are Manager (Code 11-0000 \$106.33/hour), Electrical Engineer (Code 17-2071 \$77.29/hour). The hourly cost for the reporting requirements (\$91.81 = \$92 rounded) is an average of the cost of a manager and engineer.

**Comments:** Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: September 22, 2023.

**Debbie-Anne A. Reese,**  
Deputy Secretary.

[FR Doc. 2023-21259 Filed 9-27-23; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas and Oil Pipeline Rate and Refund Report filings:

#### Filings Instituting Proceedings

*Docket Numbers:* RP23-1048-000.  
*Applicants:* Natural Gas Pipeline Company of America LLC.

*Description:* Compliance filing: Penalty Revenue Crediting Report from January through June 2023 to be effective N/A.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922-5021.

*Comment Date:* 5 p.m. ET 10/4/23.

*Docket Numbers:* RP23-1049-000.

*Applicants:* Transcontinental Gas Pipe Line Company, LLC.

*Description:* Compliance filing: Annual Cash-Out Report Period Ending July 31, 2023 to be effective N/A.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922-5057.

*Comment Date:* 5 p.m. ET 10/4/23.

*Docket Numbers:* RP23-1050-000.

*Applicants:* Wyoming Interstate Company, L.L.C.

*Description:* § 4(d) Rate Filing: Agreement Housekeeping Filing to be effective 11/1/2023.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922-5095.

*Comment Date:* 5 p.m. ET 10/4/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) 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:* RP23-789-001.

*Applicants:* Kinetica Deepwater Express, LLC.

*Description:* Compliance filing: Settlement Compliance Filing to be effective 11/1/2023.

*Filed Date:* 9/22/23.

*Accession Number:* 20230922-5056.

*Comment Date:* 5 p.m. ET 10/4/23.

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.

For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659. 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: September 22, 2023.

**Debbie-Anne A. Reese,**  
Deputy Secretary.

[FR Doc. 2023-21257 Filed 9-27-23; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Cove Point LNG, LP; Notice of Application and Establishing Intervention Deadline

Take notice that on September 8, 2023, Cove Point LNG, LP (CPL), 2100 Cove Point Road, Lusby, Maryland 20657, filed an application under sections 3 and 7(b) of the Natural Gas Act (NGA), and part 157 of the Commission's regulations requesting authorization to: (1) abandon certain liquefied natural gas (LNG) Terminating and Processing facilities previously certificated under NGA section 7; (2) abandon services provided under CPL's Rate Schedule LTD-1 of its FERC Gas Tariff and the cancellation of that Rate Schedule; (3) modify CPL's FERC Gas



Tariff to fully reflect the elimination of Rate Schedule LTD-1; and (4) convert such certificated facilities and operation under NGA section 3, so that the entirety of CPL's LNG Terminaling and Processing facilities and related operations are authorized solely under NGA section 3, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page ([www.ferc.gov](http://www.ferc.gov)) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact the Federal Energy Regulatory Commission at [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov) or call toll-free, (886) 208-3676 or TTY (202) 502-8659.

Any questions regarding the proposed project should be directed to Matthew Bley, Director, Gas Transmission Certificates, 6603 West Broad Street, Richmond, Virginia 23230 by phone at (804) 221-7854, or by email at [Matthew.bley@bhegts.com](mailto:Matthew.bley@bhegts.com).

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,<sup>1</sup> within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

### Public Participation

There are three ways to become involved in the Commission's review of this project: you can file comments on

the project, you can protest the filing, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on October 13, 2023. How to file protests, motions to intervene, and comments is explained below.

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).

### Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections, to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be.

### Protests

Pursuant to sections 157.10(a)(4)<sup>2</sup> and 385.211<sup>3</sup> of the Commission's regulations under the NGA, any person<sup>4</sup> may file a protest to the application. Protests must comply with the requirements specified in section 385.2001<sup>5</sup> of the Commission's regulations. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before October 13, 2023.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the Project docket number CP23-539-000 in your submission.

(1) You may file your comments electronically by using the *eComment* feature, which is located on the Commission's website at [www.ferc.gov](http://www.ferc.gov) under the link to *Documents and Filings*. Using *eComment* is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments or protests electronically by using the *eFiling* feature, which is located on the Commission's website ([www.ferc.gov](http://www.ferc.gov)) under the link to *Documents and Filings*. With *eFiling*, you can provide comments in a variety of formats by attaching them as a file with your submission. New *eFiling* users must first create an account by clicking on "*eRegister*." You will be asked to select the type of filing you are making; first select "General" and then select "Comment on a Filing"; or

(3) You can file a paper copy of your comments or protests by mailing them to the following address below. Your written comments must reference the Project docket number (CP23-539-000).

*To file via USPS:* Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

*To file via any other courier:* Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of comments (options 1 and 2 above) and has *eFiling* staff available to assist you at (202) 502-8258 or [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov).

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

### Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,<sup>6</sup> has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission

<sup>1</sup> 18 CFR (Code of Federal Regulations) 157.9.

<sup>2</sup> 18 CFR 157.10(a)(4).

<sup>3</sup> 18 CFR 385.211.

<sup>4</sup> Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

<sup>5</sup> 18 CFR 385.2001.

<sup>6</sup> 18 CFR 385.102(d).



in accordance with Rule 214 of the Commission's Rules of Practice and Procedure<sup>7</sup> and the regulations under the NGA<sup>8</sup> by the intervention deadline for the project, which is October 13, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to-intervene.asp>.

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP23–539–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website ([www.ferc.gov](http://www.ferc.gov)) under the link to Documents and Filings. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Intervention." The eFiling feature includes a document-less intervention option; for more information, visit <https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf>; or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP23–539–000.

**To file via USPS:** Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

**To file via any other courier:** Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov).

Protests and motions to intervene must be served on the applicant either by mail or email at: Matthew Bley, Director, Gas Transmission Certificates, 6603 West Broad Street, Richmond,

Virginia 23230 or at [Matthew.bley@bhagts.com](mailto:Matthew.bley@bhagts.com). Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed<sup>9</sup> motions to intervene are automatically granted by operation of Rule 214(c)(1).<sup>10</sup> Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.<sup>11</sup> A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

#### Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at [www.ferc.gov](http://www.ferc.gov) using the "eLibrary" link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to [www.ferc.gov/docs-filing/esubscription.asp](http://www.ferc.gov/docs-filing/esubscription.asp).

**Intervention Deadline:** 5:00 p.m. Eastern Time on October 13, 2023.

Dated: September 22, 2023.

**Debbie-Anne A. Reese,**  
Deputy Secretary.

[FR Doc. 2023–21261 Filed 9–27–23; 8:45 am]

**BILLING CODE 6717–01–P**

<sup>9</sup> The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

<sup>10</sup> 18 CFR 385.214(c)(1).

<sup>11</sup> 18 CFR 385.214(b)(3) and (d).

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. AD23–9–000]

#### Reliability Technical Conference; Supplemental Notice of Technical Conference

As announced in the Notice of Technical Conference issued in this proceeding on August 3, 2023, the Federal Energy Regulatory Commission (Commission) will convene its annual Reliability Technical Conference in the above-referenced proceeding on Thursday, November 9, 2023, from approximately 9 a.m. to 5 p.m. eastern time. The conference will include Commissioner-led and staff-led panels. The conference will be held in-person at the Commission's headquarters at 888 First Street NE, Washington, DC 20426 in the Commission Meeting Room.

The purpose of this conference is to discuss policy issues related to the reliability and security of the Bulk-Power System. The conference will also discuss the impact of the Environmental Protection Agency's proposed rule under section 111 of the Clean Air Act on electric reliability.<sup>1</sup>

The conference will be open for the public to attend, and there is no fee for attendance. Supplemental notices will be issued prior to the conference with further details regarding the agenda. Information on this technical conference will also be posted on the Calendar of Events on the Commission's website, [www.ferc.gov](http://www.ferc.gov), prior to the event.

The conference will also be transcribed. Transcripts will be available for a fee from Ace Reporting, (202) 347–3700.

Those who wish to nominate themselves for consideration as a panel participant should submit their name, title, company (or organization they are representing), telephone, email, a one-paragraph biography, picture, and panel in which they wish to participate to: [2023\\_Reliability\\_Conf@ferc.gov](mailto:2023_Reliability_Conf@ferc.gov) by close of business on October 2, 2023.

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),

<sup>1</sup> New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule, 88 FR 33240 (proposed May 23, 2023) (to be codified at 40 CFR part 60).

<sup>7</sup> 18 CFR 385.214.

<sup>8</sup> 18 CFR 157.10.

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 technical conference, please contact

Michael Gildea at [Michael.Gildea@ferc.gov](mailto:Michael.Gildea@ferc.gov) or (202) 502-8420. For information related to logistics, please contact Sarah McKinley at

[Sarah.Mckinley@ferc.gov](mailto:Sarah.Mckinley@ferc.gov) or (202) 502-8368.

Dated: September 22, 2023.

**Debbie-Anne A. Reese,**  
Deputy Secretary.



## 2023 Reliability Technical Conference

*Docket No. AD23-9-000*

November 9, 2023, 9:00 a.m.–5:00 p.m.

Morning Session: Bulk Power System Reliability and the Evolving Grid

9:00–9:15 a.m. Opening Remarks and Introductions

9:15–10:45 a.m. Morning Panel 1: State of Bulk Power System Reliability with a Focus on the Changing Resource Mix and Resource Adequacy (Commission Led)

The transformation of the Bulk-Power System is resulting in significant changes to the nation's power supply portfolio. These changes include increased penetrations of inverter-based resources, the increased use and importance of natural gas generating units for system balancing, and the participation of distributed energy resources. Ensuring the adequate supply of electric energy to service loads during peak hours and during extreme weather conditions is also becoming more challenging in many regions of North America. This panel will explore the current state of grid reliability, and resource and energy adequacy, and efforts that can be undertaken to improve them.

The panel will begin with a presentation by NERC of the findings, conclusions, and recommendations from its annual State of Reliability report.

This panel may include a discussion of the following topics and questions:

(1) What should the Commission's top reliability priorities be for the next one to three years? What are potential actions the Commission could take to improve reliability regarding these priorities?

(2) What trends and risks identified in NERC's 2023 State of Reliability Report and the 2023 ERO Reliability Risk Priorities Report warrant the most attention and effort?

(3) Resource adequacy traditionally has been characterized in terms of planning reserve margin, which assesses the excess generating capacity required to meet peak load. NERC and industry have recently been discussing the notion of energy adequacy, which assesses whether there is sufficient energy—power over time—to meet customers' energy needs. Is energy adequacy a more appropriate metric to characterize reliability risks given the changing grid?

(4) NERC has highlighted essential reliability services (e.g., frequency response, voltage control, and ramping capability) as core to maintaining reliable operation of the grid. How does the changing resource mix and characteristics of load affect the needed amount and provision of these essential reliability services? What actions, and by whom, are necessary to ensure adequate levels of these services?

(5) The electric grid is undergoing its most significant changes in a century. How should reliability oversight adapt to this change? Is the existing reliability oversight model flexible and agile enough to help lead the change?

(6) In recent years, reliance on natural gas as a fuel for electric generation has steadily increased. At the Commission's recommendation, the North American Energy Standards Board (NAESB) held forums between August 2022 and July 2023 to discuss the growing interdependence between the natural gas and electric sectors. NAESB issued recommendations to enhance market coordination to address challenges posed by this growing interdependence.

Should the Commission prioritize pursuing any specific NAESB recommendation?

(7) Wildfires are no longer considered only a California or Western states issue for grid reliability, as drought conditions are expanding into additional regions including MISO, ERCOT and SPP creating further reliability impacts. What preparations have you taken (or are you considering) to address emerging wildfire and drought reliability risks in your region?

10:45–11:00 a.m. Break

11:00–12:30 p.m. Morning Panel 2: CIP Reliability Standards and the Evolving Grid (Commission Led)

Cybersecurity vulnerabilities and threats continue to evolve at a pace that tests utility cybersecurity programs. These quickly evolving threats present a challenge when assessing whether security controls, including the CIP Reliability Standards, adequately respond to the latest cyber risks. Most utilities and other electric sector stakeholders with mature cybersecurity programs implement an overarching cybersecurity program to oversee all aspects of their cybersecurity activities, including identification of the assets to be protected, staffing, technology selection and procurement, and compliance with the CIP Reliability Standards. However, ongoing and anticipated changes to the interconnected electric grid, such as the shift in the types of energy sources used to generate electricity may disrupt cyber programs. Utilities are digitizing their grids while managing an increasing number of grid-connected devices. As a consequence, utilities require more advanced tools to process and analyze large amounts of data for grid planning, operations, and security. These changes are also leaving uncertainty as to where

these digital assets will fit into the cybersecurity regulatory framework and what tools can be used to effectively manage them or even what the future may bring as cyberattacks continue to grow in sophistication. This panel will discuss how the evolving grid affects cybersecurity, the CIP Reliability Standards and compliance, as well as best practices; the challenges of implementing appropriate oversight; and ways in which industry can address these challenges to improve its response to evolving vulnerabilities and threats to reduce the risk to the Bulk-Power System.

(1) Discuss the primary security issues facing electric utilities and describe the prioritization of resources and investment. What are some lessons learned and best practices?

(2) With regard to evolving cyber threats, describe how your cybersecurity program identifies and responds to such conditions. When responding, how do you assess the risk posed to your systems by the threats?

(3) Describe the benefits and challenges of implementing and maintaining a cybersecurity program as the resource mix continues to evolve. How does this program interact with actions to comply with the CIP Reliability Standards? How does such a program help to identify and prioritize security concerns, and what actions are taken to address those concerns, including the application of best practices?

(4) Describe how supply chain security and the use of third-party systems, such as cloud services, are addressed in your risk assessments and implemented in the cybersecurity program. What concerns still exist related to supply chain and third-party systems?

(5) What additional actions can the Commission, NERC, and industry take to further protect the grid from security threats, both physical and cyber?

12:30–1:15 p.m. Lunch Break

Afternoon Session: EPA's "Clean Power Plan 2.0" and Reliability

On May 23, 2023 the EPA issued a notice of proposed rulemaking under section 111 of the Clean Air Act. Several comments submitted to EPA on the proposed rule indicated that implementation of the proposal would affect electric reliability. The afternoon panels will discuss the possible reliability impacts of the rule and possible mitigations.

1:15–2:15 p.m. Afternoon Panel 1: EPA Presentation of EPA Section 111 Proposed Rule (Commission Led)

Joseph Goffman, Principal Deputy Assistant Administrator for the Office of Air and Radiation (OAR), Environmental Protection Agency (EPA), accompanied by staff, will provide an overview of the Section 111 Proposed Rule, and highlight specific issues relevant to the reliable operation of the electric system.

2:15–4:50 p.m. Afternoon Panels 2 and 3: Discuss the Proposed Rule (Staff Led)

—2:15–3:30 p.m. Electric Industry Stakeholders

—3:30–3:40 p.m. Break

—3:40–4:50 p.m. Regional, State, and Local Regulatory Entities

Afternoon Panels 2 and 3 will present perspectives on reliability aspects of the proposed rule, followed by an opportunity for questions and answers. Panelists for both Panels 2 and 3 should be prepared to discuss the following topics and questions:

(1) Will the rule, if implemented as proposed, affect electric reliability? In what ways?

(2) What tools and processes should the Commission, other federal and state agencies, and industry consider in order to implement the proposed rule? What authority should the Commission and other federal and state agencies have in order to address potential reliability issues that could arise during implementation of the proposed rule?

(3) What existing processes for coordination will enable federal and state agencies, planning entities, and industry stakeholders to share ongoing developments relevant to the implementation of the proposed rule?

(4) What specific tools are currently available to agencies to consider impacts to retail consumers? Are there additional tools that should be developed to consider these issues?

4:50–5:00 p.m. Closing Remarks

[FR Doc. 2023–21262 Filed 9–27–23; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER23–2899–000]

#### MS Solar 6, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of MS Solar 6, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that

such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene, or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 12, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

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: September 22, 2023.

**Debbie-Anne A. Reese,**  
Deputy Secretary.

[FR Doc. 2023-21263 Filed 9-27-23; 8:45 am]

BILLING CODE 6717-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OARM-2016-0762; FRL-11408-01-OMS]

### Agency Information Collection Activities; Proposed Information Collection Request; Comment Request; General Administrative Requirements for Assistance Programs

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), “General Administrative Requirements for Assistance Programs” (EPA ICR Number 0938.23, OMB Control Number 2030-0020) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through 6/30/2024. This notice allows for 60 days for public comments.

**DATES:** Comments must be submitted on or before November 27, 2023.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA-HQ-OARM-2016-0762, to EPA online using [www.regulations.gov](http://www.regulations.gov) (our preferred method), by email to [doCKET\\_oms@epa.gov](mailto:doCKET_oms@epa.gov), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA’s policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes

profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

#### FOR FURTHER INFORMATION CONTACT:

Amanda Kemp, Office of Grants and Debarment, National Policy, Training and Compliance Division, 3903R, Environmental Protection Agency, 1300 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202-564-0209; fax number: 202-565-2470; email address: [kemp.amanda@epa.gov](mailto:kemp.amanda@epa.gov).

**SUPPLEMENTARY INFORMATION:** This is a proposed extension of the ICR, which is currently approved through 6/30/2024. 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.

This notice allows 60 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at [www.regulations.gov](http://www.regulations.gov) or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA’s public docket, visit <http://www.epa.gov/dockets>.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate forms of information technology. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

**Abstract:** The information is collected from applicants and recipients of EPA assistance to monitor adherence to the programmatic and administrative

requirements of the Agency’s financial assistance program. The information collected is used to make awards, pay recipients, and collect information on how Federal funds are being spent. EPA needs this information to meet its Federal stewardship responsibilities. This ICR renewal requests authorization for the collection of information under EPA’s General Regulation for Assistance Programs, which establishes minimum management requirements for all recipients of EPA grants or cooperative agreements (assistance agreements). Recipients must respond to these information requests to obtain and/or retain a benefit (Federal funds). For awards made prior to December 26, 2014, 40 CFR part 30, “Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,” establishes the management requirements for institutions of higher education, hospitals, and other non-profit organizations, as well as procurement requirements for non-governmental recipients. For awards made prior to December 26, 2014, 40 CFR part 31, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” includes the management requirements for States, local governments, and Indian Tribal governments. For awards made after December 26, 2014, 2 CFR 200 and EPA’s implementation of 2 CFR 200 at 2 CFR 1500 “Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards” establishes the management requirements for all entity types. These regulations include only those provisions mandated by statute, required by Office of Management and Budget (OMB) Circulars, or added by EPA to ensure sound and effective financial assistance management. For all awards, 40 CFR part 33 “Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements” establishes DBE utilization requirements for all entity types. These regulations include only those provisions mandated by statute or added by EPA to ensure sound and effective financial assistance management with respect to DBE utilization. This ICR combines all of these requirements under OMB Control Number 2030-0020. The information required by these regulations will be used by EPA award officials to make assistance awards and assistance payments and to verify that the recipient is using Federal funds appropriately.

*Form Numbers:* To be determined.

*Respondents/affected entities:* The primary recipients of EPA assistance agreements are State and local governments, Indian Tribes, educational institutions, and not-for-profit institutions.

*Respondents' obligation to respond:* Required to obtain an assistance agreement (40 CFR part 30, 40 CFR part 31, and 40 CFR part 33 for awards made prior to December 26, 2014, and 2 CFR 200, 2 CFR 1500, and 40 CFR part 33 for awards made after December 26, 2014).

*Estimated number of respondents:* 3,048 (total).

*Frequency of response:* On occasion, quarterly, and annually.

*Total estimated burden:* 94,606 hours (per year). Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* \$6,054,791 (per year), which includes \$0 annualized capital or operation & maintenance costs.

*Changes in the estimates:* Estimated total respondent burden is likely to increase compared with the ICR currently approved by OMB due to an increase in the number of the estimated respondent universe.

**Rachel Lentz,**

*Acting Director, National Policy, Training and Compliance Division.*

[FR Doc. 2023–21164 Filed 9–27–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA–R08–OW–2019–0404; FRL–11434–01–OMS]

### Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Filter Adoption Survey (Renewal)

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Filter Adoption Survey (EPA ICR Number 2615.02, OMB Control Number 2008–0003) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through September 30, 2023. Public comments were previously requested via the **Federal Register** on February 17, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

**DATES:** Comments may be submitted on or before October 30, 2023.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA–R08–OW–2019–0404, to EPA online using [www.regulations.gov](http://www.regulations.gov) (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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:

Robert Parker, Supervisor, Drinking Water Section A, Water Division, 8WD–DWA, Environmental Protection Agency Region 8, 1595 Wynkoop Street, Denver Colorado 80202–1129; telephone number 303–312–6664; email address: [parker.robert@epa.gov](mailto:parker.robert@epa.gov).

**SUPPLEMENTARY INFORMATION:** This is a proposed extension of the ICR, which is currently approved through September 30, 2023. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested via the **Federal Register** on February 17, 2023 during a 60-day comment period (88 FR 10325). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at [www.regulations.gov](http://www.regulations.gov) or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

**Abstract:** Denver Water is a public water system that must comply with applicable requirements of the Lead and Copper Rule (LCR). On September 6,

2019, Denver Water submitted a request to EPA Region 8 for a variance from the optimal corrosion control treatment requirements under the Safe Drinking Water Act's LCR. The request proposed a multi-pronged approach to remove lead at least as efficiently as the use of orthophosphate (the designated optimal corrosion control treatment) by employing pH and alkalinity adjustments to reduce corrosivity of the water, accelerated lead service line removal, and a filter program in which Denver Water would distribute pitcher filters to consumers that have a known, suspected, or possible lead service line. Under section 1415(a)(3) of the Safe Drinking Water Act, on December 16, 2019, the U.S. EPA granted Denver Water a variance (2019 Variance) from the definition of “optimal corrosion control treatment” in 40 CFR 141.2. The 2019 Variance contained requirements to determine the efficacy of the filter program and a survey program was established to produce information to support that determination. That collection was approved under EPA ICR #2615.01.

On November 30, 2022, EPA issued a new variance to replace the expiring 2019 variance. Denver Water, EPA and CDPHE agreed that beginning in 2025, a survey conducted every two years (rather than annually) would be sufficient to determine the efficacy of the filter program. EPA will use the 2025 survey results that Denver Water collects to determine the consumer filter adoption rate and to confirm that customers are using and maintaining the filters per manufacturer's instructions. Every second year, the filter adoption survey will be sent by Denver Water via postal mail to approximately 20,000 of an estimated 119,250 individual homes that have received a pitcher filter through Denver Water's filter distribution program. Surveys will be sent via direct mail and will include an online completion option. Direct mailings will be sent with a unique QR code to track which addresses responses have been received from. Surveys will be sent out in both English and Spanish.

Furthermore, Denver Water must collect samples from filters in at least 50 locations in use by customers enrolled in the filter program who are also enrolled in Denver Water's LCR compliance tap sampling program. During the LCR compliance tap sampling visit, Denver Water will collect additional information on whether the filter is properly used and maintained, including but not limited to: whether the filter cartridge is properly installed and changed on time; whether the filter is being used for

drinking, cooking, or infant formula; and whether the filter is being used per manufacturer's instructions.

*Form Numbers:* 6700–009.

*Respondents/affected entities:* Households served by Denver Water that have a known, suspected, or possible lead service line or a galvanized line in need of replacing (per the 2022 Variance), and who have been distributed a pitcher filter through the filter distribution program.

*Respondent's obligation to respond:* Voluntary.

*Estimated number of respondents:* 2,000 (total).

*Frequency of response:* Once in 2025, then biennially.

*Total estimated burden:* 323 hours (per year). Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* \$22,111 (per year), which includes \$667 annualized capital or operation & maintenance costs.

*Changes in the Estimates:* There is decrease of 947.34 hours per year in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is a result of Denver Water reducing their estimates of per survey burden as well as the fact that only one survey will be conducted in this three-year period versus three in the period covered by the previous ICR.

**Courtney Kerwin,**

*Director, Regulatory Support Division.*

[FR Doc. 2023–21175 Filed 9–27–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2023–0463; FRL–11396–01–OCSPP]

### Metamitron; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

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

**ACTION:** Notice.

**SUMMARY:** EPA has received specific exemption requests from the Colorado and Nebraska Departments of Agriculture to use the pesticide metamitron (CAS No. 41394–05–2) to treat up to 69,596 acres of sugar beets to control the invasive weed, Palmer amaranth. The applicants propose the use of a new chemical which has not been registered by EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemptions, in accordance

with the regulation at 40 Code of Federal Regulations (CFR) part 166.24(a)(1).

**DATES:** Comments must be received on or before October 13, 2023.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2023–0463, through the *Federal eRulemaking Portal* at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Charles Smith, Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–2875; email address: [RDPRNotices@epa.gov](mailto:RDPRNotices@epa.gov).

## SUPPLEMENTARY INFORMATION:

### I. General Information

#### A. Does this action apply to me?

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

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

#### B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through <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>.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

### II. What action is the Agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. The Colorado and Nebraska Departments of Agriculture have requested the EPA Administrator to issue specific exemptions for the use of metamitron on sugar beets to control Palmer amaranth. Information in accordance with 40 CFR part 166 was submitted as part of the requests.

As part of this request, the applicants assert that emergency conditions exist due to insufficient means to control Palmer amaranth in sugar beets, and the use of metamitron will help avert significant economic losses.

The Applicants propose to apply a total of 64 fluid ounces per acre of the unregistered product, Goltix 700 SC (containing 58.3% metamitron, equivalent to 5.84 lbs. of metamitron per gallon of product) on up to 22,468 acres of sugar beets in Colorado, and 47,128 acres in Nebraska (total of 69,596 acres) from April 1 to May 31, 2024, using a potential product maximum of 11,234 gallons in Colorado and 23,564 gallons in Nebraska (total of 34,798 gallons of Goltix 700 SC, equivalent to 203,221 lbs. of metamitron).

This notice does not constitute a decision by EPA on the applications themselves. The regulations governing FIFRA section 18 at 40 CFR part 166.24(a)(1) require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (*i.e.*, an active ingredient) which has not been registered by EPA. The notice provides an opportunity for public comment on the applications.

The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemptions requested by the Colorado and Nebraska Departments of Agriculture.

*Authority:* 7 U.S.C. 136 *et seq.*

Dated: September 21, 2023.

**Charles Smith,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2023-21184 Filed 9-27-23; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** Tuesday, October 3, 2023 at 10:30 a.m. and its continuation at the conclusion of the open meeting on October 5, 2023.

**PLACE:** 1050 First Street NE, Washington, DC and virtual (this meeting will be a hybrid meeting.)

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** Compliance matters pursuant to 52 U.S.C. 30109.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

**ADDITIONAL INFORMATION:** This meeting will be cancelled if the Commission is not open due to a funding lapse.

\* \* \* \* \*

**CONTACT PERSON FOR MORE INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694-1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

**Laura E. Sinram,**

*Secretary and Clerk of the Commission.*

[FR Doc. 2023-21554 Filed 9-26-23; 4:15 pm]

**BILLING CODE 6715-01-P**

## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Recordkeeping and Disclosure Requirements Associated with Regulation O (FR O; OMB No. 7100-0382).

**DATES:** Comments must be submitted on or before November 27, 2023.

**ADDRESSES:** You may submit comments, identified by FR O, by any of the following methods:

- Agency Website: <https://www.federalreserve.gov/>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

- Email: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the OMB number or FR number in the subject line of the message.

- Fax: (202) 452-3819 or (202) 452-3102.

- Mail: Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M-4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M-4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory

Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

### FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, [nuha.elmaghrabi@frb.gov](mailto:nuha.elmaghrabi@frb.gov), (202) 452-3884.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at <https://www.reginfo.gov/public/do/PRAMain>, if approved.

### Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents,



including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

### **Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection**

*Collection title:* Recordkeeping and Disclosure Requirements Associated with Regulation O.

*Collection identifier:* FR O.

*OMB control number:* 7100–0382.

*General description of collection:* The Board's Regulation O—Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks (12 CFR part 215) governs any extension of credit made by a member bank to an executive officer, director, or principal shareholder of the member bank, of any company of which the member bank is a subsidiary, and of any other subsidiary of that company. Regulation O prohibits extensions of credit to insiders unless they are made on substantially the same terms (including interest rates and collateral) as those prevailing at the time for comparable transactions by the bank with other persons who are not employed by the bank and do not involve more than the normal risk of repayment or present other unfavorable features. In addition, Regulation O limits extensions of credit by a member bank to individual insiders and to all insiders, requires a member bank's board of directors to approve certain large extensions of credit, and sets forth recordkeeping and disclosure requirements.

*Proposed revisions:* The FR O Paperwork Reduction Act (PRA) clearance currently only lists member banks as respondents. The Board proposes to revise the FR O PRA clearance to reflect that the information collections included in Regulation O, by operation of statute, apply in practice to all insured depository institutions, regardless of whether they are member banks. This revision would be solely an administrative law matter, and would not actually impose new requirements on any institutions. While the proposed revision would not substantively increase burden for any institution, the administrative change would result in a larger reported burden of 21,932 hours.

*Frequency:* Event-generated.

*Respondents:* Insured depository institutions and uninsured member banks.

*Total estimated number of respondents:* 6,099.

*Total estimated change in burden:* 12,512.

*Total estimated annual burden hours:* 21,932.<sup>1</sup>

Board of Governors of the Federal Reserve System, September 22, 2023.

Erin M. Cayce,

Assistant Secretary of the Board.

[FR Doc. 2023–21161 Filed 9–27–23; 8:45 am]

**BILLING CODE 6210–01–P**

## **FEDERAL RESERVE SYSTEM**

### **Proposed Agency Information Collection Activities; Comment Request**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend, with revision, the Application for Exemption from Prohibited Service at Savings and Loan Holding Companies (FR LL–12; OMB No. 7100–0338).

**DATES:** Comments must be submitted on or before November 27, 2023.

**ADDRESSES:** You may submit comments, identified by FR LL–12, by any of the following methods:

- *Agency Website:* <https://www.federalreserve.gov/>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.
- *Email:* [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the OMB number or FR number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St NW, Washington, DC 20551.

All public comments are available from the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless

modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

<sup>1</sup> More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at <https://www.federalreserve.gov/apps/reportingforms/home/review>. On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR O.

modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

### **FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, [nuha.elmaghrabi@frb.gov](mailto:nuha.elmaghrabi@frb.gov), (202) 452–3884.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at <https://www.federalreserve.gov/apps/reportingforms/home/review>

[www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain), if approved.

### Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

### Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

*Collection title:* Application for Exemption from Prohibited Service at Savings and Loan Holding Companies.

*Collection identifier:* FR LL-12.

*OMB Control Number:* 7100-0338.

*General description of collection:* The Federal Deposit Insurance (FDI) Act and the Board's Regulation LL—Savings and Loan Holding Companies (12 CFR part 238) prohibit individuals who have been convicted of certain criminal offenses or who have agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such criminal offenses from participating in the affairs of a savings and loan holding company (SLHC) or any of its subsidiaries without the written consent of the Board. Such an individual, or the SLHC with which the individual seeks to participate, may apply for an exemption from this prohibition.

*Proposed revisions:* The Board proposes to revise the FR LL-12 by clearing two previously uncleared

recordkeeping and disclosure requirements: (1) In order to utilize the exception at 12 CFR 238.86 related to employees in non-policy-making roles, an SLHC must maintain a list of all policymaking positions and review this list annually; and (2) A person who is not subject to the requirement to seek an exemption from the Board because their criminal offenses are de minimis must disclose the conviction or pretrial diversion or similar program to all insured depository institutions and other banking organizations the affairs of which he or she participates.

*Frequency:* Event-generated.

*Respondents:* SLHCs; Individuals.

*Total estimated number of respondents:* 32.

*Total estimated change in burden:* 530.

*Total estimated annual burden hours:* 674.<sup>1</sup>

Board of Governors of the Federal Reserve System, September 22, 2023.

**Ann Misback,**

*Secretary of the Board.*

[FR Doc. 2023-21152 Filed 9-27-23; 8:45 am]

**BILLING CODE 6210-01-P**

## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Reporting, Recordkeeping, and Disclosure Provisions Associated with the Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice (FR 4100; OMB No. 7100-0309).

**DATES:** Comments must be submitted on or before November 27, 2023.

**ADDRESSES:** You may submit comments, identified by FR 4100, by any of the following methods:

- *Agency Website:* <https://www.federalreserve.gov/>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

<sup>1</sup> More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at <https://www.federalreserve.gov/apps/reportingforms/home/review>. On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR LL-12.

- *Email:* [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the OMB number or FR number in the subject line of the message.

- *FAX:* (202) 452-3819 or (202) 452-3102.

- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M-4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M-4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

**FOR FURTHER INFORMATION CONTACT:** Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, [nuha.elmaghrabi@frb.gov](mailto:nuha.elmaghrabi@frb.gov), (202) 452-3884.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at <https://www.reginfo.gov/public/do/PRAMain>, if approved.

### Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

- a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;
- b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;
- c. Ways to enhance the quality, utility, and clarity of the information to be collected;
- d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and
- e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

*Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection*

*Collection title:* Reporting, Recordkeeping, and Disclosure Provisions Associated with the Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice.

*Collection identifier:* FR 4100.

*OMB control number:* 7100-0309.

*General description of collection:* The FR 4100 is the Board's information

collection associated with the Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice (ID-Theft Guidance or Guidance). The ID-Theft Guidance was published in the **Federal Register** in March 2005.<sup>1</sup>

The ID-Theft Guidance, which applies to financial institutions, was issued in response to developing trends in the theft and accompanying misuse of customer information. The Guidance includes certain voluntary reporting, recordkeeping, and disclosure provisions.

*Frequency:* Event-generated.

*Respondents:* State member banks, bank holding companies (BHCs), affiliates and certain non-banking subsidiaries of BHCs, uninsured state agencies and branches of foreign banks, commercial lending companies owned or controlled by foreign banks, savings and loan holding companies, and Edge and agreement corporations.

*Total estimated number of respondents:* 391.

*Total estimated annual burden hours:* 12,120.<sup>2</sup>

Board of Governors of the Federal Reserve System, September 22, 2023.

**Erin M. Cayce,**

*Assistant Secretary of the Board.*

[FR Doc. 2023-21159 Filed 9-27-23; 8:45 am]

**BILLING CODE 6210-01-P**

## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation VV (FR VV; OMB No. 7100-0360).

**DATES:** Comments must be submitted on or before November 27, 2023.

**ADDRESSES:** You may submit comments, identified by FR VV, by any of the following methods:

<sup>1</sup> See 70 FR 15736 (March 29, 2005).

<sup>2</sup> More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at <https://www.federalreserve.gov/apps/reportingforms/home/review>. On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR 4100.

• *Agency Website:* <https://www.federalreserve.gov/>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

• *Email:* [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the OMB number or FR number in the subject line of the message.

• *FAX:* (202) 452-3819 or (202) 452-3102.

• *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M-4775, 2001 C St NW, Washington, DC 20551.

All public comments are available from the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M-4365A, 2001 C St NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

### FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, [nuha.elmaghrabi@frb.gov](mailto:nuha.elmaghrabi@frb.gov), (202) 452-3884.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining

whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at <https://www.reginfo.gov/public/do/PRAMain>, if approved.

### Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

### Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

*Collection title:* Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation VV.

*Collection identifier:* FR VV.

*OMB control number:* 7100-0360.

### General description of collection:

Section 13 of the Bank Holding Company Act of 1956 (BHC Act)<sup>1</sup> and the Board's implementing regulation, Regulation VV—Proprietary Trading and Certain Interests in and Relationships with Covered Funds (12 CFR part 248),<sup>2</sup> contain certain prohibitions and restrictions on the ability of a banking entity<sup>3</sup> to engage in proprietary trading<sup>4</sup> or to have certain interests in, or relationships with, a hedge fund or private equity fund (covered fund). Certain provisions of Regulation VV contain information collection requirements intended to facilitate the monitoring and enforcement of compliance with its requirements. For example, Regulation VV requires banking entities engaged in significant trading activities to collect, evaluate, and furnish data regarding covered trading activities as an indicator of areas meriting additional attention by the banking entity and the Board. In addition, section 248.20(d) of Regulation VV requires banking entities engaged in proprietary trading activity to comply with the reporting requirements described in Appendix A; the Board has implemented this requirement through the Regulation VV Quantitative Measurements (FR VV-1).

*Frequency:* Quarterly, annual, and event-generated.

*Respondents:* State member banks, bank holding companies, savings and loan holding companies, foreign banking organizations, U.S. branches or agencies of foreign banks, and other holding companies that control an insured depository institution and any subsidiary of the foregoing.

*Total estimated number of respondents:* 231.

*Total estimated annual burden hours:* 30,676.<sup>5</sup>

<sup>1</sup> 12 U.S.C. 1851.

<sup>2</sup> The Board issued Regulation VV in conjunction with the Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), Commodity Futures Trading Commission (CFTC), and Securities and Exchange Commission (SEC) (collectively, the agencies), with each of the agencies promulgating regulations implementing section 13 of the BHC Act.

<sup>3</sup> For purposes of section 13 of the BHC Act, a "banking entity" generally means "any insured depository institution (as defined in 12 U.S.C. 1813), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978, and any affiliate or subsidiary of any such entity." Certain smaller institutions and institutions that function solely in a trust or fiduciary capacity are excluded from this definition. See 12 U.S.C. 1851(h)(1).

<sup>4</sup> The term "proprietary trading" means engaging as principal for the trading account of the banking entity in any purchase or sale of one or more financial instruments. See 12 CFR 248.3(a).

<sup>5</sup> More detailed information regarding this collection, including more detailed burden

Board of Governors of the Federal Reserve System, September 22, 2023.

**Ann Misback,**

*Secretary of the Board.*

[FR Doc. 2023-21142 Filed 9-27-23; 8:45 am]

BILLING CODE 6210-01-P

## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Reporting, Recordkeeping, and Disclosure Requirements Associated with Rules Regarding Availability of Information (FR 4035; OMB No. 7100-0381).

**DATES:** Comments must be submitted on or before November 27, 2023.

**ADDRESSES:** You may submit comments, identified by FR 4035, by any of the following methods:

- *Agency Website:* <https://www.federalreserve.gov/foia/proposedregs.aspx>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

- *Email:* [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the OMB number or FR number in the subject line of the message.

- *Fax:* (202) 452-3819 or (202) 452-3102.

- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M-4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M-4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m.

estimates, can be found in the OMB Supporting Statement posted at <https://www.federalreserve.gov/apps/reportingforms/home/review>. On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR VV.

on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

**FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, [nuha.elmaghrabi@frb.gov](mailto:nuha.elmaghrabi@frb.gov), (202) 452-3884.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at <https://www.reginfo.gov/public/do/PRAMain>, if approved.

**Request for Comment on Information Collection Proposal**

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

**Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection**

*Collection title:* Reporting, Recordkeeping, and Disclosure Requirements Associated with Rules Regarding Availability of Information.

*Collection identifier:* FR 4035.

*OMB control number:* 7100-0381.

*General description of collection:* The information collection consists of reporting, recordkeeping, and disclosure requirements under subpart C (Nonpublic Information Made Available to Supervised Financial Institutions, Governmental Agencies, and Others in Certain Circumstances) of the Rules Regarding Availability of Information (12 CFR part 261). Subpart C contains reporting requirements that enable third parties to request the Board's authorization to access, use, or further disclose confidential supervisory information or other nonpublic information of the Board, and that ensure that the Board is notified when any subpoena or other legally enforceable demand requires production of confidential supervisory information or other nonpublic information of the Board in the form of documents or testimony. Subpart C also contains one recordkeeping requirement related to a provision that allows supervised financial institutions to disclose confidential supervisory information to service providers if the disclosure is deemed necessary to the service provider's provision of services, and two disclosure requirements that apply

when individuals are served with a subpoena, order, or other judicial or administrative process requiring the production of confidential supervisory information or other nonpublic information of the Board in the form of documents or testimony.

*Frequency:* Event-generated.

*Respondents:* Supervised financial institutions, state, local, and foreign agencies, and entities exercising governmental authority, and any person, entity, agency, or authority.

*Total estimated number of respondents:* 105.

*Total estimated annual burden hours:* 83.<sup>1</sup>

Board of Governors of the Federal Reserve System, September 22, 2023.

**Erin M. Cayce,**

*Assistant Secretary of the Board.*

[FR Doc. 2023-21158 Filed 9-27-23; 8:45 am]

**BILLING CODE 6210-01-P**

**FEDERAL RESERVE SYSTEM**

**Proposed Agency Information Collection Activities; Comment Request**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation LL (FR LL; OMB No. 7100-0380).

**DATES:** Comments must be submitted on or before November 27, 2023.

**ADDRESSES:** You may submit comments, identified by FR LL, by any of the following methods:

- *Agency website:* <https://www.federalreserve.gov/>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

- *Email:* [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the OMB number or FR number in the subject line of the message.

- *Fax:* (202) 452-3819 or (202) 452-3102.

- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback,

<sup>1</sup> More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at <https://www.federalreserve.gov/apps/reportingforms/home/review>. On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR 4035.

Secretary of the Board, Mailstop M-4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M-4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

**FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, [nuha.elmaghrabi@frb.gov](mailto:nuha.elmaghrabi@frb.gov), (202) 452-3884.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's

public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at <https://www.reginfo.gov/public/do/PRAMain>, if approved.

**Request for Comment on Information Collection Proposal**

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

**Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection**

*Collection title:* Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation LL.

*Collection identifier:* FR LL.

*OMB control number:* 7100-0380.

*General description of collection:* Regulation LL—Savings and Loan Holding Companies (12 CFR part 238) requires certain large savings and loan holding companies (SLHCs) to submit a capital plan to the Board on an annual basis, request prior approval from the Board under certain circumstances before making a capital distribution, conduct company-run periodic stress tests, report the results of its company-run stress tests to the Board, publicly disclose a summary of the results of

such stress tests, and comply with certain other reporting and recordkeeping requirements. Capital is central to a firm's ability to absorb unexpected losses and continue to lend to creditworthy businesses and consumers. The Board's capital planning requirements for large bank holding companies help to ensure that these firms have robust systems and processes that incorporate forward-looking projections of revenue and losses to monitor and maintain their internal capital adequacy. The Board's stress testing and stress capital buffer requirements help ensure that a firm can meet its obligations to creditors and other counterparties, as well as continue to serve as a financial intermediary through periods of financial and economic stress.

*Proposed revisions:* The Board is proposing to revise the FR LL to account for several reporting provisions and one recordkeeping provision which have not been previously cleared by the Board under the PRA.

**Reporting Requirements**

Section 238.132(c)(2)(i) provides that the Board may conduct a stress test on an SLHC (other than an foreign banking organization) with average total consolidated assets of \$100 billion or more on a more or less frequent basis than would be required under paragraph (c)(1). Section 238.132(c)(3)(iii) permits an SLHC to request in writing that the Board reconsider the requirement to conduct a stress test on a more or less frequent basis than would be required under (c)(1). This request must include an explanation as to why the request for reconsideration should be granted. The Board will respond in writing within 14 calendar days of receipt of the request. This request would be submitted via the Federal Reserve's IntraLinks system.

Section 238.143(a)(3)(ii) permits a Category II SLHC, Category III SLHC, or a SLHC with average total consolidated assets of greater than \$250 billion to request in writing that the Board reconsider the requirement to conduct a stress test on a more or less frequent basis than would be required under paragraph (a)(2)(i). This request must include an explanation as to why the request for reconsideration should be granted. The Board will respond in writing within 14 calendar days of receipt of the request. This request would be submitted via the Federal Reserve's IntraLinks system.

Section 238.143(b)(4) provides that if the Board requires a Category II SLHC, Category III SLHC, or a SLHC with average total consolidated assets of greater than \$250 billion to include one

or more additional components in certain of its stress testing scenarios the Board will notify the company in writing and include a basis for its determination. Within 14 calendar days of receipt of this notification the company may request in writing that the Board reconsider the requirement that company include the additional component(s) or additional scenario(s), including an explanation as to why the request for reconsideration should be granted. The Board will respond in writing within 14 calendar days of receipt of the company's request. This request would be submitted via the Federal Reserve's IntraLinks system.

#### *Recordkeeping Requirements*

Section 238.144(c)(1) requires a Category II SLHC, Category III SLHC, or a SLHC with average total consolidated assets of greater than \$250 billion to establish and maintain a system of controls, oversight, and documentation, including policies and procedures, that are designed to ensure that its stress testing processes are effective in meeting the relevant requirements. These policies and procedures must, at a minimum, describe the covered company's stress testing practices and methodologies, and processes for validating and updating the company's stress test practices and methodologies consistent with applicable laws and regulations.

*Frequency:* Ongoing, annual, bi-annual, or event-generated.

*Respondents:* Foreign SLHCs with average total consolidated assets of greater than \$250 billion and domestic covered SLHCs with average total consolidated assets of greater than \$100 billion.

*Total estimated number of respondents:* 1.

*Total estimated change in burden:* 31.

*Total estimated annual burden hours:* 14,430.<sup>1</sup>

Board of Governors of the Federal Reserve System, September 22, 2023.

**Erin M. Cayce,**

*Assistant Secretary of the Board.*

[FR Doc. 2023–21160 Filed 9–27–23; 8:45 am]

**BILLING CODE 6210–01–P**

<sup>1</sup> More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at <https://www.federalreserve.gov/apps/reportingforms/home/review>. On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR LL.

## **FEDERAL RESERVE SYSTEM**

### **Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB**

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to implement the Ad Hoc Clearance for Board-Wide Use (FR 3100; OMB No. 7100–NEW).

#### **FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Clearance Officer—Nuha Elmaghrahi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, [nuha.elmaghrabi@frb.gov](mailto:nuha.elmaghrabi@frb.gov), (202) 452–3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements (which contain more detailed information about the information collections and burden estimates than this notice), and approved collection of information instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board's public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above.

### **Final Approval Under OMB Delegated Authority To Implement the Following Information Collection Collection**

*Collection title:* Ad Hoc Clearance for Board-Wide Use.

*Collection identifier:* FR 3100.

*OMB control number:* 7100–NEW.

*Effective Date:* October 30, 2023.

*General description of collection:*

Information under this ad hoc information collection would be collected from Board-regulated entities, other stakeholders, and the public

(collectively, respondents) through to-be-defined surveys, interviews, and focus groups, and other similar activities about a variety of financial service-related topics and the Board's operations. The clearance would help the Board understand respondents' perspectives, experiences, and expectations regarding the financial system and Board operations and would be used to inform the Board's initiatives to promote financial system stability, supervise and regulate financial institutions and financial activities, and promote consumer protection and community development.

*Frequency:* As needed.

*Respondents:* Individuals, institutions, state and local governments, and other persons of interest to the Board.

*Total estimated number of respondents:* 850.

*Total estimated annual burden hours:* 17,000.<sup>1</sup>

*Current actions:* On May 15, 2023, the Board published an initial notice in the **Federal Register** (88 FR 30972) requesting public comment for 60 days on the implementation of the FR 3100. The comment period for this notice expired on July 14, 2023. The Board did not receive any comments. The collection will be implemented as proposed.

Board of Governors of the Federal Reserve System, September 22, 2023.

**Erin M. Cayce,**

*Assistant Secretary of the Board.*

[FR Doc. 2023–21157 Filed 9–27–23; 8:45 am]

**BILLING CODE 6210–01–P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Medicare & Medicaid Services**

**[CMS–1795–N]**

### **Medicare Program; Town Hall Meeting on the Fiscal Year 2025 Applications for New Medical Services and Technologies Add-On Payments**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

**ACTION:** Notice of meeting.

<sup>1</sup> More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at <https://www.federalreserve.gov/apps/reportingforms/home/review>. On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR 3100.



**SUMMARY:** This notice announces a town hall meeting in accordance with the Social Security Act (the Act) to discuss fiscal year (FY) 2025 applications for add-on payments for new medical services and technologies under the hospital inpatient prospective payment system (IPPS). Interested parties are invited to this virtual meeting to present their comments, recommendations, and data regarding whether the FY 2025 new medical services and technologies applications meet the substantial clinical improvement criterion.

**DATES:**

*Meeting Dates:* The New Technology Town Hall meeting announced in this notice will be held virtually on Wednesday, December 13, 2023, and Thursday, December 14, 2023 (the number of new technology applications submitted will determine if a second day for the meeting is necessary; see the **SUPPLEMENTARY INFORMATION** section for details regarding the second day of the meeting and the posting of the final schedule). The New Technology Town Hall meeting will begin each day at 9 a.m. eastern standard time (EST) and check-in via online platform will begin at 8:30 a.m. EST.

*Deadline for Registration of Presenters at the New Technology Town Hall Meeting:* The deadline to register to present at the New Technology Town Hall meeting is 5 p.m., EST on Monday, November 6, 2023.

*Deadline for Submission of Agenda Item(s) or Written Comments for the New Technology Town Hall Meeting:* Written comments and agenda items (public comments to be delivered at the New Technology Town Hall meeting) for discussion at the New Technology Town Hall meeting, including agenda items by presenters (presentation slide decks), must be received by 5 p.m. EST on Monday, November 13, 2023.

*Deadline for Requesting Special Accommodations:* The deadline to submit requests for special accommodations is 5 p.m., EST on Monday, November 20, 2023.

*Deadline for Submission of Written Comments after the New Technology Town Hall Meeting for Consideration in the Fiscal Year (FY) 2025 Hospital Inpatient Prospective Payment System/Long Term Care PPS (IPPS/LTCH PPS) Proposed Rule:* Individuals may submit written comments after the New Technology Town Hall meeting, as specified in the **ADDRESSES** section of this notice, on whether the service or technology represents a substantial clinical improvement. These comments must be received by 5 p.m. EST on Monday, December 18, 2023, to ensure

consideration in the FY 2025 IPPS/LTCH PPS proposed rule.

**ADDRESSES:**

*Meeting Location:* The New Technology Town Hall meeting will be held virtually via live stream technology or webinar and listen-only via toll-free teleconference. Live stream or webinar and teleconference dial-in information will be provided through an upcoming listserv/email notice and will appear on the final meeting agenda, which will be posted on the New Technology website when available at: <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html>. Continue to check the website for updates.

*Registration and Special Accommodations:* Individuals wishing to present at the meeting must follow the instructions located in section III. of this notice. Individuals who need special accommodations should send an email to [newtech@cms.hhs.gov](mailto:newtech@cms.hhs.gov).

*Submission of Agenda Item(s) or Written Comments for the New Technology Town Hall Meeting:* Each presenter must submit an agenda item(s) regarding whether a FY 2025 application meets the substantial clinical improvement criterion. Written comments, questions or other statements must not exceed three single-spaced typed pages and may be sent via email to [newtech@cms.hhs.gov](mailto:newtech@cms.hhs.gov).

**FOR FURTHER INFORMATION CONTACT:**

Drew Kasper, (410) 786-8926, [drew.kasper@cms.hhs.gov](mailto:drew.kasper@cms.hhs.gov) and [newtech@cms.hhs.gov](mailto:newtech@cms.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background on the Add-On Payments for New Medical Services and Technologies Under the IPPS**

Effective for discharges beginning on or after October 1, 2001, section 1886(d)(5)(K)(i) of the Act requires the Secretary to establish (after notice and opportunity for public comment) a mechanism to recognize the costs of new services and technologies under the hospital inpatient prospective payment system (IPPS). In addition, section 1886(d)(5)(K)(vi) of the Act specifies that a medical service or technology will be considered “new” if it meets criteria established by the Secretary (after notice and opportunity for public comment). For further discussion on the new technology add-on payment criteria, we refer readers to the new technology add-on payment final rule (66 FR 46912, September 7, 2001), as well as the FY 2012 IPPS/LTCH PPS final rule (76 FR 51572 through 51574), the FY 2020 IPPS/LTCH PPS final rule (84 FR 42288 through 42300), and the FY 2021 IPPS/

LTCH PPS final rule (85 FR 58736 through 58742).

As finalized in the FY 2020 and FY 2021 IPPS/LTCH PPS final rules, technologies which are eligible for the alternative new technology pathway for transformative new devices or the alternative new technology pathway for certain antimicrobials do not need to meet the requirement under 42 CFR 412.87(b)(1) that the technology represent an advance that substantially improves, relative to technologies previously available, the diagnosis or treatment of Medicare beneficiaries. These medical devices or products will also be considered not substantially similar to an existing technology for purposes of new technology add-on payment under the IPPS. See the FY 2020 IPPS/LTCH PPS final rule (84 FR 42292 through 42297) and the FY 2021 IPPS/LTCH PPS final rule (85 FR 58737 through 58739) for additional information.

In the FY 2020 IPPS/LTCH PPS final rule (84 FR 42289 through 42292), we codified in our regulations at § 412.87 the following aspects of how we evaluate substantial clinical improvement for purposes of new technology add-on payments under the IPPS to determine if a new technology meets the substantial clinical improvement requirement:

- The totality of the circumstances is considered when making a determination that a new medical service or technology represents an advance that substantially improves, relative to services or technologies previously available, the diagnosis or treatment of Medicare beneficiaries.

- A determination that a new medical service or technology represents an advance that substantially improves, relative to services or technologies previously available, the diagnosis or treatment of Medicare beneficiaries means—

- ++ The new medical service or technology offers a treatment option for a patient population unresponsive to, or ineligible for, currently available treatments;

- ++ The new medical service or technology offers the ability to diagnose a medical condition in a patient population where that medical condition is currently undetectable or offers the ability to diagnose a medical condition earlier in a patient population than allowed by currently available methods, and there must also be evidence that use of the new medical service or technology to make a diagnosis affects the management of the patient; or

++ The use of the new medical service or technology significantly improves clinical outcomes relative to services or technologies previously available as demonstrated by one or more of the following:

- A reduction in at least one clinically significant adverse event, including a reduction in mortality or a clinically significant complication.
- A decreased rate of at least one subsequent diagnostic or therapeutic intervention (for example, due to reduced rate of recurrence of the disease process).
- A decreased number of future hospitalizations or physician visits.
- A more rapid beneficial resolution of the disease process treatment including, but not limited to, a reduced length of stay or recovery time; an improvement in one or more activities of daily living; an improved quality of life; or, a demonstrated greater medication adherence or compliance.

++ The totality of the circumstances otherwise demonstrates that the new medical service or technology substantially improves, relative to technologies previously available, the diagnosis or treatment of Medicare beneficiaries.

- Evidence from the following published or unpublished information sources from within the United States or elsewhere may be sufficient to establish that a new medical service or technology represents an advance that substantially improves, relative to services or technologies previously available, the diagnosis or treatment of Medicare beneficiaries: Clinical trials, peer reviewed journal articles; study results; meta-analyses; consensus statements; white papers; patient surveys; case studies; reports; systematic literature reviews; letters from major healthcare associations; editorials and letters to the editor; and public comments. Other appropriate information sources may be considered.

- The medical condition diagnosed or treated by the new medical service or technology may have a low prevalence among Medicare beneficiaries.

- The new medical service or technology may represent an advance that substantially improves, relative to services or technologies previously available, the diagnosis or treatment of a subpopulation of patients with the medical condition diagnosed or treated by the new medical service or technology.

Section 1886(d)(5)(K)(viii) of the Act requires that as part of the process for evaluating new medical services and

technology applications, the Secretary shall do the following:

- Provide for public input regarding whether a new service or technology represents an advance in medical technology that substantially improves the diagnosis or treatment of Medicare beneficiaries before publication of a proposed rule.
- Make public and periodically update a list of all the services and technologies for which an application is pending.
- Accept comments, recommendations, and data from the public regarding whether the service or technology represents a substantial improvement.
- Provide for a meeting at which organizations representing hospitals, physicians, manufacturers, and any other interested party may present comments, recommendations, and data to the clinical staff of CMS as to whether the service or technology represents a substantial improvement before publication of a proposed rule.

The opinions and presentations provided during this meeting will assist us as we evaluate the new medical services and technology applications for FY 2025.

## II. New Technology Town Hall Meeting Format and Conference Call Information

### A. Format of the Town Hall Meeting

As noted in section I. of this notice, we are required to provide for a meeting at which organizations representing hospitals, physicians, manufacturers, and any other interested party may present comments, recommendations, and data to the clinical staff of CMS concerning whether the service or technology represents a substantial clinical improvement. This meeting will allow for a discussion of the substantial clinical improvement criterion for the FY 2025 applications for new technology add-on payments. Information regarding the applications can be found on our website at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html>.

The majority of the meeting will be reserved for presentations of comments, recommendations, and data from registered presenters. The time for each presenter's comments will be approximately 10 minutes, with additional time reserved for questions, and will be based on the number of registered presenters. Individuals who would like to present must register and submit their agenda item(s) via email to [newtech@cms.hhs.gov](mailto:newtech@cms.hhs.gov) by the dates

specified in the **DATES** section of this notice.

Depending on the number of applications received, we will determine if a second meeting day is necessary. The final schedule for the New Technology Town Hall meeting will be posted on the CMS website at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html> by November 20, 2023 to inform the public of the number of days of the meeting.

In addition, written comments will also be accepted and presented at the meeting if they are received via email to [newtech@cms.hhs.gov](mailto:newtech@cms.hhs.gov) by the date specified in the **DATES** section of this notice. Written comments may also be submitted after the meeting for our consideration. If the comments are to be considered before the publication of the FY 2025 IPPS/LTCH PPS proposed rule, the comments must be received via email to [newtech@cms.hhs.gov](mailto:newtech@cms.hhs.gov) by the date specified in the **DATES** section of this notice.

### B. Conference Call and Webinar Information

As noted previously, the New Technology Town Hall meeting will be held virtually. There will be an option to participate in the New Technology Town Hall Meeting via webinar and a toll-free teleconference phone line. Information on the option to participate via webinar and a teleconference dial-in will be provided through an upcoming listserv/email notice and will appear on the final meeting agenda, which will be posted on the New Technology website at: <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html>. Continue to check the website for updates.

### C. Disclaimer

We cannot guarantee reliability for a webinar.

## III. Registration Instructions

The Division of New Technology in CMS is coordinating the meeting registration for the New Technology Town Hall meeting on substantial clinical improvement. While there is no registration fee, individuals planning to present at the New Technology Town Hall meeting must register to present.

Registration for presenters may be completed by sending an email to [newtech@cms.hhs.gov](mailto:newtech@cms.hhs.gov), by the date specified in the **DATES** section of this notice. Please include the name and email address of the presenter(s), as well as address, telephone number, and the

name of the technology for which they will be presenting.

Registration for attendees not presenting at the meeting is not required.

#### IV. Collection of Information

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Chyana Woodyard, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

**Chyana Woodyard,**

*Federal Register Liaison, Centers for Medicare & Medicaid Services.*

[FR Doc. 2023–21186 Filed 9–27–23; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2020–N–2030]

#### Agency Information Collection Activities; Proposed Collection; Comment Request; Application for Food and Drug Administration Approval To Market a New Drug

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with applications for FDA approval to market a new drug or generic drug.

**DATES:** Either electronic or written comments on the collection of

information must be submitted by November 27, 2023.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 27, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

#### 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–2020–N–2030 for “Application for Food and Drug Administration Approval to Market a New Drug.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed

in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

#### FOR FURTHER INFORMATION CONTACT:

Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, [PRASStaff@fda.hhs.gov](mailto:PRASStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined

in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

#### **Applications for FDA Approval To Market a New Drug—21 CFR Part 314**

*OMB Control Number 0910-0001—Revision*

This information collection supports implementation of statutory and regulatory authorities that govern new drugs. Under section 505(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(a)), a new drug may not be commercially marketed in the United States unless an approval of an application filed with FDA under section 505(b) or (j) of the FD&C Act is effective with respect to such drug. We have issued regulations in part 314 (21 CFR part 314) that establish procedures and requirements for applications submitted in accordance with section 505 of the FD&C Act. The regulations in subpart A (§§ 314.1 through 314.3) set forth general provisions, while regulations in subparts B and C (§§ 314.50 through 314.99) set forth content and format requirements for new drug applications (NDAs) and

abbreviated new drug applications (ANDAs) respectively. The regulations include requirements for the submission of specific data elements along with patent information, pediatric use information, supplements and amendments, proposed labeling, and specific postmarketing reports (PMRs). Respondents to the information collection are sponsors of these applications.

Regulations in subpart D (§§ 314.100 through 314.170) explain Agency actions on applications and set forth timeframes for FDA review. The information collection includes provisions established through our Agency user fee programs, most recently authorized under the FDA User Fee Reauthorization Act of 2022. These provisions pertain to performance goals, expedited programs, review transparency, communications with FDA, dispute resolution, drug safety enhancements, and the allocation of Agency resources to align with these program objectives as agreed to with our stakeholders and set forth in our “User Fee Performance Goals for Fiscal Years 2023–2027” Commitment Letters, which are available from our website at <https://www.fda.gov> along with more information about specific FDA user fee programs.

Included among the provisions in subpart G (§§ 314.410 through 314.445), § 314.420 covers information to include in drug master files (DMFs). To assist respondents to this information collection we have prepared templates, guidance, forms, and resources available from our website at <https://www.fda.gov/drugs/forms-submission-requirements/drug-master-files-dmfs>. We have developed Form FDA 3938 and accompanying instructions on submitting DMFs in accordance with the applicable regulations. We are revising Form FDA 3898 and the accompanying instructions to allow for multiple selections of submission types and to clarify the number of digits to be entered for the holder and establishment registration numbers.

In accordance with § 314.445, we also develop Agency guidance documents to assist respondents in complying with provisions in part 314. These guidance documents are issued consistent with our good guidance practice regulations at 21 CFR 10.115. To search available FDA guidance documents, visit our website at <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>.

Applications submitted in accordance with subpart H (§§ 314.500 through 314.560) pertain to accelerated approval of new drugs for serious or life-threatening illnesses.

Information collection and associated burden for the submissions in subpart I (§§ 314.600 through 314.650) pertain to approval of certain new drugs when human efficacy studies are not ethical or feasible. The regulations provide for the submission of specific data elements, animal studies of safety and efficacy to establish likely clinical benefit in humans and upon approval of the drug product, additional requirements and/or restrictions to ensure safe use of the product. Additional PMRs, safety reporting, and promotional material as well as requirements for withdrawal of these human drug applications, and FDA termination of requirements for these human drug applications are included in §§ 314.620 through 314.650. The estimated burden for these human drug applications is included in the reported submissions and burden under general human drug applications, § 314.50, and other specific regulations in the table for human drug application requirements in general.

Finally, we are also revising the collection to include the submission of information pursuant to the CREATES Act (enacted as part of the Further Consolidated Appropriations Act of 2020 (21 U.S.C. 355–1(1) and 355–2)). Under the CREATES Act, developers of potential drug and biological products are enabled to use the CREATES pathway to obtain samples of brand products that are needed to support their applications. Relevant products include those submitted in generic drug applications under section 505(j) of the FD&C Act and NDAs submitted under section 505(b)(2) of the FD&C Act, and biosimilar products submitted under section 351(k) of the Public Health Service Act as amended by the Biologics Price Competition and Innovation Act of 2009. One of the requirements for using the CREATES pathway for products that are subject to a Risk Evaluation and Mitigation Strategy with elements to assure safe use is to obtain a Covered Product Authorization (CPA) from FDA (21 U.S.C. 355–2(b)(2)). New information collection burden for CPAs for new drug and biologic applications is included in the burden table below.

To assist respondents to the information collection we have developed the following forms:

- *Form FDA 356h (and instructions):* Application to Market a New or Abbreviated New Drug or Biologic for Human Use
- *Form FDA 2252 (and instructions):* Transmittal of Annual Reports for Drugs and Biologics for Human Use (§ 314.81)
- *Form FDA 2253 (and instructions):* Transmittal of Advertisements and Promotional Labeling for Drugs and Biologics for Human Use
- *Forms FDA 3331/3331a (and instructions):* Field Alert Reports
- *Form FDA 3542 (and instructions):* Patent Information Submitted Upon and After Approval of an NDA or Supplement

- *FDA 3542a (and instructions):* Patent Information Submitted with the Filing of an NDA, Amendment, or Supplement
  - *Revised Form FDA 3938 (and revised instruction):* DMF submission
  - *Form FDA 3988 (and instruction):* Transmittal of post marketing requirements (PMR)/postmarketing commitments (PMC) submissions for Drugs and Biologics
  - *Form FDA 3989 (and instruction):* Transmittal of PMR/PMC Annual Status Report Information
- Individuals requesting printed forms are instructed to contact the FDA Forms Manager by email at [formsmanager@oc.fda.gov](mailto:formsmanager@oc.fda.gov). Certain fees may be applicable.

Information collection pertaining to hearings and other administrative proceedings covered in 21 CFR subpart E are approved under OMB control number 0910–0191. Unless otherwise noted, information collection pertaining to postmarket safety reporting and associated recordkeeping is approved under OMB control numbers 0910–0230 and 0910–0291.

Respondents for this information collection include pharmaceutical industry entities who contribute to the preparation and marketing of pharmaceutical products to the U.S. public.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

| 21 CFR section                                                                                       | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response (in hours) | Total hours |
|------------------------------------------------------------------------------------------------------|-----------------------|------------------------------------|------------------------|----------------------------------------|-------------|
| <b>Subpart B</b>                                                                                     |                       |                                    |                        |                                        |             |
| 314.50(a)–(l)—Content and format of a 505(b)(1) or 505(b)(2) application ..                          | 85                    | 1.42                               | 121                    | 1,921 .....                            | 232,441     |
| 314.50(i)(1)—Patent certifications: Form FDA 3542 .....                                              | 170                   | 6.55                               | 1,113                  | 10 .....                               | 11,130      |
| 314.50(i)(1)—Patent certifications: Form FDA 3542a .....                                             | 1                     | 1                                  | 1                      | 15 .....                               | 15          |
| 314.50(i)(6)—Amended patent certifications .....                                                     | 73                    | 4.33                               | 316                    | 2 .....                                | 632         |
| 314.52(a), (b), and (e)—NDAs—Notice of noninfringement of patent certification.                      | 15                    | 3                                  | 45                     | 15 .....                               | 675         |
| 314.52(c)—Noninfringement of patent certification notice content .....                               | 22                    | 3                                  | 66                     | 0.33 (20 minutes) .....                | 22          |
| 314.53(f)(1)—Correction of patent information errors by persons other than the NDA holder.           | 7                     | 1.14                               | 8                      | 10 .....                               | 80          |
| 314.53(f)(2)—Correction of patent information errors by the NDA holder ....                          | 8                     | 1.13                               | 9                      | 1 .....                                | 9           |
| 314.60—Amendments to unapproved NDA, supplement or resubmission ...                                  | 269                   | 7.22                               | 1,942                  | 80 .....                               | 155,360     |
| 314.60(f)—Patent certifications for unapproved applications .....                                    | 6                     | 1                                  | 6                      | 2 .....                                | 12          |
| 314.65—Withdrawal of unapproved applications .....                                                   | 20                    | 1.05                               | 21                     | 2 .....                                | 42          |
| 314.70 and 314.71—Supplements and other changes to approved application.                             | 501                   | 5.13                               | 2,570                  | 150 .....                              | 385,500     |
| 314.72—Changes of ownership of NDAs .....                                                            | 73                    | 1.67                               | 122                    | 2 .....                                | 244         |
| 314.81—Other PMR 314.81(b)(1) [3331 and 3331a field alert reports and follow-ups].                   | 532                   | 18.5                               | 9,834                  | 8 .....                                | 78,672      |
| 314.81(b)(2)—[Form FDA 2252]—Annual reports .....                                                    | 692                   | 4.46                               | 3,090                  | 40 .....                               | 123,600     |
| 314.81(b)(2)—[Form FDA 2253]—Promotional labeling .....                                              | 310                   | 121                                | 37,508                 | 2 .....                                | 75,016      |
| 314.81(b)(2)(vii) Form FDA 3988—PMR/PMC .....                                                        | 737                   | 0.87                               | 642                    | 24 .....                               | 15,408      |
| 314.81(b)(2)(vii) Form FDA 3989—PMR/PMC Annual Status Report for Drugs and Biologics.                | 737                   | 0.29                               | 216                    | 24 .....                               | 5,184       |
| <b>Subpart C</b>                                                                                     |                       |                                    |                        |                                        |             |
| 314.93—Suitability Petitions .....                                                                   | 16                    | 1.31                               | 21                     | 24 .....                               | 504         |
| 314.94(a) and (d)—ANDA content .....                                                                 | 213                   | 4.02                               | 857                    | 480 .....                              | 411,360     |
| 314.94(a)(12)(viii)—Amended patent certifications before approval of ANDA.                           | 153                   | 1                                  | 153                    | 2 .....                                | 306         |
| 314.95(c)—Noninfringement of patents (ANDAs) .....                                                   | 209                   | 3                                  | 627                    | 16 .....                               | 10,032      |
| 314.96(a)(1)—Amendments to unapproved ANDAs .....                                                    | 514                   | 26.55                              | 13,647                 | 80 .....                               | 1,091,760   |
| 314.96(c)—Amendment for pharmaceutical equivalent to a listed drug other than reference listed drug. | 1                     | 1                                  | 1                      | 300 .....                              | 300         |
| 314.96(d)—Patent certification requirements .....                                                    | 100                   | 1                                  | 100                    | 2 .....                                | 200         |
| 314.97—Supplements and other changes to ANDAs .....                                                  | 343                   | 17.57                              | 6,027                  | 80 .....                               | 482,160     |
| 314.97(b)—Supplements to ANDA for pharmaceutical equivalent to a listed drug other than RLD.         | 1                     | 1                                  | 1                      | 300 .....                              | 300         |
| 314.99(a)—ANDA Applicants: Withdrawal of unapproved ANDAs .....                                      | 58                    | 2.41                               | 140                    | 2 .....                                | 280         |
| 314.99(a)—ANDA Transfer of ownership .....                                                           | 137                   | 1.24                               | 170                    | 2 .....                                | 340         |
| <b>Subpart D</b>                                                                                     |                       |                                    |                        |                                        |             |
| 314.101(a)—NDA or ANDA filing over protest .....                                                     | 1                     | 1                                  | 1                      | 0.5 (30 minutes) .....                 | 0.5         |
| 314.107(e)—notification of court actions or written consent to approval .....                        | 54                    | 1.98                               | 107                    | 0.5 (30 minutes) .....                 | 53.5        |
| <b>Subparts G, H, and I</b>                                                                          |                       |                                    |                        |                                        |             |
| 314.420—Drug Master Files—original Form FDA 3938 .....                                               | 491                   | 2.05                               | 1,005                  | 61 .....                               | 61,305      |
| DMF Amendments—Technical .....                                                                       | 1,335                 | 18.71                              | 24,979                 | 8 .....                                | 199,832     |
| DMF Amendments—REMS .....                                                                            | 2                     | 1                                  | 2                      | 8 .....                                | 16          |
| DM Amendments—administrative .....                                                                   | 1,024                 | 9.67                               | 6,851                  | 6 .....                                | 41,106      |
| DMFs—Annual reports .....                                                                            | 1,836                 | 6.04                               | 11,097                 | 4 .....                                | 44,388      |
| 314.550—Promotional material and subpart H applications <sup>2</sup> .....                           | 69                    | 5.84                               | 403                    | 120 .....                              | 48,360      |

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>—Continued

| 21 CFR section                                                    | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response (in hours) | Total hours |
|-------------------------------------------------------------------|-----------------------|------------------------------------|------------------------|----------------------------------------|-------------|
| CPA Requests for NDA/Biologics License Application Products ..... | 1                     | 1                                  | 1                      | 5 .....                                | 5           |
| Total .....                                                       | .....                 | .....                              | .....                  | .....                                  | 3,476,650   |

<sup>1</sup> Total burden hours have been rounded.

<sup>2</sup> We have included burden attendant to subpart H applications activity in our estimate of burden associated with § 314.50.

Our estimated burden for the information collection reflects an overall decrease of 642,293.5 hours. The reporting period for this information collection renewal includes the 3 years of the COVID-19 pandemic. We attribute this adjustment to a decrease in the number of submissions received during the public health emergency. We anticipate that the numbers of submissions to FDA will return to pre-pandemic levels as economic activity recovers. We also attribute a portion of the burden adjustment to improved operational efficiencies with regard to Agency data systems and digital submission processes.

Dated: September 23, 2023.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2023–21256 Filed 9–27–23; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2023–N–3847]

#### Agency Information Collection Activities: Proposed Collection; Comment Request; Adverse Experience Reporting for Licensed Biological Products; and General Records

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed extension of the collection of

information applicable to required adverse experience reporting for licensed biological products, and general records associated with the manufacture and distribution of biological products.

**DATES:** Submit either electronic or written comments on the collection of information by November 27, 2023.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before November 27, 2023. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 27, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

#### Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

**Instructions:** All submissions received must include the Docket No. FDA–2023–N–3847 for “Adverse Experience Reporting for Licensed Biological Products; and General Records.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed

except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

**FOR FURTHER INFORMATION CONTACT:** Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-5733, [PRASStaff@fda.hhs.gov](mailto:PRASStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice

of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

**Adverse Experience Reporting For Licensed Biological Products; and General Records—21 CFR Part 600**

*OMB Control Number 0910-0308—Extension*

This information collection helps support implementation of statutory and regulatory authorities that govern adverse experience reporting. Under the Public Health Service Act (PHS Act) (42 U.S.C. 262), FDA may only approve a biologics license application for a biological product that is safe, pure, and potent. When a biological product is approved and enters the market, the product is introduced to a larger patient population in settings different from clinical trials. New information generated during the postmarketing period offers further insight into the benefits and risks of the product, and evaluation of this information is important to ensure its safe use. Regulations implementing adverse experience reporting (AER) requirements applicable to biological

products are codified in part 600 (21 CFR part 600). Regulations applicable to combination products subject to regulations in part 600 are found in part 4 (21 CFR part 4)—Regulation of Combination Products. The collections of information are intended to enable FDA to take actions necessary for the protection of the public health in response to reports of adverse experiences related to biologics licensed under any provision of section 351 of the PHS Act.

To assist respondents with the reporting provisions of the information collection, FDA has created both paper-based and electronic forms. Information may be submitted electronically through *MEDWATCH* or the *Vaccine Adverse Experience Reporting System* (VAERS). AER reports are filed using the *MEDWATCH* Form FDA-3500A (approved under OMB control numbers 0910-0291 and 0910-0645) or the VAERS-1. Both versions of the forms and instructions are available from the internet at <https://vaers.hhs.gov/>. The forms may also be downloaded, completed, and submitted to the Agency by mail or facsimile.

For operational efficiency, on March 20, 2023, we requested, and OMB has approved, the addition of burden attributable to provisions set forth in part 4, subpart B, previously included in OMB control number 0910-0834. When information regarding an event that involves a death or serious injury, or an adverse event, associated with the use of the combination product is received by the product sponsor, the information must be provided to the other constituent part applicant(s) no later than 5 calendar days after receipt under § 4.103. Relatedly, § 4.104 explains how and where to submit reports.

We estimate the burden of this collection of information as follows:

**TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN—BIOLOGICAL PRODUCTS<sup>1</sup>**

| 21 CFR section; activity                                                   | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response (in hours) | Total hours       |
|----------------------------------------------------------------------------|-----------------------|------------------------------------|------------------------|----------------------------------------|-------------------|
| 600.80(c)(1), 600.80(d), and 600.80(e); postmarketing 15-day Alert Reports | 109                   | 3,806.95                           | 414,958                | 1                                      | 414,958           |
| 600.82; notification of discontinuance or interruption in manufacturing    | 23                    | 1.435                              | 33                     | 2                                      | 66                |
| 600.80(c)(2); Periodic Adverse Experience Reports                          | 109                   | 3,697                              | 402,973                | 28                                     | 11,283,244        |
| 600.81; distribution reports                                               | 172                   | 5.727                              | 985                    | 1                                      | 985               |
| 600.80(h)(2), 600.81(b)(2), and 600.90; waiver requests                    | 35                    | 1.886                              | 66                     | 1                                      | 66                |
| <b>Total</b>                                                               |                       |                                    |                        |                                        | <b>11,699,319</b> |

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.



TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN—BIOLOGICAL PRODUCTS <sup>1</sup>

| 21 CFR section; activity                          | Number of recordkeepers | Number of records per recordkeeper | Total annual records | Average burden per recordkeeper (in hours) | Total hours |
|---------------------------------------------------|-------------------------|------------------------------------|----------------------|--------------------------------------------|-------------|
| 600.12; <sup>2</sup> Maintenance of Records ..... | 131                     | 40.145                             | 5,259                | 32                                         | 168,288     |
| 600.12(b)(2); Recall Records .....                | 216                     | 3.4028                             | 735                  | 24                                         | 17,640      |
| 600.80(c)(1) and 600.80(k); AER Records .....     | 109                     | 7,503.95                           | 817,931              | 1                                          | 817,931     |
| Total .....                                       |                         |                                    |                      |                                            | 1,003,859   |

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

<sup>2</sup> The recordkeeping requirements in § 610.18(b) are included in the estimate for § 600.12.

TABLE 3—ESTIMATED ANNUAL REPORTING BURDEN—COMBINATION PRODUCTS <sup>1</sup>

| 21 CFR section; activity                                                                                                                                                          | Number of respondents | Number of disclosures per respondents | Total annual disclosures | Average burden per disclosure (in hours) | Total hours |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|---------------------------------------|--------------------------|------------------------------------------|-------------|
| 4.102, 4.103, 4.104, 4.105; Postmarketing Safety Reporting for Combination Products, including associated reports and sharing information with other constituent part applicants. | 11                    | 18                                    | 198                      | 0.35 (21 minutes) ...                    | 69          |

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden for this information collection has changed since the last OMB approval. The reporting and recordkeeping burden has increased mostly due to an increase in the number of AER reports submitted to FDA and the associated recordkeeping with these reports. We have also added burden we believe attributable to post marketing safety reporting and attendant recordkeeping and disclosures, as required under part 4, subpart B.

Dated: September 23, 2023.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2023–21252 Filed 9–27–23; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of General Medical Sciences; 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 of General Medical Sciences Special Emphasis Panel; Renewal of Centers of Biomedical Research Excellence (COBRE) (Phase 2).

*Date:* November 7–8, 2023.

*Time:* 9:30 a.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892 (Virtual Meeting).

*Contact Person:* Nina Sidorova, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Room 3AN18–01, Bethesda, Maryland 20892, 301–594–3663, [sidorova@nigms.nih.gov](mailto:sidorova@nigms.nih.gov).

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel; Review of MOSAIC K99/R00 applications.

*Date:* November 9, 2023.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892 (Virtual Meeting).

*Contact Person:* Rebecca H. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Room 3AN12B, Bethesda, Maryland 20892, 301–594–2771, [johnsonrh@nigms.nih.gov](mailto:johnsonrh@nigms.nih.gov).

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel; Review of Support for Research Excellence (SuRE) Program (R16).

*Date:* November 17, 2023.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892 (Virtual Meeting).

*Contact Person:* Rebecca H. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Room 3AN12B, Bethesda, Maryland 20892, 301–594–2771, [johnsonrh@nigms.nih.gov](mailto:johnsonrh@nigms.nih.gov).

(Catalogue of Federal Domestic Assistance Program No. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: September 22, 2023.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–21154 Filed 9–27–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 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:* Heart, Lung, and Blood Initial Review Group; NHLBI

Institutional Training Mechanism Study Section.

*Date:* December 1, 2023.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Michael P. Reilly, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6705 Rockledge Drive, Room 208–Z, Bethesda, MD 20892, 301–827–7975, [reillymp@nhlbi.nih.gov](mailto:reillymp@nhlbi.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

*Dated:* September 22, 2023.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–21145 Filed 9–27–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 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:* Heart, Lung, and Blood Initial Review Group; Heart, Lung, and Blood Program Project Study Section.

*Date:* December 1, 2023.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* DoubleTree by Hilton McLean Tysons, 1960 Chain Bridge Rd., McLean, VA 22102.

*Contact Person:* Melissa H. Nagelin, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–R, Bethesda, MD 20892, (301) 827–7951, [nagelinmh2@nhlbi.nih.gov](mailto:nagelinmh2@nhlbi.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

*Dated:* September 22, 2023.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–21146 Filed 9–27–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Dental and Craniofacial Research; 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 of Dental and Craniofacial Research Special Emphasis Panel; Review of NIDCR R03 and DSR Member-Conflict Applications.

*Date:* November 2, 2023.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Dental and Craniofacial Research, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Yun Mei, MD, Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Bethesda, MD 20892, (301) 827–4639, [yun.mei@nih.gov](mailto:yun.mei@nih.gov).

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review of RFA–DE–24–001 and RFA–DE–24–002.

*Date:* November 15, 2023.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Dental and Craniofacial Research, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Christopher T. Campbell, Ph.D., MD, Scientific Review Officer,

Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Bethesda, MD 20892, (301) 594–5593, [christopher.campbell@nih.gov](mailto:christopher.campbell@nih.gov).

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

*Dated:* September 22, 2023.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–21151 Filed 9–27–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Establishment of the Applied Therapeutics for Cancer Integrated Review Group

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. 1001–1014), the Director, National Institutes of Health (NIH) announces the establishment of the Applied Therapeutics for Cancer Integrated Review Group (IRG) as authorized by 42 U.S.C. 282(b)(16), section 402(b)(16) of the Public Health Service Act, as amended.

The Director, NIH, has determined that the Applied Therapeutics for Cancer IRG is in the public interest in connection with the performance of duties imposed on NIH by law, and that these duties can best be performed through the advice and counsel of the committee.

The committee provides advice and recommendations on funding applications and proposals, including but not limited to, the scientific and technical merit of applications for grants-in-aid for research, research training, or research-related grants and cooperative agreements, or contract proposals relating to scientific areas relevant to translational and clinical investigations that encompass cancer therapeutic development and cancer treatment.

Inquiries may be directed to Claire Harris, Director, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail code 4875), Telephone (301) 496–2123, or [Claire.Harris@nih.gov](mailto:Claire.Harris@nih.gov).

Dated: September 21, 2023.

**Lawrence A. Tabak,**

*Acting NIH Director, National Institutes of Health.*

[FR Doc. 2023–21233 Filed 9–27–23; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### **Request for Information (RFI): Inviting Comments and Suggestions on Opportunities and Challenges for the Collection, Use, and Sharing of Real-World Data (RWD) Including Electronic Health Records, for National Institutes of Health (NIH) Supported Biomedical and Behavioral Research**

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Request for information.

**SUMMARY:** The purpose of this National Institutes of Health (NIH) Request for Information (RFI) is to solicit public comments on the use of Real-World Data (RWD), including Electronic Health Records, for Biomedical and Behavioral Research.

**DATES:** The NIH RFI is open for public comment. To assure consideration, your response must be received by December 14, 2023, 11:59 p.m. (ET).

**ADDRESSES:** All comments must be submitted electronically on the submission website at <https://datascience.nih.gov/rfi-rwd>.

Responses must be received by 11:59:59 p.m. (ET) on December 14, 2023.

Responses to this RFI are voluntary and may be submitted anonymously. You may voluntarily include your name and contact information with your response. If you choose to provide NIH with this information, NIH will not share your name and contact information outside of NIH unless required by law.

Other than your name and contact information, please do not include any personally identifiable information or any information that you do not wish to make public. Proprietary, classified, confidential, or sensitive information should not be included in your response. The Government will use the information submitted in response to this RFI at its discretion. Other than your name and contact information, the Government reserves the right to use any submitted information on public websites, in reports, in summaries of the state of the science, in any possible resultant solicitation(s), grant(s), or

cooperative agreement(s), or in the development of future funding opportunity announcements. This RFI is for informational and planning purposes only and is not a solicitation for applications or an obligation on the part of the Government to provide support for any ideas identified in response to it. Please note that the Government will not pay for the preparation of any information submitted or for use of that information.

We look forward to your input and hope that you will share this RFI opportunity with your colleagues.

#### **FOR FURTHER INFORMATION CONTACT:**

Questions about this request for information should be directed to Dr. Susan Gregurick, 301–435–1923, [RWD-rfi@od.nih.gov](mailto:RWD-rfi@od.nih.gov), National Institutes of Health, Office of Data Science Strategy, 9000 Rockville Pike, Bethesda, Maryland 20892.

**SUPPLEMENTARY INFORMATION:** The National Institutes of Health (NIH) is requesting public comment on the use of Real World Data (RWD) for NIH supported biomedical and behavioral research, including opportunities for leveraging the benefits of RWD and strategies for responsible use. NIH also seeks to better understand community perspectives on the potential value and constraints—including scientific, administrative, legal, business, and bioethical—for the greater use of RWD in NIH-sponsored biomedical and behavioral research. This request for information (RFI) is in accordance with 42 U.S.C. 281 as amended.

#### **Background**

Researchers are increasingly using data collected in real-world settings to augment traditional research studies, as well as develop more effective treatments and interventions for patients. These “real-world data (RWD)”, defined by the U.S. Food and Drug Administration, are data relating to patient health status and/or the delivery of health care routinely collected from a variety of sources. Examples of RWD include data derived from electronic health records, medical claims data, data from product or disease registries, and data gathered from other sources (such as digital health technologies) that can inform on health status. While these data hold tremendous promise for biomedical and behavioral research, they can be collected from a variety of sources through multiple mechanisms, creating challenges for researchers and questions for those whose data are being shared.

Importantly, NIH is committed to ensuring participant privacy and

autonomy are protected in all NIH-supported research. As NIH establishes health-related research data platforms that include access to RWD, NIH continues to prioritize maximizing data access while upholding participant preferences regarding the collection and use of their data. Most recently, through the Advisory Committee to the NIH Director, (<https://www.acd.od.nih.gov/index.html>), NIH staff met with stakeholders to better understand their perspectives on benefits and risks of combining and using human datasets, particularly from disparate sources (e.g., research and non-research settings) and how their data should be used in biomedical and behavioral research. NIH will continue working to incorporate these perspectives in its research studies to build trust and honor participant preferences. Input requested on this RFI will be used to inform NIH’s continuing development of guidance on the use of RWD for research and assist in the planning for appropriate mechanisms and programs for research with RWD.

#### **Information Requested**

NIH is requesting public comment on the use of RWD for NIH-supported biomedical and behavioral research, including opportunities for leveraging the benefits of RWD and strategies for its responsible use. NIH also seeks to better understand community perspectives on the potential value and constraints—including scientific, administrative, legal, business, and bioethical—for the increased use of RWD in biomedical and behavioral research.

Response to this RFI is voluntary and may be submitted anonymously. Respondents are free to address any or all topics listed below, as well as other relevant topics, for NIH’s consideration.

1. *Scientific value and quality considerations for collection, use, and sharing of RWD in biomedical and behavioral research.* NIH seeks broad input on how RWD is acquired and used in NIH-funded research, the demonstrated and anticipated value of RWD in research, and opportunities and challenges related to data standards and quality, representativeness, and potential biases for using RWD in research. Additionally, NIH is seeking information on:

(a) Biomedical and behavioral research questions that could be investigated using RWD, including novel unanticipated insights that have been enabled by using RWD in research.

(b) Barriers to using RWD in research, such as bias, underrepresentation of populations in data, and technical

issues of data harmonization and linkage.

2. *Using RWD as part of the scientific paradigm, including open science, scientific rigor and reproducibility, and team science.* NIH seeks broad input on the opportunities and challenges related to using RWD as part of the scientific process.

(a) Approaches or methods for using RWD in collaborative teams and ensuring reproducibility.

(b) How do researchers assess the validation and verification of RWD data that is used in research.

(c) Appropriate open science practices and use of the FAIR principles (<https://www.nature.com/articles/sdata201618>) for research using RWD and approaches for maximizing appropriate data sharing when expected by the NIH Policy for Data Management and Sharing (<https://sharing.nih.gov/data-management-and-sharing-policy>) or other policies.

3. *Administrative and logistical considerations for collecting, using, and sharing RWD for biomedical and behavioral research.* NIH seeks broad input on the opportunities and challenges related to the process of acquiring, using, and making RWD available for biomedical and behavioral research, including:

(a) Pros and cons of various approaches for obtaining RWD through algorithms, purchasing RWD through trusted parties, accessing RWD through secure enclaves, etc.

(b) Considerations regarding licensing, costs, third party involvement, and restrictions for data use and sharing.

(c) Availability/utility of emerging de-identification technologies and data storage/sharing considerations.

4. *Ethical considerations for using RWD for biomedical and behavioral research.* NIH seeks broad input on the opportunities and challenges related to potential bioethical issues regarding the collection, use, and sharing of RWD, including:

(a) Strategies for protecting participant privacy and autonomy.

(b) Potential re-identification risks for RWD, including the technical feasibility of re-identifying linked data and the possibility of anonymity for patients, research participants, and their families.

(c) Ethical implications of data as a "commodity", in terms of buying and selling personal health data.

This RFI is for planning purposes only and should not be construed as a solicitation for applications or proposals, or as an obligation in any way on the part of the United States Government. The Government will not pay for the preparation of any

information submitted or for the Government's use. Additionally, the Government cannot guarantee the confidentiality of the information provided.

Dated: September 21, 2023.

**Tara A. Schwetz,**

*Acting Principal Deputy Director, National Institutes of Health.*

[FR Doc. 2023–21239 Filed 9–27–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Establishment of the Social and Community Influences on Health Integrated Review Group

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. 1001–1014), the Director, National Institutes of Health (NIH) announces the establishment of the Social and Community Influences on Health Integrated Review Group (IRG) as authorized by 42 U.S.C. 282(b)(16), section 402(b)(16) of the Public Health Service Act, as amended.

The Director, NIH, has determined that the Social and Community Influences on Health IRG is in the public interest in connection with the performance of duties imposed on NIH by law, and that these duties can best be performed through the advice and counsel of the committee.

The committee provides advice and recommendations on funding applications and proposals, including but not limited to, the scientific and technical merit of applications for grants-in-aid for research, research training, or research-related grants and cooperative agreements, or contract proposals relating to scientific areas relevant to social, interpersonal, community, and cultural influences on health, development, and well-being across the life span.

Inquiries may be directed to Claire Harris, Director, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail code 4875), Telephone (301) 496–2123, or [Claire.Harris@nih.gov](mailto:Claire.Harris@nih.gov).

Dated: September 21, 2023.

**Lawrence A. Tabak,**

*Acting NIH Director, National Institutes of Health.*

[FR Doc. 2023–21234 Filed 9–27–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Cancer Institute; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute.

This meeting will be a hybrid meeting held in-person and virtually and will be open to the public as indicated below with attendance limited to space available. Individuals who plan to attend in-person or view the virtual meeting and need special assistance or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session can be accessed from the NIH Videocast at the following link: <http://videocast.nih.gov/>.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, National Cancer Institute.

*Date:* November 13, 2023.

*Open:* 10:00 a.m. to 10:30 a.m.

*Agenda:* Remarks from the NCI Director.

*Closed:* 10:30 a.m. to 4:00 p.m.

*Agenda:* Personnel qualifications and performance, and competence of individual investigators.

*Name of Committee:* Board of Scientific Counselors, National Cancer Institute.

*Date:* November 14, 2023.

*Closed:* 11:00 a.m. to 1:45 p.m.

*Agenda:* Personnel qualifications and performance, and competence of individual investigators.

*Place:* National Institute of Health, Building 31, C Wing, 6th Floor, Conference Room C, 9000 Rockville Pike, Bethesda, MD 20892 (Hybrid Meeting).

*Contact Person:* Brian E. Wojcik, Ph.D., Senior Review Administrator, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 3W414, Rockville, MD 20850, 240–276–5660, [wojcikb@mail.nih.gov](mailto:wojcikb@mail.nih.gov).

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when

applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at <https://www.nih.gov/about-nih/visitor-information/campus-access-security> for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <https://deainfo.nci.nih.gov/advisory/bsc/index.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 22, 2023.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–21147 Filed 9–27–23; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Diabetes and Digestive and Kidney Diseases; 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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Specialized Study Centers Review.

*Date:* October 30, 2023.

*Time:* 10:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Elena Sanovich, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Blvd., Room 7351, Bethesda, MD 20892–2542, 301–594–8886, [sanoviche@mail.nih.gov](mailto:sanoviche@mail.nih.gov).

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Diabetes Self-Care.

*Date:* November 3, 2023.

*Time:* 10:00 a.m. to 11:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Elena Sanovich, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Blvd., Room 7351, Bethesda, MD 20892–2542, 301–594–8886, [sanoviche@mail.nih.gov](mailto:sanoviche@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 22, 2023.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–21153 Filed 9–27–23; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Heart, Lung, and Blood Institute; Notice of Closed 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 Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI MOSAIC K99 R00 Review Panel.

*Date:* November 3, 2023.

*Time:* 12:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Kazuyo Kegan, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–T, Bethesda, MD 20892, (301) 402–1334, [kazuyo.kegan@nih.gov](mailto:kazuyo.kegan@nih.gov).

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Mentored Career Development K-Awards.

*Date:* November 6, 2023.

*Time:* 11:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Manoj K. Valiyaveetil, Ph.D., Scientific Review Officer, Blood & Vascular Branch, Office Scientific Review, Division of Extramural Research Activities (DERA), National Institute of Health, National Heart, Lung, and Blood Institute, Bethesda, MD 20817, (301) 402–1616, [manoj.valiyaveetil@nih.gov](mailto:manoj.valiyaveetil@nih.gov).

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Grant Review for NHLBI K Award Recipients (R03).

*Date:* November 9, 2023.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Zhihong Shan, Ph.D., MD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 205–J, Bethesda, MD 20892, (301) 827–7085, [zhihong.shan@nih.gov](mailto:zhihong.shan@nih.gov).

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Support for Conference and Scientific Meetings (R13).

*Date:* November 16, 2023.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Kazuyo Kegan, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–T, Bethesda, MD 20892, (301) 402–1334, [kazuyo.kegan@nih.gov](mailto:kazuyo.kegan@nih.gov).

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Catalyze Product Definition (R61/R33).

*Date:* November 16, 2023.

*Time:* 10:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Manoj K. Valiyaveettil, Ph.D., Scientific Review Officer, Blood & Vascular Branch, Office Scientific Review, Division of Extramural Research Activities (DERA), National Institute of Health, National Heart, Lung, and Blood Institute, Bethesda, MD 20817, (301) 402-1616, [manoj.valiyaveettil@nih.gov](mailto:manoj.valiyaveettil@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 22, 2023.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023-21144 Filed 9-27-23; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Human Genome Research Institute; Notice of Closed 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:* Center for Inherited Disease Research Access Committee.

*Date:* November 3, 2023.

*Time:* 11:30 a.m. to 12:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, National Human Genome Research Institute, 6700B Rockledge Drive, Room 3172, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Barbara J. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institutes of Health, National Human Genome Research Institute, 6700B Rockledge Drive, Room 3172, Bethesda, MD 20892, (301) 402-8837, [barbara.thomas@nih.gov](mailto:barbara.thomas@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: September 22, 2023.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023-21148 Filed 9-27-23; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Aging; 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 on Aging Special Emphasis Panel; Multi-Component Application.

*Date:* October 25, 2023.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Dario Dieguez, Ph.D., Scientific Review Officer, National Institute on Aging, Scientific Review Branch, Gateway Building, 7201 Wisconsin Avenue (2W218), Bethesda, MD 20892, (301) 827-3101, [dario.dieguez@nih.gov](mailto:dario.dieguez@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 22, 2023.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023-21155 Filed 9-27-23; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a

meeting of the Sickle Cell Disease Advisory Committee.

The meeting will be held as a virtual meeting and will be open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: <https://videocast.nih.gov/>.

*Name of Committee:* Sickle Cell Disease Advisory Committee.

*Date:* January 29, 2024.

*Time:* 10:00 a.m. to 3:00 p.m.

*Agenda:* NHLBI Sickle Cell Disease Program Updates.

*Place:* National Institutes of Health, Rockledge Centre I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Telephone Access:* +1 669 254 5252 (Meeting ID 160 763 2658). *Virtual Access:* <https://nih.zoomgov.com/j/1607632658> (Meeting ID: 160 763 2658).

*Contact Person:* Julie A. Panepinto, MD, MSPH, SCDAC Executive Secretary, Director, Division of Blood Diseases and Resources, National Institutes of Health, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Suite 9166, Bethesda, MD 20892, 301-435-0080, [nhlbi.nih.gov](mailto:NHLBIDBDRGrantResource@nhlbi.nih.gov).

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <https://www.nhlbi.nih.gov/advisory-and-peer-review-committees/nhlbi-sickle-cell-disease-advisory-committee>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 22, 2023.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023-21156 Filed 9-27-23; 8:45 am]

BILLING CODE 4140-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, email the SAMHSA Reports Clearance Officer at [samhsapra@samhsa.hhs.gov](mailto:samhsapra@samhsa.hhs.gov).

*Comments are invited on:* (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

#### Proposed Project: 988 Cooperative Agreements Monitoring Program (OMB No. 0930-0290)—New ICR

The Substance Abuse and Mental Health Services Administration (SAMHSA) is seeking Office of Management and Budget (OMB) Emergency approval for new information collection activities for monitoring all of SAMHSA's 988 Cooperative Agreements. The collection of this information is critical to successfully oversee operational response and quality of service through the 988 Suicide and Crisis Lifeline to

ensure connections to care for individuals in suicidal crisis or emotional distress contacting in for 988 phone, chat, and text support for connecting local, state/territory and national outcomes and monitoring contractual obligations for current and future 988 grant programs. Much of this information is already embedded in the current 988 Suicide and Crisis Lifeline network administrator grants, the 988 state and territory grant program, or the 988 Tribal Response grant program.

Congress designated 988 in 2020 and the Lifeline transitioned to the 3-digit number in July 2022. As a part of the federal government's commitment to addressing the mental health crisis in America, unprecedented federal resources have been invested to scale up crisis centers in support of 988. In Section 1103(a)(2)(B) of the Consolidated Appropriations Act, 2023, Congress called for enhanced program evaluation, including performance measures to assess program response and improve readiness and performance of the service, including review of each contact to ensure timely connection of service and quality provision in line with evidence-based care. In order to help meet the standards and requirements set forth in statute, ongoing communication of key outcomes within this OMB request must be received and reviewed to ensure connection and quality of care through 988.

The information being collected will be used by SAMHSA to ensure individuals in suicidal crisis can contact 988 Suicide and Crisis Lifeline and are connected to crisis centers provided evidence-based care and able to receive critical resource referral and linkage, including opportunities for mobile crisis support, crisis receiving and stabilizing facilities, peer respite centers and withdrawal management services. The four programs to be monitored and evaluated include the Tribal Cooperative Agreements, State and Territory Cooperative Agreements, 988 Crisis Center Follow-up Cooperative Agreements, and the 988 Lifeline Administrator.

The purpose of the Tribal Cooperative Agreements is to provide resources to improve response to 988 contacts (including calls, chats, and texts) originating in Tribal communities and/or activated by American Indians/Alaska Natives. The information

collection instruments include Tribal Government: Semi Annual Progress Report, Tribal Government: Monthly Meeting Agenda, Tribal Government: Quality Improvement Plan.

The purpose of the State and Territory Cooperative Agreements is to improve state and territory response to 988 contacts (including calls, chats, and texts) originating in the state/territory. The information collection instruments include State/Territory: Monthly Key Metrics, State/Territory: Quarterly Report Template, State/Territory: Programmatic QI Plan (Annual Collection), State/Territory: Monthly Meeting Call Agenda, State/Territory: Chat and Text Report (Annual Collection), State/Territory: Communications Plan (Annual Collection), State/Territory: Sustainability Plan (Annual Collection), State/Territory: Mobile Crisis and 988-911 reports (Annual Collection).

The purpose of the 988 Crisis Center Follow Up Cooperative Agreements is to provide a crisis center response that ensures the systematic follow-up of suicidal persons who contact a 988 Suicide and Crisis Lifeline (988 Lifeline) Crisis Center; provides enhanced coordination of crisis stabilization, crisis respite, mobile crisis outreach (MCO) response services and other services on the crisis continuum of care; reduces unnecessary police engagement and; improves connections for high-risk populations. The information collection instruments include Crisis Center Data Reporting Elements and Crisis Center Monthly Agenda Template.

Finally, the purpose of the 988 Lifeline Administrator is to manage, enhance, and strengthen the 988 Lifeline network that routes individuals in the United States to a network of certified crisis centers that link to local emergency, mental health, and social services resources. The information collection instruments include Instrument 1: Lifeline Key Metrics (Monthly) and Instrument 2: Monthly Progress Reports.

The total annualized burden to an estimated 529 respondents for the 988 Cooperative Agreements programs combined monitoring is estimated to be 2,944 hours. Burden estimates are based on the data collection requirements and the amount of respondents. These estimated burden hours over three years are as follows:



## ESTIMATED TOTAL BURDEN FOR 988 COOPERATIVE AGREEMENTS MONITORING PROGRAM

| SAMHSA tool                                                                  | Number of respondents | Responses per respondent | Total responses | Hours per response | Total hour burden | Hourly wage cost | Total hour cost |
|------------------------------------------------------------------------------|-----------------------|--------------------------|-----------------|--------------------|-------------------|------------------|-----------------|
| Tribal Govt: Semi Annual Progress Report .....                               | 25                    | 2                        | 50              | 2                  | 100               | \$26.00          | \$2,600.00      |
| Tribal Govt: Monthly Meeting Agenda .....                                    | 25                    | 12                       | 300             | 1                  | 300               | 26.00            | 7,800.00        |
| Tribal Govt: Quality Improvement Plan ...                                    | 25                    | 1                        | 25              | 2                  | 50                | 26.00            | 1,300.00        |
| State/Territory: Monthly Key Metrics .....                                   | 54                    | 12                       | 648             | 1                  | 648               | 26.00            | 16,848.00       |
| State/Territory: Quarterly Report Template .....                             | 54                    | 3                        | 162             | 2                  | 324               | 26.00            | 8,424.00        |
| State/Territory: Programmatic QI Plan (Annual Collection) .....              | 54                    | 1                        | 54              | 2                  | 108               | 26.00            | 2,808.00        |
| State/Territory: Monthly Meeting Call Agenda .....                           | 54                    | 12                       | 648             | 1                  | 648               | 26.00            | 16,848.00       |
| State/Territory: Chat and Text Report (Annual Collection) .....              | 54                    | 1                        | 54              | 1                  | 54                | 26.00            | 1,404.00        |
| State/Territory: Communications Plan (Annual Collection) .....               | 54                    | 1                        | 54              | 1                  | 54                | 26.00            | 1,404.00        |
| State/Territory: Sustainability Plan (Annual Collection) .....               | 54                    | 1                        | 54              | 2                  | 108               | 26.00            | 2,808.00        |
| State/Territory: Mobile Crisis and 988-911 reports (Annual Collection) ..... | 54                    | 1                        | 54              | 6                  | 324               | 26.00            | 8,424.00        |
| Crisis Center Data Reporting Elements ..                                     | 10                    | 1                        | 10              | 2                  | 20                | 26.00            | 520.00          |
| Crisis Center Monthly Agenda Template                                        | 10                    | 1                        | 10              | 2                  | 20                | 26.00            | 520.00          |
| Instrument 1: Lifeline Key Metrics (Monthly) .....                           | 1                     | 12                       | 12              | 11.50              | 138               | 26.00            | 3,588.00        |
| Instrument 2: Monthly Progress Reports                                       | 1                     | 12                       | 12              | 4                  | 48                | 26.00            | 1,248.00        |
| Total .....                                                                  | 529                   | 73                       | 2,147           | .....              | 2,944             | .....            | 76,544.00       |

<sup>1</sup> The hourly wage of \$26.00 was calculated based on rounding a \$25.94 hourly wage based on the Occupational Employment and Wages, Mean Hourly Wage rate for Community and Social Service Occupations (<https://www.bls.gov>).

Written comments and recommendations for Send comments to Carlos Graham, SAMHSA Reports Clearance Officer, 5600 Fisher Lane, Room 15E57A, Rockville, MD 20852 OR email him a copy at [samhsapra@samhsa.hhs.gov](mailto:samhsapra@samhsa.hhs.gov). Written comments should be received by November 27, 2023.

**Carlos Graham,**

*Reports Clearance Officer.*

[FR Doc. 2023-21166 Filed 9-27-23; 8:45 a.m.]

**BILLING CODE 4162-20-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Accreditation and Approval of AmSpec, LLC (Cape Canaveral, FL) as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of AmSpec, LLC (Cape

Canaveral, FL) as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that AmSpec, LLC (Cape Canaveral, FL), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of August 3, 2022.

**DATES:** AmSpec, LLC (Cape Canaveral, FL) was approved and accredited as a commercial gauger and laboratory as of August 3, 2022. The next inspection date will be scheduled for August 2026.

**FOR FURTHER INFORMATION CONTACT:** Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501-A North, Washington, DC 20229, tel. 202-344-1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec, LLC, 191 Center Street, Cape Canaveral, FL 32920, has been approved to gauge

petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of August 3, 2022.<sup>1</sup>

AmSpec, LLC (Cape Canaveral, FL) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapters | Title                      |
|--------------|----------------------------|
| 3 .....      | Tank Gauging.              |
| 7 .....      | Temperature Determination. |
| 8 .....      | Sampling.                  |
| 11 .....     | Physical Properties Data.  |
| 12 .....     | Calculations.              |
| 17 .....     | Maritime Measurement.      |

AmSpec, LLC (Cape Canaveral, FL) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

<sup>1</sup> As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the

scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924,

85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

| CBPL No.    | ASTM  | Title                                                                                                                                                        |
|-------------|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 27-01 ..... | D287  | Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).                                                          |
| 27-02 ..... | D1298 | Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method. |
| 27-03 ..... | D4006 | Standard Test Method for Water in Crude Oil by Distillation.                                                                                                 |
| 27-04 ..... | D95   | Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.                                                               |
| 27-06 ..... | D473  | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.                                                                      |
| 27-08 ..... | D86   | Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.                                                                         |
| 27-11 ..... | D445  | Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).                                       |
| 27-13 ..... | D4294 | Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry.                                    |
| 27-14 ..... | D2622 | Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.                                              |
| 27-48 ..... | D4052 | Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.                                                                   |
| 27-50 ..... | D93   | Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.                                                                                   |
| 27-53 ..... | D2709 | Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.                                                                        |
| 27-54 ..... | D1796 | Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method.                                                                           |
| 27-58 ..... | D5191 | Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method).                                                                                 |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [CBPGaugersLabs@cbp.dhs.gov](mailto:CBPGaugersLabs@cbp.dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

**James D. Sweet,**

*Laboratory Director, Houston, Laboratories and Scientific Services Directorate.*

[FR Doc. 2023-21219 Filed 9-27-23; 8:45 am]

**BILLING CODE 9111-14-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Accreditation and Approval of AmSpec, LLC (Texas City, TX) as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of AmSpec, LLC (Texas City, TX) as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that AmSpec, LLC (Texas City, TX), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of August 3, 2022.

**DATES:** AmSpec, LLC (Texas City, TX) was approved and accredited as a commercial gauger and laboratory as of August 3, 2022. The next inspection date will be scheduled for August 2026.

**FOR FURTHER INFORMATION CONTACT:** Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501-

A North, Washington, DC 20229, tel. 202-344-1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec, LLC, 3208 5th Avenue South, Texas City, TX 77590, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of August 3, 2022.<sup>1</sup>

AmSpec, LLC (Texas City, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapters | Title                      |
|--------------|----------------------------|
| 3 .....      | Tank Gauging.              |
| 7 .....      | Temperature Determination. |
| 8 .....      | Sampling.                  |
| 11 .....     | Physical Properties Data.  |
| 12 .....     | Calculations.              |
| 17 .....     | Maritime Measurement.      |

AmSpec, LLC (Texas City, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No.    | ASTM  | Title                                                                                          |
|-------------|-------|------------------------------------------------------------------------------------------------|
| 27-03 ..... | D4006 | Standard Test Method for Water in Crude Oil by Distillation.                                   |
| 27-04 ..... | D95   | Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation. |
| 27-05 ..... | D4928 | Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.            |

<sup>1</sup> As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the

scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924,

85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

| CBPL No.    | ASTM  | Title                                                                                                                     |
|-------------|-------|---------------------------------------------------------------------------------------------------------------------------|
| 27-06 ..... | D473  | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.                                   |
| 27-08 ..... | D86   | Standard Test Method for Distillation of Petroleum Products.                                                              |
| 27-11 ..... | D445  | Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).    |
| 27-13 ..... | D4294 | Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry. |
| 27-14 ..... | D2622 | Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.           |
| 27-46 ..... | D5002 | Standard Test Method for Density, Relative Density, and API Gravity of Crude Oils by Digital Density Analyzer.            |
| 27-48 ..... | D4052 | Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.                                |
| 27-50 ..... | D93   | Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.                                                |
| 27-53 ..... | D2709 | Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.                                     |
| 27-54 ..... | D1796 | Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method.                                        |
| 27-58 ..... | D5191 | Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method).                                              |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [CBPGaugersLabs@cbp.dhs.gov](mailto:CBPGaugersLabs@cbp.dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

**James D. Sweet,**

*Laboratory Director, Houston, Laboratories and Scientific Services Directorate.*

[FR Doc. 2023-21212 Filed 9-27-23; 8:45 am]

**BILLING CODE 9111-14-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Accreditation and Approval of AmSpec, LLC (Davie, FL) as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of AmSpec, LLC (Davie, FL) as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that AmSpec, LLC (Davie, FL), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of August 30, 2022.

**DATES:** AmSpec, LLC (Davie, FL) was approved and accredited as a commercial gauger and laboratory as of August 30, 2022. The next inspection date will be scheduled for August 2026.

**FOR FURTHER INFORMATION CONTACT:** Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501-A North, Washington, DC 20229, tel. 202-344-1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec, LLC, 4370 Oakes Road, Suite #732, Davie, FL 33314, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of August 30, 2022.<sup>1</sup>

AmSpec, LLC (Davie, FL) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapters | Title                      |
|--------------|----------------------------|
| 3 .....      | Tank Gauging.              |
| 7 .....      | Temperature Determination. |
| 8 .....      | Sampling.                  |
| 11 .....     | Physical Properties Data.  |
| 12 .....     | Calculations.              |
| 17 .....     | Maritime Measurement.      |

AmSpec, LLC (Davie, FL) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No.    | ASTM  | Title                                                                                                                                                        |
|-------------|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 27-02 ..... | D1298 | Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method. |
| 27-04 ..... | D95   | Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.                                                               |
| 27-06 ..... | D473  | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.                                                                      |
| 27-08 ..... | D86   | Standard Test Method for Distillation of Petroleum Products.                                                                                                 |
| 27-11 ..... | D445  | Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).                                       |

<sup>1</sup> As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the

scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924,

85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

| CBPL No.    | ASTM  | Title                                                                                                                               |
|-------------|-------|-------------------------------------------------------------------------------------------------------------------------------------|
| 27-13 ..... | D4294 | Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.           |
| 27-48 ..... | D4052 | Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.                                          |
| 27-54 ..... | D1796 | Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method.                                                  |
| 27-57 ..... | D7039 | Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-Ray Fluorescence Spectrometry. |
| 27-58 ..... | D5191 | Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method).                                                        |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [CBPGaugersLabs@cbp.dhs.gov](mailto:CBPGaugersLabs@cbp.dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

**James D. Sweet,**  
Laboratory Director, Houston, Laboratories and Scientific Services Directorate.

[FR Doc. 2023-21211 Filed 9-27-23; 8:45 am]

**BILLING CODE 9111-14-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Accreditation and Approval of AmSpec Services, LLC (Mobile, AL) as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of AmSpec Services, LLC (Mobile, AL) as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that AmSpec Services, LLC (Mobile, AL) has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of April 12, 2022.

**DATES:** AmSpec Services, LLC (Mobile, AL) was approved and accredited as a commercial gauger and laboratory as of April 12, 2022. The next inspection date will be scheduled for April 2026.

**FOR FURTHER INFORMATION CONTACT:** Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501-

A North, Washington, DC 20229, tel. 202-344-1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec Services, LLC, 5237 Halls Mill Rd., Mobile, AL 36619, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of April 12, 2022.<sup>1</sup>

AmSpec Services, LLC (Mobile, AL) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapters | Title                      |
|--------------|----------------------------|
| 3 .....      | Tank Gauging.              |
| 7 .....      | Temperature Determination. |
| 8 .....      | Sampling.                  |
| 11 .....     | Physical Properties Data.  |
| 12 .....     | Calculations.              |
| 17 .....     | Maritime Measurement.      |

AmSpec Services, LLC (Mobile, AL) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No.    | ASTM  | Title                                                                                                                                     |
|-------------|-------|-------------------------------------------------------------------------------------------------------------------------------------------|
| 27-01 ..... | D287  | Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).                                       |
| 27-02 ..... | D1298 | Standard Test Method for Density, Relative Density, or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method. |
| 27-04 ..... | D95   | Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.                                            |
| 27-05 ..... | D4928 | Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.                                                       |
| 27-06 ..... | D473  | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.                                                   |
| 27-11 ..... | D445  | Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).                    |
| 27-13 ..... | D4294 | Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.                 |
| 27-46 ..... | D5002 | Standard Test Method for Density, Relative Density, and API Gravity of Crude Oils by Digital Density Analyzer.                            |
| N/A .....   | D4007 | Standard Test Method for Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure).                                 |

<sup>1</sup> As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the

scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924,

85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to [CBPGaugersLabs@cbp.dhs.gov](mailto:CBPGaugersLabs@cbp.dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <https://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

**James D. Sweet,**

*Laboratory Director, Houston, Laboratories and Scientific Services Directorate.*

[FR Doc. 2023–21202 Filed 9–27–23; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Accreditation and Approval of King Inspection and Testing, Inc. (Carson, CA) as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of King Inspection and Testing, Inc. (Carson, CA), as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that King Inspection and Testing, Inc. (Carson, CA) has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of August 11, 2022.

**DATES:** King Inspection and Testing, Inc. (Carson, CA) was approved and accredited as a commercial gauger and laboratory as of August 11, 2022. The next inspection date will be scheduled for August 2026.

**FOR FURTHER INFORMATION CONTACT:** Dr. Justin Shey, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501–A North,

Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that King Inspection and Testing, Inc., 1300 E 223rd St., #410, Carson, CA 90745, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13, as of August 11, 2022.<sup>1</sup>

King Inspection and Testing, Inc. (Carson, CA) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapters | Title                      |
|--------------|----------------------------|
| 3 .....      | Tank Gauging.              |
| 7 .....      | Temperature Determination. |
| 8 .....      | Sampling.                  |
| 12 .....     | Calculations.              |
| 17 .....     | Marine Measurement.        |

King Inspection and Testing, Inc. (Carson, CA) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No.    | ASTM  | Title                                                                                                                                     |
|-------------|-------|-------------------------------------------------------------------------------------------------------------------------------------------|
| 27–02 ..... | D1298 | Standard Test Method for Density, Relative Density, or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method. |
| 27–08 ..... | D86   | Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.                                                      |
| N/A .....   | D7153 | Standard Test Method for Freezing Point of Aviation Fuels (Automatic Laser Method).                                                       |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to [CBPGaugersLabs@cbp.dhs.gov](mailto:CBPGaugersLabs@cbp.dhs.gov). Please reference the website listed below for a

complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

**James D. Sweet,**

*Laboratory Director, Houston, Laboratories and Scientific Services Directorate.*

[FR Doc. 2023–21209 Filed 9–27–23; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Accreditation and Approval of AmSpec, LLC (Mickleton, NJ) as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of AmSpec, LLC (Mickleton, NJ) as a commercial gauger and laboratory.

<sup>1</sup> As a result of the SARS–CoV–2 (COVID–19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the

scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924,

85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID–19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that AmSpec, LLC (Mickleton, NJ), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of August 11, 2022.

**DATES:** AmSpec, LLC (Mickleton, NJ) was approved and accredited as a commercial gauger and laboratory as of August 11, 2022. The next inspection date will be scheduled for August 2026.

**FOR FURTHER INFORMATION CONTACT:** Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501–

A North, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec, LLC, 410 South Gate Ct., Mickleton, NJ 08056, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of August 11, 2022.<sup>1</sup>

AmSpec, LLC (Mickleton, NJ) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapters | Title                      |
|--------------|----------------------------|
| 1 .....      | Vocabulary.                |
| 3 .....      | Tank Gauging.              |
| 7 .....      | Temperature Determination. |
| 8 .....      | Sampling.                  |
| 12 .....     | Calculations.              |
| 17 .....     | Maritime Measurement.      |

AmSpec, LLC (Mickleton, NJ) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No.    | ASTM  | Title                                                                                                                                                        |
|-------------|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 27–01 ..... | D287  | Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).                                                          |
| 27–02 ..... | D1298 | Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method. |
| 27–03 ..... | D4006 | Standard Test Method for Water in Crude Oil by Distillation.                                                                                                 |
| 27–04 ..... | D95   | Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.                                                               |
| 27–05 ..... | D4928 | Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.                                                                          |
| 27–06 ..... | D473  | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.                                                                      |
| 27–08 ..... | D86   | Standard Test Method for Distillation of Petroleum Products.                                                                                                 |
| 27–11 ..... | D445  | Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).                                       |
| 27–13 ..... | D4294 | Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.                                    |
| 27–14 ..... | D2622 | Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.                                              |
| 27–46 ..... | D5002 | Standard Test Method for Density, Relative Density, and API Gravity of Crude Oils by Digital Density Analyzer.                                               |
| 27–48 ..... | D4052 | Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.                                                                   |
| 27–50 ..... | D93   | Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.                                                                                   |
| 27–53 ..... | D2709 | Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.                                                                        |
| 27–54 ..... | D1796 | Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method.                                                                           |
| 27–57 ..... | D7039 | Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-Ray Fluorescence Spectrometry.                          |
| 27–58 ..... | D5191 | Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method).                                                                                 |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to [CBPGaugersLabs@cbp.dhs.gov](mailto:CBPGaugersLabs@cbp.dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs->

*scientific/commercial-gaugers-and-laboratories.*

**James D. Sweet,**

*Laboratory Director, Houston, Laboratories and Scientific Services Directorate.*

[FR Doc. 2023–21221 Filed 9–27–23; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Accreditation and Approval of Pan Pacific Surveyors, Inc. (Paramount, CA) as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Pan Pacific Surveyors, Inc. (Paramount, CA) as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Pan

<sup>1</sup> As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the

scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924,

85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

Pacific Surveyors, Inc. (Paramount, CA), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of September 1, 2022.

**DATES:** Pan Pacific Surveyors, Inc. (Paramount, CA) was approved and accredited as a commercial gauger and laboratory as of September 1, 2022. The next inspection date will be scheduled for September 2026.

**FOR FURTHER INFORMATION CONTACT:** Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501–

A North, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Pan Pacific Surveyors, Inc., 7625 Rosecrans Avenue, Ste. 27, Paramount, CA 90723, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of September 1, 2022.<sup>1</sup>

Pan Pacific Surveyors, Inc. (Paramount, CA) is approved for the following gauging procedures for petroleum and certain petroleum

products from the American Petroleum Institute (API):

| API chapters | Title                      |
|--------------|----------------------------|
| 3 .....      | Tank Gauging.              |
| 7 .....      | Temperature Determination. |
| 8 .....      | Sampling.                  |
| 12 .....     | Calculations.              |
| 17 .....     | Maritime Measurement.      |

Pan Pacific Surveyors, Inc. (Paramount, CA) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No.    | ASTM  | Title                                                                                                                                     |
|-------------|-------|-------------------------------------------------------------------------------------------------------------------------------------------|
| 27–02 ..... | D1298 | Standard Test Method for Density, Relative Density, or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method. |
| N/A .....   | D4007 | Standard Test Method for Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure).                                 |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to [CBPGaugersLabs@cbp.dhs.gov](mailto:CBPGaugersLabs@cbp.dhs.gov).

Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

**James D. Sweet,**  
Laboratory Director, Houston, Laboratories and Scientific Services Directorate.

[FR Doc. 2023–21278 Filed 9–27–23; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Accreditation of Dixie Services, Inc. (Galena Park, TX) as a Commercial Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation of Dixie Services, Inc. (Galena Park, TX), as a commercial laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Dixie Services, Inc. (Galena Park, TX), has been accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of August 26, 2022.

**DATES:** Dixie Services, Inc. (Galena Park, TX) was accredited as a commercial laboratory as of August 26, 2022. The

next inspection date will be scheduled for August 2026.

**FOR FURTHER INFORMATION CONTACT:** Dr. Justin Shey, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501–A North, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12, that Dixie Services, Inc., 1706 First Street, Galena Park, TX 77547, has been accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 as of August 26, 2022.<sup>1</sup>

Dixie Services, Inc. (Galena Park, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No.    | ASTM  | Title                                                                                          |
|-------------|-------|------------------------------------------------------------------------------------------------|
| 27–04 ..... | D95   | Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation. |
| 27–05 ..... | D4928 | Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.            |
| 27–06 ..... | D473  | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.        |

<sup>1</sup> As a result of the SARS–CoV–2 (COVID–19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924,

85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID–19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

<sup>1</sup> As a result of the SARS–CoV–2 (COVID–19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the

scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924, 85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID–19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.



| CBPL No.    | ASTM  | Title                                                                                                                     |
|-------------|-------|---------------------------------------------------------------------------------------------------------------------------|
| 27-07 ..... | D4807 | Standard Test Method for Sediment in Crude Oil by Membrane Filtration.                                                    |
| 27-08 ..... | D86   | Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.                                      |
| 27-11 ..... | D445  | Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).    |
| 27-13 ..... | D4294 | Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry. |
| 27-14 ..... | D2622 | Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.           |
| 27-39 ..... | D721  | Standard Test Method for Oil Content of Petroleum Waxes.                                                                  |
| 27-46 ..... | D5002 | Standard Test Method for Density, Relative Density, and API Gravity of Crude Oils by Digital Density Analyzer.            |
| 27-48 ..... | D4052 | Standard Test Method for Density, Relative Density, and API Gravity of Liquids by Digital Density Meter.                  |
| 27-50 ..... | D93   | Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester.                                                |
| 27-53 ..... | D2709 | Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.                                     |
| 27-58 ..... | D5191 | Standard Test Method for Vapor Pressure of Petroleum Products and Liquid Fuels (Mini Method).                             |
| N/A .....   | D92   | Standard Test Method for Flash and Fire Points by Cleveland Open Cup Tester.                                              |
| N/A .....   | D97   | Standard Test Method for Pour Point of Petroleum Products.                                                                |
| N/A .....   | D613  | Standard Test Method for Cetane Number of Diesel Fuel Oil.                                                                |
| N/A .....   | D2699 | Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel.                                            |
| N/A .....   | D2700 | Standard Test Method for Motor Octane Number of Spark-Ignition Engine Fuel.                                               |

Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquiries regarding the specific test this entity is accredited to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [CBPGaugersLabs@cbp.dhs.gov](mailto:CBPGaugersLabs@cbp.dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

**James D. Sweet,**

*Laboratory Director, Houston, Laboratories and Scientific Services Directorate.*

[FR Doc. 2023-21213 Filed 9-27-23; 8:45 am]

**BILLING CODE 9111-14-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Approval of Intertek USA, Inc. (Tampa, FL) as a Commercial Gauger

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of approval of Intertek USA, Inc. (Tampa, FL) as a commercial gauger.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. (Tampa, FL), has been approved to gauge petroleum and certain petroleum products for customs purposes for the next four years as of August 2, 2022.

**DATES:** Intertek USA, Inc. (Tampa, FL) was approved as a commercial gauger as of August 2, 2022. The next inspection date will be scheduled for August 2026.

**FOR FURTHER INFORMATION CONTACT:** Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501-A North, Washington, DC 20229, tel. 202-344-1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.13, that Intertek USA, Inc., 4951A East Adamo Drive, Suite 130, Tampa, FL 33605, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13 as of August 2, 2022.<sup>1</sup> Intertek USA, Inc. (Tampa, FL) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapters | Title                      |
|--------------|----------------------------|
| 3 .....      | Tank Gauging.              |
| 7 .....      | Temperature Determination. |
| 8 .....      | Sampling.                  |
| 12 .....     | Calculations.              |
| 17 .....     | Maritime Measurement.      |

<sup>1</sup> As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924, 85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [CBPGaugersLabs@cbp.dhs.gov](mailto:CBPGaugersLabs@cbp.dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

**James D. Sweet,**

*Laboratory Director, Houston, Laboratories and Scientific Services Directorate.*

[FR Doc. 2023-21214 Filed 9-27-23; 8:45 am]

**BILLING CODE 9111-14-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Accreditation and Approval of AmSpec Services, LLC (Plainfield, IL) as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of AmSpec Services, LLC (Plainfield, IL) as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that AmSpec Services, LLC (Plainfield, IL) has been approved to gauge petroleum

and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of May 25, 2022.

**DATES:** AmSpec Services, LLC (Plainfield, IL) was approved and accredited as a commercial gauger and laboratory as of May 25, 2022. The next inspection date will be scheduled for May 2026.

**FOR FURTHER INFORMATION CONTACT:** Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501–A North, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec Services, LLC, 12351 South Industrial Drive East, Plainfield, IL 60585, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of May 25, 2022.<sup>1</sup>

AmSpec Services, LLC (Plainfield, IL) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapters | Title                      |
|--------------|----------------------------|
| 1 .....      | Vocabulary.                |
| 3 .....      | Tank Gauging.              |
| 7 .....      | Temperature Determination. |
| 8 .....      | Sampling.                  |
| 9 .....      | Density Determination.     |
| 12 .....     | Calculations.              |
| 17 .....     | Maritime Measurement.      |

AmSpec Services, LLC (Plainfield, IL) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No.    | ASTM  | Title                                                                                                                     |
|-------------|-------|---------------------------------------------------------------------------------------------------------------------------|
| 27–04 ..... | D95   | Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.                            |
| 27–05 ..... | D4928 | Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.                                       |
| 27–06 ..... | D473  | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.                                   |
| 27–08 ..... | D86   | Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.                                      |
| 27–11 ..... | D445  | Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).    |
| 27–13 ..... | D4294 | Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry. |
| 27–14 ..... | D2622 | Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.           |
| 27–46 ..... | D5002 | Standard Test Method for Density, Relative Density, and API Gravity of Crude Oils by Digital Density Analyzer.            |
| 27–48 ..... | D4052 | Standard Test Method for Density, Relative Density, and API Gravity of Liquids by Digital Density Meter.                  |
| 27–50 ..... | D93   | Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester.                                                |
| 27–54 ..... | D1796 | Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method (Laboratory Procedure).                 |
| 27–58 ..... | D5191 | Standard Test Method for Vapor Pressure of Petroleum Products and Liquid Fuels (Mini Method).                             |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to [CBPGaugersLabs@cbp.dhs.gov](mailto:CBPGaugersLabs@cbp.dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <https://www.cbp.gov/about/labs->

*scientific/commercial-gaugers-and-laboratories.*

**James D. Sweet,**

*Laboratory Director, Houston, Laboratories and Scientific Services Directorate.*

[FR Doc. 2023–21200 Filed 9–27–23; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Accreditation and Approval of Intertek USA, Inc. (Yorktown, VA) as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Intertek USA, Inc. (Yorktown, VA) as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. (Yorktown, VA), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of June 2, 2022.

**DATES:** Intertek USA, Inc. (Yorktown, VA) was approved and accredited as a commercial gauger and laboratory as of June 2, 2022. The next inspection date will be scheduled for June 2026.

**FOR FURTHER INFORMATION CONTACT:** Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501–A North, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 109–B Freedom Blvd., Yorktown, VA 23692, has been approved to gauge

<sup>1</sup> As a result of the SARS–CoV–2 (COVID–19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the

scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924,

85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID–19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of June 2, 2022.<sup>1</sup>

Intertek USA, Inc. (Yorktown, VA) is approved for the following gauging procedures for petroleum and certain

petroleum products from the American Petroleum Institute (API):

| API chapters | Title                      |
|--------------|----------------------------|
| 1 .....      | Vocabulary.                |
| 3 .....      | Tank Gauging.              |
| 5 .....      | Metering.                  |
| 7 .....      | Temperature Determination. |
| 8 .....      | Sampling.                  |
| 12 .....     | Calculations.              |
| 17 .....     | Maritime Measurement.      |

Intertek USA, Inc. (Yorktown, VA) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No.    | ASTM  | Title                                                                                         |
|-------------|-------|-----------------------------------------------------------------------------------------------|
| 27-08 ..... | D86   | Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.          |
| 27-48 ..... | D4052 | Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.    |
| 27-58 ..... | D5191 | Standard Test Method for Vapor Pressure of Petroleum Products and Liquid Fuels (Mini Method). |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [CBPGaugersLabs@cbp.dhs.gov](mailto:CBPGaugersLabs@cbp.dhs.gov).

Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

**James D. Sweet,**

*Laboratory Director, Houston, Laboratories and Scientific Services Directorate.*

[FR Doc. 2023-21216 Filed 9-27-23; 8:45 am]

**BILLING CODE 9111-14-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Accreditation and Approval of Camin Cargo Control, Inc. (Corpus Christi, TX) as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Camin Cargo Control, Inc. (Corpus Christi, TX), as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Camin Cargo Control, Inc. (Corpus Christi, TX) has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of May 18, 2022.

**DATES:** Camin Cargo Control, Inc. (Corpus Christi, TX) was approved and accredited as a commercial gauger and laboratory as of May 18, 2022. The next inspection date will be scheduled for May 2026.

**FOR FURTHER INFORMATION CONTACT:** Robert P. Munivez, Laboratories and Scientific Services, U.S. Customs and Border Protection, 4150 Interwood

South Parkway, Houston, TX 77032, tel. 281-560-2900.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Camin Cargo Control, Inc., 218 Centaurus Street, Corpus Christi, TX 78405, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of May 18, 2022.<sup>1</sup>

Camin Cargo Control, Inc. (Corpus Christi, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapters | Title                      |
|--------------|----------------------------|
| 3 .....      | Tank Gauging.              |
| 7 .....      | Temperature Determination. |
| 8 .....      | Sampling.                  |
| 12 .....     | Calculations.              |
| 17 .....     | Marine Measurement.        |

Camin Cargo Control, Inc. (Corpus Christi, TX), is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

<sup>1</sup> As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924,

85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

<sup>1</sup> As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the

scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924, 85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

| CBPL No.    | ASTM  | Title                                                                                                                                     |
|-------------|-------|-------------------------------------------------------------------------------------------------------------------------------------------|
| 27-01 ..... | D287  | Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).                                       |
| 27-02 ..... | D1298 | Standard Test Method for Density, Relative Density, or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method. |
| 27-03 ..... | D4006 | Standard Test Method for Water in Crude Oil by Distillation.                                                                              |
| 27-04 ..... | D95   | Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.                                            |
| 27-06 ..... | D473  | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.                                                   |
| 27-08 ..... | D86   | Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.                                                      |
| 27-11 ..... | D445  | Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).                    |
| 27-13 ..... | D4294 | Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.                 |
| 27-14 ..... | D2622 | Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.                           |
| 27-48 ..... | D4052 | Standard Test Method for Density, Relative Density, and API Gravity of Liquids by Digital Density Meter.                                  |
| 27-54 ..... | D1796 | Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method (Laboratory Procedure).                                 |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (281) 560-2900. The inquiry may also be sent to [CBPGaugersLabs@cbp.dhs.gov](mailto:CBPGaugersLabs@cbp.dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <https://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

**James D. Sweet,**  
Laboratory Director, Houston, Laboratories and Scientific Services.

[FR Doc. 2023-21205 Filed 9-27-23; 8:45 am]

**BILLING CODE 9111-14-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Accreditation and Approval of Intertek USA, Inc. (Benicia, CA), as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Intertek USA, Inc. (Benicia, CA), as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. (Benicia, CA) has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of March 29, 2022.

**DATES:** Intertek USA, Inc. (Benicia, CA) was accredited and approved, as a commercial gauger and laboratory as of March 29, 2022. The next inspection date will be scheduled for March 2026.

**FOR FURTHER INFORMATION CONTACT:** Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501-

A North, Washington, DC 20229, tel. 202-344-1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 6050 Egret Ct., Benicia, CA 94510 has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of March 29, 2022.<sup>1</sup>

Intertek USA, Inc. (Benicia, CA) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapters | Title                      |
|--------------|----------------------------|
| 3 .....      | Tank Gauging.              |
| 7 .....      | Temperature Determination. |
| 8 .....      | Sampling.                  |
| 12 .....     | Calculations.              |
| 17 .....     | Marine Measurement.        |

Intertek USA, Inc. (Benicia, CA) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No.    | ASTM  | Title                                                                                                                     |
|-------------|-------|---------------------------------------------------------------------------------------------------------------------------|
| 27-03 ..... | D4006 | Standard Test Method for Water in Crude Oil by Distillation.                                                              |
| 27-04 ..... | D95   | Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.                            |
| 27-05 ..... | D4928 | Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.                                       |
| 27-06 ..... | D473  | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.                                   |
| 27-07 ..... | D4807 | Standard Test Method for Sediment in Crude Oil by Membrane Filtration.                                                    |
| 27-13 ..... | D4294 | Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry. |
| 27-46 ..... | D5002 | Standard Test Method for Density and Relative Density of Crude Oils by Digital Density Analyzer.                          |

<sup>1</sup> As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the

scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924,

85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

| CBPL No.    | ASTM  | Title                                                                                                     |
|-------------|-------|-----------------------------------------------------------------------------------------------------------|
| 27–48 ..... | D4052 | Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.                |
| 27–54 ..... | D1796 | Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method (Laboratory Procedure). |
| N/A .....   | D4007 | Standard Test Method for Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure). |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to [CBPGaugersLabs@cbp.dhs.gov](mailto:CBPGaugersLabs@cbp.dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

**James D. Sweet,**

*Laboratory Director, Houston, Laboratories and Scientific Services Directorate.*

[FR Doc. 2023–21208 Filed 9–27–23; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Approval of Coastal Gulf and International (Gonzales, LA) as a Commercial Gauger

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of approval of Coastal Gulf and International (Gonzales, LA), as a commercial gauger.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Coastal Gulf and International (Gonzales, LA) has been approved to gauge petroleum and certain petroleum products for customs purposes for the next four years as of April 14, 2022.

**DATES:** Coastal Gulf and International (Gonzales, LA) was approved as a commercial gauger as of April 14, 2022. The next inspection date will be scheduled for April 2026.

**FOR FURTHER INFORMATION CONTACT:** Dr. Justin Shey, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501–A North,

Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.13, that Coastal Gulf and International, 2104 South Southland Ave., Gonzales, LA 70737, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13 as of April 14, 2022.<sup>1</sup>

Coastal Gulf and International (Gonzales, LA) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapters | Title                      |
|--------------|----------------------------|
| 3 .....      | Tank Gauging.              |
| 7 .....      | Temperature Determination. |
| 8 .....      | Sampling.                  |
| 12 .....     | Calculations.              |
| 17 .....     | Marine Measurement.        |

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to [CBPGaugersLabs@cbp.dhs.gov](mailto:CBPGaugersLabs@cbp.dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <https://www.cbp.gov/about/labs->

<sup>1</sup> As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. *See* 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924, 85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

*scientific/commercial-gaugers-and-laboratories.*

**James D. Sweet,**

*Laboratory Director, Houston, Laboratories and Scientific Services Directorate.*

[FR Doc. 2023–21207 Filed 9–27–23; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Approval of Intertek USA, Inc. (Valdez, AK) as a Commercial Gauger

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of approval of Intertek USA, Inc. (Valdez, AK) as a commercial gauger.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. (Valdez, AK), has been approved to gauge petroleum and certain petroleum products for customs purposes for the next four years as of July 8, 2022.

**DATES:** Intertek USA, Inc. (Valdez, AK) was approved as a commercial gauger as of July 8, 2022. The next inspection date will be scheduled for July 2026.

**FOR FURTHER INFORMATION CONTACT:** Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501–A North, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.13, that Intertek USA, Inc., 354 Fairbanks Street, Valdez, AK 99686, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13 as of July 8, 2022.<sup>1</sup>

<sup>1</sup> As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. *See* 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924, 85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and

Intertek USA, Inc. (Valdez, AK) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapters | Title                      |
|--------------|----------------------------|
| 3 .....      | Tank Gauging.              |
| 7 .....      | Temperature Determination. |
| 8 .....      | Sampling.                  |
| 12 .....     | Calculations.              |
| 17 .....     | Maritime Measurement.      |

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to [CBPGaugersLabs@cbp.dhs.gov](mailto:CBPGaugersLabs@cbp.dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

**James D. Sweet,**

*Laboratory Director, Houston, Laboratories and Scientific Services Directorate.*

[FR Doc. 2023–21215 Filed 9–27–23; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Approval of Coastal Gulf and International (Corpus Christi, TX) as a Commercial Gauger

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of approval of Coastal Gulf and International (Corpus Christi, TX), as a commercial gauger.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Coastal Gulf and International (Corpus Christi, TX) has been approved to gauge petroleum and certain petroleum products for customs purposes for the next four years as of May 18, 2022.

**DATES:** Coastal Gulf and International (Corpus Christi, TX) was approved as a commercial gauger as of May 18, 2022.

Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

The next inspection date will be scheduled for May 2026.

**FOR FURTHER INFORMATION CONTACT:** Dr. Justin Shey, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501–A North, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.13, that Coastal Gulf and International, 4738 Neptune Dr., Corpus Christi, TX 78405, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13 as of May 18, 2022.<sup>1</sup>

Coastal Gulf and International (Corpus Christi, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapters | Title                      |
|--------------|----------------------------|
| 3 .....      | Tank Gauging.              |
| 7 .....      | Temperature Determination. |
| 8 .....      | Sampling.                  |
| 12 .....     | Calculations.              |
| 17 .....     | Marine Measurement.        |

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to [CBPGaugersLabs@cbp.dhs.gov](mailto:CBPGaugersLabs@cbp.dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

<sup>1</sup> As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924, 85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

*scientific/commercial-gaugers-and-laboratories.*

**James D. Sweet,**

*Laboratory Director, Houston, Laboratories and Scientific Services Directorate.*

[FR Doc. 2023–21206 Filed 9–27–23; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Accreditation and Approval of Saybolt LP (Wilmington, NC) as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Saybolt LP (Wilmington, NC), as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Saybolt LP (Wilmington, NC), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of July 20, 2022.

**DATES:** Saybolt LP (Wilmington, NC) was approved and accredited as a commercial gauger and laboratory as of July 20, 2022. The next triennial inspection date will be scheduled for July 2025.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert P. Munivez, Laboratories and Scientific Services, U.S. Customs and Border Protection, 4150 Interwood South Parkway, Houston, TX 77032, tel. 281–560–2937.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Saybolt LP, 2321 Burnett Blvd., Wilmington, NC 28401, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

Saybolt LP (Wilmington, NC) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapters | Title                      |
|--------------|----------------------------|
| 3 .....      | Tank Gauging.              |
| 7 .....      | Temperature Determination. |
| 8 .....      | Sampling.                  |

| API chapters | Title                  | Saybolt LP (Wilmington, NC) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs | and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM): |
|--------------|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|
| 9 .....      | Density Determination. |                                                                                                                                                                                   |                                                                                                        |
| 12 .....     | Calculations.          |                                                                                                                                                                                   |                                                                                                        |
| 17 .....     | Marine Measurement.    |                                                                                                                                                                                   |                                                                                                        |

| CBPL No.    | ASTM  | Title                                                                                                                                                                     |
|-------------|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 27-02 ..... | D1298 | Standard Test Method for Density, Relative Density, or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.                                 |
| 27-06 ..... | D473  | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.                                                                                   |
| 27-08 ..... | D86   | Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.                                                                                      |
| 27-11 ..... | D445  | Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).                                                    |
| 27-48 ..... | D4052 | Standard Test Method for Density, Relative Density, and API Gravity of Liquids by Digital Density Meter.                                                                  |
| 27-54 ..... | D1796 | Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method (Laboratory Procedure).                                                                 |
| N/A .....   | D5453 | Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Spark Ignition Engine Fuel, Diesel Engine Fuel, and Engine Oil by Ultraviolet Fluorescence. |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [CBPGaugersLabs@cbp.dhs.gov](mailto:CBPGaugersLabs@cbp.dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

**James D. Sweet,**

*Laboratory Director, Houston, Laboratories and Scientific Services Directorate.*

[FR Doc. 2023-21218 Filed 9-27-23; 8:45 am]

**BILLING CODE 9111-14-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Accreditation and Approval of Intertek USA, Inc. (Texas City, TX) as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Intertek USA, Inc. (Texas City, TX) as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. (Texas City, TX), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of August 4, 2022.

**DATES:** Intertek USA, Inc. (Texas City, TX) was approved and accredited as a commercial gauger and laboratory as of August 4, 2022. The next inspection date will be scheduled for August 2026.

**FOR FURTHER INFORMATION CONTACT:** Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501-

A North, Washington, DC 20229, tel. 202-344-1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 728 4th Avenue South, Texas City, TX 77590, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of August 4, 2022.<sup>1</sup>

Intertek USA, Inc. (Texas City, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapters | Title                      |
|--------------|----------------------------|
| 3 .....      | Tank Gauging.              |
| 7 .....      | Temperature Determination. |
| 8 .....      | Sampling.                  |
| 12 .....     | Calculations.              |
| 17 .....     | Maritime Measurement.      |

Intertek USA, Inc. (Texas City, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No.    | ASTM  | Title                                                                                                                                     |
|-------------|-------|-------------------------------------------------------------------------------------------------------------------------------------------|
| 27-01 ..... | D287  | Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).                                       |
| 27-02 ..... | D1298 | Standard Test Method for Density, Relative Density, or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method. |
| 27-03 ..... | D4006 | Standard Test Method for Water in Crude Oil by Distillation.                                                                              |
| 27-04 ..... | D95   | Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.                                            |
| 27-05 ..... | D4928 | Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.                                                       |

<sup>1</sup> As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the

scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924,

85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.



| CBPL No.    | ASTM  | Title                                                                                                                     |
|-------------|-------|---------------------------------------------------------------------------------------------------------------------------|
| 27-06 ..... | D473  | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.                                   |
| 27-07 ..... | D4807 | Standard Test Method for Sediment in Crude Oil by Membrane Filtration.                                                    |
| 27-08 ..... | D86   | Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.                                      |
| 27-11 ..... | D445  | Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).    |
| 27-13 ..... | D4294 | Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry. |
| 27-46 ..... | D5002 | Standard Test Method for Density, Relative Density, and API Gravity of Crude Oils by Digital Density Analyzer.            |
| 27-48 ..... | D4052 | Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.                                |
| 27-50 ..... | D93   | Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.                                                |
| 27-53 ..... | D2709 | Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.                                     |
| 27-54 ..... | D1796 | Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method (Laboratory Procedure).                 |
| N/A .....   | D70   | Standard Test Method for Specific Gravity and Density of Semi-Solid Asphalt Binder (Pycnometer method).                   |
| N/A .....   | D97   | Standard Test Method for Pour Point of Petroleum Products.                                                                |
| N/A .....   | D4007 | Standard Test Method for Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure).                 |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [CBPGaugersLabs@cbp.dhs.gov](mailto:CBPGaugersLabs@cbp.dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

**James D. Sweet,**  
Laboratory Director, Houston, Laboratories and Scientific Services Directorate.

[FR Doc. 2023-21220 Filed 9-27-23; 8:45 am]

**BILLING CODE 9111-14-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Accreditation and Approval of Intertek USA, Inc. (Carteret, NJ) as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Intertek USA, Inc. (Carteret, NJ) as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. (Carteret, NJ), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of July 18, 2022.

**DATES:** Intertek USA, Inc. (Carteret, NJ) was approved and accredited as a commercial gauger and laboratory as of July 18, 2022. The next inspection date will be scheduled for July 2026.

**FOR FURTHER INFORMATION CONTACT:** Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501-

A North, Washington, DC 20229, tel. 202-344-1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 1000 Port Carteret Dr., Suite C, Carteret, NJ 07008, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of July 18, 2022.<sup>1</sup>

Intertek USA, Inc. (Carteret, NJ) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapters | Title                      |
|--------------|----------------------------|
| 1 .....      | Vocabulary.                |
| 3 .....      | Tank Gauging.              |
| 7 .....      | Temperature Determination. |
| 8 .....      | Sampling.                  |
| 12 .....     | Calculations.              |
| 17 .....     | Maritime Measurement.      |

Intertek USA, Inc. (Carteret, NJ) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No.    | ASTM  | Title                                                                                               |
|-------------|-------|-----------------------------------------------------------------------------------------------------|
| 27-01 ..... | D287  | Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method). |
| 27-04 ..... | D95   | Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.      |
| 27-06 ..... | D473  | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.             |
| 27-07 ..... | D4807 | Standard Test Method for Sediment in Crude Oil by Membrane Filtration.                              |
| 27-08 ..... | D86   | Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.                |

<sup>1</sup> As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the

scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924,

85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

| CBPL No.    | ASTM  | Title                                                                                                                                   |
|-------------|-------|-----------------------------------------------------------------------------------------------------------------------------------------|
| 27-11 ..... | D445  | Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).                  |
| 27-13 ..... | D4294 | Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.               |
| 27-46 ..... | D5002 | Standard Test Method for Density, Relative Density, and API Gravity of Crude Oils by Digital Density Analyzer.                          |
| 27-48 ..... | D4052 | Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.                                              |
| 27-50 ..... | D93   | Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.                                                              |
| 27-53 ..... | D2709 | Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.                                                   |
| 27-58 ..... | D5191 | Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method).                                                            |
| N/A .....   | D1319 | Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption.                            |
| N/A .....   | D2699 | Octane Number of Spark-Ignition Engine Fuel.                                                                                            |
| N/A .....   | D2700 | Motor Octane Number of Spark-Ignition Engine Fuel.                                                                                      |
| N/A .....   | D3606 | Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography.            |
| N/A .....   | D5599 | Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection. |
| N/A .....   | D5769 | Determination of Benzene, Toluene, and Total Aromatics in Finished Gasolines by Gas Chromatography/Mass Spectrometry.                   |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [CBPGaugersLabs@cbp.dhs.gov](mailto:CBPGaugersLabs@cbp.dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

**James D. Sweet,**

*Laboratory Director, Houston, Laboratories and Scientific Services Directorate.*

[FR Doc. 2023-21222 Filed 9-27-23; 8:45 am]

**BILLING CODE 9111-14-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Accreditation and Approval of AmSpec Services, LLC (Yorktown, VA) as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of AmSpec Services, LLC (Yorktown, VA) as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that AmSpec Services, LLC (Yorktown, VA) has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of June 23, 2022.

**DATES:** AmSpec Services, LLC (Yorktown, VA) was approved and accredited as a commercial gauger and laboratory as of June 23, 2022. The next inspection date will be scheduled for June 2026.

**FOR FURTHER INFORMATION CONTACT:** Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501-

A North, Washington, DC 20229, tel. 202-344-1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec Services, LLC, 100-B Redoubt Road, Yorktown, VA 23692, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of June 23, 2022.<sup>1</sup>

AmSpec Services, LLC (Yorktown, VA) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapters | Title                      |
|--------------|----------------------------|
| 1 .....      | Vocabulary.                |
| 3 .....      | Tank Gauging.              |
| 7 .....      | Temperature Determination. |
| 8 .....      | Sampling.                  |
| 12 .....     | Calculations.              |
| 17 .....     | Maritime Measurement.      |

AmSpec Services, LLC (Yorktown, VA) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No.    | ASTM  | Title                                                                                                                                     |
|-------------|-------|-------------------------------------------------------------------------------------------------------------------------------------------|
| 27-02 ..... | D1298 | Standard Test Method for Density, Relative Density, or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method. |

<sup>1</sup> As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the

scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924,

85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

| CBPL No.    | ASTM  | Title                                                                                                                     |
|-------------|-------|---------------------------------------------------------------------------------------------------------------------------|
| 27-04 ..... | D95   | Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.                            |
| 27-06 ..... | D473  | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.                                   |
| 27-08 ..... | D86   | Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.                                      |
| 27-11 ..... | D445  | Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).    |
| 27-13 ..... | D4294 | Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry. |
| 27-14 ..... | D2622 | Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.           |
| 27-48 ..... | D4052 | Standard Test Method for Density, Relative Density, and API Gravity of Liquids by Digital Density Meter.                  |
| 27-53 ..... | D2709 | Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.                                     |
| 27-58 ..... | D5191 | Standard Test Method for Vapor Pressure of Petroleum Products and Liquid Fuels (Mini Method).                             |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [CBPGaugersLabs@cbp.dhs.gov](mailto:CBPGaugersLabs@cbp.dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

**James D. Sweet,**

*Laboratory Director, Houston, Laboratories and Scientific Services Directorate.*

[FR Doc. 2023-21203 Filed 9-27-23; 8:45 am]

**BILLING CODE 9111-14-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Accreditation and Approval of Saybolt LP (Deer Park, TX) as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Saybolt LP (Deer Park, TX), as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Saybolt LP (Deer Park, TX), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of August 18, 2022.

**DATES:** Saybolt LP (Deer Park, TX) was approved and accredited as a commercial gauger and laboratory as of August 18, 2022. The next triennial inspection date will be scheduled for August 2025.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert P. Munivez, Laboratories and Scientific Services, U.S. Customs and Border Protection, 4150 Interwood

South Parkway, Houston, TX 77032, tel. 281-560-2937.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Saybolt LP, 201 Deerwood Glen Dr., Deer Park, TX 77536, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

Saybolt LP (Deer Park, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapters | Title                      |
|--------------|----------------------------|
| 3 .....      | Tank Gauging.              |
| 5 .....      | Metering.                  |
| 7 .....      | Temperature Determination. |
| 8 .....      | Sampling.                  |
| 12 .....     | Calculations.              |
| 17 .....     | Marine Measurement.        |

Saybolt LP (Deer Park, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No.    | ASTM  | Title                                                                                                                                     |
|-------------|-------|-------------------------------------------------------------------------------------------------------------------------------------------|
| 27-01 ..... | D287  | Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).                                       |
| 27-02 ..... | D1298 | Standard Test Method for Density, Relative Density, or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method. |
| 27-03 ..... | D4006 | Standard Test Method for Water in Crude Oil by Distillation.                                                                              |
| 27-04 ..... | D95   | Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.                                            |
| 27-05 ..... | D4928 | Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.                                                       |
| 27-06 ..... | D473  | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.                                                   |
| 27-07 ..... | D4807 | Standard Test Method for Sediment in Crude Oil by Membrane Filtration.                                                                    |
| 27-08 ..... | D86   | Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.                                                      |
| 27-11 ..... | D445  | Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).                    |
| 27-13 ..... | D4294 | Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.                 |
| 27-14 ..... | D2622 | Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.                           |
| 27-46 ..... | D5002 | Standard Test Method for Density, Relative Density, and API Gravity of Crude Oils by Digital Density Analyzer.                            |

| CBPL No.    | ASTM  | Title                                                                                                    |
|-------------|-------|----------------------------------------------------------------------------------------------------------|
| 27–48 ..... | D4052 | Standard Test Method for Density, Relative Density, and API Gravity of Liquids by Digital Density Meter. |
| 27–50 ..... | D93   | Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.                               |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to [CBPGaugersLabs@cbp.dhs.gov](mailto:CBPGaugersLabs@cbp.dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

**James D. Sweet,**

*Laboratory Director, Houston, Laboratories and Scientific Services Directorate.*

[FR Doc. 2023–21217 Filed 9–27–23; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6086–N–08]

**RIN 2577–AD05**

### Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE); Extension of NSPIRE Compliance Date for HCV Programs

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (HUD).

**ACTION:** Notice.

**SUMMARY:** This notice extends the compliance date for HUD’s National Standards for the Physical Inspection of Real Estate (NSPIRE) final rule for Housing Choice Voucher (HCV) and Project Based Voucher (PBV) programs until October 1, 2024. HUD is taking this action to allow Public Housing Authorities (PHAs) additional time to implement HUD’s NSPIRE standards.

**DATES:** *Compliance Date:* Jurisdictions, participants, and grantees subject to 24 CFR parts 882, 982, and 983 are not required to comply with the changes to

these parts in the NSPIRE final rule until October 1, 2024.

#### FOR FURTHER INFORMATION CONTACT:

Dana M. Kitchen, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW, Suite 100, Washington, DC 20410–4000; telephone 202–708–1112 (this is not a toll-free number), [NSPIREV\\_AlternateInspection@hud.gov](mailto:NSPIREV_AlternateInspection@hud.gov). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

PHAs subject to the HCV and PBV programs currently use the Housing Quality Standards (HQS) for inspections, which are defined at 24 CFR 982.401. The Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for Physical Inspection of Real Estate (NSPIRE) final rule (“NSPIRE final rule”) was published on May 11, 2023 (88 FR 30442). The NSPIRE final rule includes amendments to 24 CFR parts 982 and 983 effective October 1, 2023.

#### II. Basis for Delay of Compliance Date

HUD encourages any PHA that is ready to implement NSPIRE at their earliest convenience. However, HUD has determined that additional time is necessary for some PHAs to implement NSPIRE for HCV, PBV, and Moderate Rehabilitation (Mod Rehab) programs. This will provide PHAs with additional time to train staff, communicate with landlords and for HUD to provide additional technical resources needed for PHAs and agencies to transition to the NSPIRE standards.

#### III. Instructions

PHAs who wish to continue using HQS on or after October 1, 2023, must notify HUD of their intent to continue using HQS and the date on which they plan to transition to NSPIRE. This date may be no later than October 1, 2024. This notification must be sent via email to [NSPIREV\\_AlternateInspection@](mailto:NSPIREV_AlternateInspection@)

[hud.gov](mailto:hud.gov) with a courtesy copy to their Field Office representative. The email’s subject line must read “*Notification of Extension of HQS, [PHA code]*” and the body of the email should include the PHA name, PHA code, a statement that HQS will continue to be used, and what date the PHA tentatively plans to implement NSPIRE (which may be no later than October 1, 2024).

If a PHA implements NSPIRE after October 1, 2023, but before October 1, 2024, the PHA must notify HUD via email to [NSPIREV\\_AlternateInspection@hud.gov](mailto:NSPIREV_AlternateInspection@hud.gov) with a courtesy copy to their Field Office representative. The email’s subject line must read “*Notification of Implementation of NSPIRE, [PHA code]*” and the body of the email should include the PHA name, PHA code, a statement that the PHA will be transitioning to NSPIRE, and what date the PHA will implement NSPIRE (which may be no later than October 1, 2024).

#### IV. Conclusion

Accordingly, HUD revises the October 1, 2023, compliance date for the changes made to 24 CFR parts 882, 982, and 983 to October 1, 2024, at which time PHAs subject to these parts must comply with the NSPIRE final rule. Until October 1, 2024, PHAs subject to these parts may instead choose to comply with these parts as they existed prior to October 1, 2023.

Principal Deputy Assistant Secretary for Public and Indian Housing, Richard J. Monocchio, having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Aaron Santa Anna, who is the Federal Register Liaison for HUD, for purposes of publication in the **Federal Register**.

**Aaron Santa Anna,**

*Federal Register Liaison for the Department of Housing and Urban Development.*

[FR Doc. 2023–21141 Filed 9–27–23; 8:45 am]

**BILLING CODE 4210–67–P**

**DEPARTMENT OF THE INTERIOR****Geological Survey**

[GX23LR000F60100; OMB Control Number 1028–0068/Renewal]

**Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Ferrous Metals Surveys**

**AGENCY:** U.S. Geological Survey, Department of the Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing to renew an Information Collection.

**DATES:** Interested persons are invited to submit comments on or before November 27, 2023.

**ADDRESSES:** Send your comments on this Information Collection Request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to [gs-info\\_collections@usgs.gov](mailto:gs-info_collections@usgs.gov). Please reference OMB Control Number 1028–0068 Ferrous Minerals Survey in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Elizabeth S. Sangine by email at [escottsangine@usgs.gov](mailto:escottsangine@usgs.gov) or by telephone at 703–648–7720. 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. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

**SUPPLEMENTARY INFORMATION:** In accordance with the PRA, (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval. We may not conduct or sponsor, nor are you 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 the agency might 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 personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

**Abstract:** Respondents to these forms supply the USGS with domestic production and consumption data for 13 ores, concentrates, metals, and ferroalloys, some of which are considered strategic and critical, to assist in determining National Defense Stockpile goals. These data and derived information will be published as chapters in Mineral Yearbooks, monthly Mineral Industry Surveys, annual Mineral Commodity Summaries, and special publications for use by government agencies, Congressional offices, educational institutions, research organizations, financial institutions, consulting firms, industry, academia, and the general public.

**Title of Collection:** Ferrous Metals Surveys.

**OMB Control Number:** 1028–0068.

**Form Number:** Various (15 USGS forms).

**Type of Review:** Extension of a currently approved collection.

**Respondents/Affected Public:** Businesses or other for-profit institutions; U.S. nonfuel mineral producers and consumers of ferrous and related metals.

**Total Estimated Number of Annual Respondents:** 980.

**Total Estimated Number of Annual Responses:** 2,718.

**Estimated Completion Time per Response:** For each form, we will include an average burden time ranging from 10 minutes to 1 hour.

**Total Estimated Number of Annual Burden Hours:** 1,364.

**Respondent's Obligation:** Voluntary.  
**Frequency of Collection:** Monthly or Annually.

**Total Estimated Annual Non-hour Burden Cost:** There are no “non-hour cost” burdens associated with this ICR.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authorities for this action are the PRA, the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1601 *et seq.*), the National Mining and Minerals Policy Act of 1970 (30 U.S.C. 21(a)), the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 *et seq.*), and the Defense Production Act (50 U.S.C. 2061 *et seq.*).

**Steven Fortier,**

*Director, National Minerals Information Center, U.S. Geological Survey.*

[FR Doc. 2023–21183 Filed 9–27–23; 8:45 am]

**BILLING CODE 4338–11–P**

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management**

[FF01R05000/XXX/FSRS34510100000/OROR–106303965]

**Notice of Proposed Withdrawal and Opportunity for Public Meeting for the Malheur National Wildlife Refuge, Oregon**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of proposed withdrawal.

**SUMMARY:** On behalf of the United States Fish and Wildlife Service (FWS) and subject to valid existing rights, the Secretary of the Interior proposes to withdraw 199.90 acres of public lands from appropriation under the public land laws, including location and entry under the United States mining laws, subject to valid existing rights, for up to 100 years to protect and reserve the land for management as part of the Malheur

National Wildlife Refuge (NWR) located in Harney County, Oregon. This notice temporarily segregates these lands for up to 2 years and announces to the public an opportunity to comment and request a public meeting on the proposed withdrawal.

**DATES:** Comments and requests for a public meeting must be received by December 28, 2023.

**ADDRESSES:** All comments and meeting requests should be sent to the BLM Oregon/Washington State Director Attn: Malheur NWR Withdrawal Notice, P.O. Box 2965, Portland, Oregon 97208. The BLM will not consider comments via telephone calls. The application and case file are available for public examination by interested persons by appointment at the BLM Public Room, 1220 SW 3rd Ave., 11th Floor, Portland, Oregon 97208 during regular business hours 8:00 a.m. to 4:30 p.m., Monday through Friday except holidays. Please call 503-808-6001 to make an appointment.

**FOR FURTHER INFORMATION CONTACT:**

Luke Poff, Realty Specialist, BLM Oregon/Washington State Office, 503-808-6249, email at [lpoff@blm.gov](mailto:lpoff@blm.gov), or you may contact the BLM office at the address noted above. The FWS can be reached at the Region 1 Regional Office, 911 NE 11th Ave. Portland, Oregon 97232 or through Sequoia Williams, Realty Specialist, at 503-956-7691, or by email at [sequoia\\_williams@fws.gov](mailto:sequoia_williams@fws.gov). Individuals in the United States who are deaf, blind, 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 FWS filed a petition/application requesting that the Secretary of the Interior withdraw the following described public lands from all forms of appropriation under the public land laws, including location and entry under the United States mining laws, subject to valid existing rights, for up to 100 years to protect and reserve the land for wildlife refuge purposes:

**Willamette Meridian, Oregon**

*Malheur National Wildlife Refuge, Addition*

T. 25 S., R. 33 E.,

Sec. 34, lot 10.

T. 26 S., R. 33 E.,

Sec. 3, lots 2, 4, and 10, and SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;

Sec. 10, W $\frac{1}{2}$ NE $\frac{1}{4}$ .

The areas described aggregate 199.90 acres.

The Secretary of the Interior approved the FWS's petition. Therefore, the petition/application constitutes a withdrawal proposal of the Secretary of the Interior (43 CFR 2310.1-3(e)).

The use of a right-of-way, interagency agreement, or cooperative agreement would not provide adequate protection of the wildlife refuge. There are no suitable alternative sites since these lands are located within the Malheur NWR.

No water is necessary to fulfill the purpose of the proposed withdrawal.

Comments will be available for public review. 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 personally identifying information—may be made publicly available at any time. While you may ask the BLM in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

An opportunity for a public meeting may be afforded in connection with the application for withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the application for this withdrawal must submit a written request to the State Director, BLM Oregon/Washington State Office at the address in the **ADDRESSES** section, within 90 days from the date of publication of this notice. If the authorized officer determines that a public meeting will be held, a notice of the date, time, and place will be published in the **Federal Register** and local newspapers and posted on the BLM website at [www.blm.gov](http://www.blm.gov) at least 30 days before the scheduled date of the meeting.

For a period of two years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled or if the withdrawal is approved prior to that date. The temporary uses that may be permitted during this segregation period are leases, licenses, permits, rights-of-way, and disposal of mineral or vegetative resources other than under the mining laws.

The withdrawal application will be processed in accordance with the regulations set forth in 43 CFR 2300.

(Authority: 43 U.S.C. 1714)

**Barry R. Bushue,**

*BLM Oregon/Washington State Director.*

[FR Doc. 2023-21287 Filed 9-27-23; 8:45 am]

**BILLING CODE 4310-HC-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[BLM\_NV\_FRN\_MO4500172232]

**Notice of Temporary Closure of Public Lands for the 2023–2027 Laughlin Off-Highway Vehicle Races, Clark County, NV**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of temporary closure.

**SUMMARY:** The Las Vegas Field Office announces the temporary closures of certain public lands under its administration for three annual off-highway vehicle (OHV) races that occur in Laughlin, Nevada. This area is used by OHV recreationists, and the temporary closures are needed to limit their access to the race area and to minimize the risk of potential collisions with spectators and racers.

**DATES:** One event will take place between January and March and two races will occur between October and December from 2023 through 2027. Each race will span a 2-day period. The closure dates will be listed on [www.blm.gov/nevada](http://www.blm.gov/nevada) 30 days prior to each event.

**ADDRESSES:** The temporary closure order, communications plan, and map of the temporary closure area for each event will be posted at the BLM Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130, and on the BLM website: [www.blm.gov/nevada](http://www.blm.gov/nevada). These materials will also be posted at the access point of the Laughlin race area and surrounding areas.

**FOR FURTHER INFORMATION CONTACT:**

Braden Yardley, Outdoor Recreation Planner, (702) 515-5089, or [byardley@blm.gov](mailto:byardley@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:** This action is being taken to help ensure public safety during the official permitted races in the Laughlin area. The public lands affected by this closure are described as follows:

**Mount Diablo Meridian, Nevada**

T. 32 S., R. 66 E.,

Sec. 8, lots 2 thru 33;

Sec. 9;

Sec. 10, S $\frac{1}{2}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , and S $\frac{1}{2}$ ;  
 Sec. 11, S $\frac{1}{2}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , and S $\frac{1}{2}$ ;  
 Sec. 14;  
 Sec. 15, E $\frac{1}{2}$ ;  
 Sec. 16, N $\frac{1}{2}$ , SW $\frac{1}{4}$ , and N $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
 Sec. 17, lots 1 thru 8, lots 21 thru 25, and  
 lots 30 thru 44.

The area described contains 4,521.97 acres, according to the official plats of the surveys of the said lands on file with the BLM.

The temporary closures will be posted to roads leading into the public lands to notify the public of the closures for these events. The closure areas include State Route 163 to the north and T. 32 S., R. 66 E sections 8 and 17 to the west and are bracketed by Bruce Woodbury Drive to the south and southwest and Thomas Edison Drive to the east. Under the authority of Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.0–7, and 43 CFR 8364.1, the BLM will enforce the following rules in the area described above:

The entire area as listed in the legal description earlier is closed to all vehicles and personnel except law enforcement, emergency vehicles, event personnel, event participants, and spectators. Access routes leading to the closed area will be signed to indicate a closure ahead. No vehicle stopping or parking in the closed area except for designated parking areas will be permitted. Event participants and spectators are required to remain within designated areas only.

The BLM will enforce the following restrictions for the duration of the closure to ensure the safety of participants and spectators. Unless otherwise authorized, the following activities within the closure area are prohibited:

- Camping;
- Possession and/or consuming any alcoholic beverage unless the person has reached the age of 21 years;
- Discharging or use of firearms or other weapons;
- Possession or discharging of fireworks;
- Allowing any pet or other animal in one's care to be unrestrained at any time. Animals must be on a leash or other restraint no longer than 3 feet;
- Operation of any vehicle that is not legally registered for street and highway operation (e.g., All Terrain Vehicles, motorcycles, Utility Terrain Vehicles, golf carts, and any OHV, including operation of such a vehicle in spectator viewing areas);
- Parking any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety

hazard, or endanger any person, property, or feature. Vehicles so parked are subject to citation, removal, and impoundment at the owner's expense;

- Operating a vehicle through, around, or beyond a restrictive sign, recognizable barricade, fence, or traffic control barrier or device;
- Failing to maintain control of a vehicle to avoid danger to persons, property, or wildlife; and
- Operating a motor vehicle without due care or at a speed greater than 25 mph.

Signs and maps directing the public to designated spectator areas will be provided by the event sponsor.

**Exceptions:** Temporary closure restrictions do not apply to activities conducted under contract with the BLM, agency personnel monitoring the event, or activities conducted under an approved plan of operation. Authorized users must have in their possession a written permit or contract from the BLM, signed by the authorized officer.

**Enforcement:** Any person who violates this temporary closure may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Nevada law.

(Authority: 43 CFR 8360.0–7 and 8364.1)

**Bruce Sillitoe,**

*Field Manager—Las Vegas Field Office.*

[FR Doc. 2023–21264 Filed 9–27–23; 8:45 am]

**BILLING CODE 4331–21–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS–WASO–NAGPRA–NPS0036645;  
 PPWOCRADNO–PCU00RP14.R50000]

### Notice of Inventory Completion: University of Nevada, Las Vegas, Las Vegas, NV

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Nevada, Las Vegas has completed an inventory of human remains and has determined that there is no cultural affiliation between the human remains and any Indian Tribe. The human remains were removed from Alameda County, CA.

**DATES:** Disposition of the human remains in this notice may occur on or after October 30, 2023.

**ADDRESSES:** Dr. Daniel Benyshek, University of Nevada, Las Vegas, 4505 S Maryland Parkway, Las Vegas, NV 89154, telephone (702) 895–2070, email [Daniel.Benyshek@unlv.edu](mailto:Daniel.Benyshek@unlv.edu).

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Nevada, Las Vegas. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of Nevada, Las Vegas.

### Description

Human remains representing, at minimum, one individual were removed from Alameda County, CA (Accession # *AHUR 30 (Unknown Site)*). No associated funerary objects are present.

### Aboriginal Land

The human remains in this notice were removed from a known geographic location. This location is the aboriginal land of one or more Indian Tribes. The following information was used to identify the aboriginal: a final judgment of the Indian Claims Commission.

### Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the University of Nevada, Las Vegas has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains and associated funerary objects described in this notice were removed from the aboriginal land of the California Valley Miwok Tribe, California.

### Requests for Disposition

Written requests for disposition of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that



the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains described in this notice to a requestor may occur on or after October 30, 2023. If competing requests for disposition are received, the University of Nevada, Las Vegas must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains are considered a single request and not competing requests. The University of Nevada, Las Vegas is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

**Authority:** Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and § 10.11.

Dated: September 20, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023-21243 Filed 9-27-23; 8:45 am]

**BILLING CODE 4312-52-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS-WASO-NAGPRA-NPS0036643;  
PPWOCRADN0-PCU00RP14.R50000]

### Notice of Inventory Completion: University of Nevada, Las Vegas, Las Vegas, NV

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Nevada, Las Vegas has completed an inventory of human remains and associated funerary objects and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any Indian Tribe. The human remains and associated funerary objects were removed from an unknown county or counties in Nevada.

**DATES:** Disposition of the human remains and associated funerary objects in this notice may occur on or after October 30, 2023.

**ADDRESSES:** Dr. Daniel Benyshek, University of Nevada, Las Vegas, 4505 S Maryland Parkway, Las Vegas, NV 89154, telephone (702) 895-2070, email [Daniel.Benyshek@unlv.edu](mailto:Daniel.Benyshek@unlv.edu).

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative

responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Nevada, Las Vegas. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of Nevada, Las Vegas.

### Description

Human remains representing, at minimum, 10 individuals were removed from an unknown county or counties in Nevada (accession #s *AHUR 32* ("Rocking Horse Ranch Site"), *AHUR 137x* ("Rockwell Site"), *AHUR 138x* ("Rockwell Site"), *AHUR 139x* ("Rockwell Site"), *AHUR 140x* ("Rockwell Site"), *AHUR 144ax* ("Rockwell Site"), *AHUR 144bx* ("Rockwell Site"), *AHUR 144cx* ("Rockwell Site"), *AHUR 144dx* ("Rockwell Site"), and *FHUR 43* ("Unknown Site")). While some of these ancestral remains are attributed to named sites, we are unable to identify these sites and, consequently, we are unable to identify the county or counties from which the human remains were removed. The six associated funerary objects are vegetable fibers, chert flakes, and pottery sherds.

### Aboriginal Land

The human remains and associated funerary objects in this notice were removed from a known geographic location (*i.e.*, the State of Nevada). This location is the aboriginal land of one or more Indian Tribes. The following information was used to identify the aboriginal land: a final judgment of the Indian Claims Commission.

### Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the University of Nevada, Las Vegas has determined that:

- The human remains described in this notice represent the physical remains of 10 individuals of Native American ancestry.
- The six objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.

- The human remains and associated funerary objects described in this notice were removed from the aboriginal land of the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Confederated Tribes of the Goshute Reservation, Nevada and Utah; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Eastern Shoshone Tribe of the Wind River Reservation, Wyoming; Ely Shoshone Tribe of Nevada; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Fort Mojave Indian Tribe of Arizona, California & Nevada; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes); Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Shoshone-Bannock Tribes of the Fort Hall Reservation; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Summit Lake Paiute Tribe of Nevada; Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band; and Wells Band); Walker River Paiute Tribe of the Walker River Reservation, Nevada; Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches); Winnemucca Indian Colony of Nevada; Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada; and the Yomba Shoshone Tribe of the Yomba Reservation, Nevada.

### Requests for Disposition

Written requests for disposition of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization

not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains and associated funerary objects described in this notice to a requestor may occur on or after October 30, 2023. If competing requests for disposition are received, the University of Nevada, Las Vegas must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The University of Nevada, Las Vegas is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

**Authority:** Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and § 10.11.

Dated: September 20, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–21241 Filed 9–27–23; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS–WASO–NAGPRA–NPS0036648;  
PPWOCRADN0–PCU00RP14.R50000]

#### Notice of Inventory Completion Amendment: Louisiana State University, Museum of Natural Science, Baton Rouge, LA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; amendment.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Louisiana State University, Museum of Natural Science (LSUMNS) has amended a Notice of Inventory Completion published in the **Federal Register** on December 13, 2000. This notice amends the minimum number of individuals and the number of associated funerary objects in a collection removed from the Phillip Nicks Place site in Avoyelles Parish, LA (16AV4).

**DATES:** Repatriation of the human remains and associated funerary objects in this notice may occur on or after October 30, 2023.

**ADDRESSES:** Dr. Rebecca Saunders, Curator, LSUMNS Division of Anthropology, 119 Foster Hall, LSU,

Baton Rouge, LA 70803, telephone (225) 588–0909, email [rsaunde@lsu.edu](mailto:rsaunde@lsu.edu).

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of LSUMNS. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the inventory or related records held by LSUMNS.

#### Amendment

This notice amends determinations concerning human remains and associated funerary objects from site 16AV4, the Phillip Nicks site, listed in a Notice of Inventory Completion that was published in the **Federal Register** on December 13, 2000 (65 FR 77907–77908). Repatriation of the items in the original Notice of Inventory Completion has not occurred. During a re-inventory of collections from site 16AV4, the minimum number of individuals was determined to be five, rather than six as previously reported. In addition, 64 historical objects that previously were thought to have come from the general site area were determined to come from the disturbed mound summit and, consequently, they are associated funerary objects. The 427 associated funerary objects (previously identified as 363 associated funerary objects) include bracelets, rings, glass beads, textile fragments, shell fragments, gun flints, lead shot, iron nails, and iron nail fragments.

#### Determinations (as Amended)

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, LSUMNS has determined that:

- The human remains described in this amended notice represent the physical remains of five individuals of Native American ancestry.
- The 427 objects described in this amended notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Jena Band of Choctaw Indians; Mississippi Band of

Choctaw Indians; and The Choctaw Nation of Oklahoma.

#### Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after October 30, 2023. If competing requests for repatriation are received, LSUMNS must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. LSUMNS is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

**Authority:** Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, 10.13, and 10.14.

Dated: September 20, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–21246 Filed 9–27–23; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS–WASO–NAGPRA–NPS0036651;  
PPWOCRADN0–PCU00RP14.R50000]

#### Notice of Inventory Completion: University of California, Berkeley, Berkeley, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of California, Berkeley has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects

and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Sutter, Yuba, and western Placer Counties, CA.

**DATES:** Repatriation of the human remains and associated funerary objects in this notice may occur on or after October 30, 2023.

**ADDRESSES:** Alexandra Lucas, Repatriation Coordinator, Government and Community Relations (Chancellor's Office), University of California, Berkeley, 200 California Hall, Berkeley, CA 94720, telephone (510) 570-0964, email [nagpra-ucb@berkeley.edu](mailto:nagpra-ucb@berkeley.edu).

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of California, Berkeley. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of California, Berkeley.

### Description

In September of 1933, human remains representing, at minimum, one individual were removed from an unknown location (CA-Pla-NL-1) in Placer County, CA, by the California Conservation Corps Superintendent and were donated to the Lowie Museum (today the Phoebe A. Hearst Museum of Anthropology) at the University of California, Berkeley. No associated funerary objects are present.

Sometime prior to 1947, human remains representing, at minimum, one individual were removed from an unknown location (CA-Pla-NL-2) in Placer County, CA, and were donated by James Moore to the Lowie Museum (today the Phoebe A. Hearst Museum of Anthropology) at the University of California, Berkeley. No associated funerary objects are present.

Sometime between 1931 and 1947, human remains representing, at minimum, one individual were removed from CA-Sut-11 in Sutter County, CA, by Jeremiah B. Lillard (Sacramento Junior College), Franklin Fenenga, Francis A. Riddell, Harry Starr Riddell Jr., Harry Starr Riddell Sr., A. Niehaus (Sacramento County Board of Education), Henry Gibbs, Leslie Barber, and E. B. Niehaus, Henry Gibbs. In 1947, James Moore donated these human remains to the Lowie Museum (today the Phoebe A. Hearst Museum of

Anthropology) at the University of California, Berkeley. The 15 associated funerary objects are one lot consisting of baked and unbaked clay, one lot consisting of baskets, one lot consisting of beads, one lot consisting of charmstones, one lot consisting of cordage, one lot consisting of dough paddles, one lot consisting of faunal remains, one lot consisting of floral remains, one lot consisting of netting, one lot consisting of ornaments and pendants, one lot consisting of pipes, one lot consisting of shells, one lot consisting of textiles, one lot consisting of worked and unworked stones, and one lot consisting of worked faunal bones.

On February 14, 1957, human remains representing, at minimum, one individual were removed from CA-Sut-20 in Sutter County, California, by F. M. VanZant. The one associated funerary object is a lot consisting of beads.

Sometime between 1899 and 1928, human remains representing, at minimum, one individual were removed from an unknown location (CA-Sut-NL-1) in Sutter County, CA, by Benjamin W. Hathaway and were donated by Benjamin W. Hathaway and A. G. Colley to the Lowie Museum (today the Phoebe A. Hearst Museum of Anthropology). No associated funerary objects are present.

In 1954, human remains representing, at minimum, two individuals were removed from an unknown location (CA-Yub-NL-1) in Yuba County, CA, and were gifted by Stuart C. Way to the Lowie Museum (today the Phoebe A. Hearst Museum of Anthropology). No associated funerary objects are present.

Sometime between 1949 and 1953, human remains representing, at minimum, 11 individuals were removed from CA-Yub-5 in Yuba County, CA, and were donated to the Lowie Museum (today the Phoebe A. Hearst Museum of Anthropology) by Albert B. Elasser, James Allan, Martin A. Baumhoff (University of California Archaeological Survey), and Charles Miles. The 11 associated funerary objects are one lot consisting of baked and unbaked clay, one lot consisting of beads, one lot consisting of faunal remains, one lot consisting of floral remains, one lot consisting of glass, one lot consisting of level bag pieces, one lot consisting of metal, one lot consisting of ornaments and pendants, one lot consisting of shells, one lot consisting of worked and unworked stones, and one lot consisting of worked faunal bones.

### Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable

earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: Tribal expert knowledge, geographical, linguistic, and anthropological.

### Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the University of California, Berkeley has determined that:

- The human remains described in this notice represent the physical remains of 18 individuals of Native American ancestry.
- The 27 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the United Auburn Indian Community of the Auburn Rancheria of California.

### Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after October 30, 2023. If competing requests for repatriation are received, the University of California, Berkeley must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The University of California, Berkeley is responsible for

sending a copy of this notice to the Indian Tribe identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, § 10.10, and § 10.14.

Dated: September 20, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–21249 Filed 9–27–23; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS–WASO–NAGPRA–NPS0036647;  
PPWOCRADNO–PCU00RP14.R50000]

#### Notice of Inventory Completion: Detroit Institute of Arts, Detroit, MI

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Detroit Institute of Arts has completed an inventory of associated funerary objects and has determined that there is a cultural affiliation between the associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The associated funerary objects were removed from Emmet County, MI.

**DATES:** Repatriation of the associated funerary objects in this notice may occur on or after October 30, 2023.

**ADDRESSES:** Denene De Quintal Ph.D., Detroit Institute of Arts, 5200 Woodward Avenue, Detroit, MI 48202, telephone (313) 578–1067, email [NAGPRA@dia.org](mailto:NAGPRA@dia.org).

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Detroit Institute of Arts. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Detroit Institute of Arts.

#### Description

Possibly in the 1920s, a grave marker was removed from the St. Ignatius Church, in Emmet County, MI. Subsequently, Alfred Heath sold the grave marker to Milford G. Chandler (1889–1981), who later sold it to

Richard A. Pohrt (1911–2005) of Flint, Michigan. On April 21, 1981, the Detroit Institute of Arts purchased it from Richard A. Pohrt. The grave marker may be associated with the Kenoshaneg Family. The one associated funerary object is this grave marker (81.586).

In the late 19th century, an effigy figure was removed from Cross Village, in Emmet County, MI. John Ojibway, who relocated from the St. Ignace area to Cross Village, Michigan, obtained the effigy figure. The figure passed through the Ojibway family before eventually coming into the possession of the Frank Francis family of Cross Village. Subsequently, in 1968, Richard A. Pohrt purchased the effigy figure. In 1981, the Detroit Institute of Arts purchased the figure from Mr. Pohrt. The one associated funerary object is this effigy figure (81.67).

#### Cultural Affiliation

The associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following type of information was used to reasonably trace the relationship: historical.

#### Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Detroit Institute of Arts has determined that:

- The two objects described in this notice were made exclusively for burial purposes.
- There is a relationship of shared group identity that can be reasonably traced between the associated funerary objects described in this notice and the Little Traverse Bay Bands of Odawa Indians, Michigan.

#### Requests for Repatriation

Written requests for repatriation of the associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the associated funerary objects in this notice to a requestor may occur on or after October 30, 2023. If competing requests for repatriation are received, the Detroit Institute of Arts must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the associated funerary objects are considered a single request and not competing requests. The Detroit Institute of Arts is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, § 10.10, and § 10.14.

Dated: September 20, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–21244 Filed 9–27–23; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS–WASO–NAGPRA–NPS0036650;  
PPWOCRADNO–PCU00RP14.R50000]

#### Notice of Inventory Completion: University of California, Riverside, Riverside, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of California, Riverside (UCR) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Riverside, CA.

**DATES:** Repatriation of the human remains and associated funerary objects in this notice may occur on or after October 30, 2023.

**ADDRESSES:** Megan Murphy, University of California, Riverside, 900 University Avenue, Riverside, CA 92517–5900, telephone (951) 827–6349, email [megan.murphy@ucr.edu](mailto:megan.murphy@ucr.edu).

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of California, Riverside. The National Park

Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of California, Riverside.

### Description

In 1970, human remains representing, at minimum, one individual were removed from CA-RIV-381, the Marana Site, near Vail Lake, in Riverside, CA. The human remains were removed during a field class led by Robert Bettinger. No reports on the site have been published, though it is referenced in a few publications. In UCR-ARU Report #292, archeologist Richard Lando describes CA-RIV-381 as “an important, extensive permanent village site on Temecula Creek with a large range of artifacts present including petroglyphs, pictographs, manos, metates, mortars, pestles, pottery, bone awls, beads, and chipped stones artifacts” and as culturally Luiseño. In a paper authored by Bettinger and R.E. Taylor, “*Suggested Revisions in Archaeological Sequences of the Great Basin in Interior Southern California*,” a radiocarbon date of A.D. 1450 was reportedly obtained from the Marana Site. The 14 associated funerary objects are one lot consisting of unmodified animal bones, one lot consisting of ceramics (indigenous and post-contact), one lot consisting of clay, one lot consisting of glass, one lot consisting of lithic flakes and tools, one lot consisting of metal, one lot consisting of plastic, one lot consisting of modified shells, one lot consisting of charcoal, one lot consisting of organic materials, one lot consisting of mineralogical objects, one lot consisting of unmodified shells, one lot consisting of fire-altered rocks, and one lot consisting of pipe fragments.

### Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, geographical, historical, oral traditional, and expert tribal opinion.

### Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the University of California, Riverside has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The 14 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Pechanga Band of Indians (*Previously* listed as Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California).

### Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after October 30, 2023. If competing requests for repatriation are received, the University of California, Riverside must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The University of California, Riverside is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

**Authority:** Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, § 10.10, and § 10.14.

Dated: September 20, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–21248 Filed 9–27–23; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0036649; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Intent To Repatriate Cultural Items: University of California, Riverside, Riverside, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of California, Riverside intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Riverside, CA.

**DATES:** Repatriation of the cultural items in this notice may occur on or after October 30, 2023.

**ADDRESSES:** Megan Murphy, University of California, Riverside, 900 University Avenue, Riverside, CA 92517–5900, telephone (951) 827–6349, email [megan.murphy@ucr.edu](mailto:megan.murphy@ucr.edu).

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of California, Riverside. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the University of California, Riverside.

### Description

In 1963, eight objects of cultural patrimony were removed from archeological site CA-RIV-332 (Christensen-Webb Site) in Riverside, CA. Dr. Makoto Kowta of the University of California, Riverside Anthropology Department removed the objects as part of an archeological field school. The eight objects of cultural patrimony are one lot consisting of animal bones, one lot consisting of ceramics, one lot consisting of clay, one lot consisting of

lithics, one lot consisting of metal objects, one lot consisting of floral material, one lot consisting of mineralogical objects, and one lot consisting of unmodified shells.

#### Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, geographical, historical, oral traditional, and expert tribal opinion.

#### Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the University of California, Riverside has determined that:

- The eight lots of cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Pechanga Band of Indians (*Previously* listed as Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California).

#### Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after October 30, 2023. If competing requests for repatriation are received, the University of California, Riverside must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The University of California, Riverside is

responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: September 20, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–21247 Filed 9–27–23; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0036646;  
PPWOCRADN0–PCU00RP14.R50000]**

#### Notice of Inventory Completion: Louisiana State University, Museum of Natural Science, Baton Rouge, LA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of inventory completion.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Louisiana State University, Museum of Natural Science (LSUMNS) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Iberville Parish, Louisiana.

**DATES:** Repatriation of the human remains and associated funerary objects in this notice may occur on or after October 30, 2023.

**ADDRESSES:** Dr. Rebecca Saunders, LSUMNS Division of Anthropology, 119 Foster Hall, LSU, Baton Rouge, LA 70803; telephone (225) 588–0909, email [rsaunde@lsu.edu](mailto:rsaunde@lsu.edu).

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of LSUMNS. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by LSUMNS.

#### Description

In 1940–1941, human remains representing, at a minimum, 19 individuals were removed from the Bayou Goula Mounds site (16IV011), in Iberville Parish, LA, by Edward Doran during an excavation undertaken as a joint project between Louisiana State University (LSU) and the Federal Works Project Administration. These human remains belong to eight adults, six juveniles, and five individuals of indeterminate age. Sex could not be determined for any of these individuals. The 56 associated funerary objects are 29 projectile points (one is a fragment), 10 brass/copper tinkling cones, two brass buttons (both broken on seam), one brass bell (missing clapper), nine historic glass beads, two tubular copper beads, two quartz crystals, and one lot consisting of sherds from a small Owens Punctuated vessel.

In 1977, human remains representing, at a minimum, one individual, were removed from the Bayou Goula/Mugulasha Village site (16IV134) in Iberville Parish, LA, by Glen Fredlund, during research for his M.A. thesis at LSU. In 2016, these remains were transferred from Fredlund's possession to the LSUMNS. The fragmentary cranial remains, which were found entangled among the roots of a fallen tree, belong to an adult of indeterminate sex. The 225 associated funerary objects are: 223 historic glass beads, one Florida cut crystal bead, and one cube of galena.

#### Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, and historical.

#### Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, LSUMNS has determined that:

- The human remains described in this notice represent the physical remains of 20 individuals of Native American ancestry.
- The 281 objects described in this notice are reasonably believed to have been placed with or near individual

human remains at the time of death or later as part of the death rite or ceremony.

- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Jena Band of Choctaw Indians; Mississippi Band of Choctaw Indians; and The Choctaw Nation of Oklahoma.

#### Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in

**ADDRESSES.** Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after October 30, 2023. If competing requests for repatriation are received, LSUMNS must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. LSUMNS is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

**Authority:** Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, § 10.10, and § 10.14.

Dated: September 20, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023-21245 Filed 9-27-23; 8:45 am]

**BILLING CODE 4312-52-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS-WASO-NAGPRA-NPS0036644;  
PPWOCRADN0-PCU00RP14.R50000]

**Notice of Inventory Completion:  
University of Nevada, Las Vegas, Las Vegas, NV**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Nevada, Las Vegas has completed an inventory of human remains and associated funerary objects and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any Indian Tribe. The human remains and associated funerary objects were removed from an unknown county or counties in California.

**DATES:** Disposition of the human remains and associated funerary objects in this notice may occur on or after October 30, 2023.

**ADDRESSES:** Dr. Daniel Benyshek, University of Nevada, Las Vegas, 4505 S Maryland Parkway Las Vegas, NV 89154, telephone (702) 895-2070, email [Daniel.Benyshek@unlv.edu](mailto:Daniel.Benyshek@unlv.edu).

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Nevada, Las Vegas. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of Nevada, Las Vegas.

#### Description

Human remains representing, at minimum, four individuals were removed from an unknown county or counties in California (*Accession #s AHUR 116A (Unknown Site), AHUR 116B (Unknown Site), AHUR 117 (Unknown Site), AHUR 118A ("Arroyo Rockshelter Site")*). While the ancestral remains of one of these individuals are attributed to a named site, we are unable to identify this site and, consequently, we are unable to identify the county or counties from which the human remains were removed. The 10 associated funerary objects are four moccasins (two pairs), one lot consisting of faunal bones, one lot consisting of pottery sherds, an Elko side-notched point, a Parowan point, one lot consisting of stone flakes, and one lot consisting of shells.

#### Aboriginal Land

The human remains and associated funerary objects in this notice were removed from a known geographic location (*i.e.*, the State of California). This location is the aboriginal land of one or more Indian Tribes. The following information was used to

identify the aboriginal land: a final judgment of the Indian Claims Commission.

#### Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the University of Nevada, Las Vegas has determined that:

- The human remains described in this notice represent the physical remains of four individuals of Native American ancestry.

- The 10 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.

- The human remains and associated funerary objects described in this notice were removed from the aboriginal land of the Absentee-Shawnee Tribe of Indians of Oklahoma; Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California; Alturas Indian Rancheria, California; Bear River Band of the Rohnerville Rancheria, California; Berry Creek Rancheria of Maidu Indians of California; Big Sandy Rancheria of Western Mono Indians of California; Bishop Paiute Tribe; Bridgeport Indian Colony; Buena Vista Rancheria of Me-Wuk Indians of California; Cabazon Band of Cahuilla Indians (*Previously listed as Cabazon Band of Mission Indians, California*); Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; Cahto Tribe of the Laytonville Rancheria; Cahuilla Band of Indians; California Valley Miwok Tribe, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Captain Grande Band of Diegueno Mission Indians of California (Barona Group of Captain Grande Band of Mission Indians of the Barona Reservation, California; Viejas (Baron Long) Group of Captain Grande Band of Mission Indians of the Viejas Reservation, California); Cedarville Rancheria, California; Chemehuevi Indian Tribe of the Chemehuevi Reservation, California; Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Cloverdale Rancheria of Pomo Indians of California; Cold Springs Rancheria of Mono Indians of California; Colorado River Indian Tribes



of the Colorado River Indian Reservation, Arizona and California; Confederated Tribes of Siletz Indians of Oregon; Coyote Valley Band of Pomo Indians of California; Dry Creek Rancheria Band of Pomo Indians, California; Eastern Shoshone Tribe of the Wind River Reservation, Wyoming; Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Elk Valley Rancheria, California; Enterprise Rancheria of Maidu Indians of California; Ewiiapaayp Band of Kumeyaay Indians, California; Federated Indians of Graton Rancheria, California; Fort Bidwell Indian Community of the Fort Bidwell Reservation of California; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Fort McDowell Yavapai Nation, Arizona; Fort Mojave Indian Tribe of Arizona, California & Nevada; Grindstone Indian Rancheria of Wintun-Wailaki Indians of California; Hoopa Valley Tribe, California; Hopland Band of Pomo Indians, California; Iipay Nation of Santa Ysabel, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Ione Band of Miwok Indians of California; Jackson Band of Miwok Indians; Jamul Indian Village of California; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Karuk Tribe; Kasha Band of Pomo Indians of the Stewarts Point Rancheria, California; Klamath Tribes; Kletsel Dehe Wintun Nation of the Cortina Rancheria (*Previously listed as Kletsel Dehe Band of Wintun Indians*); Koi Nation of Northern California; La Jolla Band of Luiseno Indians, California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Lone Pine Paiute-Shoshone Tribe; Los Coyotes Band of Cahuilla and Cupeno Indians, California; Lytton Rancheria of California; Manchester Band of Pomo Indians of the Manchester Rancheria, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mechoopda Indian Tribe of Chico Rancheria, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; Middletown Rancheria of Pomo Indians of California; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Mooretown Rancheria of Maidu Indians of

California; Morongo Band of Mission Indians, California; Northfork Rancheria of Mono Indians of California; Paiute Indian Tribe of Utah (Cedar Band, Kanosh Band, Koosharem Band, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes); Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pala Band of Mission Indians; Paskenta Band of Nomlaki Indians of California; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Indians (*Previously listed as Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California*); Picayune Rancheria of Chukchansi Indians of California; Pinoleville Pomo Nation, California; Pit River Tribe, California (Includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek, and Roaring Creek Rancherias); Potter Valley Tribe, California; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Quartz Valley Indian Community of the Quartz Valley Reservation of California; Quechan Tribe of the Fort Yuma Indian Reservation, California and Arizona; Ramona Band of Cahuilla, California; Redding Rancheria, California; Redwood Valley or Little River Band of Pomo Indians of the Redwood Valley Rancheria, California; Reno-Sparks Indian Colony, Nevada; Resighini Rancheria, California; Rincon Band of Luiseno Indians (*Previously listed as Rincon Band of Luiseno Mission Indians of Rincon Reservation, California*); Robinson Rancheria; Round Valley Indian Tribes, Round Valley Reservation, California; (California), San Pasqual Band of Diegueno Mission Indians of California; Santa Rosa Band of Cahuilla Indians, California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California; Scotts Valley Band of Pomo Indians of California; Soboba Band of Luiseno Indians, California; Susanville Indian Rancheria, California; Sycuan Band of the Kumeyaay Nation; Table Mountain Rancheria; Tejon Indian Tribe; Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band; and Wells Band); Timbisha Shoshone Tribe; Tolowa Dee-ni' Nation; Torres Martinez Desert Cahuilla Indians, California; Tule River Indian Tribe of the Tule River Reservation, California; Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; Twenty-Nine Palms Band of Mission Indians of California; United Auburn Indian Community of the Auburn

Rancheria of California; Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches); Wilton Rancheria, California; Wiyot Tribe, California; Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada; Yocha Dehe Wintun Nation, California; Yuhaaviatam of San Manuel Nation (*Previously listed as San Manuel Band of Mission Indians, California*); and the Yurok Tribe of the Yurok Reservation, California.

### Requests for Disposition

Written requests for disposition of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains and associated funerary objects described in this notice to a requestor may occur on or after October 30, 2023. If competing requests for disposition are received, the University of Nevada, Las Vegas must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The University of Nevada, Las Vegas is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and § 10.11.

Dated: September 20, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–21242 Filed 9–27–23; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF THE INTERIOR****National Park Service**

[NPS-WASO-NAGPRA-NPS0036653;  
PPWOCRADN0-PCU00RP14.R50000]

**Notice of Inventory Completion:  
California State University, Chico, CA**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the California State University, Chico (CSU Chico) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Sutter County, CA.

**DATES:** Repatriation of the human remains and associated funerary objects in this notice may occur on or after October 30, 2023.

**ADDRESSES:** Dawn Rewolinski, California State University, Chico, 400 W 1st Street, Chico, CA 95929, telephone (530) 898-3090, email [drewolinski@csuchico.edu](mailto:drewolinski@csuchico.edu).

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of CSU Chico. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by CSU Chico.

**Description***Accession 253*

Human remains representing, at minimum, seven individuals were removed from Sutter County, CA. These human remains derive from archeological recoveries, public donations, and forensic cases. No associated funerary objects are present.

*Accession 364*

At an unknown date, human remains representing, at minimum, four individuals were archeologically recovered from "Mile 115 Midden Locus A and B," an unknown location in Sutter County, CA, and were recorded at CSU Chico in 2004. The seven associated funerary objects are one lot consisting of clay, one lot

consisting of ochre, one lot consisting of modified stones, one lot consisting of faunal elements, one lot consisting of modified shells, one lot consisting of unmodified shells, and one lot consisting of stone debitage.

**Cultural Affiliation**

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, historical, and expert opinion in the form of Tribal traditional knowledge.

**Determinations**

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, CSU Chico has determined that:

- The human remains described in this notice represent the physical remains of 11 individuals of Native American ancestry.
- The seven objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the United Auburn Indian Community of the Auburn Rancheria of California.

**Requests for Repatriation**

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or

after October 30, 2023. If competing requests for repatriation are received, CSU Chico must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. CSU Chico is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

**Authority:** Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, § 10.10, and § 10.14.

Dated: September 20, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023-21251 Filed 9-27-23; 8:45 am]

**BILLING CODE 4312-52-P**

**DEPARTMENT OF THE INTERIOR****National Park Service**

[NPS-WASO-NAGPRA-NPS0036652;  
PPWOCRADN0-PCU00RP14.R50000]

**Notice of Intent To Repatriate Cultural  
Items: California State University,  
Chico, CA**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the California State University, Chico (CSU, Chico) intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and certain cultural items that meet the definition of objects of cultural patrimony, and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Placer and Sutter Counties, CA.

**DATES:** Repatriation of the cultural items in this notice may occur on or after October 30, 2023.

**ADDRESSES:** Dawn Rewolinski, California State University, Chico, 400 W 1st Street, Chico, CA 95929, telephone (530) 898-3090, email [drewolinski@csuchico.edu](mailto:drewolinski@csuchico.edu).

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the California State University, Chico. The National Park Service is not responsible for the determinations in this notice.

Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the California State University, Chico.

### Description

#### Accession 351

In 2002, two objects of cultural patrimony were archeologically recovered at the Holiday Inn Express site in Roseville, Placer County, CA, by the Archeological Research Program at CSU, Chico. The two objects of cultural patrimony are one lot consisting of metal and one lot consisting of unmodified faunal remains.

#### Accession 429

At an unknown date, six cultural items—two unassociated funerary objects and four objects of cultural patrimony—were removed from Placer and Sutter Counties, CA. Subsequently, these items became part of the collection of Dale Ritter. In 2019, Ritter's son, Eric Ritter, donated these items to the Chico State Anthropology Department. The two unassociated funerary objects are one lot consisting of modified shells and one lot consisting of unmodified shells. The four objects of cultural patrimony are one lot consisting of modified stones, one lot consisting of stone debitage, one lot consisting of modified shells, and one lot consisting of unmodified shells.

### Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, historical, and expert opinion in the form of Tribal traditional knowledge.

### Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the California State University, Chico has determined that:

- The two cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have

been removed from a specific burial site of a Native American individual.

- The six cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the United Auburn Indian Community of the Auburn Rancheria of California.

### Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after October 30, 2023. If competing requests for repatriation are received, the California State University, Chico must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The California State University, Chico is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

**Authority:** Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: September 20, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–21250 Filed 9–27–23; 8:45 am]

**BILLING CODE 4312–52–P**

### INTERNATIONAL TRADE COMMISSION

[USITC SE–23–047]

#### Sunshine Act Meetings

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** October 11, 2023 at 11:00 a.m.

**PLACE:** Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

#### MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 701–TA–585–586 and 731–TA–1383–1384 (Review) (Stainless Steel Flanges from China and India). The Commission currently is scheduled to complete and file its determinations and views of the Commission on October 19, 2023.
5. *Outstanding action jackets:* none.

**CONTACT PERSON FOR MORE INFORMATION:** Sharon Bellamy, Supervisory Hearings and Information Officer, 202–205–2000.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: September 26, 2023.

**Sharon Bellamy,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2023–21561 Filed 9–26–23; 4:15 pm]

**BILLING CODE 7020–02–P**

### INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1338]

#### Certain Smart Televisions; Notice of a Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation in its Entirety; Termination of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 22) granting a joint motion to terminate the investigation in its entirety based upon settlement.

#### FOR FURTHER INFORMATION CONTACT:

Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov). General

information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** On October 21, 2022, the Commission instituted this investigation based on a complaint filed by Maxell, Ltd. ("Maxell") of Kyoto, Japan. 87 FR 64110 (Oct. 21, 2022). The complaint alleged violations of section 337 based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain smart televisions by reason of infringement of one or more of claim 4 of U.S. Patent No. 8,549,109; claims 2, 4, 5, 7, and 8 of U.S. Patent No. 8,170,394; claim 1 of U.S. Patent No. 10,958,971; and claims 1 and 21 of U.S. Patent No. 11,017,815. *Id.* The Commission's notice of investigation named VIZIO, Inc. ("VIZIO") of Irvine, California as the sole respondent. The Office of Unfair Import Investigations was not named as a party in this investigation. *Id.*

On August 25, 2023, Maxell and VIZIO jointly moved to terminate the investigation in its entirety based upon reaching a settlement agreement.

On August 30, 2023, the ALJ issued the subject ID granting the motion. The ID observed that Commission Rule 210.21(a)(2) provides that "[a]ny party may move at any time to terminate an investigation in whole or in part as to any or all respondents on the basis of settlement, a licensing or other agreement . . . ." ID at 1 (citing 19 CFR 210.21(a)(2)). The ID found that in compliance with 19 CFR 210.21(b)(1), the parties certify that "there are no other agreements, written or oral, express or implied, between the parties concerning the subject matter of the investigation." *Id.* The parties also submitted confidential and public versions of the settlement agreement. *Id.* The ID further found that "termination of this investigation by settlement will not adversely affect the public interest." *Id.* (citing 19 CFR 210.50(b)(2)). No one petitioned for review of the subject ID.

The Commission has determined not to review the subject ID. The investigation is hereby terminated in its entirety.

The Commission vote for this determination took place on September 22, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as

amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 25, 2023.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2023-21260 Filed 9-27-23; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[USITC SE-23-048]

### Sunshine Act Meetings

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** October 12, 2023 at 9:30 a.m.

**PLACE:** Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205-2000.

**STATUS:** Open to the public.

#### MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. No. 731-TA-891 (Fourth Review) (Foundry Coke from China). The Commission currently is scheduled to complete and file its determinations and views of the Commission on October 20, 2023.
5. *Outstanding action jackets:* none.

**CONTACT PERSON FOR MORE INFORMATION:** Sharon Bellamy, Supervisory Hearings and Information Officer, 202-205-2000.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: September 26, 2023.

**Sharon Bellamy,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2023-21534 Filed 9-26-23; 4:15 pm]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1352]

### Certain Selective Thyroid Hormone Receptor-Beta Agonists, Processes for Manufacturing or Relating to Same, and Products Containing Same; Notice of a Commission Determination Not To Review an Initial Determination Granting a Motion To Intervene

**AGENCY:** International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission (the "Commission") has determined not to review an initial determination ("ID") (Order No. 37) granting a motion to intervene in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Carl P. Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket 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 <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on February 9, 2023, based on a complaint, as supplemented, filed by Viking Therapeutics, Inc. of San Diego, California ("Viking"). 88 FR 8455-56 (Feb. 9, 2023). The complaint alleges a violation of section 337 the Tariff Act, as amended, 19 U.S.C. 1337, by way of the importation, sale for importation, or sale in the United States after importation of certain selective thyroid hormone receptor-beta agonists, processes for manufacturing or relating to same, and products containing same by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure a domestic industry or prevent the establishment of a domestic industry. *Id.* The named respondents include Ascleitis Pharma Inc. of Hangzhou, Zhejiang Province, China; Ascleitis Pharmaceuticals Co. of Shaoxing, Zhejiang Province, China; Ascleitis

Bioscience Co. of Hangzhou, Zhejiang Province, China; Gannex Pharma Co. of Shanghai, China; and Jinzi Jason Wu of Seattle, Washington (all collectively, “the Ascleitis Respondents”). *Id.* The Office of Unfair Import Investigation is also participating in the investigation. *Id.*

On June 30, 2023, Viking filed an Omnibus Motion for Monetary and Non-Monetary Sanctions Against Respondents and their Counsel, alleging failure to cooperate during discovery, failure to cooperate during forensic examinations, and violations of the terms of certain orders.

On August 10, 2023, Foster, Murphy, Altman & Nickel, PC (“Foster Murphy”) moved to intervene in this investigation for the limited purpose of defending Foster Murphy and its attorneys’ interest in response to complainant Viking’s omnibus motion for sanctions. The motion was unopposed.

On August 28, 2023, the presiding administrative law judge (“ALJ”) issued the subject ID (Order No. 37) pursuant to Commission Rule 210.19 (19 CFR 210.19) granting Foster Murphy’s motion to intervene. Order No. 37 (Aug. 28, 2023). The ALJ states that the sanctions motion seeks joint and several liability between the Ascleitis Respondents and Foster Murphy for discovery abuse. *Id.* at 4–5. The ALJ finds that Viking’s sanctions motion makes specific allegations that implicate Foster Murphy and its attorneys. *Id.* at 5. The ALJ finds that, in view of these separate interests, the limited purpose of the intervention, and the lack of opposition, Foster Murphy’s motion to intervene is granted. *Id.* at 6.

No party filed a petition for review.

The Commission has determined not to review the subject ID.

The Commission vote for this determination took place on September 22, 2023.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 22, 2023.

**Katherine Hiner,**  
Supervisory Attorney.

[FR Doc. 2023–21140 Filed 9–27–23; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On September 19, 2023, the Department of Justice lodged a proposed Consent Decree (the “Consent Decree”) with the District Court of the Southern District of New York in a lawsuit entitled *United States of America, et al. v. City of Mount Vernon*, Civil Action No. 18–5845.

In this action, the United States and State of New York seek injunctive relief compelling the City of Mount Vernon to comply with the Clean Water Act in its operation of a municipal separate storm sewer system. The lawsuit also seeks civil penalties for past violations.

The proposed Consent Decree resolves the United States’ and States’ civil claims. It imposes injunctive relief requiring Mount Vernon to take steps necessary to bring its municipal separate storm sewer system into compliance. It also requires Mount Vernon to pay a \$100,000 civil penalty to the United States and imposes (but suspends payment of) a \$100,000 civil penalty owed to the State of New York.

The publication of this notice opens the public comment on the proposed settlement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America, et al. v. City of Mount Vernon*, DJ # 90–5–1–1–11743. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

| <i>To submit comments:</i> | <i>Send them to:</i>                                                                          |
|----------------------------|-----------------------------------------------------------------------------------------------|
| By email .....             | <a href="mailto:pubcomment-ees.enrd@usdoj.gov">pubcomment-ees.enrd@usdoj.gov</a> .            |
| By mail .....              | Assistant Attorney General,<br>U.S. DOJ—ENRD, P.O.<br>Box 7611, Washington, DC<br>20044–7611. |

During the public comment period, the settlement may be examined and downloaded at this Justice Department website: [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. The Consent Decree has voluminous exhibits, so please specify in your request whether you wish the exhibits to be included. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for \$11.75 (for the Consent Decree without exhibits) or \$189.00 (for the Consent Decree with exhibits) (25 cents per page reproduction cost) payable to the United States Treasury.

**Henry S. Friedman,**

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–21124 Filed 9–27–23; 8:45 am]

BILLING CODE 4410–15–P

## DEPARTMENT OF JUSTICE

[OMB Number 1123–0NEW]

### Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection; Authorization for Release of Information

**AGENCY:** Office of the Pardon Attorney, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Office of the Pardon Attorney, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until November 27, 2023.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kira Gillespie, Deputy Pardon Attorney, Office of the Pardon Attorney, 950 Pennsylvania Avenue NW, Main Justice—RFK Building, Washington, DC 20530; [kira.gillespie@usdoj.gov](mailto:kira.gillespie@usdoj.gov); (202) 616–6073.

**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 Office of the Pardon Attorney, including whether the information will have practical utility;
- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information,

- including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Abstract:** Applicants seeking pardon by the President will be asked to respond to this collection. The principal purpose for collecting this information is to enable the Office of the Pardon Attorney to process applicants' requests for pardon after completion of sentence.

The information is necessary to obtain records relating to applicants' backgrounds and criminal records and ensure proper notification to the Federal Bureau of Investigation, U.S. Attorneys' Offices, U.S. Probation Offices, and federal courts in the event of grants of executive clemency.

#### Overview of This Information Collection

1. *Type of Information Collection:* New collection.
2. *The Title of the Form/Collection:* Authorization for Release of Information.
3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number for this collection. The applicable component within the Department of Justice is the Office of the Pardon Attorney.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: Individuals or households. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Available information suggests that potentially 1,000 applicants will complete petitions annually. We estimate an average of five minutes for each applicant to respond to the collection.

6. *An estimate of the total annual burden (in hours) associated with the collection:* Considering the above projected figures, we estimate 83.3 hours of annual burden hours.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* \$0.

#### TOTAL BURDEN HOURS

| Activity                                  | Number of respondents | Frequency        | Total annual responses | Time per response | Total annual burden (hours) |
|-------------------------------------------|-----------------------|------------------|------------------------|-------------------|-----------------------------|
| Authorization for Release of Information. | 1,000                 | 1/annually ..... | 1,000                  | 5 min .....       | 5,000 min. or 83.33 hrs.    |
| Unduplicated Totals .....                 | 1,000                 | .....            | 1,000                  | .....             | 83.33 hrs.                  |

*If additional information is required contact:* Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC.

Dated: September 19, 2023.

**Darwin Arceo,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2023-21127 Filed 9-27-23; 8:45 am]

**BILLING CODE 4410-29-P**

#### DEPARTMENT OF JUSTICE

[OMB Number 1110-0057]

#### Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Uniform Crime Reporting (UCR) Data Collection Instrument Pretesting and Burden Estimation Generic Clearance

**AGENCY:** Federal Bureau of Investigation, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division

Department of Justice (DOJ)), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until November 27, 2023.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Edward L. Abraham, Crime and Law Enforcement Statistics Unit Chief, FBI, CJIS Division, Module D-1, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; telephone number: 304-625-4830 and email: [elabraham@fbi.gov](mailto:elabraham@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 Bureau of Justice

Statistics, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Abstract:** This clearance provides the FBI's UCR Program the ability to conduct pretests which evaluate the validity and reliability of information collection instruments and determine the level of burden state and local agencies have in reporting crime data to the FBI. The PRA only allows for ten or more respondents in the collection of information, such as pretesting activities. This clearance request expands the pretesting sample to 350 people for each of the information collections administered by the UCR

Program. Further, the clearance will allow for a brief five-minute cost and burden assessment for the 18,000 law enforcement agencies participating in the UCR Program.

### Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* Uniform Crime Reporting (UCR) Data Collection Instrument Pretesting and Burden Estimation Generic Clearance.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no form number. The applicable component within the DOJ is the CJIS Division, FBI.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: State, local and tribal governments, Federal Government. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* UCR Participation Burden

Estimation: There are approximately 18,000 law enforcement respondents; calculated estimates indicate five minutes per submission. UCR Form Pretesting: There are approximately 350 respondents; calculated estimates indicate one hour per pretest.

6. *An estimate of the total annual burden (in hours) associated with the collection:* There are approximately 1,850 hours annual burden associated with this information collection.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* \$0.

### TOTAL BURDEN HOURS

| Activity                                  | Number of respondents | Frequency        | Total annual responses | Time per response | Total annual burden (hours) |
|-------------------------------------------|-----------------------|------------------|------------------------|-------------------|-----------------------------|
| UCR Participation Burden Estimation ..... | 18,000                | 1/annually ..... | 18,000                 | 5 min .....       | 1500                        |
| UCR Form Pretesting .....                 | 350                   | 1/annually ..... | 350                    | 1 hr .....        | 350                         |
| Unduplicated Totals .....                 | 18,350                | .....            | 18,350                 | .....             | 1,850                       |

*If additional information is required contact:* Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC.

Dated: September 21, 2023.

**Darwin Arceo,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2023-21125 Filed 9-27-23; 8:45 am]

**BILLING CODE 4410-02-P**

## DEPARTMENT OF JUSTICE

[OMB Number 1123-0NEW]

### Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection; Authorization for the Release of Medical Information—Mental Health

**AGENCY:** Office of the Pardon Attorney, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Office of the Pardon Attorney, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until November 27, 2023.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kira Gillespie, Deputy Pardon Attorney, Office of the Pardon Attorney, 950 Pennsylvania Avenue NW, Main Justice—RFK Building, Washington, DC 20530; [kira.gillespie@usdoj.gov](mailto:kira.gillespie@usdoj.gov); (202) 616-6073.

**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 Office of the Pardon Attorney, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Abstract:** Applicants seeking pardon by the President will be asked to respond to this collection. The principal purpose for collecting this information is to enable the Office of the Pardon Attorney to process applicants' requests for pardon. The information is necessary to obtain records relating to applicants' medical records to verify information provided to the Office in the course of the pardon background investigation and to ensure that the Federal Bureau of Investigation or its designees can properly obtain and investigate such information. Overview of this information collection:

1. *Type of Information Collection:* New collection.

2. *The Title of the Form/Collection:* Authorization for the Release of Mental Health Information.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number for this collection. The applicable component within the Department of Justice is the Office of the Pardon Attorney.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public:



Individuals or households. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Available information suggests that potentially 1,000 applicants will

complete petitions annually. We estimate an average of five minutes for each applicant to respond to the collection.

6. *An estimate of the total annual burden (in hours) associated with the collection:* Considering the above

projected figures, we estimate 83.3 hours of annual burden hours.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* \$0.

#### TOTAL BURDEN HOURS

| Activity                              | Number of respondents | Frequency        | Total annual responses | Time per response | Total annual burden (hours) |
|---------------------------------------|-----------------------|------------------|------------------------|-------------------|-----------------------------|
| Petition for Commutation of Sentence. | 1,000                 | 1/annually ..... | 1,000                  | 5 min .....       | 5,000 min. or 83.33 hrs.    |
| Unduplicated Totals .....             | 1,000                 | .....            | 1,000                  | .....             | 83.33 hrs.                  |

*If additional information is required contact:* Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC.

Dated: September 19, 2023.

**Darwin Arceo,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2023-21128 Filed 9-27-23; 8:45 am]

**BILLING CODE 4410-29-P**

## DEPARTMENT OF JUSTICE

[OMB Number 1123-0NEW]

### Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection; Authorization for Release of Medical Information

**AGENCY:** Office of the Pardon Attorney, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Office of the Pardon Attorney, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until November 27, 2023.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection

instrument with instructions or additional information, please contact Kira Gillespie, Deputy Pardon Attorney, Office of the Pardon Attorney, 950 Pennsylvania Avenue NW, Main Justice—RFK Building, Washington, DC 20530; [kira.gillespie@usdoj.gov](mailto:kira.gillespie@usdoj.gov); (202) 616-6073.

**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 Office of the Pardon Attorney, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Abstract:** Applicants seeking pardon after completion of sentence by the President will be asked to respond to this collection. The principal purpose for collecting this information is to enable the Office of the Pardon Attorney to process applicants' requests for

pardon after completion of sentence. The information is necessary to obtain records relating to applicants' medical records to verify information provided to the Office in the course of the pardon background investigation and to ensure that the Federal Bureau of Investigation or its designees can properly obtain and investigate such information.

### Overview of This Information Collection

1. *Type of Information Collection:* New collection.

2. *The Title of the Form/Collection:* Authorization for Release of Medical Information.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number for this collection. The applicable component within the Department of Justice is the Office of the Pardon Attorney.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: Individuals or households. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Available information suggests that potentially 1,000 applicants will complete authorizations annually. We estimate an average of five minutes for each applicant to respond to the collection.

6. *An estimate of the total annual burden (in hours) associated with the collection:* Considering the above projected figures, we estimate 83.3 hours of annual burden hours.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* \$0.

## TOTAL BURDEN HOURS

| Activity                                               | Number of respondents | Frequency        | Total annual responses | Time per response | Total annual burden (hours) |
|--------------------------------------------------------|-----------------------|------------------|------------------------|-------------------|-----------------------------|
| Authorization for Release of Medical Information ..... | 1,000                 | 1/annually ..... | 1,000                  | 5 min .....       | 83.3                        |
| Unduplicated Totals .....                              | 1,000                 | .....            | 1,000                  | .....             | 83.3                        |

*If additional information is required contact:* Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC.

Dated: September 19, 2023.

**Darwin Arceo,**  
Department Clearance Officer for PRA, U.S.  
Department of Justice.

[FR Doc. 2023-21126 Filed 9-27-23; 8:45 am]

**BILLING CODE 4410-29-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Agency Information Collection Activities; Comment Request; Workforce Innovation and Opportunity Act (WIOA) Common Performance Reporting

**ACTION:** Notice.

**SUMMARY:** The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, Workforce Innovation and Opportunity Act (WIOA) Common Performance Reporting. This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

**DATES:** Consideration will be given to all written comments received by November 27, 2023.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Kellen Grode by telephone at (202) 693-3534 (this is not a toll-free number), TTY 1-877-889-5627 (this is not a toll-free number), or by email at [grode.kellen.m@dol.gov](mailto:grode.kellen.m@dol.gov).

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Policy Development and Research, 200 Constitution Ave. NW, Room N-5641, Washington, DC 20210; by email: [grode.kellen.m@dol.gov](mailto:grode.kellen.m@dol.gov).

**FOR FURTHER INFORMATION CONTACT:** Kellen Grode by telephone at (202) 693-3534, (this is not a toll-free number) or by email at [grode.kellen.m@dol.gov](mailto:grode.kellen.m@dol.gov).

**SUPPLEMENTARY INFORMATION:** DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Section 116 of WIOA (29 U.S.C. 3141) authorizes this information collection. This information collection requires States and Local Areas that operate the six core programs of the workforce development system to comply with common performance accountability requirements for those programs, which are: the Adult, Dislocated Worker, and Youth programs (title I, administered by DOL); the Wagner-Peyser Act program (title III, administered by DOL); the Adult Education and Family Literacy Act (AEFLA) program (title II, administered by ED); and the Vocational Rehabilitation (VR) program (title IV, administered by ED). As such, States and Local Areas that operate core programs must submit common performance data to demonstrate that specified performance levels are achieved. States and Local Areas will report the common performance data through this ICR.

In addition, and in accordance with WIOA section 122(b)(2), training providers that are eligible to receive funds from Adult and Dislocated

Worker programs authorized under title I of WIOA (also known as "eligible training providers" or ETPs) must report data on outcomes achieved under those programs to the State(s) in which they are listed on the State ETP list. States then report the information submitted by ETPs to DOL. The information collection requirements applicable to ETPs are contained in this ICR.

Section 116(d)(1) of WIOA mandates that the Secretaries of Labor and Education develop a template for performance reports to be used by States, local boards, and ETPs for reporting on outcomes achieved by participants in the six core programs. Corresponding joint regulations for these data collection requirements, including which primary performance indicators apply for each core program, have been issued by the Departments. See 81 FR 55792 (Aug. 19, 2016). The final regulations became effective on October 18, 2016. These joint performance regulations can be found at: (1) 20 CFR part 677 (which covers the Adult and Dislocated Worker programs (20 CFR part 680), the Youth program (20 CFR part 681), and the Wagner-Peyser Act program (20 CFR part 652)); (2) 34 CFR part 463, subpart I (which covers the AEFLA program); and (3) 34 CFR part 361, subpart E (which covers the VR program).

The data collection instruments covered in this ICR, are necessary to meet the requirements of section 116 of WIOA. These information collection instruments were developed jointly by the Departments, and include: (1) the Joint Participant Individual Record Layout (PIRL), which provides a standardized set of data elements, definitions, and reporting instructions for use by States and local entities administering WIOA core programs (ETA-9170); (2) the Statewide Performance Report Template, to be used for the reporting of data by State entities that administer WIOA core programs (ETA-9169); (3) the Local Area Performance Report Template, to be used for the reporting of data by local entities that administer WIOA core programs (ETA-9169); (4) the ETP Performance Report specifications and definitions, to be used for the reporting

of data by eligible providers of training services under title I Adult and Dislocated Worker programs (ETA–9171); and (5) the Annual Statewide Performance Report Narrative, an information collection requirement to be used for providing information on the status and progress of workforce development program performance.

WIOA establishes six primary indicators of performance. Currently, the regulations contain definitions for five of the six performance indicators. However, in the final rule implementing WIOA, the Departments indicated that they would initially implement the sixth indicator of performance—effectiveness in serving employers—in the form of a pilot program to test the feasibility and rigor of the three proposed approaches. With the pilot completed, the Departments are engaging in this rulemaking that proposes to define the performance indicator for effectiveness in serving employers for the regulations implementing the jointly administered requirements governing WIOA's six core programs.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention Joint WIOA ICR 1205–0526.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including

whether the information will have practical utility;

- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including 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).

*Agency:* DOL–ETA.

*Type of Review:* Extension with revision.

*Title of Collection:* Workforce Innovation and Opportunity Act (WIOA) Common Performance Reporting.

*Forms:* WIOA Statewide Performance Report Template and WIOA Local Performance Report Template (ETA–9169); WIOA Joint Participant Individual Record Layout (PIRL) (ETA–9170); and WIOA Eligible Training Provider (ETP) Performance Report Specifications and WIOA Eligible Training Provider (ETP) Performance Report Definitions (ETP–9171).

*OMB Control Number:* 1205–0526.

*Affected Public:* State, local, and Tribal governments.

*Estimated Number of Respondents:* 19,114,129.

*Frequency:* Varies.

*Total Estimated Annual Responses:* 38,216,054.

*Estimated Average Time per Response:* Varies.

*Estimated Total Annual Burden Hours:* 9,863,057.

*Total Estimated Annual Other Cost Burden:* \$310,900,457.

*Authority:* 44 U.S.C. 3506(c)(2)(A).

**Brent Parton,**

*Principal Deputy Assistant Secretary for Employment and Training, Labor.*

[FR Doc. 2023–21195 Filed 9–27–23; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Agency Information Collection Activities; Comment Request; Department of Labor-Only Performance Accountability

**ACTION:** Notice.

**SUMMARY:** The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, DOL-only Performance Accountability, Information, and Reporting. This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

**DATES:** Consideration will be given to all written comments received by November 27, 2023.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Kellen Grode by telephone at (202) 693–3534 (this is not a toll-free number), TTY 1–877–889–5627, or by email at [grode.kellen.m@dol.gov](mailto:grode.kellen.m@dol.gov).

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Policy Development and Research, 200 Constitution Ave. NW, Room N–5641, Washington, DC 20210; by email: [grode.kellen.m@dol.gov](mailto:grode.kellen.m@dol.gov).

**FOR FURTHER INFORMATION CONTACT:** Kellen Grode by telephone at (202) 693–3534, (this is not a toll-free number) or by email at [grode.kellen.m@dol.gov](mailto:grode.kellen.m@dol.gov).

**SUPPLEMENTARY INFORMATION:** DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Section 116 of WIOA (29 U.S.C. 3141) authorizes this information collection. The Department of Labor's (DOL)'s Employment and Training Administration (ETA) developed the (Program) Performance Report (ETA–9173) and the Pay-for-Performance Report (ETA–9174) to facilitate State performance reporting. In order to collect the participant level data that will be aggregated and displayed in the

(Program) Performance Report (ETA–9173) quarterly and the Pay-for-Performance Report (ETA–9174) annual reports, States will use a standardized individual record file for program participants, called the DOL Participant Individual Record Layout (PIRL, ETA–9172). The PIRL provides a standardized set of data elements, definitions, and reporting instructions that will be used to describe the characteristics, activities, and outcomes of WIOA and DOL partner program participants. States and grantees will be required to collect participant information that corresponds with the data elements and descriptions delineated within the PIRL. Once collected, this information will then be aggregated according to the conditions outlined in the specifications found within the Program Performance Report spreadsheet. This document details the common data elements and technical specifications necessary for calculation of reporting elements under all the DOL programs listed in the paragraph below. Once aggregated, the outcomes of the PIRL data will be submitted by the States and grantees to ETA and then displayed according to the framework within the (Program) Performance Report. Each program mentioned in this supporting statement will generate a program specific report that mirrors the construct of the (Program) Performance Report. DOL requires States and grantees to certify and submit the (Program) Performance Report to ETA on a quarterly basis.

This ICR is the product of a joint effort among the DOL offices that administer the following programs: WIOA Adult, WIOA Dislocated Worker, WIOA Youth, National Dislocated Worker Grants, Dislocated Worker Projects authorized under WIOA sec. 169(c), Wagner-Peyser Employment Service, National Farmworker Jobs Program, Job Corps, YouthBuild, Indian and Native American Program, as well as non-WIOA covered programs, including Trade Adjustment Assistance (TAA), REO, H–1B discretionary grants, Senior Community Service Employment Program (SCSEP), Apprenticeship grants, and the Jobs for Veterans' State Grants Programs. While H–1B grants, TAA, SCSEP, Apprenticeship grants and the REO programs are not authorized under WIOA, these programs utilize the data element definitions and reporting templates in this ICR.

The accuracy, reliability, and comparability of program reports submitted by States and grantees using Federal funds are fundamental elements of good public administration and are necessary tools for maintaining and demonstrating system integrity. The use

of a standard set of data elements, definitions, and specifications at all levels of the workforce system helps states to coordinate funding and leverage resources available to create a more efficient and effective system to improve the quality of the performance information that is received by DOL.

The set of primary indicators of performance represents the key results that ETA strives to achieve for their customers, and that ETA and Congress are interested in measuring. Using this set of primary indicators affords ETA the ability to describe, in a similar manner, the core purposes of the workforce system—through the program services received, how many people found jobs; what were their earnings; and what skill gains they achieved. They are an integral part of ETA's performance accountability system, and through the Workforce Performance Accountability, Information, and Reporting System, ETA will continue to collect from States and grantees the data on program activities, participants, and outcomes that are necessary for program management and to convey full and accurate information on the performance of workforce programs to policymakers and stakeholders.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention DOL Only 1205–0521

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the Agency, including whether the information will have practical utility;

- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including 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).

*Agency:* DOL–ETA.

*Type of Review:* Revision.

*Title of Collection:* DOL-Only

Performance Accountability, Information, and Reporting System.

*Forms:* DOL Participant Individual Record Layout (PIRL, ETA–9172); (Program). Performance Report (ETA–9173); Pay-for Performance Report (ETA–9174).

*OMB Control Number:* 1205–0521.

*Affected Public:* State, local, and Tribal governments.

*Estimated Number of Respondents:* 17,583,750.

*Frequency:* Varies.

*Total Estimated Annual Responses:* 41,064,037.

*Estimated Average Time per Response:* Varies.

*Estimated Total Annual Burden Hours:* 10,459,627.

*Total Estimated Annual Other Cost Burden:* \$355,854,278.39.

*Authority:* 44 U.S.C. 3506(c)(2)(A).

**Brent Parton,**

*Principal Deputy Assistant Secretary for Employment and Training, Labor.*

[FR Doc. 2023–21192 Filed 9–27–23; 8:45 am]

**BILLING CODE 4510-FN-P**

## DEPARTMENT OF LABOR

### Wage and Hour Division

#### **Minimum Wage for Federal Contracts Covered by Executive Order 13658, Notice of Rate Change in Effect as of January 1, 2024**

**AGENCY:** Wage and Hour Division, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Wage and Hour Division (WHD) of the U.S. Department of Labor (the Department) is issuing this notice to

announce the applicable minimum wage rate for workers performing work on or in connection with federal contracts covered by Executive Order 13658, Establishing a Minimum Wage for Contractors (the Executive Order or the order), beginning January 1, 2024. Beginning on that date, the Executive Order 13658 minimum wage rate that generally must be paid to workers performing work on or in connection with covered contracts will increase to \$12.90 per hour, while the required minimum cash wage that generally must be paid to tipped employees performing work on or in connection with covered contracts will increase to \$9.05 per hour. Covered contracts that are entered into on or after January 30, 2022, or that are renewed or extended (pursuant to an option or otherwise) on or after January 30, 2022, are generally subject to a higher minimum wage rate established by Executive Order 14026 of April 27, 2021, Increasing the Minimum Wage for Federal Contractors.

**DATES:** These new Executive Order 13658 rates shall take effect on January 1, 2024.

**FOR FURTHER INFORMATION CONTACT:** Amy DeBisschop, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693-0406 (this is not a toll-free number). Alternative formats are available upon request by calling 1-866-487-9243. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

**SUPPLEMENTARY INFORMATION:**

**I. Executive Order 13658 Background and Requirements for Determining Annual Increases to the Minimum Wage Rate**

Executive Order 13658 was signed on February 12, 2014, and raised the hourly minimum wage for workers performing work on or in connection with covered federal contracts to \$10.10 per hour, beginning January 1, 2015, with annual adjustments thereafter in an amount determined by the Secretary pursuant to the order. *See* 79 FR 9851. The Executive Order directed the Secretary to issue regulations to implement the order's requirements. *See* 79 FR 9852. Accordingly, after engaging in notice-and-comment rulemaking, the Department published a final rule on October 7, 2014, to implement the Executive Order. *See* 79 FR 60634. The final regulations, set forth at 29 CFR part 10, established standards and

procedures for implementing and enforcing the minimum wage protections of the order.

Executive Order 13658 and its implementing regulations require the Secretary to determine the applicable minimum wage rate for workers performing work on or in connection with covered contracts on an annual basis, beginning January 1, 2016. *See* 79 FR 9851; 29 CFR 10.1(a)(2), 10.5(a)(2), 10.12(a). Sections 2(a) and (b) of the order establish the methodology that the Secretary must use to determine the annual inflation-based increases to the minimum wage rate. *See* 79 FR 9851. These provisions, which are implemented in 29 CFR 10.5(b)(2), explain that the applicable minimum wage determined by the Secretary for each calendar year shall be:

- Not less than the amount in effect on the date of such determination;
- Increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) (United States city average, all items, not seasonally adjusted), or its successor publication, as determined by the Bureau of Labor Statistics (BLS); and
- Rounded to the nearest multiple of \$0.05.

Section 2(b) of Executive Order 13658 further provides that, in calculating the annual percentage increase in the CPI-W for purposes of determining the new minimum wage rate, the Secretary shall compare such CPI-W for the most recent month, quarter, or year available (as selected by the Secretary prior to the first year for which a minimum wage is in effect) with the CPI-W for the same month in the preceding year, the same quarter in the preceding year, or the preceding year, respectively. *See* 79 FR 9851. To calculate the annual percentage increase in the CPI-W, the Department elected in the final rule implementing the Executive Order to compare such CPI-W for the most recent year available with the CPI-W for the preceding year. *See* 29 CFR 10.5(b)(2)(iii). In the final rule, the Department explained that it decided to compare the CPI-W for the most recent year available (instead of using the most recent month or quarter, as allowed by the order) with the CPI-W for the preceding year, "to minimize the impact of seasonal fluctuations on the Executive Order minimum wage rate." 79 FR 60666.

Once a determination has been made with respect to the new minimum wage rate, Executive Order 13658 and its implementing regulations require the Secretary to notify the public of the applicable minimum wage rate on an

annual basis at least 90 days before any new minimum wage takes effect. *See* 79 FR 9851; 29 CFR 10.5(a)(2), 10.12(c)(1). The regulations explain that the Administrator of the Department's Wage and Hour Division (the Administrator) will publish an annual notice in the **Federal Register** stating the applicable minimum wage rate at least 90 days before any new minimum wage takes effect. *See* 29 CFR 10.12(c)(2)(i). Additionally, the regulations state that the Administrator will provide notice of the Executive Order minimum wage rate on Wage Determinations OnLine (WDOL), <http://www.wdol.gov>, or any successor site;<sup>1</sup> on all wage determinations issued under the Davis-Bacon Act (DBA), 40 U.S.C. 3141 *et seq.*, and the Service Contract Act (SCA), 41 U.S.C. 6701 *et seq.*; and by other means the Administrator deems appropriate. *See* 29 CFR 10.12(c)(2)(ii)-(iv).

Section 3 of Executive Order 13658 requires contractors to pay tipped employees covered by the order performing on or in connection with covered contracts an hourly cash wage of at least \$4.90, beginning on January 1, 2015, provided the employees receive sufficient tips to equal the Executive Order minimum wage rate under section 2 of the order when combined with the cash wage. *See* 79 FR 9851-52; 29 CFR 10.28(a). The order further provides that, in each succeeding year, beginning January 1, 2016, the required cash wage must increase by \$0.95 (or a lesser amount if necessary) until it reaches 70 percent of the Executive Order minimum wage. *Id.* For subsequent years, the cash wage for tipped employees will be 70 percent of the Executive Order minimum wage rounded to the nearest \$0.05. *Id.* When a contractor is using a tip credit to meet a portion of its wage obligations under the Executive Order, the amount of tips received by the employee must equal at least the difference between the cash wage paid and the Executive Order minimum wage; if the employee does not receive sufficient tips, the contractor must increase the cash wage paid so that the cash wage in combination with the tips received equals the Executive Order minimum wage. *Id.*

The Executive Order 13658 minimum wage and the cash wage required for tipped employees are currently \$12.15 and \$8.50 per hour, respectively. The Department announced these rates on September 30, 2022, and the rates took

<sup>1</sup> WDOL.gov has since moved to <https://sam.gov/content/wage-determinations>. This website is the authoritative and single website for obtaining appropriate Service Contract Act and Davis-Bacon Act wage determinations for each official contract action.

effect on January 1, 2023. *See* 87 FR 59468.

## II. Effect of Executive Order 14026

On April 27, 2021, President Joseph R. Biden, Jr. signed Executive Order 14026, Increasing the Minimum Wage for Federal Contractors. 86 FR 22835. Executive Order 14026 establishes a higher hourly minimum wage of \$15.00 per hour, beginning on January 30, 2022, and, beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary in accordance with the order. This higher hourly minimum wage applies to the same types of contracts with the Federal Government that are covered by Executive Order 13658. However, Executive Order 14026 only applies to contracts with the Federal Government that are entered into on or after January 30, 2022, or that are renewed or extended (pursuant to an exercised option or otherwise) on or after January 30, 2022. For some amount of time, the Department therefore anticipates that there will be some existing contracts with the Federal Government that do not qualify as a covered “new contract” for purposes of Executive Order 14026 and thus will remain subject to the minimum wage requirements of Executive Order 13658.

The Department anticipates that, in the relatively near future, essentially all covered contracts with the Federal Government will qualify as “new” contracts under Executive Order 14026 and be subject to its higher minimum wage rate. Until such time, however, Executive Order 13658 and its regulations at 29 CFR part 10 must remain in place. Accordingly, the Department will continue announcing annual updates to Executive Order 13658’s minimum wage rates for existing contracts still covered by Executive Order 13658.<sup>2</sup>

## III. The 2024 Executive Order 13658 Minimum Wage Rate

Using the methodology set forth in Executive Order 13658 and summarized above, the Department must first

determine the annual percentage increase in the CPI-W (United States city average, all items, not seasonally adjusted), as published by BLS, to determine the new Executive Order 13658 minimum wage rate. In calculating the annual percentage increase in the CPI-W, the Department must compare the CPI-W for the most recent year available with the CPI-W for the preceding year. The Department therefore compares the percentage change in the CPI-W between the most recent year (*i.e.*, the most recent four quarters) and the prior year (*i.e.*, the four quarters preceding the most recent year). The Department then increases the current Executive Order minimum wage rate by the resulting annual percentage change and rounds to the nearest multiple of \$0.05.

To determine the Executive Order 13658 minimum wage rate beginning January 1, 2024, the Department calculated the CPI-W for the most recent year by averaging the CPI-W for the four most recent quarters, which consist of the first two quarters of 2023 and the last two quarters of 2022 (*i.e.*, July 2022 through June 2023). This produced an average index level of 294.367.<sup>3</sup> The Department then compared that data to the average CPI-W for the preceding year—277.278—which consists of the first two quarters of 2022 and the last two quarters of 2021 (*i.e.*, July 2021 through June 2022). Based on this methodology, the Department determined that the annual percentage increase in the CPI-W (United States city average, all items, not seasonally adjusted) was 6.163 percent ( $(294.367 \div 277.278) - 1$ ). The Department then applied that annual percentage increase of 6.163 percent to the current Executive Order hourly minimum wage rate of \$12.15, which resulted in a wage rate of \$12.899 ( $(\$12.15 \times 0.06163) + \$12.15$ ). Pursuant to the Executive Order, that rate must be rounded to the nearest multiple of \$0.05.

The new Executive Order 13658 minimum wage rate that must generally be paid to workers performing on or in

connection with covered contracts beginning January 1, 2024 is therefore \$12.90 per hour.

## IV. The 2024 Executive Order 13658 Minimum Cash Wage For Tipped Employees

As noted above, section 3 of Executive Order 13658 provides a methodology to determine the amount of the minimum hourly cash wage that must be paid to tipped employees performing on or in connection with covered contracts. Because the cash wage for tipped employees reached 70 percent of the Executive Order 13658 minimum wage beginning on January 1, 2018 (*i.e.*, \$7.25 per hour compared to \$10.35 per hour), future updates to the cash wage for tipped employees must continue to set the rate at 70 percent of the full Executive Order 13658 minimum wage. Seventy percent of the new Executive Order 13658 minimum wage rate of \$12.90 is \$9.03 ( $\$12.90 \times 0.70$ ). Because the Executive Order provides that the rate must be rounded to the nearest \$0.05, the new minimum hourly cash wage for tipped workers performing on or in connection with covered contracts beginning January 1, 2024, is therefore \$9.05 per hour.

## V. Appendices

Appendix A to this notice provides a chart of the CPI-W data published by BLS that the Department used to calculate the new Executive Order 13658 minimum wage rate based on the methodology explained herein. A poster reflecting the new Executive Order 13658 minimum wage rate will be publicly available on the WHD website on January 1, 2024.

**Julie A. Su,**  
*Acting Secretary of Labor.*

## Appendix A: Data Used to Determine Executive Order 13658 Minimum Wage Rate Effective January 1, 2024.

*Data Source:* Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) (United States city average, all items, not seasonally adjusted)

|                                  | Quarter 3 |         |         | Quarter 4 |         |         | Quarter 1 |         |         | Quarter 2 |         |         | Annual average |
|----------------------------------|-----------|---------|---------|-----------|---------|---------|-----------|---------|---------|-----------|---------|---------|----------------|
| 2021Q3 to 2022Q2                 | 267.789   | 268.387 | 269.086 | 271.552   | 273.042 | 273.925 | 276.296   | 278.943 | 283.176 | 284.575   | 288.022 | 292.542 | 277.278        |
| 2022Q3 to 2023Q2                 | 292.219   | 291.629 | 291.854 | 293.003   | 292.495 | 291.051 | 293.565   | 295.057 | 296.021 | 297.730   | 298.382 | 299.394 | 294.367        |
| Annual Percentage Increase ..... | .....     | .....   | .....   | .....     | .....   | .....   | .....     | .....   | .....   | .....     | .....   | .....   | 6.163%         |

<sup>2</sup> Based on an order issued by the U.S. Court of Appeals for the Tenth Circuit on February 17, 2022, the minimum wage requirements of the final rule implementing Executive Order 14026 are not currently being enforced as to “contracts or contract-like instruments entered into with the

federal government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on federal lands.” The final rule’s requirements remain in effect for all other contracts subject to the rule.

<sup>3</sup> In 1988, the reference base for the CPI-W was changed from 1967 = 100 to 1982–84 = 100. The 1982–84 period was chosen to coincide with the updated expenditure weights which were based on the Consumer Expenditure Surveys for the years 1982, 1983, and 1984.

[FR Doc. 2023–21114 Filed 9–27–23; 8:45 am]

BILLING CODE 4510–27–P

## DEPARTMENT OF LABOR

### Wage and Hour Division

#### Minimum Wage for Federal Contracts Covered by Executive Order 14026, Notice of Rate Change in Effect as of January 1, 2024

**AGENCY:** Wage and Hour Division, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Wage and Hour Division (WHD) of the U.S. Department of Labor (the Department) is issuing this notice to announce the applicable minimum wage rate for workers performing work on or in connection with federal contracts covered by Executive Order 14026, Increasing the Minimum Wage for Federal Contractors (the Executive Order or the order). Beginning on January 1, 2024, the Executive Order 14026 minimum wage rate that generally must be paid to workers performing work on or in connection with covered contracts will increase to \$17.20 per hour. This minimum wage rate will apply to non-tipped and tipped employees alike, as, beginning January 1, 2024, Executive Order 14026 eliminates the lower cash wage that contractors may pay tipped employees. Contracts similar to those covered by Executive Order 14026 that were entered into, renewed, or extended prior to January 30, 2022, are generally subject to a lower minimum wage rate established by Executive Order 13658 of February 12, 2014, Establishing a Minimum Wage for Contractors.

**DATES:** These new Executive Order 14026 wage rates shall take effect on January 1, 2024.

**FOR FURTHER INFORMATION CONTACT:** Amy DeBisschop, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Alternative formats are available upon request by calling 1–866–487–9243. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

#### SUPPLEMENTARY INFORMATION:

#### I. Executive Order 14026 Background and Requirements for Determining Annual Increases to the Minimum Wage Rate

On April 27, 2021, President Joseph R. Biden, Jr. signed Executive Order 14026, “Increasing the Minimum Wage for Federal Contractors.” 86 FR 22835. In relevant part, Executive Order 14026 raised the hourly minimum wage paid by federal contractors to workers performing work on or in connection with certain covered Federal contracts to \$15.00 per hour, beginning January 30, 2022, with annual adjustments for inflation thereafter in amounts determined by the Secretary of Labor. *Id.*

Executive Order 14026 directed the Secretary to issue regulations to implement the order’s requirements. *See* 86 FR 22836. Accordingly, after engaging in notice-and-comment rulemaking, the Department published a final rule on November 24, 2021, implementing Executive Order 14026. *See* 86 FR 67126. The final regulations, set forth at 29 CFR part 23, established standards and procedures for implementing and enforcing the minimum wage protections of Executive Order 14026.<sup>1</sup>

Executive Order 14026 and its implementing regulations require the Secretary to determine the applicable minimum wage rate for workers performing work on or in connection with covered contracts on an annual basis, beginning January 1, 2023. *See* 86 FR 22835–36; *see also* 29 CFR 23.10(b)(2), 23.50(a)(2), 23.120(a). Sections 2(a) and (b) of Executive Order 14026 establish the methodology that the Secretary must use to determine the annual inflation-based increases to the minimum wage rate. *See* 86 FR 22835–36. These provisions, which are implemented in 29 CFR 23.50(b)(2), explain that the applicable minimum wage determined by the Secretary for each calendar year shall be:

- Not less than the amount in effect on the date of such determination;
- Increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) (United States city average, all items,

<sup>1</sup> Based on an order issued by the U.S. Court of Appeals for the Tenth Circuit on February 17, 2022, the minimum wage requirements of the final rule implementing Executive Order 14026 are not currently being enforced as to “contracts or contract-like instruments entered into with the federal government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on federal lands.” The final rule’s requirements remain in effect for all other contracts subject to the rule.

not seasonally adjusted), or its successor publication, as determined by the Bureau of Labor Statistics (BLS); and

- Rounded to the nearest multiple of \$0.05.

Section 2(b) of Executive Order 14026 further provides that, in calculating the annual percentage increase in the CPI–W for purposes of determining the new minimum wage rate, the Secretary shall compare such CPI–W for the most recent month, quarter, or year available (as selected by the Secretary prior to the first year for which a minimum wage is in effect) with the CPI–W for the same month in the preceding year, the same quarter in the preceding year, or the preceding year, respectively. *See* 86 FR 22835–36. To calculate the annual percentage increase in the CPI–W, the Department elected in its final rule implementing Executive Order 14026 to compare such CPI–W for the most recent year available with the CPI–W for the preceding year. *See* 29 CFR 23.50(b)(2)(iii). Consistent with the regulations implementing Executive Order 13658, *see* 29 CFR 10.5, the Department explained that it decided to compare the CPI–W for the most recent year available (instead of using the most recent month or quarter, as allowed by the order) with the CPI–W for the preceding year, “to minimize the impact of seasonal fluctuations on the Executive order minimum wage rate.” 86 FR 67167.

Once a determination has been made with respect to the new minimum wage rate, Executive Order 14026 and its implementing regulations require the Secretary to notify the public of the applicable minimum wage rate on an annual basis at least 90 days before any new minimum wage takes effect. *See* 86 FR 22835; 29 CFR 23.50(a)(2), 23.120(c)(1). The regulations explain that the Administrator of the Department’s Wage and Hour Division (the Administrator) will publish an annual notice in the **Federal Register** stating the applicable minimum wage rate at least 90 days before any new minimum wage takes effect. *See* 29 CFR 23.120(c)(2)(i). Additionally, the regulations state that the Administrator will provide notice of the Executive Order minimum wage rate on <https://sam.gov/content/wage-determinations>, or any successor site; on all wage determinations issued under the Davis-Bacon Act (DBA), 40 U.S.C. 3141 *et seq.*, and the Service Contract Act (SCA), 41 U.S.C. 6701 *et seq.*; and by other means the Administrator deems appropriate. *See* 29 CFR 23.120(c)(2)(ii)–(iv).

Section 3 of Executive Order 14026 explains the application of the order to tipped workers. 86 FR 22836. It



provides that for workers covered by section 2 of the order who are tipped employees pursuant to section 3(t) of the FLSA, 29 U.S.C. 203(t), the cash wage that must be paid by an employer to such workers shall be at least: (i) \$10.50 an hour, beginning on January 30, 2022; (ii) beginning January 1, 2023, 85 percent of the wage in effect under section 2 of the order, rounded to the nearest multiple of \$0.05; and (iii) beginning January 1, 2024, and for each subsequent year, 100 percent of the wage in effect under section 2 of the order. 86 FR 22836. Consistent with applicable law, if the wage required to be paid under the SCA, 41 U.S.C. 6701 *et seq.*, or any other applicable law or regulation is higher than the wage required by section 2 of the order, the employer must pay additional cash wages sufficient to meet the highest wage required to be paid. 86 FR 22836.

The Executive Order 14026 minimum wage and the cash wage required for tipped employees are currently \$16.20 and \$13.75 per hour, respectively.<sup>2</sup> The Department announced these rates on September 30, 2022, and the rates took effect on January 1, 2023. 87 FR 59464.

## II. The 2024 Executive Order 14026 Minimum Wage Rate

Using the methodology set forth in Executive Order 14026 and summarized above, the Department must first determine the annual percentage increase in the CPI-W (United States city average, all items, not seasonally adjusted), as published by BLS, to determine the new Executive Order 14026 minimum wage rate. In calculating the annual percentage increase in the CPI-W, the Department must compare the CPI-W for the most recent year available with the CPI-W for the preceding year. The Department therefore compares the percentage

change in the CPI-W between the most recent year (*i.e.*, the most recent four quarters) and the prior year (*i.e.*, the four quarters preceding the most recent year). The Department then increases the current Executive Order minimum wage rate by the resulting annual percentage change and rounds to the nearest multiple of \$0.05.

To determine the Executive Order 14026 minimum wage rate beginning January 1, 2024, the Department therefore calculated the CPI-W for the most recent year by averaging the CPI-W for the four most recent quarters, which consist of the first two quarters of 2023 and the last two quarters of 2022 (*i.e.*, July 2022 through June 2023). This produced an average index level of 294.367.<sup>3</sup> The Department then compared that data to the average CPI-W for the preceding year—277.278—which consists of the first two quarters of 2022 and the last two quarters of 2021 (*i.e.*, July 2021 through June 2022). Based on this methodology, the Department determined that the annual percentage increase in the CPI-W (United States city average, all items, not seasonally adjusted) was 6.163 percent  $((294.367 \div 277.278) - 1)$ . The Department then applied that annual percentage increase of 6.163 percent to the current Executive Order 14026 minimum wage (\$16.20 per hour), which resulted in an hourly wage rate of \$17.198  $((\$16.20 \times 0.06163) + \$16.20)$ ; however, pursuant to Executive Order 14026, the updated minimum wage rate must be rounded to the nearest multiple of \$0.05.

Accordingly, effective January 1, 2024, the new minimum wage rate that must generally be paid to workers performing on or in connection with contracts covered by Executive Order 14026 will be \$17.20 per hour.

## III. Phase-Out of the Minimum Cash Wage for Tipped Employees

As noted above, section 3 of Executive Order 14026 provides a methodology to determine the amount of the minimum hourly cash wage that must be paid to tipped employees performing on or in connection with covered contracts. In relevant part, section 3(a)(ii) of the Executive order specifies that, for calendar year 2024, the minimum hourly cash wage for tipped employees shall increase to 100 percent of the wage in effect under section 2 of the order. *See* 86 FR 22836; *see also* 29 CFR 23.280(a)(1)(iii). This means that, beginning on January 1, 2024, contractors may no longer credit employee tips toward the Executive Order 14026 minimum wage, and tipped employees covered by Executive Order 14026 will be entitled to a cash wage of at least \$17.20 per hour.

## IV. Appendices

Appendix A to this notice provides a chart of the CPI-W data published by BLS that the Department used to calculate the new Executive Order 14026 minimum wage rate based on the methodology explained herein. A poster reflecting the new Executive Order 14026 minimum wage rate will be publicly available on the WHD website on January 1, 2024.

**Julie A. Su,**  
*Acting Secretary of Labor.*

## Appendix A: Data Used to Determine Executive Order 14026 Minimum Wage Rate Effective January 1, 2024

*Data Source:* Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) (United States city average, all items, not seasonally adjusted)

|                                  | Quarter 3 |         |         | Quarter 4 |         |         | Quarter 1 |         |         | Quarter 2 |         |         | Annual average |
|----------------------------------|-----------|---------|---------|-----------|---------|---------|-----------|---------|---------|-----------|---------|---------|----------------|
| 2021Q3 to 2022Q2                 | 267.789   | 268.387 | 269.086 | 271.552   | 273.042 | 273.925 | 276.296   | 278.943 | 283.176 | 284.575   | 288.022 | 292.542 | 277.278        |
| 2022Q3 to 2023Q2                 | 292.219   | 291.629 | 291.854 | 293.003   | 292.495 | 291.051 | 293.565   | 295.057 | 296.021 | 297.730   | 298.382 | 299.394 | 294.367        |
| Annual Percentage Increase ..... | .....     | .....   | .....   | .....     | .....   | .....   | .....     | .....   | .....   | .....     | .....   | .....   | 6.163%         |

[FR Doc. 2023–21115 Filed 9–27–23; 8:45 am]

BILLING CODE 4510–27–P

## NATIONAL COUNCIL ON DISABILITY Sunshine Act Meetings

**TIME AND DATE:** The Members of the National Council on Disability (NCD) will hold a two-day in-person Council

meeting on Thursday, November 16, 2023, 9 a.m.–4:30 p.m. Eastern Standard Time (EST) and Friday, November 17, 2023, 10 a.m.–1:15 p.m., EST.

**PLACE:** This meeting will take place at the Omni Hotel and Resort, One West

<sup>2</sup> Contracts of the same kind as are covered by Executive Order 14026 and that were entered into, renewed, or extended prior to January 30, 2022, are generally subject to Executive Order 13658 and its lower minimum wage requirements. The Executive

Order 13658 minimum wage and the cash wage required for tipped employees are currently \$12.15 and \$8.50 per hour, respectively. *See* 87 FR 59468.

<sup>3</sup> In 1988, the reference base for the CPI-W was changed from 1967 = 100 to 1982–84 = 100. The

1982–84 period was chosen to coincide with the updated expenditure weights which were based on the Consumer Expenditure Surveys for the years 1982, 1983 and 1984.

Exchange Street, Providence, RI 02903. The event will also be streamed live via Zoom videoconference for those not able to attend in person. Registration is not required. Details are available on NCD's event page at <https://ncd.gov/events/2023/upcoming-council-meeting>.

#### MATTERS TO BE CONSIDERED:

**Day 1**—Following welcome remarks and introductions, Chairman Gallegos will host a fireside chat discussion with former Chair Sandra Parrino; then a brief break; followed by a town hall public comment session about housing concerns and opportunities; followed by a housing concerns panel presentation and questions from the Council. Following a lunch break, a town hall public comment session about transportation concerns and opportunities is followed by a transportation concerns panel presentation and questions from the Council; followed by a briefing on NCD's upcoming progress report Toward Economic Security, before adjourning.

**Day 2**—Welcome remarks and introductions are followed by the Chairman's report; Executive Committee report, Executive Director's report; policy updates; Council member report outs; a break; annual ethics training; and any old or new business, before adjourning.

**AGENDA:** The times provided below are approximations for when each agenda item is anticipated to be discussed (all times Eastern Standard Time):

#### Thursday, November 16, 2023

9:00–9:15 a.m.—Welcome and Call to Order  
 9:15–10:15 a.m.—Fireside Chat with Sandy Parrino  
 10:15–10:30 a.m.—BREAK  
 10:30–11:15 a.m.—Housing Concerns and Opportunities Town Hall  
 11:15 a.m.–12:15 p.m.—Housing Concerns and Opportunities Panel, Q&A  
 12:15–1:30 p.m.—LUNCH BREAK  
 1:30–2:15 p.m.—Transportation Concerns and Opportunities Town Hall  
 2:15–3:15 p.m.—Transportation Concerns and Opportunities Panel, Q&A  
 3:15–3:30 p.m.—BREAK  
 3:30–4:30 p.m.—Toward Economic Security progress report briefing and respondent panel  
 4:30 p.m.—Adjourn

#### Friday, November 17, 2023

10:00–10:05 a.m.—Welcome and Call to Order  
 10:05–10:15 a.m.—Chairman's Report

10:15–10:30 a.m.—Executive Committee Report  
 10:30–10:40 a.m.—Executive Director's Report  
 10:40–11:15 a.m.—Policy Updates  
 11:15–11:45 a.m.—Council Member report outs on community outreach/ input  
 11:45 a.m.–12:00 p.m.—BREAK  
 12:00–1:00 p.m.—Annual Ethics Training  
 1:00–1:15 p.m.—Old Business/New Business  
 1:15 p.m.—Adjourn

**PUBLIC COMMENT:** Your participation during NCD's public comment period provides an opportunity for us to hear from you—individuals, businesses, providers, educators, parents and advocates. Your comments are important in bringing to the Council's attention and issues and priorities of the disability community, and help inform open research projects the Council has underway as well as the potential for future ones.

For the November 16 Council meeting, NCD will have two town hall format public comment sessions focused on housing concerns and opportunities, and transportation concerns and opportunities for people with disabilities. Commenters will be limited to three minutes each to accommodate as many comments as possible. Additional information on specifics of the topic is available on NCD's public comment page at <https://ncd.gov/public-comment>.

The Council will prioritize in-person commenters, but as time permits, will also receive public comment by video or audio over Zoom, and always accepts advance public comments via email. Due to the hybrid nature of the event, in-person presentations will be given priority.

To provide public comment during an NCD Council Meeting in any form (in-person or by Zoom), NCD now requires advanced registration by sending an email to [PublicComment@ncd.gov](mailto:PublicComment@ncd.gov) with the subject line "Public Comment" and your name, organization, state, and topic of comment included in the body of your email. Deadline for registration is November 14, 8:00 p.m. EST. Please indicate if you are providing the comment in-person, over Zoom, or only submitting via email. All individuals desiring to make public comment are strongly encouraged to read NCD's guidelines for public comment in advance of the meeting at: <https://ncd.gov/public-comment>.

While public comment can be submitted on any topic over email, comments during the meeting should be

specific to experiences with housing concerns and opportunities for people with disabilities.

**CONTACT PERSON FOR MORE INFORMATION:** Nicholas Sabula, Public Affairs Specialist, NCD, 1331 F Street NW, Suite 850, Washington, DC 20004; 202–272–2004 (V), or [nsabula@ncd.gov](mailto:nsabula@ncd.gov).

**ACCOMMODATIONS:** ASL Interpreters will be provided in-room and included during the live streamed meeting, and CART has been arranged for this meeting and will be embedded into the Zoom platform as well as available via streamtext link. The web link to access CART (in English) is: <https://www.streamtext.net/player?event=NCD>.

If you require additional accommodations, please notify Stacey Brown by sending an email to [sbrown@ncd.gov](mailto:sbrown@ncd.gov) as soon as possible and no later than 24 hours prior to the meeting.

Due to last-minute confirmations or cancellations, NCD may substitute items without advance public notice.

Dated: September 25, 2023.

**Anne C. Sommers McIntosh,**  
*Executive Director.*

[FR Doc. 2023–21421 Filed 9–26–23; 11:15 am]

**BILLING CODE 8421–02–P**

#### NATIONAL SCIENCE FOUNDATION

**Agency Information Collection Activities: Comment Request; Awardee Reporting Requirements for the Established Program To Stimulate Competitive Research (EPSCoR) Research Infrastructure Improvement Programs**

**AGENCY:** National Science Foundation.

**ACTION:** Notice.

**SUMMARY:** The National Science Foundation (NSF) is announcing plans to renew this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

**DATES:** Written comments on this notice must be received by November 27, 2023 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

**FOR FURTHER INFORMATION CONTACT:** Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314;

telephone (703) 292-7556; or send email to [spimpto@nsf.gov](mailto:spimpto@nsf.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

#### **SUPPLEMENTARY INFORMATION:**

*Comments:* Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Title of Collection:* Awardee Reporting Requirements for the Established Program to Stimulate Competitive Research (EPSCoR) Research Infrastructure Improvement Programs.

*OMB Number:* 3145-0243.

*Expiration Date of Approval:* February 29, 2024.

*Type of Request:* Intent to seek approval to renew an information collection.

*Proposed Project:* The mission of the National Science Foundation (NSF) is to promote the progress of science; to advance the national health, welfare, and prosperity; and to secure the national defense, while avoiding the undue concentration of research and education. In 1977, in response to congressional concern that NSF funding was overly concentrated geographically, a National Science Board task force analyzed the geographic distribution of NSF funds, which resulted in the creation of an NSF Experimental Program to Stimulate Competitive Research (EPSCoR). The American Innovation and Competitiveness Act (Pub. L. 114-329, Sec 103 D) effectively changed the program's name from "Experimental" to "Established" in FY 2016. Congress specified two objectives for the EPSCoR program in the National Science Foundation Authorization Act of 1988: (1) to assist States that historically have received relatively little Federal research and development funding; and (2) to assist States that

have demonstrated a commitment to develop their research bases and improve science and engineering research and education programs at their universities and colleges.

The EPSCoR Research Infrastructure Improvement (RII) Investment Strategies advance science and engineering capabilities in EPSCoR jurisdictions for discovery, innovation and overall knowledge-based prosperity. These projects build human, cyber, and physical infrastructure in EPSCoR jurisdictions, stimulating sustainable improvements in their Research & Development (R&D) capacity and competitiveness.

EPSCoR projects are unique in their scope and complexity; in their integration of individual researchers, institutions, and organizations; and in their role in developing the diverse, well-prepared, STEM-enabled workforce necessary to sustain research competitiveness and catalyze economic development. In addition, these projects are generally inter- or multi-disciplinary and involve effective jurisdictional and regional collaborations among academic, government, and private sector stakeholders that advance scientific research, promote innovation, and provide multiple societal benefits. They also broaden participation in science and engineering by engaging multiple institutions and organizations at all levels of research and education, and people within and among EPSCoR jurisdictions. These projects usually involve between 100 to 300 participants per year over the performance period, and the projects reach thousands more through their extensive STEM outreach activities. The American Innovation and Competitiveness Act of 2016, Section 103 (Pub. L. 114-329) requires NSF EPSCoR to submit annual reports to both Congress and OSTP that contain data detailing project progress and success (new investigators, broadening participation, dissemination of results, new workshops, outreach activities, proposals submitted and awarded, mentoring activities among faculty members, collaborations, researcher participating on the review process, etc.).

EPSCoR RII Track-1 and Track-2 projects are required to submit annual reports on progress and plans, which are used as a basis for performance review and determining the level of continued funding. To support this review and the management of EPSCoR RII projects, teams are required to develop a set of performance indicators for building sustainable infrastructure and capacity in terms of a strategic plan for the project; measure performance and revise

strategies as appropriate; report on the progress relative to the project's goals and milestones; and describe changes in strategies, if any, for submission annually to NSF. These indicators are both quantitative and descriptive and may include, for example, the characteristics of project personnel and students; aggregate demographics of participants; sources of financial support and in-kind support; expenditures by operational component; characteristics of industrial and/or other sector participation; research activities; workforce development activities; external engagement activities; patents and patent licenses; publications; degrees granted to students involved in project activities; and descriptions of significant advances and other outcomes of the EPSCoR project's efforts. Part of this reporting takes the form of several spreadsheets to capture specific information to demonstrate progress towards achieving the goals of the program. Such reporting requirements are included in the cooperative agreement which is binding between the awardee institution and NSF.

Each project's annual report addresses the following categories of activities: (1) research, (2) education, (3) workforce development, (4) partnerships and collaborations, (5) communication and dissemination, (6) sustainability, (7) diversity, (8) management, and (9) evaluation and assessment.

For each of the categories the report is required to describe overall objectives for the year; specific accomplishments, impacts, outputs and outcomes; problems or challenges the project has encountered in making progress towards goals; and anticipated problems in performance during the following year.

*Use of the Information:* NSF will use the information to continue its oversight of funded EPSCoR RII projects, and to evaluate the progress of the program.

The change would facilitate reporting better aligned with program goals and provides data as legislatively required for NSF EPSCoR.

*Estimate of Burden:* 100 hours per project for twenty-eight projects for a total of 2,800 hours.

*Respondents:* Non-profit institutions; federal government.

*Estimated Number of Responses per Report:* One.

Dated: September 25, 2023.

**Suzanne H. Plimpton,**  
Reports Clearance Officer, National Science Foundation.

[FR Doc. 2023-21281 Filed 9-27-23; 8:45 am]

**BILLING CODE 7555-01-P**

**NATIONAL SCIENCE FOUNDATION****Agency Information Collection  
Activities: Comment Request;  
Graduate Research Fellowships  
Program**

**AGENCY:** National Science Foundation.  
**ACTION:** Notice.

**SUMMARY:** The National Science Foundation (NSF) is announcing plans to renew this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

**DATES:** Written comments on this notice must be received by November 27, 2023 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

**FOR FURTHER INFORMATION CONTACT:**

Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, h 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292-7556; or send email to [splimpto@nsf.gov](mailto:splimpto@nsf.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Graduate Research Fellowship Program.

*OMB Number:* 3145-0023.

*Expiration Date of Approval:* December 31, 2023.

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

*Abstract:* section 10 of the National Science Foundation Act of 1950 (42 U.S.C. 1861 *et seq.*), as amended, states that “The Foundation is authorized to award, within the limits of funds made available \* \* \* scholarships and graduate fellowships for scientific study or scientific work in the mathematical, physical, biological, engineering, social, and other sciences at accredited U.S. institutions selected by the recipient of such aid, for stated periods of time.”

The Graduate Research Fellowship Program has two goals:

- To select, recognize, and financially support, early in their careers, individuals with the demonstrated potential to be high achieving scientists and engineers;

- To broaden participation in science and engineering of underrepresented groups, including women, minorities, persons with disabilities, and veterans.

The list of GRFP Awardees recognized by the Foundation may be found via FastLane through the NSF website: <https://www.fastlane.nsf.gov/grfp/AwardeeList.do?method=loadAwardeeList>. The GRF Program is described in the Solicitation available at: [https://www.nsf.gov/publications/pub\\_summ.jsp?ods\\_key=nsf19590&org=NSF](https://www.nsf.gov/publications/pub_summ.jsp?ods_key=nsf19590&org=NSF).

*Estimate of Burden:* This is an annual application program providing three years of support to individuals, usable over a five-year fellowship period. The application deadlines are in late October. It is estimated that each submission is averaged to be 16 hours per respondent, which includes three references (on average) for each application. It is estimated that it takes two hours per reference for each applicant.

The clearance request also includes two forms—the NSF-349, Fellowship Starting Certificate, and the NSF-453, the Fellowship Termination Certificate and Grant Fiscal Report. These are completed by program Fellows at the beginning and the end of their fellowship.

*Respondents:* Individuals.

*Estimated Number of Responses:* 15,000.

*Estimated Total Annual Burden on Respondents:* 225,000 hours.

*Frequency of Responses:* Annually.

*Comments:* Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 25, 2023.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2023-21276 Filed 9-27-23; 8:45 am]

**BILLING CODE 7555-01-P**

**NATIONAL SCIENCE FOUNDATION****Agency Information Collection  
Activities: Comment Request; National  
Science Foundation-Managed  
Honorary Awards**

**AGENCY:** National Science Foundation.  
**ACTION:** Notice.

**SUMMARY:** The National Science Foundation (NSF) is announcing plans to renew, with a revision, this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

**DATES:** Written comments on this notice must be received by November 27, 2023 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

**FOR FURTHER INFORMATION CONTACT:**

Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292-7556; or send email to [splimpto@nsf.gov](mailto:splimpto@nsf.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* National Science Foundation-Managed Honorary Awards.

*OMB Approval Number:* 3145-0035.

*Expiration Date of Approval:* January 31, 2024.

*Type of Request:* Intent to seek approval to revise an information collection for three years.

*Abstract:* The National Science Foundation (NSF) administers several external awards, among them the President's National Medal of Science, the Alan T. Waterman Award, the National Science Board (NSB) Vannevar Bush Award, the NSB Public Service Award, the Presidential Awards for Excellence in Science, Mathematics and Engineering Mentoring (PAESMEM) program, and the Presidential Awards for Excellence in Mathematics and Science Teaching (PAEMST) program. The full descriptions for these programs, including nominating requirements, may be found at the following website: <https://www.nsf.gov/awards/presidential.jsp>.

*Use of the Information:* Following are brief outlines of the honorary award programs:

- **President's National Medal of Science.** Statutory authority for the President's National Medal of Science is contained in 42 U.S.C. 1881 (Pub. L. 86–209), which established the award and stated that “(t)he President shall . . . award the Medal on the recommendations received from the National Academy of Sciences or on the basis of such other information and evidence as . . . appropriate.”

- **Alan T. Waterman Award.** Congress established the Alan T. Waterman Award in August 1975 (42 U.S.C. 1881a (Pub. L. 94–86) and authorized NSF to “establish the Alan T. Waterman Award for research or advanced study in any of the sciences or engineering” to mark the 25th anniversary of the National Science Foundation and to honor its first Director. The annual award recognizes an outstanding young researcher in any field of science or engineering supported by NSF. In addition to a medal, the awardee receives a grant of \$1,000,000 over a five-year period for scientific research or advanced study in any field of science or engineering.

- **Vannevar Bush Award.** The Vannevar Bush Award honors truly exceptional lifelong leaders in science and technology who have made substantial contributions to the welfare of the Nation through public service activities in science, technology, and public policy. The National Science Board established this award in 1980 in the memory of Vannevar Bush, who served as a science advisor to President Franklin Roosevelt during World War II, helped to establish Federal funding for science and engineering as a national priority during peacetime, and was behind the creation of the National Science Foundation.

- **NSB Public Service Award.** The National Science Board established the Public Service Award in November 1996 to honor individuals and groups that have made substantial contributions to increasing public understanding of science and engineering in the United States. These contributions may be in a wide variety of areas that have the potential of contributing to public understanding of and appreciation for science and engineering—including mass media, education and/or training programs, and entertainment.

- **Presidential Awards for Excellence in Science, Mathematics and Engineering Mentoring (PAESMEM)** program. In 1996, the White House, through the National Science and Technology Council (NSTC) and the

Office of Science and Technology Policy (OSTP), established the Presidential Awards for Excellence in Science, Mathematics and Engineering Mentoring (PAESMEM) program. The program, administered on behalf of the White House by the National Science Foundation, seeks to identify outstanding mentoring efforts or programs designed to enhance the participation of groups (women, minorities and persons with disabilities as well as groups from low socioeconomic regions) underrepresented in science, mathematics and engineering. The awardees will serve as exemplars to their colleagues and will be leaders in the national effort to more fully develop the Nation's human resources in science, mathematics and engineering. This award is managed at NSF by the Directorate for Education and Human Resources (EHR).

- **Presidential Award for Excellence in Mathematics and Science Teaching.** The Presidential Award for Excellence in Mathematics and Science Teaching (PAEMST) is the highest recognition that a kindergarten through 12th-grade mathematics or science teacher may receive for outstanding teaching in the United States. Enacted by Congress in 1983, this program authorizes the President to bestow 108 awards with two per state or jurisdiction, assuming there are qualified applicants. Awards are given in the science category, which includes science and engineering, and the mathematics category, which includes mathematics, technology and computer science. In even-numbered years, nominations are accepted for elementary teachers (grades K–6); in odd-numbered years, secondary teachers (grades 7–12) are nominated. This award is managed at NSF by the Directorate for Education and Human Resources (EHR).

*Estimate of Burden:* These are annual award programs with application deadlines varying according to the program. Public burden also may vary according to program; however, across all the programs, it is estimated that each submission will average 23 hours per respondent. If the nominator is thoroughly familiar with the disciplinary background of the nominee, time spent to complete the nomination may be considerably reduced. Once provisionally selected, on behalf of OSTP, NSF may collect information from the potential Presidential award honorees necessary for OSTP to complete a background check. The estimated time for completion is ten minutes per respondent, including reviewing the instructions.

*Respondents:* Individuals, businesses or other for-profit organizations, universities, non-profit institutions, and Federal and State governments.

*Estimated Number of Responses per Award:* 1800 responses, broken down as follows: For the President's National Medal of Science, 80; background check form, 15; for the Alan T. Waterman Award, 70; for the Vannevar Bush Award, 20; for the Public Service Award, 30; for the PAESMEM, 200; and 1400 for the PAEMST.

*Estimated Total Annual Burden on Respondents:* 41,974 hours, broken down by 1,600 hours for the President's National Medal of Science nominations (20 hours per 80 respondents) and three hours for the background check information for approximately 15–20 honorees; 2,000 hours for the Alan T. Waterman Award (20 hours per 100 respondents); 300 hours for the Vannevar Bush Award (15 hours per 20 respondents); 450 hours for the Public Service Award (15 hours per 30 respondents); 4,000 hours for the PAESMEM (20 hours per 200 respondents) and three hours for the background check information for approximately 15 honorees; and 33,600 hours for the PAEMST (24 hours per 1400 respondents) and 18 hours for the background check information for approximately 108 honorees.

*Frequency of Responses:* Annually.

*Comments:* Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 25, 2023.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2023–21277 Filed 9–27–23; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

*Name and Committee Code:* Advisory Committee for Mathematical and Physical Sciences (#66).

*Date and Time:* November 8, 2023; 10:00 a.m. to 5:15 p.m.; November 9, 2023: 8:55 a.m. to 2:40 p.m.

*Place:* NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314/Hybrid participation for AC Members, Presenters, Visitors and Guests.

To attend the meeting in person, all visitors must contact the Directorate for Mathematical and Physical Sciences at least 48 hours prior to the meeting to arrange for a visitor's badge. All visitors must access NSF via the Visitor Center entry adjacent to the south building entrance on Eisenhower Avenue on the day of the meeting to receive a visitor's badge. It is suggested that visitors allow time to pass through security screening.

To attend the virtual meeting, please send your request for the virtual meeting link at least 48 hours prior to the meeting.

Please send all requests for virtual or in-person meeting access to Catalina Achim at [cachim@nsf.gov](mailto:cachim@nsf.gov).

*Type of Meeting:* Open.

*Contact Person:* Catalina Achim, National Science Foundation, 2415 Eisenhower Avenue, Room E9335, Alexandria, Virginia 22314; Telephone: 703/292–2048.

*Meeting Information:* <http://www.nsf.gov/mps/advisory.jsp>.

*Purpose of Meeting:* To provide advice, recommendations and counsel on major goals and policies pertaining to MPS programs and activities.

### Agenda

Wednesday, November 8, 2023

- Call to Order and Official Opening of the Meeting
- Approval of Prior Meeting Minutes—MPSAC Chair
- MPS Update by Assistant Director
- Science Highlight
- Report by the Division of Astronomy Committee of Visitors
- Report by the MPS AC Subcommittee on Facilities and Major Research Infrastructure
- Update on the Next-Generation Gravitational Wave Observatory Subcommittee (NextGenGW SC) Report

- TIP Update
- Waterman Award Debrief
- Preparation for Discussion with NSF Director, NSF Chief Operating Officer, and NSF Director's Chief of Staff
- Closing Remarks and Adjourn Day 1

Thursday, November 9, 2023

- Welcome and Overview of Agenda
- DEIA Update
- Report by the Division of Materials Research Committee of Visitors
- MPS Engagement Request
- Preparation for Discussion with NSF Director, NSF Chief Operating Officer and NSF Director's Chief of Staff
- Meeting and Discussion with NSF Director, NSF Chief Operating Officer, and NSF Director's Chief of Staff
- Closing Remarks and Adjourn Day 2

Dated: September 25, 2023.

**Crystal Robinson,**

*Committee Management Officer.*

[FR Doc. 2023–21265 Filed 9–27–23; 8:45 am]

**BILLING CODE 7555–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2023–279 and CP2023–282; MC2023–280 and CP2023–283]**

### New Postal Products

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* October 2, 2023.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

### SUPPLEMENTARY INFORMATION:

#### Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)

### I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related

to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.<sup>1</sup>

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

### II. Docketed Proceeding(s)

1. *Docket No(s):* MC2023–279 and CP2023–282; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 64 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 22, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* October 2, 2023.

2. *Docket No(s):* MC2023–280 and CP2023–283; *Filing Title:* USPS Request

<sup>1</sup> See Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

to Add Priority Mail & USPS Ground Advantage Contract 65 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 22, 2023; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Jennaca D. Upperman; *Comments Due*: October 2, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,  
Secretary.

[FR Doc. 2023–21253 Filed 9–27–23; 8:45 am]

BILLING CODE 7710–FW–P

## POSTAL SERVICE

### International Product Change—Priority Mail Express International, Priority Mail International & First-Class Package International Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

**DATES:** *Date of notice*: September 28, 2023.

**FOR FURTHER INFORMATION CONTACT:** Christopher C. Meyerson, (202) 268–7820.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 13, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 27 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2023–265 and CP2023–268.

Colleen Hibbert-Kapler,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2023–21149 Filed 9–27–23; 8:45 am]

BILLING CODE 7710–12–P

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35022; File No. 812–15481]

### T. Rowe Price OHA Select Private Credit Fund and OHA Private Credit Advisors LLC

September 25, 2023.

**AGENCY:** Securities and Exchange Commission (“Commission” or “SEC”).

**ACTION:** Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the “Act”) for an exemption from sections 18(a)(2), 18(c), 18(i) and section 61(a) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain closed-end management investment companies that have elected to be regulated as business development companies (“BDCs”) to issue multiple classes of shares with varying sales loads and asset-based service and/or distribution fees.

**APPLICANTS:** T. Rowe Price OHA Select Private Credit Fund and OHA Private Credit Advisors LLC.

**FILING DATES:** The application was filed on July 5, 2023, and amended on September 13, 2023.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission 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 Applicants 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 Commission by 5:30 p.m. on October 20, 2023, and should be accompanied by proof of service on the 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 emailing the Commission’s Secretary.

**ADDRESSES:** The Commission: [Secretaries-Office@sec.gov](mailto:Secretaries-Office@sec.gov). Applicants: Gregory S. Rubin, Esq., OHA Private Credit Advisors LLC, [grubin@oakhilladvisors.com](mailto:grubin@oakhilladvisors.com), with copies to Richard Horowitz, Esq., Dechert, LLP, [richard.horowitz@dechert.com](mailto:richard.horowitz@dechert.com).

## FOR FURTHER INFORMATION CONTACT:

Laura L. Solomon, Senior Counsel or Kyle R. Ahlgren, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel’s Office).

**SUPPLEMENTARY INFORMATION:** For Applicants’ representations, legal analysis, and conditions, please refer to Applicants’ application, dated September 13, 2023, which may be obtained via the Commission’s website by searching for the file number at the top of this document, 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.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–21286 Filed 9–27–23; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98489; File No. SR–NASDAQ–2023–036]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend Rule 4120 and Rule 4753

September 22, 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 September 12, 2023, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 4120 (Limit Up-Limit Down and Trading Halts) and Rule 4753 (Nasdaq Halt Cross) to set forth specific requirements for halting and resuming

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.



trading in a security that is subject to a reverse stock split.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set 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 conjunction with the increase in overall reverse stock splits in recent years, Nasdaq proposes to amend Rule 4120 and Rule 4753 to set forth specific requirements for halting trading in a security that is subject to a reverse stock split and resuming trading using the Nasdaq Halt Cross. Current Rule 4120 does not specifically list rule reverse stock splits in its numerated circumstances in which Nasdaq may halt trading in a security. The proposed amendments will be specific to the automatic initiation, pre-market trading and opening of a Nasdaq-listed security undergoing a reverse stock split.

#### Background

Nasdaq has observed that the current market environment has led to an increase in reverse stock split activity. In 2022, Nasdaq processed 196 reverse stock splits, compared to 35 in 2021 and 98 in 2020. Just in the first quarter of 2023, Nasdaq processed 78 reverse stock splits, and projects significantly more throughout 2023. Reverse stock splits are often effected by smaller companies that do not have broad media or research coverage. In most cases, the companies are listed on the Capital Market tier and are conducting reverse stock splits to achieve compliance with Nasdaq's \$1 minimum bid price requirement.<sup>3</sup>

<sup>3</sup> Rule 5550(a)(2) specifies that a Company that has its Primary Equity Security listed on the Capital

Nasdaq believes that the increase in companies effecting reverse stock splits warrants amendments to the trading halt rules to allow for Nasdaq to help reduce the potential for errors resulting in a material effect on the market resulting from market participants' processing of the reverse stock split, including incorrect adjustment or entry of orders. Nasdaq currently processes reverse stock splits overnight, with the security opening for trading at 4:00 a.m. EST in the pre-market hours (*i.e.*, the trading session between 4:00 a.m. to 9:30 a.m. EST) on a split-adjusted basis. Recently, market participants have expressed concerns with allowing trading on an adjusted basis at 4:00 a.m., noting that it is not optimal because system errors or problems with orders may go unnoticed for a period of time when a security that has undergone a reverse stock split opens for trading with the other thousands of securities. These errors have the potential to adversely affect investors, market participants and the issuer.<sup>4</sup> For example, in one recent instance problems in connection with the processing of a reverse stock split resulted in a broker executing trades selling more shares than customers held in their accounts, resulting in a temporary short position.

As such, Nasdaq believes it is appropriate to impose a regulatory halt, which would prohibit pre-market trading immediately after a reverse stock split and open trading in such securities using the Nasdaq Halt Cross<sup>5</sup> process set forth in Rule 4753. The proposed new rule will allow for Nasdaq and market participants to better detect any errors or problems with orders for the security resulting from the reverse stock split before trading in the security begins and thereby avoid any material effect on the market.

#### Description of the Proposed Amendment

Nasdaq is proposing to: (1) amend Rule 4120(a) to provide the Exchange

Market must have a minimum bid price of at least \$1 per share. *See also* Rule 5450(a)(1) (Global and Global Select Markets). Companies are afforded a grace period pursuant to Rule 5810(c)(3)(A) to regain compliance.

<sup>4</sup> In a separate filing, Nasdaq also proposed changes to adopt specific notification and disclosure requirements for reverse stock splits. *See* Securities Exchange Act Release No. 98014 (July 28, 2023), 88 FR 51376 (August 3, 2023) (SR-Nasdaq-2023-21).

<sup>5</sup> The "Nasdaq Halt Cross" is the process for determining the price at which Eligible Interest shall be executed at the open of trading for a halted security and for executing that Eligible Interest. *See* Rule 4753(a)(4). "Eligible Interest" shall mean any quotation or any order that has been entered into the system and designated with a time-in-force that would allow the order to be in force at the time of the Halt Cross. *See* Nasdaq Rule 4753(a)(5).

with explicit authority to declare a trading halt before the end of Post-Market Hours<sup>6</sup> on the day immediately before the market effective date of a reverse stock split; and (2) amend Rule 4120(c) to include this halt in the existing procedures for initiating and terminating a trading halt. More specifically, proposed Rule 4120(a)(14) provides that Nasdaq shall halt trading of a security for which Nasdaq is the primary listing market before the end of the Post-Market Hours on the day immediately before the market effective date of a reverse stock split. A trading halt due to a reverse stock split will be mandatory pursuant to proposed Rule 4120(a)(14). Nasdaq also proposes to modify Rule 4120(c)(7)(A) to include the new halt authority proposed in Rule 4120(a)(14) in the reopening process currently applicable to halts under Rules 4120(a)(1), (4), (5), (6), (9), (10) and (11). In general, Nasdaq expects to initiate the halt at 7:50 p.m., prior to the close of post-market trading at 8:00 p.m. on the day immediately before the split is effective,<sup>7</sup> and resume trading at 9:00 a.m. on the day the split is effective.<sup>8</sup> Nasdaq believes that this halt and delayed opening will give sufficient time for investors to review their orders and the quotes for the security and allow market participants to ensure that their systems have properly adjusted for the reverse stock split.

Nasdaq is also proposing to update Rule 4753(b) to include proposed Rule 4120(a)(14) in the list of numerated provisions that would be subject to the Nasdaq Halt Cross. As such, any security that is subject to a reverse stock split will be reopened using the Nasdaq Halt Cross prior to trading during market hours.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities

<sup>6</sup> The term "Post-Market Hours" means the period of time beginning immediately after the end of Market Hours and ending at 8:00 p.m. ET. *See* Nasdaq Rule Equity 1, Section 1(a)(9).

<sup>7</sup> Initiating the halt at approximately 7:50 p.m. will provide Nasdaq with a limited buffer to ensure that trading in a security that is undergoing a reverse stock split will not continue after the close of post-market trading.

<sup>8</sup> Nasdaq may change the resumption time if, for example, there was an Extraordinary Market Activity that could interfere with a fair and orderly 9:00 a.m. resumption. "Extraordinary Market Activity" is defined in the Fiftieth Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis.

exchange, and, in particular, with the requirements of section 6(b) of the Act.<sup>9</sup> Specifically, the proposal is consistent with section 6(b)(5) of the Act<sup>10</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

As described above, the Exchange is seeking to amend rules related to halting and resuming trading in U.S.-listed equity securities subject to a reverse stock split. The Exchange believes that establishing a reverse stock split trading halt rule will protect investors by giving the Exchange automatic authority to act in situations where it is necessary to maintain fair and orderly markets. It will also ensure that the process for resuming trading following a reverse stock split halt is consistent with other types of halts initiated by Nasdaq. Currently, none of the provisions in Rule 4120 provide authority to preemptively halt during pre-market hours the trading in a security undergoing a significant corporate action that could lead to investor or market confusion. The Exchange believes that the proposed amendments will provide greater transparency and clarity with respect to the manner in which trading will be halted due to a reverse stock split, and the process through which that halt will be implemented and terminated. Particularly, Nasdaq will not have the discretion of determining when to halt a security following a reverse stock split. Rather, following the reverse stock split of the security for which Nasdaq is the primary listing market, trading in the security will automatically halt prior to the close of post-market trading at 8:00 p.m. The proposed changes seek to achieve consistency with respect to the initiation and termination of a trading halt with respect to securities that have undergone a reverse stock split, while maintaining a fair and orderly market, protecting investors and protecting the public interest.

Additionally, establishing a mandatory trading halt for securities that have undergone a reverse stock split and resuming trading thereafter promotes fair and orderly markets and the protection of investors, because it encourages Nasdaq to consider the broader interests of the national market system and addresses potential concerns that system errors may affect immediate trading in those securities. Based on the

foregoing, the Exchange believes that the proposed rules are consistent with section 6(b)(5) of the Act<sup>11</sup> because they will promote just and equitable principles of trade and will remove any impediments to a free and open market and a national market system by allowing sufficient time for investors to review their orders and the quotes for a security that has undergone a reverse stock split, and allow market participants to ensure that their systems have properly accounted for the reverse stock split. As discussed previously, the Exchange believes that the proposed amendments establishing the authority and process for reverse stock split trading halts and the resumption of trading is consistent with the Act, which itself imposes obligations on exchanges with respect to issuers that are listed.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes the proposal is consistent with section 6(b)(8) of the Act in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as explained below.

The Exchange believes the proposal will not impose a burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change is designed to protect investors and facilitate a fair and orderly market, which are both important purposes of the Act. To the extent that there is any impact on intermarket competition, it is incidental to these objectives.

The Exchange does not believe that the proposed rule change imposes a burden on intra-market competition because the provisions apply to all market participants and issuers equally. In addition, information regarding the halting and resumption of trading will be disseminated using several freely accessible sources to ensure broad availability of information offered by the Exchange that are available to subscribers.

In addition, the proposals include provisions related to the declaration and timing of trading halts and the resumption of trading designed to avoid any advantage to those who can react more quickly than other participants.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<https://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-NASDAQ-2023-036 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NASDAQ-2023-036. 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 (<https://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

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

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 a.m. and 3 p.m. Copies of the 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-NASDAQ-2023-036 and should be submitted on or before October 19, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

[FR Doc. 2023-21136 Filed 9-27-23; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98488]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Declaration of Effectiveness of the Fingerprint Plan of the Financial Industry Regulatory Authority, Inc.

September 22, 2023.

On September 22, 2023, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission" or "SEC") a new fingerprint plan ("Plan")<sup>1</sup> pursuant to Rule 17f-2(c)<sup>2</sup> under the Securities Exchange Act of 1934 ("Exchange Act" or "Act").<sup>3</sup> The Plan supersedes and replaces FINRA's current fingerprint plan, which was declared effective for the Commission by the Division of Trading and Markets, pursuant to delegated authority, on November 2, 2021 ("2021 Fingerprint Plan").<sup>4</sup>

As discussed in the FINRA Letter, historically FINRA has processed fingerprints submitted from registered transfer agent and registered clearing agency (hereinafter referred to as "transfer agents" and "clearing agencies") personnel who are required to be fingerprinted using FINRA's fingerprint processing platform.<sup>5</sup> FINRA states that the new Plan is necessary because FINRA must retire its fingerprint processing platform, due to the termination of support of essential software used by the platform.<sup>6</sup> Because its fingerprint processing platform will no longer be supported, FINRA states that there is an exigent need to provide an option for transfer agents and clearing agencies that are currently using FINRA to meet the Exchange Act fingerprinting requirement.<sup>7</sup> Accordingly, FINRA is adopting a new Plan to reflect that it has arranged for its FBI-approved channeler ("FBI-Approved Channel Partner")<sup>8</sup> to serve, on an interim basis, as a fingerprinting option for transfer agents and clearing agencies that elect to use it.<sup>9</sup> FINRA states that it will continue to work with SEC and FBI staff to find a more

(Declaration of Effectiveness of the Fingerprint Plan of the Financial Industry Regulatory Authority, Inc. ("2021 Declaration")). See also Letter from Richard E. Pullano, Vice President and Associate General Counsel, FINRA, to Devin Ryan, Assistant Director, Office of Chief Counsel, Division of Trading and Markets, Commission, dated October 28, 2021, <https://www.sec.gov/files/rules/other/2021/finra-incoming-fingerprint-plan-cover-letter.pdf> ("FINRA October 2021 Letter").

<sup>5</sup> See FINRA Letter at 1. See *id.* at 3, n.8. See also 2021 Declaration at 5-6, 12 (describing fingerprinting processing for transfer agent and clearing agency personnel). As FINRA notes, as a result of the 2021 Fingerprint Plan transition, the percentage of fingerprints processed through FINRA's fingerprint platform decreased by 97 percent. See FINRA Letter at 1, n.3.

<sup>6</sup> See FINRA Letter at 1. FINRA states that, for over 20 years, it directly channeled fingerprints of transfer agent and clearing agency personnel to the Federal Bureau of Investigation ("FBI") using a proprietary platform that used vendor-provided software and specialized communications equipment. Although FINRA continues to process fingerprints submitted by transfer agents and clearing agencies, it soon will no longer have the ability to directly channel fingerprints to the FBI as its fingerprint processing platform must be retired. Specifically, in addition to the vendor discontinuing the software used for the platform and ceasing to support the software, FINRA learned in late 2022 that other software (an unrelated server product) that is integral to the platform's operation will no longer be supported after October 10, 2023. See *id.* at 1-2.

<sup>7</sup> See *id.* at 1-4. FINRA states that it will continue to channel fingerprints for these personnel consistent with the 2021 Fingerprint Plan until the Plan is declared effective or September 29, 2023, whichever is earlier. See Exhibit A, at 1, n.1.

<sup>8</sup> See Exhibit A at 1, n.3. See also 2021 Declaration at 2, n.6 (discussing the FBI's conditional approval of FINRA using a specified FBI-Approved Channel Partner).

<sup>9</sup> See FINRA Letter at 3-4.

permanent solution that does not involve FINRA acting in a channeler role for transfer agents and clearing agencies.<sup>10</sup> Importantly, FINRA explains that the new Plan will continue, without any changes, the processes established under the 2021 Fingerprint Plan for broker-dealer personnel,<sup>11</sup> as well as FINRA's officers, directors, employees and contractors, and will extend such processes to personnel of transfer agents and clearing agencies with respect to the use of its FBI-Approved Channel Partner.<sup>12</sup>

For the reasons discussed below, the Commission finds that, pursuant to Rule 17f-2(c) of the Exchange Act, the Plan is not inconsistent with the public interest and the protection of investors and, therefore, declares the Plan to be effective.

#### 1. Applicable Standard

Section 17(f)(2) of the Act provides, in pertinent part, that "every member of a national securities exchange, broker, dealer, registered transfer agent and registered clearing agency . . . and national securities association shall require that each of its partners, directors, officers, and employees be fingerprinted and shall submit such fingerprints, or cause the same to be submitted, to the Attorney General of the United States for identification and

<sup>10</sup> See *id.* at 3. FINRA states that no additional action is needed by the FBI to implement this interim measure because the FBI's 2021 approval of FINRA's outsourcing of its fingerprint channeling responsibilities extends to all entities identified in Exchange Act section 17(f)(2), including transfer agents and clearing agencies. See FINRA Letter at 3, n. 10 (citing letter from Chasity S. Anderson, FBI Compact Officer, National Crime Prevention and Privacy Compact Council Office, FBI, to Derek W. Linden, Executive Vice President, FINRA, dated September 28, 2021), <https://www.sec.gov/files/rules/other/2021/fbi-compact-officer-approval-letter.pdf>.

<sup>11</sup> See *id.* at 1, 4. For purposes of the Plan, broker-dealer personnel includes personnel of FINRA members and other broker-dealers required to be fingerprinted pursuant to Exchange Act section 17(f)(2) and Rule 17f-2 thereunder. The term "members," as used in the Plan, includes Capital Acquisition Brokers, Funding Portals and applicants for FINRA membership. See Exhibit A at 1-2, n.2.

<sup>12</sup> See *id.* at 1, 4. FINRA's 2021 transition to the FBI-Approved Channel Partner provides broker-dealers an efficient option to comply with the fingerprinting requirements in section 17(f)(2) and enables FINRA to fulfill its critical regulatory responsibilities for those entities. The 2021 transition similarly enables FINRA to efficiently fingerprint its officers, directors, employees and contractors consistent with New York General Business Law Section 359-e and Exchange Act section 17(f)(2) and thereby safeguard against potential threats to FINRA personnel, facilities and records. As a result of the 2021 transition, the percentage of fingerprints processed through FINRA's fingerprint platform decreased by 97 percent. See *id.* at 1, n.3. See also 2021 Declaration at 4-6, 11-13.

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> Attached hereto as Exhibit A. See also Letter from Richard Pullano, Vice President and Associate General Counsel, FINRA, to Devin Ryan, Assistant Director, Office of Chief Counsel and Moshe Rothman, Assistant Director, Office of Clearance and Settlement, Division of Trading and Markets, dated September 22, 2023 ("FINRA Letter").

<sup>2</sup> 17 CFR 240.17f-2(c).

<sup>3</sup> 15 U.S.C. 78a *et seq.*

<sup>4</sup> See Exchange Act Release No. 93511 (November 2, 2021), 86 FR 61801 (November 8, 2021), <https://www.sec.gov/files/rules/other/2021/34-93511.pdf>

appropriate processing.”<sup>13</sup> However, in accordance with Exchange Act Rule 17f–2(c), the fingerprinting requirement of section 17(f)(2) may be satisfied by submitting appropriate and complete fingerprint cards to, among others, a registered national securities association (such as FINRA) which, pursuant to a plan filed with and declared effective by the Commission, forwards such fingerprint cards to the Attorney General or its designee for identification and appropriate processing.<sup>14</sup> Under Rule 17f–2(c), such a fingerprinting plan—like FINRA’s 2021 Fingerprint Plan and this Plan—shall not become effective unless it is declared effective by the Commission, which requires the Commission to find that the plan is “not inconsistent with the public interest or the protection of investors.”<sup>15</sup>

FINRA states that the purpose of the Plan is to facilitate compliance with section 17(f)(2) of the Exchange Act and Rule 17f–2 thereunder by providing a program for, among others, transfer agents and clearing agencies, to have the fingerprints of their partners, directors, officers, and employees processed by the Attorney General.<sup>16</sup> FINRA also states it is providing, on an interim basis, transfer agents and clearing agencies an option to use an FBI-Approved Channel Partner with which FINRA has contracted to enable them to satisfy their fingerprinting requirements.<sup>17</sup> The Plan will continue, without any changes, the processes established under the 2021 Fingerprint Plan for broker-dealer personnel, as well as FINRA’s officers, directors, employees and contractors, and will extend such processes to personnel of transfer agents and clearing agencies with respect to the use of its FBI-Approved Channel Partner.<sup>18</sup>

## 2. Transfer Agents and Clearing Agencies

Under the Plan, the FBI-Approved Channel Partner will be the central point of intake for fingerprints from those transfer agents and clearing agencies that elect to use it for their personnel who are required to be

fingerprinted under section 17(f)(2).<sup>19</sup> The FBI-Approved Channel Partner will offer state-of-the-art collection services for those fingerprints at locations nationwide.<sup>20</sup> After either collecting fingerprints directly or receiving them from transfer agents or clearing agencies (or their authorized agents), the FBI-Approved Channel Partner will transmit the fingerprints to the FBI for processing, track their status, and securely make both the statuses and results available to FINRA, which, in turn, will securely make the fingerprint statuses and results available to the transfer agent or clearing agency.<sup>21</sup>

## 3. Commission’s Declaration of Effectiveness of the Plan

In accordance with Rule 17f–2(c) of the Act, the Commission has reviewed the procedures detailed in the Plan and declares the Plan to be effective, finding that it is not inconsistent with the public interest and the protection of investors.

The Commission observes that most of FINRA’s 2021 Fingerprint Plan, which the Commission found previously to be not inconsistent with the public interest and the protection of investors,<sup>22</sup> will remain largely unchanged.<sup>23</sup> As a result, the Commission has no reason to revisit its prior finding with respect to those unchanged provisions.

With respect to FINRA’s decision to arrange for its FBI-Approved Channel Partner to serve, on an interim basis, as a fingerprinting option for transfer agents and clearing agencies, the Commission observes the following representations made by FINRA. FINRA states that the 2021 Fingerprint Plan’s transition to the FBI-Approved Channel Partner provides broker-dealers an efficient option to comply with the fingerprinting requirements in section 17(f)(2) and enables FINRA to fulfill its critical regulatory responsibilities for

those entities.<sup>24</sup> The 2021 Fingerprint Plan similarly enables FINRA to efficiently fingerprint its officers, directors, employees and contractors consistent with New York state law and Exchange Act section 17(f)(2) and thereby safeguard against potential threats to FINRA personnel, facilities and records.<sup>25</sup> FINRA further states that making the services of FINRA’s FBI-Approved Channel Partner available to transfer agents and clearing agencies as an interim measure will provide those entities the ability to continue satisfy their Exchange Act requirement to fingerprint their personnel following the retirement of FINRA’s fingerprint processing platform, while FINRA works with all appropriate parties to find a permanent solution.<sup>26</sup>

The Commission agrees with FINRA’s observation that these statutorily-mandated fingerprint-based background checks—whether performed by FINRA itself for transfer agents and clearing agencies under the 2021 Fingerprint Plan or FINRA’s prior plan<sup>27</sup> or by an FBI-Approved Channel Partner under this Plan—will continue to help protect investors and serve the public interest.

Based on the foregoing, the Commission finds that, pursuant to Rule 17f–2(c) of the Exchange Act, the Plan is not inconsistent with the public interest and the protection of investors and, therefore, declares the Plan to be effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

## Exhibit A

### Financial Industry Regulatory Authority; Fingerprint Plan

The Financial Industry Regulatory Authority, Inc. (“FINRA”) submits this fingerprint plan (“Plan”) pursuant to Rule 17f–2(c) under the Securities Exchange Act of 1934 (“Exchange Act”). This Plan supersedes and replaces FINRA’s current fingerprint plan, which was declared effective by the Securities and Exchange Commission (“Commission”) on November 2, 2021 (the “2021 Fingerprint Plan”).<sup>1</sup>

<sup>24</sup> See FINRA Letter at 1, n.3.

<sup>25</sup> See *id.*

<sup>26</sup> See FINRA Letter at 3–4.

<sup>27</sup> See Exchange Act Release No. 53751 (May 2, 2006), 71 FR 27299 (May 10, 2006), <https://www.sec.gov/files/rules/other/2006/34-53751.pdf> (Declaration of Effectiveness of the Fingerprint Plan of the National Association of Securities Dealers, Inc.).

<sup>28</sup> 17 CFR 200.30–3(a)(17)(iii).

<sup>1</sup> Securities Exchange Act Release No. 93511 (November 2, 2021), 86 FR 61801 (November 8, 2021) (Declaration of Effectiveness of the

<sup>13</sup> 15 U.S.C. 78q(f)(2). Hereinafter, “Attorney General of the United States” referred to as “Attorney General.”

<sup>14</sup> 17 CFR 240.17f–2(c).

<sup>15</sup> See *id.* The Commission may also impose any terms and conditions relating to the provisions of the plan and the period of its effectiveness as it may deem necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. See *id.*

<sup>16</sup> See Exhibit A at 1.

<sup>17</sup> See FINRA Letter at 3–4. See also *id.* at 3, n.10 and accompanying text.

<sup>18</sup> See *id.* at 1, 4. See also 2021 Declaration at 4–6, 11–13.

<sup>19</sup> See FINRA Letter at 3.

<sup>20</sup> See *id.* at 3–4. FINRA also states that under the Plan, “Fingerprints will be collected electronically at those locations in the domestic United States. Fingerprints collected outside of the domestic United States must be captured and transmitted for processing consistent with protocols established by the FBI.” See *id.* at 4 n.11.

<sup>21</sup> See *id.* at 4. FINRA has also states it “intends to make the statuses and results available electronically through a secure method that meets FBI requirements; however, FINRA may deliver the fingerprint results in hard copy in the unlikely event secure electronic delivery is unavailable.” See *id.* at 4 n.12.

<sup>22</sup> See 2021 Declaration at 2–3, 6–7, 9.

<sup>23</sup> As discussed in Section 2, *supra*, the Plan will continue, without any changes, the processes established under the 2021 Fingerprint Plan for broker-dealer personnel, as well as FINRA’s officers, directors, employees and contractors.

The purpose of this Plan is to facilitate compliance with section 17(f)(2) of the Exchange Act by providing a program for FINRA members,<sup>2</sup> other broker-dealers, transfer agents, clearing agencies, and FINRA to have the fingerprints of their partners, directors, officers, and employees processed by the Attorney General of the United States or its designee (hereinafter “Attorney General”).

#### 1. Members and Other Broker-Dealers

FINRA partners with an FBI-approved private channeler (“FBI-Approved Channel Partner”)<sup>3</sup> to process fingerprints and identifying information from personnel of members and other broker-dealers required to be fingerprinted pursuant to Exchange Act section 17(f)(2) and Rule 17f-2 thereunder. The FBI-Approved Channel Partner fingerprints such personnel or accepts fingerprints of such personnel (either in electronic or hard copy format) and submits such fingerprints to the Attorney General for processing consistent with protocols and requirements established by the Attorney General.<sup>4</sup>

FINRA receives results from the FBI-Approved Channel Partner after the fingerprints have been processed by the Attorney General and makes those results available to authorized recipients (*i.e.*, to a member or other broker-dealer that submitted the fingerprints and to regulators, as appropriate, for licensing, registration and other regulatory purposes), consistent with protocols and requirements established by

Fingerprint Plan of the Financial Industry Regulatory Authority, Inc.). Pursuant to the 2021 Fingerprint Plan, FINRA channels fingerprints for transfer agents and clearing agencies. FINRA will continue to channel fingerprints for these personnel consistent with the 2021 Fingerprint Plan until the Plan is declared effective or September 29, 2023, whichever is earlier. The Plan will continue without changes the processes established under the 2021 Fingerprint Plan for broker-dealer personnel, as well as FINRA’s officers, directors, employees and contractors.

<sup>2</sup> For purposes of the Plan, the term “members” includes Capital Acquisition Brokers, Funding Portals and applicants for FINRA membership.

<sup>3</sup> The FBI-Approved Channel Partner is one of a limited number of entities approved by the FBI to submit fingerprints to the FBI and receive the results on behalf of an organization using that information for authorized non-criminal justice purposes (*e.g.*, employment suitability, licensing determinations, etc.). The FBI reviews and approves all outsourced channeling relationships consistent with its outsourcing standards and protocols. As outlined in the September 28, 2021 letter from the FBI’s National Crime Prevention and Privacy Compact Council Office (“CCO Letter”), the FBI has reviewed and conditionally granted permission to FINRA to use a specified FBI-Approved Channel Partner contingent upon FINRA filing a fingerprint plan with the Commission and the Commission declaring that fingerprint plan effective. See CCO Letter, available at <https://www.finra.org/registration-exams-ce/classic-crd/fingerprints>. The terms of the CCO Letter are incorporated by reference in the Plan.

<sup>4</sup> On its website, FINRA informs its members and other broker-dealers of the availability of fingerprint services and any fees charged by FINRA in connection with those services and the processing of fingerprints pursuant to this Plan. See <https://www.finra.org/registration-exams-ce/classic-crd/fingerprints>.

the Attorney General. With respect to members and other broker-dealers, FINRA also reviews any Criminal History Record Information returned by the Attorney General to identify persons who may be subject to statutory disqualification under the Exchange Act and to take action, as appropriate, with respect to such persons.

FINRA maintains copies of fingerprint processing results received from the Attorney General with respect to fingerprints submitted by the FBI-Approved Channel Partner pursuant to this Plan in accordance with FINRA’s records policy.<sup>5</sup> Any maintenance of fingerprint records by FINRA shall be for FINRA’s own administrative purposes; FINRA is not undertaking to maintain fingerprint records on behalf of FINRA members pursuant to Exchange Act Rule 17f-2(d)(2). FINRA records in FINRA systems the status of fingerprints of personnel of members and other broker-dealers submitted to the Attorney General.<sup>6</sup> Through these systems, FINRA makes available to a member or other broker-dealer that has submitted fingerprints the status and results of such fingerprints after submission to the Attorney General.

#### 2. Transfer Agents and Clearing Agencies

FINRA is partnering with an FBI-Approved Channel Partner to provide transfer agents and clearing agencies the option to process fingerprints and identifying information for their personnel who are required to be fingerprinted pursuant to Exchange Act section 17(f)(2) and Rule 17f-2 thereunder. The FBI-Approved Channel Partner fingerprints such personnel or accepts fingerprints of such personnel (either in electronic or hard copy format)<sup>7</sup> from a transfer agent or clearing agency that elects to use it and submits such fingerprints to the Attorney General for processing consistent with protocols and requirements established by the Attorney General. After receiving the processed results, FINRA makes them available to the submitting transfer agent or clearing agency (*i.e.*, an authorized recipient of the results) consistent with protocols and requirements established by the Attorney General.

#### 3. FINRA Personnel

FINRA partners with the FBI-Approved Channel Partner to obtain fingerprints and identifying information from FINRA personnel who are required to be fingerprinted under Exchange Act section 17(f)(2) and consistent with its Policy to Conduct Fingerprint-Based Background Checks (“Fingerprint Policy”).<sup>8</sup> The FBI-Approved Channel Partner transmits fingerprints to the Attorney General for identification and processing consistent with protocols and requirements established by

<sup>5</sup> FINRA’s records policy is to maintain all records for at least five years.

<sup>6</sup> These systems include the Central Registration Depository (CRD®) and the Funding Portal Registration Depository (FPRD®).

<sup>7</sup> See *supra* note 4.

<sup>8</sup> Securities Exchange Act Release No. 50157 (August 5, 2004), 69 FR 49924 (August 12, 2004) (Notice of Filing and Immediate Effectiveness of File No. SR-NASD-2004-095).

the Attorney General and securely makes the results available to FINRA after the fingerprints have been processed. FINRA evaluates the fingerprint results and takes any appropriate action in accordance with the terms of the Fingerprint Policy.

[FR Doc. 2023–21135 Filed 9–27–23; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98484; File No. SR–NYSEAMER–2023–45]

### Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Modify Rule 980NYP

September 22, 2023.

Pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on September 18, 2023, NYSE American LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 modify Rule 980NYP(g)(1) to expand the existing Complex Strategy Limit. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), 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 self-regulatory organization 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 those 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 parts of such statements.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to modify Rule 980NYP(g) regarding risk checks of Electronic Complex Orders (or ECOs)<sup>4</sup> to expand the existing Complex Strategy Limit.<sup>5</sup> Specifically, the Exchange proposes to impose a limit on complex strategies per underlying symbol, as described below.<sup>6</sup> The Exchange notes that an identical rule change was recently adopted on its affiliated exchange, NYSE Arca, Inc. ("NYSE Arca") and therefore this proposal raises no new or novel issues not previously considered by the Commission.<sup>7</sup> In addition, at least one other options exchange likewise may impose a limit on new complex order strategies.<sup>8</sup>

Rule 980NYP(g) describes the "ECO Risk Checks," which are designed to help ATP Holders to effectively manage risk when trading ECOs.<sup>9</sup> Rule

980NYP(g)(1) sets forth the "Complex Strategy Limit," which establishes a limit on the maximum number of new complex strategies that may be requested to be created per Market Participant Identifier or MPID, which limit would be announced by Trader Update.<sup>10</sup> Under current functionality, when an MPID reaches the limit on the maximum number of new complex strategies, the Exchange rejects all requests to create new complex strategies from that MPID for the rest of the trading day.

Notwithstanding the established Complex Strategy Limit, Rule 980NYP(g)(1) also authorizes the Exchange to reject a request to create a new complex strategy from any MPID whenever the Exchange determines it is necessary in the interests of a fair and orderly market. The established Complex Strategy Limit (the "Strategy Limit"), and the Exchange's discretion related thereto, is a system protection tool that enables the Exchange to prevent any single MPID from creating more than a limited number of complex strategies during the trading day.

The Exchange proposes to modify Rule 980NYP(g)(1) to adopt another limit for the number of permissible complex strategies requested to be created by an MPID in a trading day, except that the new limit would be based on the number of complex strategies in the same underlying symbol (the "Strategy Limit per Symbol"). Like the existing Strategy Limit, the proposed Strategy Limit per Symbol would operate as a system protection tool that enables the Exchange to prevent any single MPID from creating more than a limited number of complex strategies in a particular symbol during the trading day.

The Exchange has observed that the high volume of requests to create complex strategies in the same underlying symbol can tax Exchange resources and result in latency in providing acknowledgements to ATP Holders for all series in that same underlying symbol. As such, the proposed Strategy Limit per Symbol would augment and add granularity to the existing Complex Strategy Limit by allowing the Exchange to establish

separate limits based on the underlying symbol. The Exchange believes that MPIDs may benefit from this added granularity. For example, an MPID that sends a significant number of complex series creation requests for a particular underlying symbol may breach the Strategy Limit per Symbol for that underlying. However, that MPID would continue to have the ability to request complex strategies in other symbols—unless or until that MPID breaches the Strategy Limit per Symbol in a different symbol or—in the aggregate—breaches the Complex Strategy Limit. Thus, the Exchange believes that the proposed change would benefit all market participants because it would curtail (or remove) the latency that has at times resulted from the Exchange receiving a significant number of requests for new complex strategies in the same underlying.

To accommodate the proposed change, the Exchange proposes to reorganize and re-word certain of the existing text without changing functionality. As proposed, Rule 980NYP(g)(1) would be re-named (in plural) "Complex Strategy Limits" (as opposed to a singular "Complex Strategy Limit") and would state the following:

The Exchange will establish limits, which will be announced by Trader Update, on (A) the maximum number of new complex strategies (irrespective of the underlying symbol) that an MPID may request be created (the "Strategy Limit"); and (B) the maximum number of new complex strategies in a particular underlying symbol that an MPID may request be created (the "Strategy Limit per Symbol"). When an MPID breaches the Strategy Limit, the Exchange will reject for the rest of the trading day, all requests from that MPID to create new complex strategies. When an MPID breaches the Strategy Limit per Symbol in a particular underlying, the Exchange will reject for the rest of the trading day all requests from that MPID to create complex strategies in that underlying symbol. Notwithstanding the established Strategy Limit and Strategy Limit per Symbol, the Exchange may reject a request to create a new complex strategy from any MPID whenever the Exchange determines it is necessary in the interests of a fair and orderly market.<sup>11</sup>

For example, if the Strategy Limit is 100, an MPID has already requested and created 100 complex strategies in a trading day, the Exchange will reject any request for the 101st complex strategy for the remainder of the trading day. The same logic applies for the Strategy Limit per Symbol such that if this limit is 50 and an MPID has already requested and created 50 complex strategies in the underlying symbol XYZ

<sup>4</sup> Rule 980NYP(a)(7) defines an "Electronic Complex Order" or "ECO" to mean any Complex Order, as defined in Rule 900.3NYP(f). Rule 900.3NYP(f) (providing a Complex Order is "any order involving the simultaneous purchase and/or sale of two or more option series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy.").

<sup>5</sup> The Exchange notes that this proposed change modifies a Pillar rule (*i.e.*, with a "P" modifier) that has not yet been implemented. The Exchange anticipates migrating to its Pillar trading platform beginning on October 23, 2023. As is the case with all Pillar rules, this proposed rule change (as well as the entire Rule 980NYP) will not be implemented until all other Pillar-related rule filings are approved or operative, as applicable, and the Exchange announces the migration of underlying symbols to Pillar by Trader Update.

<sup>6</sup> See proposed Rule 980NYP(g)(1) (Complex Strategy Limits). A "complex strategy" means a particular combination of leg components and their ratios to one another. New complex strategies can be created when the Exchange receives either a request to create a new complex strategy or an ECO with a new complex strategy. See Rule 980NYP(a)(4).

<sup>7</sup> See Securities Exchange Act Release No. 98278 (September 1, 2023), 88 FR 62113 (September 8, 2023) (SR-NYSEARCA-2023-56) (immediately effective rule change to modify Rule 6.91P-O(g) to expand the existing Complex Strategy Limit to include a limit on complex strategies per symbol, per day).

<sup>8</sup> See, *e.g.*, Cboe Rule 5.33(a) (providing, in its definition of "complex strategy" that Cboe "may limit the number of new complex strategies that may be in the [Cboe] System or entered for any EFID (which EFID limit would be the same for all Users) at a particular time").

<sup>9</sup> An ATP Holder is a natural person, sole proprietorship, partnership, corporation, limited liability company or other organization, in good standing, which has been issued an ATP, and references to "member", and "member organization" as those terms are used in the Rules of the Exchange should be deemed to be references

to ATP Holders. See Rule 900.2NY. An ATP is an American Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's Trading Facilities. See *id.*

<sup>10</sup> Per Rule 900.2NY, an MPID refers to the identifier assigned to the orders and quotes of a single ATP Holder for the execution and clearing of trades on the Exchange by that permit holder. An ATP Holder may obtain multiple MPIDs and each such MPID may be associated with one or more sub-identifiers of that MPID. See *id.*

<sup>11</sup> See proposed Rule 980NYP(g)(1) (Complex Strategy Limits).

in a trading day, the Exchange will reject any request for the 51st complex strategy in XYZ for the remainder of the trading day.

The Exchange believes that this proposed modification is merely an extension of existing functionality that would help the Exchange add granularity to, and better calibrate, its risk settings related to the number of Complex Strategies per Symbol for an MPID per trading day and is therefore non-controversial.

#### Implementation

This proposed change modifies a Pillar rule (*i.e.*, with a “P” modifier). As is the case with all Pillar rules, this proposed rule change (as well as the entire Rule 980NYP) will not be implemented until all other Pillar-related rule filings are approved or operative, as applicable, and the Exchange announces the migration of underlying symbols to Pillar by Trader Update.

#### 2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>12</sup> in general, and furthers the objectives of section 6(b)(5),<sup>13</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange has observed that the high volume of requests to create complex strategies in the same underlying symbol can tax Exchange resources and result in latency in providing acknowledgements to ATP Holders for all series in that underlying symbol. As such, the proposed Strategy Limit per Symbol would augment and add granularity to the existing Complex Strategy Limit by allowing the Exchange to establish separate limits based on the underlying symbol. The Exchange believes that MPIDs may benefit from this added granularity. For example, an MPID that sends a significant number of complex series creation requests for a particular underlying symbol may breach the Strategy Limit per Symbol for that underlying. However, that MPID would continue to have the ability to

request complex strategies in other symbols—unless or until that MPID breaches the Strategy Limit per Symbol in a different symbol or—in the aggregate—breaches the Complex Strategy Limit. Thus, the proposed change would remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest because it would curtail (or remove) the latency that has at times resulted from the Exchange receiving a significant number of requests for new complex strategies in the same underlying.

The Exchange believes that the proposed change to expand the limits placed on Complex Strategies per MPID would promote just and equitable principles of trade because it would modify existing functionality in a manner that would enable the Exchange to add granularity to, and better calibrate, its risk settings related to the number of Complex Strategies in the same underlying symbol requested in a trading day.

Finally, the proposed rule change would help maintain a fair and orderly market because it would enhance an existing system protection tool to enable the Exchange to prevent any single MPID from creating more than a limited number of complex strategies in the same underlying symbol during the trading day.

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change would impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed Strategy Limit per Symbol would apply equally to all market participants that request new complex strategies. As stated herein, the proposed rule change would provide the Exchange the ability to better calibrate risk settings related to the number of Complex Strategies per Symbol for an MPID per trading day, which in turn should benefit all market participants because (as described above) it would curtail (or remove) the latency that has at times resulted from the Exchange receiving a significant number of requests for new complex strategies in the same underlying.

The Exchange believes that the proposed rule change would not impose a burden on competing options

exchanges. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. When an exchange offers enhanced functionality (like the proposed Strategy Limit per Symbol) that distinguishes it from the competition and participants find it useful, it has been the Exchange’s experience that competing exchanges will move to adopt similar functionality. Thus, the Exchange believes that this type of competition amongst exchanges is beneficial to the entire marketplace as it can result in enhanced processes, functionality, and technologies.

#### C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

#### 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>14</sup> and subparagraph (f)(6) of Rule 19b–4 thereunder.<sup>15</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.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>15</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>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).



Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<https://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-NYSEAMER-2023-45 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-NYSEAMER-2023-45. 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 (<https://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 a.m. and 3 p.m. Copies of the 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-NYSEAMER-2023-45 and should be submitted on or before October 19, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

[FR Doc. 2023-21134 Filed 9-27-23; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98490; File No. SR-DTC-2023-009]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule To Amend the DTC Operational Arrangements (Necessary for Securities To Become and Remain Eligible for DTC Services)

September 22, 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 September 14, 2023, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the DTC Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Services) (the "OA")<sup>5</sup> to (i) allow DTC to delete the Participant positions and dispose of the underlying certificates, if any, for a warrant<sup>6</sup> or right<sup>7</sup> that is past its expiration date as reflected on DTC books and records ("Expiration Date"),

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> Available at [www.dtcc.com/-/media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf](http://www.dtcc.com/-/media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf). Each term not otherwise defined herein has its respective meaning as set forth in the OA and in the Rules, By-Laws and Organization Certificate of DTC (the "Rules"), available at [www.dtcc.com/legal/rules-and-procedures.aspx](http://www.dtcc.com/legal/rules-and-procedures.aspx).

<sup>6</sup> A warrant generally represents the right of the holder to acquire common stock of an issuer at some future date at a specified price. Warrants, by their terms, have an expiration date, *i.e.*, the date after which a holder can no longer exercise its rights under the warrant, thereby rendering the warrant worthless.

<sup>7</sup> A right generally represents an opportunity for stockholders to buy new securities issued by a corporation in proportion to the number of shares they own before the new shares are offered to the public. Rights, by their terms, have an expiration date, *i.e.*, the date on which the subscription period under the rights offering expires, thereby rendering the right worthless.

provided that DTC did not receive a notice of extension of the Expiration Date from the Agent or Issuer within the applicable timeframe ("Notice Period") set forth in the OA; and (ii) make technical and clarifying changes relating to expired warrants/rights, as described in greater detail below.

#### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### (A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

On November 21, 1990, DTC filed a rule change providing for the deletion and disposal of a warrant/right whose Expiration Date had passed ("Expired Warrant/Right").<sup>8</sup> The rule change provided that DTC be permitted to delete and dispose of an Expired Warrant/Right after DTC (i) obtains written confirmation from the Issuer or Agent that the Expired Warrant/Right has expired and is null, void, and worthless (the "Confirmation"), and (ii) provides Participants with thirty days' notice of the proposed deletion and disposal of the Expired Warrant/Right. After thirty days, DTC is permitted to delete the positions in the Expired Warrant/Right from Participants' accounts and to dispose of the underlying certificates.

Over the years, DTC has encountered difficulties in contacting the Issuers or Agents of Expired Warrants/Rights and/or obtaining the Confirmation from the Issuers or Agents. In addition to the administrative burden on DTC to follow-up with Issuers and Agents, if DTC does not receive the Confirmation from the Issuer or Agent of an Expired Warrant/Right (i) the DTC books and records continue to reflect the expired security, and (ii) the underlying certificates, if any,<sup>9</sup> continue to be

<sup>8</sup> Securities Exchange Act Release No. 28642 (Nov. 21, 1990), 55 FR 49725 (Nov. 30, 1990) (SR-DTC-90-11).

<sup>9</sup> Currently, warrants/rights are required to be part of the FAST program (Fast Automated Securities

Continued

<sup>16</sup> 17 CFR 200.30-3(a)(12).

maintained in the DTC vault. This exposes DTC to the unnecessary risks and costs associated with the ongoing monitoring of positions and the custody of certificates for worthless securities. In addition, the positions in the Expired Warrant/Right remain credited to Participant accounts and the Participants continue to be charged for their positions in the Expired Warrant/Right.

At the time of this filing, DTC maintains approximately 16,700 certificates in the vault and the associated Participant positions representing approximately 890 CUSIPs of Expired Warrants/Rights for which DTC did not obtain a Confirmation. DTC is also maintaining Participant positions in certain Expired Warrants/Rights in the FAST program for which DTC did not obtain a Confirmation.

#### (i) Proposed Rule Change

In order to reduce the burden, costs, and risks presented to DTC, Participants, Agents and Issuers by requiring DTC to obtain a Confirmation from the Issuer or Agent of an Expired Warrant/Right prior to deletion and disposal, DTC is proposing to amend the OA to make the following changes:

*Notice of Extension of Expiration Date of Warrants/Rights:* DTC is proposing to amend the OA to revise the Notice Period from 15 (fifteen) business days after the Expiration Date to ten (10) business days after the Expiration Date for a warrant, and two (2) business days after the Expiration Date for rights.<sup>10</sup>

Further, pursuant to the proposed rule change, DTC would change the email address to which such notice is required to be sent from *voluntaryreorg* to *announcements@dtcc.com* to *conversionsandwarrants* to *announcements@dtcc.com*.

*Deletion and Disposal of Expired Warrants/Rights:* DTC is proposing to amend the OA to advise Issuers and Agents that if DTC has not received a notice of extension for an Expired Warrant/Right within ten (10) business days after the Expiration Date for a

warrant or within two (2) business days after the Expiration Date for rights, DTC may delete all Participant positions and dispose of any underlying certificates for the Expired Warrant/Right, without further instruction or notice. In addition, DTC is proposing to insert an asterisked footnote stating that with respect to expired warrants/rights with an expiration date prior to August 1, 2023 (“aged expired warrants/rights”), DTC will issue an Important Notice at least thirty (30) days prior to deleting and disposing of an aged Expired Warrant/Right, and the footnote will be automatically be deleted after DTC issues such Important Notice(s) for all of the aged expired warrants/rights. Finally, DTC is proposing to remove the language referencing the requirement for the Issuer or Agent to provide a null, void, and worthless declaration for Expired Warrants/Rights.

*Reactivation of Expired Warrants/Rights:* DTC is proposing to amend the OA to replace and revise the language relating to reactivation of Expired Warrants/Rights to (i) enhance the readability of the requirements and (ii) change the email address to which a notice of reactivation is required to be sent from *voluntaryreorg* to *announcements@dtcc.com* to *conversionsandwarrants* to *announcements@dtcc.com*.

#### 2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>11</sup> DTC believes that by amending the OA to (i) permit DTC to delete the Participant positions and dispose of the underlying certificates, if any, for an Expired Warrant/Right, provided that DTC did not receive a notice of extension within the ten (10) business days’ Notice Period for a warrant or the two (2) business days’ Notice Period for rights, as applicable; and (ii) make technical and clarifying changes to the OA with respect to Expired Warrants/Rights, the proposed rule change would facilitate the ability of Issuers, Agents, and Participants to understand their rights and obligations relating to Expired Warrants/Rights and activity relating thereto. Therefore, DTC believes that the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, consistent with section 17A(b)(3)(F) of the Act, cited above.

Rule 17Ad–22(e)(11) under the Act<sup>12</sup> requires, in part, that DTC establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain securities in an immobilized or dematerialized form for their transfer by book entry, ensure the integrity of securities issues, and minimize and manage the risks associated with the safekeeping and transfer of securities. DTC believes that by amending the OA to permit DTC to delete all Participant positions and dispose of any underlying certificates for an Expired Warrant/Right, without further instruction or notice, provided that DTC has not received a notice of extension for the Expired Warrant/Right from the Issuer or Agent within the applicable Notice Period, the proposed rule change would reduce the burden, costs, and risks associated with the administration of the Confirmation process, the recordkeeping of Participant positions in Expired Warrants/Rights, and the custody of the physical certificates for Expired Warrants/Rights. Based on the foregoing, DTC believes that the proposed rule change is designed to enhance DTC’s maintenance of Participants’ book-entry positions in warrants and rights, and its management and reduction of the risks associated with the safekeeping of its physical securities inventory, consistent with Rule 17Ad–22(e)(11) under the Act, cited above.

#### (B) Clearing Agency’s Statement on Burden on Competition

DTC believes that the proposed rule change to amend the OA to (i) permit DTC to delete the Participant positions and dispose of the underlying certificates, if any, for an Expired Warrant/Right, provided that DTC did not receive a notice of extension within the ten (10) business days’ Notice Period for a warrant or the two (2) business days’ Notice Period for rights, as applicable; and (ii) make technical and clarifying changes to the OA with respect to Expired Warrants/Rights procedures, would not have any impact on competition.<sup>13</sup> The proposed rule change would merely streamline the processing of Expired Warrants/Rights and would apply to all Issuers and Agents of Expired Warrants/Rights and to all holders of Expired Warrants/Rights. In light of the foregoing, DTC does not believe that the proposed rule change would impose a burden on competition.<sup>14</sup>

Transfer) program. This means that the Agent for a warrant/right, and not DTC, is responsible for maintaining the physical certificates representing the warrant/right. See OA, *supra* note 1, at 65.

<sup>10</sup> The fifteen (15) business day timeframe was established on or around 2002, when notices of extension were required to be physically mailed or telecopied to DTC. Given the technological advances in the intervening years, and the current requirement that an Issuer or Agent email a notice of extension to DTC, DTC believes that a shorter Notice Period for warrants is appropriate. DTC believes that a two (2) business day Notice Period for rights is appropriate because the payment and allocation on exercised rights typically occurs two business days after expiration date, after which the rights offer can no longer be amended or extended.

<sup>11</sup> 15 U.S.C. 78q–1(b)(3)(F).

<sup>12</sup> 17 CFR 240.17Ad–22(e)(11).

<sup>13</sup> 15 U.S.C. 78q–1(b)(3)(I).

<sup>14</sup> *Id.*

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

DTC has not received or solicited any written comments relating to this proposal. If any written comments are received, they would be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, *available at* [www.sec.gov/regulatory-actions/how-to-submit-comments](http://www.sec.gov/regulatory-actions/how-to-submit-comments). General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at [tradingandmarkets@sec.gov](mailto:tradingandmarkets@sec.gov) or 202-551-5777.

DTC reserves the right to not respond to any comments 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) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</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.

### 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 (<https://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-DTC-2023-009 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to file number SR-DTC-2023-009. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). 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-DTC-2023-009 and should be submitted on or before October 19, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-21137 Filed 9-27-23; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. S7-05-22, OMB Control No. 3235-XXXX]

### Submission for OMB Review; Comment Request: Rule 15c6-2

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information provided for 17 CFR 240.15c6-2 ("Rule 15c6-2") under the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a *et seq.*). The Commission has submitted this collection of information to the Office of Management and Budget ("OMB") for approval. The title of the information collection is "Rule 15c6-2." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Rule 15c6-2 was adopted as part of the final rules to shorten the standard settlement cycle for securities transactions from two business days after the transaction date to one business day following the transaction date. The compliance date for adopted Rule 15c6-2 is May 28, 2024. Certain provisions of Rule 15c6-2 contain "collection of information" requirements within the meaning of the PRA.<sup>1</sup> The requirements for this collection of information is mandatory for any broker or dealer ("broker-dealer") engaging in the allocation, confirmation, or affirmation process with another party or parties to achieve settlement of a securities transaction that is subject to the requirements of § 240.15c6-1(a) to either enter into written agreements as specified in the rule or establish, maintain, and enforce written policies and procedures reasonably designed to address certain objectives related to completing

<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> See 44 U.S.C. 3501 *et seq.*

allocations, confirmations, and affirmations as soon as technologically practicable and no later than the end of trade date.<sup>2</sup>

Specifically, for a broker-dealer that determines to establish, maintain, and enforce written policies and procedures pursuant to Rule 15c6–2(a), Rule 15c6–2(b) requires that such policies and procedures must be reasonably designed to (1) identify and describe any technology systems, operations, and processes that the broker-dealer uses to coordinate with other relevant parties, including investment advisers and custodians, to ensure completion of the allocation, confirmation, or affirmation process for the transaction; (2) set target time frames on trade date for completing the allocation, confirmation, and affirmation for the transaction; (3) describe the procedures that the broker-dealer will follow to ensure the prompt communication of trade information, investigate any discrepancies in trade information, and adjust trade information to help ensure that the allocation, confirmation, and affirmation can be completed by the target time frames on trade date; (4) describe how the broker-dealer plans to identify and address delays if another party, including an investment adviser or a custodian, is not promptly completing the allocation or affirmation for the transaction, or if the broker-dealer experiences delays in promptly completing the confirmation; and (5) measure, monitor, and document the rates of allocations, confirmations, and affirmations completed as soon as technologically practicable and no later than the end of the day on trade date.

The purpose of the collection under Rule 15c6–2 is to ensure that parties to institutional transactions—that is, transactions where a broker-dealer or its customer must engage with agents of the customer, including the customer's investment adviser or its securities custodian, to prepare a transaction for settlement—can ensure the completion of the allocation, confirmation, and affirmation process as soon as technologically practicable and no later than the end of the day on trade date.

The respondents to the collection of information are broker-dealers that are parties to institutional trades. As of December 31, 2021, 3,508 broker-dealers were registered with the Commission.<sup>3</sup>

Of those, approximately 143 broker-dealers are participants of the Depository Trust Company (“DTC”),<sup>4</sup> a clearing agency registered with the Commission that provides central securities depository services for transactions in U.S. equity securities. Participants in DTC can facilitate the settlement of securities transactions on behalf of their customers. For example, broker-dealers that participate in DTC are often referred to as “clearing brokers” within the securities industry. In addition to broker-dealers, DTC participants include bank custodians that may also hold securities on behalf of institutional customers. Among other things, DTC facilitates the settlement of securities transactions using the delivery-versus-payment (“DVP”) and receipt-versus-payment (“RVP”) methods, both of which are commonly used by buyers and sellers to settle an institutional transaction once the parties have completed the allocation, confirmation, and affirmation process. Because DTC is the only clearing agency that provides central securities depository services for U.S. equities, the Commission believes that the set of participants at DTC that are broker-dealers are a useful, if partial, estimate of broker-dealers that participate in the allocation, confirmation, and affirmation process and therefore of broker-dealers that would be subject to the requirements of Rule 15c6–2.

In addition, other broker-dealers may participate in the allocation, confirmation, and affirmation process but, because they do not maintain status as a participant in DTC, rely on commercial relationships with DTC participants (*i.e.*, clearing brokers) to facilitate final settlement of their institutional transactions. Using annual statistics compiled by the Financial Industry Regulatory Authority (“FINRA”), the Commission estimates that approximately 268 additional broker-dealers may serve institutional customers.<sup>5</sup> Accordingly, the Commission estimates that approximately 411 broker-dealers would be subject to the requirements of Rule 15c6–2.

Rule 15c6–2 will impose both initial and ongoing burdens. The extent to which a respondent will incur a burden

to comply with the collection of information under Rule 15c6–2 will depend on the extent to which the broker-dealer determines that its policies and procedures, as opposed to its written agreements, will be used to comply with the rule and how any existing policies and procedures for ensuring timely settlement would need to be modified to address same-day affirmation. As a general matter, most broker-dealers maintain policies and procedures to ensure the timely settlement of their transactions, and the securities industry considers achieving “same-day affirmation” an industry best practice. Nonetheless, the Commission believes that respondent broker-dealers will need to evaluate existing policies and procedures, identify any gaps, and then update their policies and procedures to address any gaps identified. Accordingly, the Commission estimates that respondent broker-dealers would incur an aggregate one-time burden of approximately 240 hours<sup>6</sup> to create policies and procedures required under the rule, and that the internal cost (or monetized value of the hour burden) of this one-time burden per broker-dealer would be \$88,880.<sup>7</sup>

Rule 15c6–2 also imposes ongoing burdens on a respondent broker-dealer as follows: (i) ongoing monitoring and compliance activities with respect to the written policies and procedures required by the proposed rule; and (ii) ongoing documentation activities with respect to its obligations to measure, monitor, and document the rates of allocations, confirmations, and affirmations completed as soon as technologically practicable and no later than the end of the day on trade date. The Commission estimates that the ongoing activities required by Rule 15c6–2 would impose an aggregate annual burden on a respondent broker-dealer of 480 hours,<sup>8</sup> and an internal cost (or monetized value of the hour

<sup>6</sup> This figure was calculated as follows: (Assistant General Counsel for 20 hours + Compliance Attorney for 120 hours + Senior Risk Management Specialist for 20 hours + Risk Management Specialist for 80 hours) = 240 hours × 411 respondents = 98,640 hours.

<sup>7</sup> This figure was calculated as follows: (Assistant General Counsel at \$543/hour × 20 hours = \$10,860) + (Compliance Attorney at \$426/hour × 120 hours = \$51,120) + (Senior Risk Management Specialist at \$417/hour × 20 hours = \$8,340) + (Risk Management Specialist at \$232/hour × 80 hours = \$18,560) = \$88,880 × 411 respondents = \$36,529,680.

<sup>8</sup> This figure was calculated as follows: (Assistant General Counsel for 48 hours + Compliance Attorney for 192 hours + Senior Risk Management Specialist for 48 hours + Risk Management Specialist for 192 hours) = 480 hours × 411 respondents = 197,280 hours.

<sup>2</sup> See 17 CFR 240.15c6–2; Exchange Act Release No. 96930 (Feb. 15, 2023) 88 FR 13872 (Mar. 6, 2023) (“Rule 15c6–2 Adopting Release”); *see also* Exchange Act Release No. 94196 (Feb. 9, 2022), 87 FR 10436 (Feb. 24, 2022) (“Rule 15c6–2 Proposing Release”).

<sup>3</sup> This estimate is derived from FOCUS Report data as of December 31, 2021.

<sup>4</sup> See DTCC, DTC Member Directories, <https://www.dtcc.com/client-center/dtc-directories> (last updated July 1, 2023).

<sup>5</sup> Specifically, statistics compiled by FINRA suggest that approximately 256 small firms and 12 medium-sized firms in the “Trading and Execution” category perform “Institutional Brokerage.” FINRA, 2022 FINRA Industry Snapshot 33, 34 (2022), <https://www.finra.org/sites/default/files/2022-03/2022-industry-snapshot.pdf>.

burden) per broker-dealer of \$172,416.<sup>9</sup> The total industry internal cost is estimated to be approximately \$107M.<sup>10</sup>

Rule 15c6–2 imposes a recordkeeping requirement on broker-dealers to maintain policies and procedures consistent with the rule. Where the Commission requests that a broker-dealer produce records retained pursuant to the requirements of Rule 15c6–2, a broker-dealer can request confidential treatment of the information. If such confidential treatment request is made, the Commission anticipates that it will keep the information confidential subject to applicable law.

Pursuant to Exchange Act Rule 17a–4(b)(7), a broker or dealer registered pursuant to section 15 of the Exchange Act must preserve for a period of not less than three years, the first two years in an easily accessible place, all written agreements (or copies thereof) entered into by such member, broker or dealer relating to its business as such, including agreements with respect to any account.<sup>11</sup>

Pursuant to 17 CFR 240.17a–4(e)(7), a broker or dealer registered pursuant to section 15 of the Exchange Act must maintain and preserve in an easily accessible place each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the member, broker or dealer with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the member, broker or dealer until three years after the termination of the use of the manual.<sup>12</sup>

The public may view background documentation for this information collection at the following website: >[www.reginfo.gov](http://www.reginfo.gov)<. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Written comments and recommendations for the proposed information collection should be sent by

October 30, 2023 to (i) >[MBX.OMB.OIRA.SEC\\_desk\\_officer@omb.eop.gov](mailto:MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov)< and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: September 22, 2023.

**Sherry R. Haywood,**  
Assistant Secretary.

[FR Doc. 2023–21167 Filed 9–27–23; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98483; File No. SR–NYSEAMER–2023–44]

### Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Modify Rule 900.3NYP

September 22, 2023.

Pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b–4 thereunder,<sup>3</sup> notice is hereby given that, on September 18, 2023, NYSE American LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 modify Rule 900.3NYP(g)(1) regarding Complex Qualified Contingent Cross Orders. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), 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 self-regulatory organization 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 those 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 parts of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to modify Rule 900.3NYP(g)(1) regarding Complex Qualified Contingent Cross (“QCC”) Orders to allow Complex QCC Orders in non-standard ratios (as defined below) to be processed electronically.<sup>4</sup> The Exchange notes that an identical rule change was recently adopted on its affiliated exchange, NYSE Arca, Inc. (“NYSE Arca”) and therefore this proposal raises no new or novel issues not previously considered by the Commission.<sup>5</sup>

Rule 900.3NYP(f) provides that a Complex Order is any order involving the simultaneous purchase and/or sale of two or more option series in the same underlying security (the “legs” or “components” of the Complex Order), for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) (referred to herein as the “standard ratio” or “standard ratio requirement”). The Exchange currently permits certain Complex Orders with ratios greater than three-to-one or less than one-to-three (“non-standard ratios”) for execution on the Exchange’s trading floor.<sup>6</sup> This proposed change is competitive as at least one other options exchange permits Complex QCC Orders in non-standard ratios to be processed electronically.<sup>7</sup> As such, the Exchange

<sup>4</sup> The Exchange notes that this proposed change modifies a Pillar rule (*i.e.*, with a “P” modifier) that has not yet been implemented. The Exchange anticipates migrating to its Pillar trading platform beginning on October 23, 2023. As is the case with all Pillar rules, this proposed rule change (as well as the entire Rule 900.3NYP) will not be implemented until all other Pillar-related rule filings are approved or operative, as applicable, and the Exchange announces the migration of underlying symbols to Pillar by Trader Update.

<sup>5</sup> See Securities Exchange Act Release No. 98279 (September 1, 2023), 88 FR 62115 (September 8, 2023) (SR–NYSEARCA–2023–57) (immediately effective rule change to modify Rule 6.62P–O(g)(1) to allow Complex QCC Orders in non-standard ratios).

<sup>6</sup> See, *e.g.*, Rule 900.3NYP(h)(6)(B) (regarding Stock/Complex Orders, which are a subset of Complex Orders (per Rule 900.3NYP(f)), that are only available for trading in Open Outcry and are not subject to the standard ratio requirement).

<sup>7</sup> In June 2022, Cboe Exchange, Inc. (“Cboe”) began supporting the electronic processing of certain stock-option orders in non-standard ratios, including Complex QCC Orders. See Cboe Exchange

Continued

<sup>9</sup> This figure was calculated as follows: (Assistant General Counsel at \$543/hour × 48 hours = \$26,064) + (Compliance Attorney at \$426/hour × 192 hours = \$81,792) + (Senior Risk Management Specialist at \$417/hour × 48 hours = \$20,016) + (Risk Management Specialist at \$232/hour × 192 hours = \$44,544) = \$172,416 × 411 respondents = \$70,862,976.

<sup>10</sup> This figure was calculated as follows: \$36,529,680 (industry one-time burden) + \$70,862,976 (industry ongoing burden) = \$107,392,656.

<sup>11</sup> 17 CFR 240.17a–4(b)(7). The title of the information collection for 17 CFR 240.17a–4 is “Records to be Preserved by Broker-Dealers” (OMB Control No. 3235–0279).

<sup>12</sup> 17 CFR 240.17a–4(e)(7).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b–4.

proposes to add new Rule 900.3NYP(g)(1)(G) to specify that Complex QCC Orders may be processed electronically in non-standard ratios.<sup>8</sup>

Rule 900.3NYP(g)(1)(A) provides that a QCC Order must be comprised of an originating order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade coupled with a contra-side order or orders totaling an equal number of contracts.<sup>9</sup> A Complex QCC Order is a QCC Order that has more than one option leg and each option leg must have at least 1,000 contracts.<sup>10</sup> Like QCC Orders, each Complex QCC Order must be a part of a “qualified contingent trade” (“QCT”), which is a transaction consisting of two or more component orders, one of which must be a stock leg.<sup>11</sup> The Exchange notes that there may be instances when an order sender

Alert, “Schedule Update—Cboe Options Introduces New Net, Leg Price Increments and Enhanced Electronic, Open Outcry Handling for Complex Orders with Non-Conforming Ratios, Reference ID: C2022060301 available online at [https://cdn.cboe.com/resources/release\\_notes/2022/Schedule-Update-Cboe-Options-Introduces-New-Net-Leg-Price-Increments-and-Enhanced-Electronic-Open-Outcry-Handling-for-Complex-Orders-with-Non-Conforming-Ratios.pdf](https://cdn.cboe.com/resources/release_notes/2022/Schedule-Update-Cboe-Options-Introduces-New-Net-Leg-Price-Increments-and-Enhanced-Electronic-Open-Outcry-Handling-for-Complex-Orders-with-Non-Conforming-Ratios.pdf) (providing, in relevant part, that beginning June 12, 2022, “automated handling via COA, COB, AIM, and QCC will be available for applicable non-conforming orders, except in SPX/SPXW). See also Securities Exchange Act Release Nos. 94204 (February 9, 2022), 87 FR 8625 (February 15, 2022) (SR-CBOE–2021–046) (order approving Cboe’s proposal, as amended, to permit complex orders with ratios less than one-to-three and greater than three-to-one to be eligible for electronic processing and to trade in penny increments); 95006 (May 31, 2022), 87 FR 34334 (June 6, 2022) (SR-CBOE–2022–024) (allowing Cboe to retain discretion to determine on class-by-class basis eligibility for electronic processing of complex orders with ratios less than one-to-three and greater than three-to-one (*i.e.*, ratios other than the standard ratio requirement). The current proposal is limited to allowing Complex QCC Orders regardless of ratio to be traded electronically. If the Exchange opts to allow other (non-QCC) Complex Orders in any ratio to be traded electronically, the Exchange will submit a separate rule filing.

<sup>8</sup> See proposed Rule 900.3NYP(g)(1)(G) (“Complex QCC Orders are eligible for electronic processing regardless of the ratio in the component legs.”). The Exchange notes that other options exchanges offer Complex QCC Orders, however, the rules of these options exchanges are silent as to whether they permit Complex QCC Orders in non-standard ratios to be processed electronically. See, e.g., Nasdaq ISE, LLC (“ISE”) Options 3, Section 12(d) (describing Complex Qualified Cross Orders).

<sup>9</sup> See Rule 900.3NYP(g)(1)(A). See also Rule 900.3NYP(g)(1)(B) for the definition of a Qualified Contingent Trade.

<sup>10</sup> See Rule 900.3NYP(g)(1)(A) (defining Complex QCC Orders). See also Rule 900.3NYP(g)(1)(D) regarding pricing requirements for Complex QCCs. This proposal does not alter the pricing requirements for Complex QCC Orders and such requirements apply regardless of whether a Complex QCC Order has a standard (or non-standard) ratio.

<sup>11</sup> See Rule 900.3NYP(g)(1)(B)(i). See generally Rule 900.3NYP(g)(1)(B) (setting forth criteria for a Qualified Contingent Trade).

must submit a Complex QCC in a non-standard ratio to meet the QCT criteria (*e.g.*, to be fully hedged).<sup>12</sup>

The proposed rule change would have no impact on the pricing of Complex QCCs because the same (existing) pricing requirements apply to all Complex QCC Orders that are electronically processed by the Exchange. Specifically, no option leg of a Complex QCC Order will trade at a price worse than the Exchange BBO<sup>13</sup> and a Complex QCC Order will be rejected based on its price if:

- “any option leg cannot execute in compliance with paragraph (g)(1)(C) of this Rule”, *i.e.*, cannot meet the pricing requirements for single-leg QCC Orders”;<sup>14</sup>
- “the best-priced Complex Order(s) on the Exchange contain(s) displayed Customer interest and the Complex QCC Order price does not improve such displayed Customer interest by 0.01;”<sup>15</sup> or
- “the price of the QCC Order is worse than the best-priced Complex Orders in the Consolidated Book.”<sup>16</sup>

Thus, under this proposal, the Exchange would ensure that every component leg of a Complex QCC Order (regardless of ratio) would trade at a price that is equal to or better than the Exchange BBO and better than displayed Customer interest on the Exchange in the same manner as it does today. In other words, the proposed rule change continues to protect interest in the leg markets as well as displayed Customer interest on the Exchange.

<sup>12</sup> See Rule 900.3NYP(g)(1)(B)(vi) (providing that the QCT transaction must be “fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade.”).

<sup>13</sup> See Rule 900.3NYP(g)(1)(D) (providing that “no option leg [of a Complex QCC Order] will trade at a price worse than the Exchange BBO”).

<sup>14</sup> See Rule 900.3NYP(g)(1)(D)(i). See also Rule 900.3NYP(g)(1)(C) (Execution of QCC Orders) (“A QCC Order with one option leg will be rejected if received when the NBBO is crossed or if it will trade at a price that (i) is at the same price as a displayed Customer order on the Consolidated Book and (ii) is not at or between the NBBO” and requiring that “[a] QCC Order with one option leg will never trade at a price worse than the Exchange BBO.”).

<sup>15</sup> See Rule 900.3NYP(g)(1)(D)(ii). The Exchange proposes to amend current Rule 900.3NYP(g)(1)(D)(ii) to clarify that the Complex QCC Order must price improve any displayed Customer interest by “at least” one penny (\$0.01), which would make the Rule more accurate. See proposed Rule 900.3NYP(g)(1)(D)(ii).

<sup>16</sup> See Rule 900.3NYP(g)(1)(D)(iii). The Exchange proposes to amend current Rule 900.3NYP(g)(1)(D)(iii) to clarify that this provision refers to the price of the “Complex” QCC Order, which would make the Rule more accurate. See proposed Rule 900.3NYP(g)(1)(D)(iii). The Exchange would continue to reject Complex QCC Orders (regardless of ratio) if “the prices of the best-priced Complex Orders in the Consolidated Book are crossed”; or “for any option leg there is no NBO.” See Rule 900.3NYP(g)(1)(D)(iii), (iv), respectively.

## Implementation

This proposed change modifies a Pillar rule (*i.e.*, with a “P” modifier). As is the case with all Pillar rules, this proposed rule change (as well as the entire Rule 900.3NYP) will not be implemented until all other Pillar-related rule filings are approved or operative, as applicable, and the Exchange announces the migration of underlying symbols to Pillar by Trader Update.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>17</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>18</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

In particular, the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because it will enable the Exchange to compete on equal footing with other exchanges that permit trading of Complex QCCs with non-standard ratios.<sup>19</sup> The proposed rule change would continue to protect investors and the public interest because the (approved) pricing requirements for Complex QCC Orders would continue to apply to Complex QCC Orders with non-standard ratios. As such, the proposal would ensure that the Complex QCC Order is priced equal to or better than the best-priced Complex Order(s) and, if there is displayed Customer interest on such order(s), that the execution price of the Complex QCC Order improves the price of the displayed Customer interest and improves the price of displayed Customer interest on each component leg of the Complex QCC Order.

In addition, the proposed change would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in

<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> See *supra* notes 5 and 7 (regarding NYSE Arca and Cboe, respectively).

general to protect investors and the public interest because it would provide another venue for electronically executing Complex QCC Orders with non-standard ratios. The proposed change would also increase opportunities for execution of Complex QCC Orders with non-standard ratios, which benefits all investors. The Exchange also believes that the proposed rule change would not permit unfair discrimination among market participants, as all market participants may opt to trade Complex QCC Orders with non-standard ratios.

The Exchange believes that the proposed clarifying changes would ensure accuracy of the proposed rule, which benefits all investors.<sup>20</sup>

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that its proposed rule change will impose any burden on intra-market competition as it would apply equally to all market participants that opt to submit Complex QCC Orders with non-standard ratios for electronic processing, which orders the Exchange will process in a uniform manner.

The Exchange does not believe that its proposed rule change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, rather the Exchange believes that its proposal will promote inter-market competition. As noted here, the proposed change is competitive as another options exchange currently permits Complex QCC Orders with non-standard ratios to be traded electronically. The Exchange's proposal will enhance inter-market competition by providing an additional venue where investors may electronically execute Complex QCC Orders with non-standard ratios, giving investors greater flexibility and a choice of where to send their orders. Market participants may find it more convenient to access one exchange over another or may choose to concentrate volume at a particular exchange to maximize the impact of volume-based incentive programs or may prefer the trade execution services of one exchange over another.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

#### **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>21</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>22</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 (<https://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-NYSEAMER-2023-44 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.

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>22</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.

All submissions should refer to file number SR-NYSEAMER-2023-44. 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 (<https://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 a.m. and 3 p.m. Copies of the 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-NYSEAMER-2023-44 and should be submitted on or before October 19, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-21139 Filed 9-27-23; 8:45 am]

**BILLING CODE 8011-01-P**

#### **SMALL BUSINESS ADMINISTRATION**

**[Disaster Declaration #18016 and #18017; Vermont Disaster Number VT-00046]**

#### **Presidential Declaration of a Major Disaster for the State of Vermont**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 6.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Vermont (FEMA-4720-DR), dated 07/14/2023.

<sup>23</sup> 17 CFR 200.30-3(a)(12).

<sup>20</sup> See *supra* notes 15-16.



*Incident:* Severe Storms, Flooding, Landslides, and Mudslides.  
*Incident Period:* 07/07/2023 through 07/21/2023.

**DATES:** Issued on 09/19/2023.

*Physical Loan Application Deadline Date:* 10/12/2023.

*Economic Injury (EIDL) Loan Application Deadline Date:* 04/15/2024.

**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:**

Alan 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 the State of Vermont, dated 07/14/2023, is hereby amended to re-establish the incident period for this disaster as beginning 07/07/2023 through 07/21/2023. 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. 2023-21189 Filed 9-27-23; 8:45 am]

**BILLING CODE 8026-09-P**

**SMALL BUSINESS ADMINISTRATION**

[Disaster Declaration #18191 and #18192; California Disaster Number CA-00388]

**Administrative Declaration of a Disaster for the State of California**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of California dated 09/22/2023.

*Incident:* Tropical Storm Hilary.  
*Incident Period:* 08/19/2023 through 08/21/2023.

**DATES:** Issued on 09/22/2023.

*Physical Loan Application Deadline Date:* 11/21/2023.

*Economic Injury (EIDL) Loan Application Deadline Date:* 06/24/2024.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Recovery &

Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Riverside

*Contiguous Counties:* California

Imperial, Orange, San Bernardino, San Diego

*Arizona:* La Paz

The Interest Rates are:

|                                                                                       | Percent |
|---------------------------------------------------------------------------------------|---------|
| <i>For Physical Damage:</i>                                                           |         |
| Homeowners with Credit Available Elsewhere .....                                      | 5.000   |
| Homeowners without Credit Available Elsewhere .....                                   | 2.500   |
| Businesses with Credit Available Elsewhere .....                                      | 8.000   |
| Businesses without Credit Available Elsewhere .....                                   | 4.000   |
| Non-Profit Organizations with Credit Available Elsewhere .....                        | 2.375   |
| Non-Profit Organizations without Credit Available Elsewhere .....                     | 2.375   |
| <i>For Economic Injury:</i>                                                           |         |
| Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere ..... | 4.000   |
| Non-Profit Organizations without Credit Available Elsewhere .....                     | 2.375   |

The number assigned to this disaster for physical damage is 18191 8 and for economic injury is 18192 0.

The States which received an EIDL Declaration # is Arizona, California.

(Catalog of Federal Domestic Assistance Number 59008)

**Isabella Guzman,**  
*Administrator.*

[FR Doc. 2023-21187 Filed 9-27-23; 8:45 am]

**BILLING CODE 8026-09-P**

**SURFACE TRANSPORTATION BOARD**

[Docket No. FD 36726]

**Pan Am Southern LLC—Temporary Overhead Trackage Rights—Boston and Maine Corporation and Springfield Terminal Railway Corporation**

Pan Am Southern LLC (PAS) has filed a verified notice of exemption under 49 CFR 1180.2(d)(8) to acquire temporary overhead trackage rights over a line

owned by the Boston and Maine Corporation (B&M) and leased and operated by Springfield Terminal Railway Company (ST). That line generally extends between PAS's existing connection to B&M/ST's tracks at Engineering Station 215+89 at CPF 312 outside Ayer, Mass., and Engineering Station 225+00 outside Ayer, for a total distance of approximately 1,000 feet (the Line).<sup>1</sup>

According to PAS, its use of the Line would be limited to repositioning locomotives. PAS states that Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad (B&E) currently serves as the contract operator of PAS and that PAS/B&E serve a facility located on PAS's line, just west of its connection to the Line. PAS explains that due to a lack of space on PAS's line between the facility and CPF 312, PAS/B&E do not have sufficient headroom to reposition PAS/B&E locomotives serving the facility, resulting in inefficiency and congestion on PAS's network. PAS notes an urgent need to reduce congestion on the PAS network and states that the limited overhead temporary trackage rights sought in this docket would provide PAS/B&E with the necessary head and tail room to reposition locomotives while PAS pursues a long-term solution to the issue, namely installation of a "cross-over" on PAS's line. PAS states that procurement and installation of the cross-over will take approximately 75 days, and that, based on that schedule, the parties have agreed that the temporary overhead trackage rights will expire on December 5, 2023.

On September 22, 2023, PAS filed a petition to waive the requirement under 49 CFR 1180.4(g) that a verified notice be filed at least 30 days before the transaction is consummated and to allow the exemption to take effect immediately, or no later than September 28, 2023. The effective date of the exemption will be addressed in a separate decision on the waiver request.

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad*,

<sup>1</sup> PAS filed a redacted copy of the draft written temporary trackage rights agreement as an exhibit to its verified notice, along with a separate motion for protective order pursuant to 49 CFR 1104.14. On September 22, 2023, PAS filed redacted and unredacted copies of the fully executed agreement. PAS's motion for protective order is addressed in a separate decision.

360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption.

All pleadings, referring to Docket No. FD 36726, must be filed with the Surface Transportation Board via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423-0001. In addition, one copy of each pleading must be served on PAS's representative, Eric M. Hocky, Clark Hill PLC, Two Commerce Square, 2001 Market St., Suite 2620, Philadelphia, PA 19103.

According to PAS, this action is categorically excluded from environmental review under 49 CFR 1105.6(c)(3) and from historic reporting requirements under 49 CFR 1105.8(b)(3).

Board decisions and notices are available at [www.stb.gov](http://www.stb.gov).

Decided: September 25, 2023.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

**Brendetta Jones,**  
Clearance Clerk.

[FR Doc. 2023-21268 Filed 9-27-23; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Notice of Final Federal Agency Actions on Transportation Project in Washington State

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice of limitation on claims for judicial review of actions by FHWA.

**SUMMARY:** This notice announces actions taken under the National Environmental Policy Act by the FHWA that are final. The action relates to the Confluence Parkway Project proposed by the City of Wenatchee, a new two-lane arterial street that would begin at the existing U.S. 2/Euclid Avenue interchange, cross the Wenatchee River on a new bridge, and extend south to the intersection of

North Miller Street and North Wenatchee Avenue. The corridor would have one vehicle travel lane and bicycle lane in each direction. Two-way left turn lanes would be included between Wenatchee Confluence State Park and the U.S. 2/Euclid Avenue interchange as well as south of the junction of Hawley Street and North Miller Street.

**DATES:** A claim seeking judicial review of the Federal agency actions on the listed highway project will be barred unless the claim is filed on or before February 26, 2024. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:**

William Witucki, Area Engineer, Federal Highway Administration (FHWA), 711 S Capitol Way, Suite 501, Olympia, WA 98501-1284, 360-753-9480, [william.wituck@dot.gov](mailto:william.wituck@dot.gov) or [hdawa@dot.gov](mailto:hdawa@dot.gov); or Laura Gloria, Executive Services Director, City of Wenatchee, 301 Yakima Street, Wenatchee, WA 98801, 509-888-3616, [LGloria@WenatcheeWA.gov](mailto:LGloria@WenatcheeWA.gov).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that FHWA has taken final agency actions within the meaning of 23 U.S.C. 139(l)(1) by issuing a NEPA Finding of No Significant Impact (FONSI) for the Confluence Parkway Project in Wenatchee, Washington. The action(s) by FHWA and the laws under which such actions were taken, are described in the FONSI and the associated agency records. That information is available by contacting FHWA at the addresses provided above.

The project proposed to support economic vitality by reducing congestion that is expected to worsen without improvement due to high growth in the area. The intersection improvements will further reduce crashes in the corridor. The project applies a variety of environmental justice evaluation tools, supporting zero emission vehicle infrastructure, and increasing wildfire evacuation capacity. The project is partially locating within an Opportunity Zone. FONSI for the project was published in September 2023.

Information about the FONSI and associated records are available from FHWA and City of Wenatchee at the addresses provided above and can be found at: <https://www.wenatcheeva.gov/home/showpublisheddocument/28981/638296697168200000>.

This notice applies to all Federal agency decisions related to the FONSI as of the issuance date of this notice and

all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4347]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, as amended [42 U.S.C. 7401-7671(q)].

3. *Land:* Section 6(f) of the Land and Water Conservation Fund Act of 1965 [16 U.S.C. 4601]; Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. *Wildlife:* Anadromous Fish Conservation Act [16 U.S.C. 757(a-757(g))]; Fish and Wildlife Coordination Act [16 U.S.C. 661-667(d)]; Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological and Historic Preservation Act [16 U.S.C. 469-469(c)]; Native American Grave Protection and Repatriation Act (25 U.S.C. 3001-3013).

6. *Wetlands and Water Resources:* Clean Water Act, (ection 319 [33 U.S.C. 329]); Safe Drinking Water Act [42 U.S.C. 300(f)-300(j)(6)].

7. *Navigation:* Rivers and Harbors Act of 1899 [33 U.S.C. 403]; General Bridge Act of 1946 [33 U.S.C. 9 and 11].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

*Authority:* 23 U.S.C. 139(l)(1), as amended by Moving Ahead for Progress in the 21st Century Act, (Pub. L. 112-141, 126 Stat. 405).

**Ralph J. Rizzo,**  
FHWA Division Administrator, Olympia, WA.

[FR Doc. 2023-21236 Filed 9-27-23; 8:45 am]

**BILLING CODE 4910-RY-P**

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****[Docket No. FHWA–2023–0032]****Proposed Second Renewed Memorandum of Understanding (MOU) Assigning Certain Federal Environmental Responsibilities to the State of Arizona, Including National Environmental Policy Act (NEPA) Authority for Certain Categorical Exclusions (CEs)****AGENCY:** Federal Highway Administration (FHWA), Department of Transportation.**ACTION:** Notice of proposed MOU, request for comments.

**SUMMARY:** The FHWA and the State of Arizona, acting by and through its Department of Transportation (State), propose a second renewal of the State's participation in the State Assumption of Responsibility for Categorical Exclusions program. This program allows FHWA to assign to States its authority and responsibility for determining whether certain designated activities within the geographic boundaries of the State, as specified in the proposed Memorandum of Understanding (MOU), are categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement under the National Environmental Policy Act. This MOU would renew and continue the State's participation in the program. The renewed MOU will amend the existing MOU by incorporating the following changes: Including language to reference the State's responsibility to report project impacts to environmental justice populations; clarifying that this assignment applies to any action to which a CE is applicable including non-highway projects; and adding a reference to the *Final April 2020 Programmatic Agreement Pursuant to Section 106 of the National Historic Preservation Act Regarding Implementation of Federal-Aid Transportation Projects in the State of Arizona* (September 2020).

**DATES:** Comments must be received on or before October 30, 2023.**ADDRESSES:** You may submit comments, identified by DOT Document Management System (DMS) Docket Number [FHWA–2023–0032], by any of the methods described below. Electronic or facsimile comments are preferred because Federal offices experience intermittent mail delays from security screening.

Website: [www.regulations.gov/](http://www.regulations.gov/). Follow the instructions for submitting

comments on the DOT electronic docket site.

*Facsimile (Fax):* 1–202–493–2251.

*Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590.

*Hand Delivery:* 1200 New Jersey Ave. SE, Washington, DC 20590, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

For access to the docket to view a complete copy of the proposed MOU, or to read background documents or comments received, go to [www.regulations.gov/](http://www.regulations.gov/) at any time or to 1200 New Jersey Ave. SE, Washington, DC 20590, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except for Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

*For FHWA:* Ms. Rebecca Yedlin, Environmental Program Manager, Federal Highway Administration, 4000 North Central Avenue, Suite 1500, Phoenix, AZ 85012; by email at [rebecca.yedlin@dot.gov](mailto:rebecca.yedlin@dot.gov) or by telephone at 602–382–8979. The FHWA Arizona Division Office normal business hours are 8 a.m. to 4:30 p.m. (Arizona Time), Monday–Friday, except for Federal Holidays.

*For State:* Mr. Steve Olmsted, NEPA Assignment Manager, Arizona Department of Transportation, 205 S 17th Ave., Mail Drop EM02, Phoenix, AZ 85007; by email at [solmsted@azdot.gov](mailto:solmsted@azdot.gov) or by telephone at 602–712–6421. The Arizona Department of Transportation normal business hours are 8 a.m. to 4:30 p.m. (Arizona Time), Monday–Friday, except for State and Federal holidays.

**SUPPLEMENTARY INFORMATION:**

*Electronic Access:* Internet users may reach the Office of the Federal Register's home page at: [www.federalregister.gov](http://www.federalregister.gov) and the Government Printing Office's database: [www.GovInfo.gov](http://www.GovInfo.gov). An electronic version of the proposed MOU may be downloaded by accessing the DOT DMS docket, as described above, at [www.regulations.gov/](http://www.regulations.gov/).

**Background**

Section 326 of title 23, United States Code (U.S.C.), creates a program that allows the Secretary of the DOT (Secretary), to assign, and a State to assume, responsibility for determining whether certain highway projects are included within classes of action that are categorically excluded (CE) from requirements for environmental assessments or environmental impact statements pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA). In addition,

this program allows the assignment of other environmental review requirements applicable to these actions. The FHWA is authorized to act on behalf of the Secretary with respect to these matters. Through an amended MOU, FHWA would renew Arizona's participation in this program for the second time. The original MOU became effective on January 3, 2018, for an initial term of three (3) years. The first renewal became effective on January 4, 2021, for a second term of three (3) years. The second renewal is set to supersede the first renewal MOU prior to its expiration date on January 4, 2024.

Stipulation I(B) of the MOU describes the types of actions for which the State would assume project-level responsibility for determining whether the criteria for a CE are met. Statewide decision-making responsibility would be assigned for all activities within the categories listed in 23 CFR 771.117(c) and those listed as examples in 23 CFR 771.117(d). In addition to the NEPA CE determination responsibilities, the MOU would assign to the State the responsibility for conducting Federal environmental review, consultation, and other related activities for projects that are subject to the MOU with respect to the following Federal laws and Executive Orders:

(1) Clean Air Act (CAA), 42 U.S.C. 7401–7671q. *Including determinations for project-level conformity if required for the project.*

(2) Noise Control Act of 1972, 42 U.S.C. 4901–4918; Compliance with the noise regulations in 23 CFR part 772 (except approval of the State noise requirements in accordance with 23 CFR 772.7).

(3) Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531–1544, and 1536.

(4) Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d.

(5) Migratory Bird Treaty Act, 16 U.S.C. 703–712.

(6) Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306108.

(7) Archeological Resources Protection Act of 1979, 16 U.S.C. 470aa, *et seq.*

(8) Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. 138 and 49 U.S.C. 303; 23 CFR part 774.

(9) Title 54, Chapter 3125—Preservation of Historical and Archeological Data, 54 U.S.C. 312501–312508.

(10) Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001–3013; 18 U.S.C. 1170.

- (11) American Indian Religious Freedom Act, 42 U.S.C. 1996.
- (12) Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201–4209.
- (13) Clean Water Act, 33 U.S.C. 1251–1377.
- (14) Safe Drinking Water Act (SDWA), 42 U.S.C. 300f–300j–6.
- (15) Rivers and Harbors Act of 1899, 33 U.S.C. 403.
- (16) Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287.
- (17) Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931.
- (18) Flood Disaster Protection Act, 42 U.S.C. 4001–4128.
- (19) FHWA wetland and natural habitat mitigation regulations, 23 CFR part 777.
- (20) Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. 138 and 49 U.S.C. 303; and 23 CFR part 774.
- (21) Land and Water Conservation Fund (LWCF), Public Law 88–578, 78 Stat. 897 (known as Section 6(f)).
- (22) Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675.
- (23) Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. 9671–9675.
- (24) Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992k.
- (25) Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319.
- (26) E.O. 11990, Protection of Wetlands.
- (27) E.O. 11988, Floodplain Management (except approving design standards and determinations that a significant encroachment is the only practicable alternative under 23 CFR 650.113 and 650.115).
- (28) E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.
- (29) E.O. 11593, Protection and Enhancement of Cultural Resources.
- (30) E.O. 13007, Indian Sacred Sites.
- (31) E.O. 13112, Invasive Species.
- (32) Planning and Environmental Linkages, 23 U.S.C. 168, except for those FHWA responsibilities associated with 23 U.S.C. 134 and 135.
- (33) Programmatic Mitigation Plans, 23 U.S.C. 169 except for those FHWA responsibilities associated with 23 U.S.C. 134 and 135.
- (34) E.O. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.
- (35) E.O. 14008, Tackling the Climate Crisis at Home and Abroad.
- (36) E.O. 14091, Further Advancing Racial Equity and Support for

Underserved Communities Through the Federal Government.

(37) E.O. 14096, Revitalizing Our Nation's Commitment to Environmental Justice for All.

The MOU allows the State to act in the place of the FHWA in carrying out the functions described above, except with respect to government-to-government consultations with federally recognized Indian tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian tribes, which is required under some of the above-listed laws and executive orders. The State also may assist FHWA with formal consultations, with consent of a tribe, but FHWA remains responsible for the consultation. This assignment includes transfer to the State of Arizona the obligation to fulfill the assigned environmental responsibilities on any proposed projects meeting the criteria in Stipulation I(B) of the MOU that were determined to be CEs prior to the effective date of the proposed MOU but that have not been completed as of the effective date of the MOU. The FHWA may terminate the State's participation in this program if FHWA provides the State a notification of noncompliance, and a period of not less than 120 days to take corrective action as FHWA determines necessary, and if the State fails to take satisfactory corrective action as determined by FHWA.

The FHWA will consider the comments submitted on the proposed MOU when making its decision on whether to execute this second renewal MOU. A copy of the proposed draft MOU is also posted on the Arizona Department of Transportation website <https://azdot.gov/business/environmental-planning/ce-assignment-and-nepa-assignment> for review. The FHWA will make the final, executed MOU publicly available.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

*Authority:* 23 U.S.C. 326; 42 U.S.C. 4331, 4332; 23 CFR 771.117; 40 CFR 1507.3, 1508.4.

**Karla Petty,**

*Division Administrator, Phoenix, Arizona.*

[FR Doc. 2023–21279 Filed 9–27–23; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0143]

### Truck Leasing Task Force (TLTF); Notice of Public Meeting

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a meeting of the TLTF.

**DATES:** The meeting will be held on Tuesday, October 17, 2023, from 10 a.m. to 4:30 p.m. ET. Requests for accommodations for a disability must be received by Tuesday, October 10. Requests to submit written materials for consideration during the meeting must be received no later than Tuesday, October 10.

**ADDRESSES:** The meeting will be held virtually for its entirety. Please register in advance of the meeting at [www.fmcsa.dot.gov/tltf](http://www.fmcsa.dot.gov/tltf). A copy of the agenda for the entire meeting will be made available at [www.fmcsa.dot.gov/tltf](http://www.fmcsa.dot.gov/tltf) at least 1 week in advance of the meeting. Once approved, copies of the meeting minutes will be available at the website following the meeting. You may visit the TLTF website at [www.fmcsa.dot.gov/tltf](http://www.fmcsa.dot.gov/tltf) for further information on the committee and its activities.

**FOR FURTHER INFORMATION CONTACT:** Ms. Shannon L. Watson, Deputy Designated Federal Officer, TLTF, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 360–2925, [tltf@dot.gov](mailto:tltf@dot.gov). Any committee-related request should be sent to the person listed in this section.

### SUPPLEMENTARY INFORMATION:

#### I. Background

The TLTF was created under the Federal Advisory Committee Act (FACA) in accordance with section 23009 of the Bipartisan Infrastructure Law (BIL) (Pub. L. 117–58), which requires the Federal Motor Carrier Safety Administration (FMCSA) to establish the TLTF. The TLTF will examine the terms, conditions, and equitability of common truck leasing arrangements, particularly as they impact owner-operators and trucking businesses subject to such agreements and submit a report on the task force's identified issues and conclusions regarding truck leasing arrangements, including recommended best practices, to the Secretary, the Secretary of Labor, and the appropriate committees of

Congress. The TLTF will work in coordination with, and be informed by, the United States Department of Labor.

The TLTF operates in accordance with FACA under the terms of the TLTF charter, filed February 11, 2022.

## II. Agenda

TLTF will begin consideration of Task 23–1: Common Truck Leasing Agreements Available to Drivers of Commercial Motor Vehicles and the Existence of Inequitable Leasing Agreements and Terms in the Motor Carrier Industry. For this and all topics considered by the committee, FMCSA will include presentations by Agency experts and those in the field under discussion.

## III. Public Participation

The meeting will be open to the public via virtual platform. Advance registration via the website is required by Friday, October 13.

DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services due to a disability, such as sign language interpretation or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by Tuesday, October 10.

Oral comments from the public will be heard during designated comment periods at the discretion of the TLTF chair and Designated Federal Officer. To accommodate as many speakers as possible, the time for each commenter may be limited. Speakers are requested to submit a written copy of their remarks for inclusion in the meeting records and for circulation to TLTF members. All prepared remarks submitted on time will be accepted and considered as part of the record. Any member of the public may present a written statement to the committee at any time.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–21285 Filed 9–27–23; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0043]

### Qualification of Drivers; Exemption Applications; Implantable Cardioverter Defibrillators (ICDs)

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of applications for exemption; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from two individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against operation of a commercial motor vehicle (CMV) by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope (transient loss of consciousness), dyspnea (shortness of breath), collapse, or congestive heart failure. If granted, the exemptions would enable these individuals with ICDs to operate CMVs in interstate commerce.

**DATES:** Comments must be received on or before October 30, 2023.

**ADDRESSES:** You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2023–0043 using any of the following methods:

- *Federal eRulemaking Portal:* Go to [www.regulations.gov/](http://www.regulations.gov/), insert the docket number (FMCSA–2023–0043) in the keyword box and click “Search.” Next, choose the only notice listed, and click on the “Comment” button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation” portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, [fmcamedical@dot.gov](mailto:fmcamedical@dot.gov). Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## I. Public Participation

### A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2023–0043), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2023-0043>. Next, choose the only notice listed, click the “Comment” button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

FMCSA will consider all comments and material received during the comment period.

### B. Viewing Comments

To view comments go to [www.regulations.gov](http://www.regulations.gov). Insert the docket number (FMCSA–2023–0043) in the keyword box and click “Search.” Next, choose the only notice listed, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

### C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov). As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at <https://www.transportation.gov/>

*individuals/privacy/privacy-act-system-records-notices*, the comments are searchable by the name of the submitter.

## II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The two individuals listed in this notice have requested an exemption from § 391.41(b)(4). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard found in § 391.41(b)(4) states that a person is physically qualified to drive a CMV if that person has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

In addition to the regulations, FMCSA has published advisory criteria<sup>1</sup> to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. The advisory criteria states that ICDs are disqualifying due to risk of syncope.

## III. Qualification of Applicant

### Dean Cece

Dean Cece is a class C driver's license holder in North Carolina. In letters dated May 16, 2022, November 11, 2023, and February 15, 2023, Dean Cece's cardiology team reports that the ICD was implanted on December 7, 1998. They state there have been no discharges from the ICD and from a cardiac perspective, Dean Cece continues to be stable with no limitation of physical activity, consistent with a New York Heart Association class I rating.

<sup>1</sup> These criteria may be found in 49 CFR part 391, Appendix A to Part 391—Medical Advisory Criteria, Section D. Cardiovascular: § 391.41(b)(4), paragraph 4, which is available on the internet at <https://www.gpo.gov/jdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf>.

### Donald Roach

Donald Roach is a class D driver's license holder in Kentucky. In a letter dated May 12, 2023, Donald Roach's cardiologist reports that their ICD was implanted on August 31, 2015. They state there have been no discharges from the ICD and from a cardiac standpoint, Donald Roach continues to be stable with no symptoms.

## IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–21198 Filed 9–27–23; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

## FEDERAL RESERVE SYSTEM

### FEDERAL DEPOSIT INSURANCE CORPORATION

#### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Joint notice and request for comment.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the OCC, the Board, and the FDIC (the agencies) may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to revise and extend for three years the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051), which are currently approved collections of information. The FFIEC

has also approved the Board's publication for public comment, on behalf of the agencies, of a proposal to revise and extend for three years the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), and the Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S), which are also currently approved collections of information. The agencies are requesting comment on proposed revisions related to the Financial Accounting Standards Board's (FASB) Accounting Standards Update (ASU) 2022–02, "Financial Instruments—Credit Losses (Topic 326): Troubled Debt Restructurings and Vintage Disclosures" (ASU 2022–02); reporting of past due loans; and reporting of internet website addresses of depository institution trade names. The revisions are proposed to take effect with the March 31, 2024, report date.

**DATES:** Comments must be submitted on or before November 27, 2023.

**ADDRESSES:** Interested parties are invited to submit written comments to any or all of the agencies. All comments will be shared among the agencies.

**OCC:** You may submit comments, by any of the following methods:

- **Email:** [prainfo@occ.treas.gov](mailto:prainfo@occ.treas.gov).
- **Mail:** Chief Counsel's Office, Office of the Comptroller of the Currency, Attention: 1557–0081, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

- **Hand Delivery/Courier:** 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

**Instructions:** You must include "OCC" as the agency name and "1557–0081" in your comment. In general, the OCC will publish comments on [www.reginfo.gov](http://www.reginfo.gov) without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the following method:

- **Viewing Comments Electronically:** Go to [www.reginfo.gov](http://www.reginfo.gov). Hover over the "Information Collection Review" drop

down menu and select “Information Collection Review.” Underneath the “Currently under Review” section heading, from the drop-down menu select “Department of Treasury” and then click “submit.” This information collection can be located by searching by OMB control number “1557–0081.” Upon finding the appropriate information collection, click on the related “ICR Reference Number.” On the next screen, select “View Supporting Statement and Other Documents” and then click on the link to any comment listed at the bottom of the screen.

- For assistance in navigating [www.reginfo.gov](http://www.reginfo.gov), please contact the Regulatory Information Service Center at (202) 482–7340.

**Board:** You may submit comments, which should refer to “Call Report and FFIEC 002 Revisions,” by any of the following methods:

- **Agency website:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at: <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- **Email:** [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include “Call Report and FFIEC 002 Revisions” in the subject line of the message.

- **Fax:** (202) 395–6974.

- **Mail:** Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available on the Board’s website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information.

**FDIC:** You may submit comments, which should refer to “Call Report and FFIEC 002 Revisions,” by any of the following methods:

- **Agency website:** <https://www.fdic.gov/resources/regulations/federal-register-publications/>. Follow the instructions for submitting comments on the FDIC’s website.

- **Email:** [comments@FDIC.gov](mailto:comments@FDIC.gov). Include “Call Report and FFIEC 002 Revisions” in the subject line of the message.

- **Mail:** Manuel E. Cabeza, Counsel, Attn: Comments, Room MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

- **Hand Delivery:** Comments may be hand delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7 a.m. and 5 p.m.

- **Public Inspection:** All comments received, including any personal information provided, will be posted without change to <https://www.fdic.gov/resources/regulations/federal-register-publications/>. Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this document will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503; by fax to (202) 395–6974; or by email to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** For further information about the proposed revisions to the information collections discussed in this notice, please contact any of the agency staff whose names appear below. In addition, copies of the report forms for the Call Reports can be obtained at the FFIEC’s website ([https://www.ffiec.gov/ffiec\\_report\\_forms.htm](https://www.ffiec.gov/ffiec_report_forms.htm)).

**OCC:** Kevin Korzeniewski, Counsel, Chief Counsel’s Office, (202) 649–5490. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

**Board:** Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, (202) 452–3884, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

**FDIC:** Manuel E. Cabeza, Counsel, (202) 898–3767, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

#### SUPPLEMENTARY INFORMATION:

#### I. Affected Reports

The proposed changes discussed below affect the Call Reports and the FFIEC 002.

##### A. Call Report

The agencies propose to extend for three years, with revision, their information collections associated with the FFIEC 031, FFIEC 041, and FFIEC 051 Call Reports.

**Report Title:** Consolidated Reports of Condition and Income (Call Report).

**Form Number:** FFIEC 031

(Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices), FFIEC 041

(Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only), and FFIEC 051

(Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less Than \$5 Billion).

**Frequency of Response:** Quarterly.

**Affected Public:** Business or other for-profit.

**Type of Review:** Revision and extension of currently approved collections.

**OCC:**

**OMB Control No.:** 1557–0081.

**Estimated Number of Respondents:**

1,015 national banks and federal savings associations.

**Estimated Average Burden per Response:** 40.76 burden hours per quarter to file.

**Estimated Total Annual Burden:** 165,486 burden hours to file.

**Board:**

**OMB Control No.:** 7100–0036.

**Estimated Number of Respondents:**

699 state member banks.

**Estimated Average Burden per Response:** 44.21 burden hours per quarter to file.

**Estimated Total Annual Burden:** 123,611 burden hours to file.

**FDIC:**

**OMB Control No.:** 3064–0052.

**Estimated Number of Respondents:**

2,990 insured state nonmember banks and state savings associations.

**Estimated Average Burden per Response:** 38.95 burden hours per quarter to file.

**Estimated Total Annual Burden:** 465,842 burden hours to file.

The estimated average burden hours collectively reflect the estimates for the FFIEC 031, the FFIEC 041, and the FFIEC 051 reports for each agency. When the estimates are calculated by type of report across the agencies, the estimated average burden hours per quarter are 84.53 (FFIEC 031), 54.60 (FFIEC 041), and 34.52 (FFIEC 051). The



changes to the Call Report forms and instructions proposed in this notice would result in an estimated increase in burden hours per quarter for the FFIEC 051 of 0.12 hours. This increase in burden results from the proposed change in frequency for Schedule RC—M, Memoranda, items 8.a. through 8.c, as discussed in Section II. C, below. The proposed revisions and clarifications in this notice are not anticipated to change the estimated burden for the FFIEC 031 and the FFIEC 041. The estimated burden per response for the quarterly filings of the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (e.g., size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices).

*Type of Review:* Extension and revision of currently approved collections. In addition to the proposed revisions discussed below, Call Reports are periodically updated to clarify instructional guidance and correct grammatical and typographical errors on the forms and instructions, which are published on the FFIEC website.<sup>1</sup> These non-substantive updates may also be commented upon.

#### Legal Basis and Need for Collections

The Call Report information collections are mandatory: 12 U.S.C. 161 (national banks), 12 U.S.C. 324 (state member banks), 12 U.S.C. 1817 (insured state nonmember commercial and savings banks), and 12 U.S.C. 1464 (federal and state savings associations). At present, except for selected data items and text, these information collections are not given confidential treatment.

Banks and savings associations submit Call Report data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report data serve a regulatory or public policy purpose by assisting the agencies in fulfilling their shared missions of ensuring the safety and soundness of financial institutions and the financial system and protecting consumer financial rights, as well as agency-specific missions affecting federal and state-chartered institutions, such as conducting monetary policy, ensuring financial stability, and administering federal deposit insurance. Call Reports are the source of the most current statistical data available for

identifying areas of focus for on-site and off-site examinations. Among other purposes, the agencies use Call Report data in evaluating institutions' corporate applications, including interstate merger and acquisition applications for which the agencies are required by law to determine whether the resulting institution would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. Call Report data also are used to calculate the risk-based assessments for insured depository institutions.

#### B. FFIEC 002 and 002S

The Board proposes to extend for three years, with revision, the FFIEC 002 and FFIEC 002S reports.

*Report Titles:* Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks; Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank.

*Form Numbers:* FFIEC 002; FFIEC 002S.

*OMB Control Number:* 7100–0032.

*Frequency of Response:* Quarterly.

*Affected Public:* Business or other for-profit.

*Respondents:* All state-chartered or federally-licensed U.S. branches and agencies of foreign banking organizations, and all non-U.S. branches managed or controlled by a U.S. branch or agency of a foreign banking organization.

*Estimated Number of Respondents:* FFIEC 002—183; FFIEC 002S—18.

*Estimated Average Burden per Response:* FFIEC 002—24.67 hours; FFIEC 002S—6.0 hours.

*Estimated Total Annual Burden:* FFIEC 002—18,058 hours; FFIEC 002S—432 hours.

*Type of Review:* Extension and revision of currently approved collections.

The proposed revisions to the FFIEC 002 instructions in this notice would not have a material impact on the existing burden estimates.

#### Legal Basis and Need for Collection

On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file the FFIEC 002, which is a detailed report of condition with a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data also are used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. In

addition, FFIEC 002 data are used to calculate the risk-based assessments for FDIC-insured U.S. branches of foreign banks. The FFIEC 002S is a supplement to the FFIEC 002 that collects information on assets and liabilities of any non-U.S. branch that is managed or controlled by a U.S. branch or agency of the foreign bank. A non-U.S. branch is managed or controlled by a U.S. branch or agency if a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in respect of assets or liabilities for that foreign branch resides at the U.S. branch or agency. A separate FFIEC 002S must be completed for each managed or controlled non-U.S. branch. The FFIEC 002S must be filed quarterly along with the U.S. branch or agency's FFIEC 002.

These information collections are mandatory (12 U.S.C. 1817(a)(1) and (3), 3102(b), and 3105(c)(2)). Except for select sensitive items, the FFIEC 002 is not given confidential treatment; the FFIEC 002S is given confidential treatment (5 U.S.C. 552(b)(4) and (8)). The data from both reports are used for (1) monitoring deposit and credit transactions of U.S. residents; (2) monitoring the impact of policy changes; (3) analyzing structural issues concerning foreign bank activity in U.S. markets; (4) understanding flows of banking funds and indebtedness of developing countries in connection with data collected by the International Monetary Fund and the Bank for International Settlements that are used in economic analysis; and (5) assisting in the supervision of U.S. offices of foreign banks. The Federal Reserve System collects and processes these reports on behalf of all three agencies.

## II. Current Actions

A. ASU 2022–02, “Financial Instruments—Credit Losses (Topic 326): Troubled Debt Restructurings and Vintage Disclosures”

### 1. Background

On March 31, 2022, the FASB issued ASU 2022–02 which eliminates the troubled debt restructuring (TDR) recognition and measurement guidance for entities that have adopted ASU 2016–13, “Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments” (ASU 2016–13). Instead of identifying and accounting for TDRs separately from other loan modifications, all loans modified from the beginning of the fiscal year in which

<sup>1</sup> [www.ffiec.gov/forms031.htm](http://www.ffiec.gov/forms031.htm); [www.ffiec.gov/forms041.htm](http://www.ffiec.gov/forms041.htm); [www.ffiec.gov/forms051.htm](http://www.ffiec.gov/forms051.htm).

the new standard is adopted by an institution would be accounted for in accordance with ASC Section 310–20–35, *Receivables—Nonrefundable Fees and Other Costs—Subsequent Measurement*, as amended by ASU 2022–02. In addition, the new standard enhances financial statement disclosure requirements for certain loan modifications to borrowers experiencing financial difficulty. These disclosures include quantitative information about the modifications and their performance and qualitative information regarding how initial modifications and subsequent performance of such modifications impact the allowance for credit losses.

Upon adoption of ASU 2022–02, an institution would have the option to use a modified retrospective transition method to account for those TDRs that existed as of the last day of the fiscal year preceding the fiscal year in which the standard was implemented. For these TDRs, an institution would recognize a cumulative-effect adjustment to the beginning balance of retained earnings as of the first day of the fiscal year resulting from the adoption of ASU 2022–02. Institutions that opt to apply ASU 2022–02 prospectively would continue applying the TDR guidance to the existing TDR loans for allowance for credit losses purposes until the loans are paid in full or otherwise settled, sold, charged-off, or subsequently modified.

Regardless of the transition method applied to existing TDRs, institutions would apply ASU 2022–02 to all modifications made from the beginning of the fiscal year of adoption and in subsequent reporting periods. Institutions would only include loans that were modified to borrowers experiencing financial difficulty from the beginning of the fiscal year of adoption and in subsequent periods in their disclosures for financial statement purposes. TDRs or modifications made prior to the beginning of the fiscal year of adoption would not be included in these enhanced disclosures in the period of adoption or in any subsequent periods.

Additionally, per ASU 2022–02, an institution would not be required to use a discounted cash flow (DCF) approach to measure the allowance for credit loss on the modified loans. However, if an institution chooses to use a DCF approach, it would be required to use the post-modification effective interest rate to discount expected cash flows. Modified loans for which repayment is expected to be provided substantially through the operation or sale of the collateral when the borrower is

experiencing financial difficulty would still be considered to be collateral dependent. For regulatory reporting purposes, the allowance for credit losses for a collateral dependent loan would continue to be measured using the fair value of collateral (less cost to sell, when appropriate), regardless of whether foreclosure is probable.

ASU 2022–02 is effective for all institutions that have adopted ASU 2016–13 for fiscal years beginning after December 15, 2022, including interim reporting periods within those fiscal years. For all other institutions, the effective date for ASU 2022–02 would be the same as the effective date for ASU 2016–13.

## 2. Proposed Changes

In response to ASU 2022–02, the agencies are proposing revisions to the Call Report forms and instructions. In general, these revisions would align the data collected in the Call Report forms and instructions with the definition of loan modifications to borrowers experiencing financial difficulty that is used in U.S. generally accepted accounting principles (GAAP). The banking agencies are proposing to replace, as appropriate, references to “troubled debt restructurings” with “modifications to borrowers experiencing financial difficulty” in the Call Report forms and instructions, and to update the Glossary to reflect the change in accounting for modifications to borrowers experiencing financial difficulty.

These changes are intended to provide data needed to monitor banks’ safety and soundness and for FDIC deposit insurance assessment purposes. The proposed revisions would assist the agencies in gaining a better understanding of banks’ credit exposures. Specifically, the loan modifications to borrowers experiencing financial difficulty reported in Call Report Schedule RC–C, Part I, Loans and Leases, Memorandum item 1, and Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets, Memorandum item 1 would enable the agencies to better understand the level of loan modification activity at institutions and the categories of loans involved in this activity. The agencies would benefit from continued reliable data outside of on-site examinations to assess modification activity, particularly given current increased risks related to commercial real estate loans and commercial and industrial loans. In addition, the proposed changes are needed to calculate deposit insurance assessments for large or highly complex

institutions as defined in FDIC regulations.<sup>2</sup>

Institutions that have fiscal years beginning in the fourth quarter of 2023, and choose not to early adopt the standard, will not apply the standard in the Call Report and/or the FFIEC 002 until the December 31, 2023, report date. The proposed revisions to specific data items resulting from the elimination of the TDR recognition and measurement guidance would be reflected in the forms as of the March 31, 2024, report date, as outlined in the following descriptions of the proposed changes to the affected Call Report and FFIEC 002 schedules.

Through December 31, 2023, the quarterly Supplemental Instructions for the Call Report will include guidance for institutions that have adopted ASU 2022–02 on reporting the data items related to loan modifications to borrowers experiencing financial difficulty.

## 3. Specific Revisions to the Call Reports Schedule RC–C and Schedule RC–N

Upon adoption of ASU 2022–02, institutions would continue to report detail on loan modifications to borrowers experiencing financial difficulty in Call Report Schedule RC–C, Part I, Loans and Leases, Memorandum item 1, and Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets, Memorandum item 1. However, the modifications reported in these Memoranda items would need to meet the definition of “loan modifications to borrowers experiencing financial difficulty” as described in ASU 2022–02, rather than the GAAP definition related to “troubled debt restructurings.” Loan modifications to borrowers experiencing financial difficulty include financing receivables that had been modified in the form of principal forgiveness, an interest rate reduction, an other-than-insignificant payment delay, or a term extension (or a combination thereof). The Call Report forms and instructions would be updated to include in the item descriptions and instructions references to “loan modifications to borrowers experiencing financial difficulty” and remove references to the TDR framework.

<sup>2</sup> On October 18, 2022, the FDIC Board adopted a final rule to incorporate ASU 2022–02, available at: <https://www.fdic.gov/news/board-matters/2022/2022-10-18-notice-sum-b-fr.pdf>, in the risk-based deposit insurance assessment system applicable to all large and highly complex insured depository institutions as defined in the FDIC’s assessment regulations. See 12 CFR 327.8(f), (g) and 12 CFR 327.16(b).

The Call Report provides the agencies with data to be used in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. This data serves a regulatory or public policy purpose by assisting the agencies in fulfilling their shared missions of ensuring the safety and soundness of supervised financial institutions and the stability of the financial system utilizing statistical data for identifying areas of focus for both on-site and off-site supervision. The information needed for these purposes at times may differ from information required by GAAP as accounting standards are not specifically tailored to the needs of the financial institution regulators.

ASU 2022-02 requires financial statement disclosures on loan modifications to borrowers experiencing financial difficulty made “within the previous 12 months preceding the payment default when the debtor was experiencing financial difficulty at the time of the modification.”<sup>3</sup> However, as evidenced by the modifications made during the COVID-19 pandemic in 2020, 2021, and 2022, it may take longer than 12 months following the modification to assess whether loans are performing in accordance with their modified terms and if the borrower is no longer experiencing financial difficulty. Reporting modifications on the Call Report for a period greater than 12 months would increase the reporting period beyond that required by the financial statement disclosure requirements in ASU 2022-02. However, the ability to monitor modifications made by institutions to borrowers experiencing financial difficulty provides useful supervisory information on the borrower’s continued performance or lack thereof on the modified loan. Due to these factors, the agencies are proposing to require reporting of these modifications for a minimum period of 12 months and until an institution performs a current, well documented credit evaluation to support that the borrower is no longer experiencing financial difficulty, unless the loan is paid off, charged-off, sold, or otherwise settled. Performing a current, well documented credit evaluation to support that the borrower is no longer experiencing financial difficulty is consistent with the *Interagency Guidelines Establishing Standards for Safety and Soundness* issued by the Board, FDIC, and OCC,<sup>4</sup> which

articulate safety and soundness standards for supervised financial institutions to establish and maintain prudent credit underwriting practices and maintain systems to identify distressed assets and manage deterioration in those assets.

The agencies invite comment on this proposal and are particularly interested in understanding any operational challenges and the nature of any loan systems changes necessary to accommodate the Call Report collection of data on loan modifications to borrowers experiencing financial difficulty for a minimum period of 12 months and until an institution performs a current, well documented credit evaluation to support that the borrower is no longer experiencing financial difficulty, unless the loan is paid off, charged-off, sold, or otherwise settled.

**Question 1:** What additional factors, if any, should the agencies consider when determining the length of time that a loan modification to a borrower experiencing financial difficulty must be reported in Schedule RC-C and RC-N memoranda items?

**Question 2:** What are the advantages or disadvantages of reporting loan modifications for a period longer than 12 months as required for financial statement disclosures for applicable institutions under ASU 2022-02?

#### Schedule RC-M

Upon adoption of ASU 2022-02, institutions would continue to report detail on other real estate owned in Schedule RC-M, Memoranda, item 3. However, instructional references to ASC Subtopic 310-40, Receivables-Troubled Debt Restructurings by Creditors (ASC Subtopic 310-40) would be updated to ASC Subtopic 310-20, Receivables-Nonrefundable Fees and Other Costs (ASC Subtopic 310-20). The Call Report instructions would be updated to include the updated codification references.

#### Schedule RC-O

Upon adoption of ASU 2022-02, institutions that meet the FDIC’s definition of large institutions or highly complex institutions for deposit insurance assessment purposes would continue to report loans that have been modified to borrowers experiencing financial difficulty in Call Report Schedule RC-O, Other Data for Deposit Insurance Assessments, renamed Memorandum item 16, “Portion of loan modifications to borrowers experiencing financial difficulty that are in compliance with their modified terms and are guaranteed or insured by the

U.S. government (including the FDIC) (included in Schedule RC-C, Part I, Memorandum item 1).” However, the modifications reported in this Memorandum item would be those that are guaranteed or insured by the U.S. government (including the FDIC) and meet the definition of “loan modifications to borrowers experiencing financial difficulty,” rather than the definition related to “loans restructured in troubled debt restructurings.” Both the FFIEC 031 and FFIEC 041 Call Report forms and instructions would be updated to include in the item descriptions and instructions references to “loan modification to borrowers experiencing financial difficulty” as described in ASU 2022-02 and remove references to the TDR framework.

#### Glossary

Effective March 31, 2024, to address the elimination of the TDR recognition and measurement guidance in ASU 2022-02, the agencies propose to revise or eliminate, as appropriate, the following Glossary entries to provide additional information for those institutions that have adopted ASU 2022-02 and to remove redundant entries: (1) “Allowance for Credit Losses,” (2) “Foreclosed Assets,” (3) “Loan Fees,” (4) “Nonaccrual Status,” (5) “Renegotiated Troubled Debt,” (6) “Troubled Debt Restructurings,” (7) “Loan Impairment,” and (8) “Purchased Credit-Impaired Loans and Debt Securities.” Additionally, a new entry for “Loan Modifications to Borrowers Experiencing Financial Difficulty” would be included in the Glossary.

#### 4. Revisions to the FFIEC 002

The Board’s proposed revisions to the FFIEC 002 are intended to align with similar changes proposed to the Call Report and discussed in the prior section.

#### Schedule N

Upon adoption of ASU 2022-02, institutions would continue to report detail on loan modifications to borrowers experiencing financial difficulty in FFIEC 002 Schedule N, Past Due, Nonaccrual, and Restructured Loans, Columns C and D. The modifications reported in these columns would meet the definition of “modifications to borrowers experiencing financial difficulty” as described in ASU 2022-02, rather than the definition related to “troubled debt restructurings.” The FFIEC 002 instructions would be updated to include references to “modifications to borrowers experiencing financial

<sup>3</sup> See ASC 310-10-50-44.

<sup>4</sup> 12 CFR part 30, appendix A (OCC); 12 CFR part 208 Appendix D-1 (Board); and 12 CFR part 364 appendix A (FDIC).

difficulty” and remove references to the TDR framework.

The agencies are proposing to align the time period for reporting applicable items on Schedule N with the Call Report Memorandum items described above.

#### *B. Past Due Definition*

The definition used to report loans as “past due” is provided in the General Instructions to Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets. The agencies have become aware of questions regarding the classification of loans as past due, particularly when a past-due loan is in the process of being extended or refinanced.<sup>5</sup> To address these questions and improve the consistency of past due reporting across institutions, the agencies are proposing three changes to the Schedule RC–N general instructions that define “past due”. First, the proposed revisions clarify that reporting institutions must report as past due any loans that the reporting institution is in the process of restructuring if the restructuring process has not concluded (*i.e.*, the restructuring has not been executed or become effective). Second, the proposed revisions would clarify that a loan or other asset should be reported as past due when either an interest payment or principal payment is due and unpaid for 30 days or longer. Third, the proposed revisions would restructure the definition to clarify the general rules for reporting past due loans, the exceptions to those general rules, and nonexclusive examples of reporting past due loans or other assets consistent with those instructions.

*Question 3:* What, if any, other clarifications to the definition of “past due” should the agencies consider that would improve usability by institutions and comparability across the institutions?

*Question 4:* While the agencies do not intend that these proposed changes would materially alter the way institutions currently assess and report past due loans, do institutions view any burden associated with implementing these proposed changes?

#### *C. Depository Institution Trade Names and Deposit Accepting URLs*

Schedule RC–M, Memoranda, items 8.a. through 8.c. request information on institutions’ websites and trade names, particularly those used to solicit deposits. The agencies added these items to enable the FDIC to effectively serve as an information resource for

depositors and the public seeking to identify the insured status of a physical branch office or internet website that uses a trade name rather than the legal name of the insured institution.

However, the FDIC has observed some institutions reporting internet websites or trade names of non-bank entities, including third parties that accept or solicit deposits from the public on behalf of the FDIC-insured depository institution. As a result, the FDIC cannot effectively use this information to assist bank customers and the public in determining the insured status of an institution which is using a website or trade name to solicit deposits.

In order to improve the effectiveness and usability of reporting these items, the agencies are proposing to clarify the instructions for items 8.a through 8.c. For item 8.a, “Uniform Resource Locator (URL) of the reporting institution’s primary internet website (home page), if any” the agencies would clarify that institutions would not report URLs of affiliates that are not insured depository institutions. For item 8.b, “URLs of all other public-facing internet websites that the reporting institution uses to accept or solicit deposits from the public, if any” the agencies would revise the instructions to clarify that an FDIC-insured depository institution would only reports URLs of public-facing internet websites operated by the reporting FDIC-insured depository institution. The agencies would also clarify the instructions to indicate that an FDIC-insured depository institution would not report internet websites of any non-bank entity, including any third parties that accept or solicit deposits from the public on behalf of the reporting FDIC-insured depository institution. These third parties, which would not be reported in this item, would include any person or entity other than the insured institution that is acting as fiduciary in the placement of deposit funds into an FDIC-insured depository institution as described under 12 CFR 330.5 and 330.7 that is commonly referred to as “pass-through” deposit insurance coverage. For item 8.c, “Trade names other than the reporting institution’s legal title used to identify one or more of the institution’s physical offices at which deposits are accepted or solicited from the public, if any” the agencies would clarify the instructions to exclude reporting of any non-bank affiliates or subsidiaries regardless of whether these entities solicit deposits.

In addition, the agencies are proposing to increase the frequency of reporting of these items on the FFIEC 051 from semi-annually to quarterly.

Currently, items 8.a through 8.c are completed on a quarterly basis by institutions filing the FFIEC 031 and FFIEC 041 Call Report form and semi-annually by those institutions filing the FFIEC 051 Call Report form. Quarterly reporting by the FFIEC 051 filers would provide more current information to assist the FDIC with identifying the insured status of institutions using the websites or trade names to solicit deposits.

*Question 5:* The current instructions for item 8 request information regarding websites “operated by” an FDIC-insured depository institution. Does the phrase “operated by” capture the appropriate population of URLs used by FDIC-insured depository institutions or would an alternate phrase such as “owned by” be more appropriate?

*Question 6:* Would these proposed instruction revisions clearly distinguish reporting deposit accepting activities of the institution under its own websites and trade names while excluding URLs used by third parties that facilitate pass-through insurance?

*Question 7:* What additional burden, if any, would result from FFIEC 051 filers reporting items 8.a through 8.c on a quarterly basis?

### **III. Timing**

The proposed revisions to the Call Reports and the FFIEC 002 would take effect beginning with the March 31, 2024, report date. The agencies invite comment on any difficulties that institutions would expect to encounter in implementing the systems changes necessary to accommodate the proposed revisions to the Call Reports and FFIEC 002 consistent with this effective date.

### **IV. Request for Comment**

Public comment is requested on all aspects of this joint notice including the questions that were provided in the earlier sections. In addition to the questions included above, comment is specifically invited on:

(a) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies’ functions, including whether the information has practical utility;

(b) The accuracy of the agencies’ estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents,

<sup>5</sup> See, *e.g.*, *United States v. Harra*, 985 F.3d 196 (3d Cir. 2021).

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.

Comments submitted in response to this joint notice will be shared among the agencies.

Dated at Washington, DC, on August 29, 2023.

**Theodore J. Dowd,**

*Deputy Chief Counsel, Office of the Comptroller of the Currency.*

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board. Board of Governors of the Federal Reserve System.*

**James P. Sheesley,**

*Assistant Executive Secretary. Federal Deposit Insurance Corporation.*

[FR Doc. 2023–21132 Filed 9–27–23; 8:45 am]

**BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

#### Notice of OFAC Sanctions Action

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them. OFAC is also publishing updates to the identifying information of three persons currently included on the SDN List.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for effective date(s).

#### FOR FURTHER INFORMATION CONTACT:

OFAC: Bradley T. Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

##### Notice of OFAC Action(s)

A. On September 14, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

**BILLING CODE 4810–AL–P**

**Individuals:**

1. KRIVORUCHKO, Ekaterina Vladimirovna (a.k.a. TOROPOVA, Ekaterina Vladimirovna; a.k.a. TOROPOVA, Yekaterina), Russia; DOB 26 Mar 1986; POB Moscow, Russia; nationality Russia; Gender Female (individual) [RUSSIA-EO14024] (Linked To: KRIVORUCHKO, Aleksei Yurievich).

Designated pursuant to section 1(a)(v) of E.O. 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," 86 FR 20249, 3 CFR, 2021 Comp., p. 542 (Apr. 15, 2021) (E.O. 14024) for being a spouse or adult child of Aleksei Yurievich Krivoruchko, a person whose property and interests in property are blocked pursuant to E.O. 14024.

2. KRIVORUCHKO, Aleksei Yurievich (Cyrillic: КРИВОРУЧКО, Алексей Юрьевич) (a.k.a. KRIVORUCHKO, Aleksey; a.k.a. KRIVORUCHKO, Alexei), Russia; DOB 17 Jul 1975; POB Stavropol, Russia; nationality Russia; Gender Male; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201 and/or 589.209 (individual) [UKRAINE-EO13661] [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

3. PAWLOWSKA HANAFIN, Katarzyna Ewa (a.k.a. PAWLOWSKA HANAFIN, Katerina; a.k.a. PAWLOWSKA, Katarzyna Ewa; a.k.a. PAWLOWSKA, Katerina), United Arab Emirates; DOB 28 Mar 1977; POB Strzelin, Poland; nationality Poland; Gender Female; Passport EM72894310 (Poland) expires 03 Nov 2027; alt. Passport EG3429510 (Poland) expires 17 Mar 2024 (individual) [RUSSIA-EO14024] (Linked To: HURIYA PRIVATE FZE LLE; Linked To: HANAFIN, John Desmond).

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy, pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Huriya Private FZE LLE, an entity whose property and interests in property are blocked pursuant to E.O. 14024, and pursuant to section 1(a)(v) of E.O. 14024 for being a spouse or adult child of John Desmond Hanafin, a person whose property and interests in property

are blocked pursuant to E.O. 14024.

4. CHUBAROV, Aleksey Sergeyevich (a.k.a. CHUBAROV, Alexei; a.k.a. CHUBAROV, Alexey), Moscow, Russia; DOB 12 Feb 1982; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

5. MAKHMUDOV, Iskandar Kakhramonovich (a.k.a. MAKHMUDOV, Iskander), Moscow, Russia; DOB 05 Dec 1963; POB Bukhara, Uzbekistan; nationality Russia; Gender Male; Tax ID No. 2000907709 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy, and pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

6. MAKHMUDOV, Dzhakhangir Iskandarovich (a.k.a. MAHMUDOV, Jahangir Iskandarovich), Russia; DOB 15 Jan 1987; nationality Russia; Gender Male; Tax ID No. 770201595400 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

7. KHOKHLUN, Andrei Rostislavovich (a.k.a. KHOKHLUN, Andrey), Russia; DOB 04 Dec 1966; POB Tashkent, Uzbekistan; nationality Russia; Gender Male; Tax ID No. 773501047190 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

8. BUZIN, Ilya Andreevich (Cyrillic: БУЗИН, Илья Андреевич) (a.k.a. BUZIN, Ilya Andreyevich), Russia; DOB 21 Aug 1980; nationality Russia; Gender Male; Tax ID No. 781634743022 (Russia) (individual) [RUSSIA-EO14024] (Linked To: VERTIKAL LIMITED).

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy, and pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Vertikal Limited, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

9. TEMIN, Gabriel, France; Finland; DOB 09 Feb 1980; POB Tallinn, Estonia; nationality France; Gender Male (individual) [RUSSIA-EO14024] (Linked To: SIBERICA OY).

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy, and pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive



officer, or member of the board of directors of Siberica OY, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

10. TEMIN, Catherine Esther, Finland; DOB 07 Jul 1985; nationality Estonia; Gender Female (individual) [RUSSIA-EO14024] (Linked To: SIBERICA OY).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Siberica OY, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

11. BOKAREV, Andrei Removich (a.k.a. BOKAREV, Andrey Removich), Russia; DOB 23 Oct 1966; POB Moscow, Russia; nationality Russia; Gender Male; Tax ID No. 1781321677 (Russia) (individual) [RUSSIA-EO14024] (Linked To: RUSSIAN ASSOCIATION OF EMPLOYERS THE RUSSIAN UNION OF INDUSTRIALISTS AND ENTREPRENEURS).

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy, and pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Russian Association of Employers the Russian Union of Industrialists and Entrepreneurs, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

12. SYROVATSKAYA, Olga Vladimironva (a.k.a. BOKAREVA, Olga), Moscow, Russia; DOB 12 Oct 1980; POB Slovyansk, Ukraine; nationality Russia; Gender Female; Tax ID No. 771065006817 (Russia) (individual) [RUSSIA-EO14024] (Linked To: BOKAREV, Andrei Removich).

Designated pursuant to section 1(a)(v) of E.O. 14024 for being a spouse or adult child of Andrei Removich Bokarev, a person whose property and interests in property are blocked pursuant to E.O. 14024.

13. BABAN, Alla Fedorovna, United Kingdom; Moscow, Russia; DOB 13 Sep 1964; POB Arioneshty, Moldova; nationality Russia; Gender Female; Tax ID No. 772911723121 (Russia) (individual) [RUSSIA-EO14024] (Linked To: OKROYAN, Mkrtich Okroevich).

Designated pursuant to section 1(a)(v) of E.O. 14024 for being a spouse or adult child of Mkrtich Okroevich Okroyan, a person whose property and interests in property are blocked pursuant to E.O. 14024.

14. OKROYAN, Anna Mkrtichevna, United Kingdom; Moscow, Russia; DOB 14 Feb 1994; POB Moscow, Russia; nationality Russia; Gender Female; Tax ID No. 772985982762 (Russia) (individual) [RUSSIA-EO14024] (Linked To: OKROYAN, Mkrtich Okroevich).

Designated pursuant to section 1(a)(v) of E.O. 14024 for being a spouse or adult child of Mkrtich Okroevich Okroyan, a person whose property and interests in property are blocked pursuant to E.O. 14024, and pursuant to section 1(a)(i) of E.O.

14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

15. OKROYAN, Andranik Mkrtychovich (a.k.a. OKROYAN, Andranik Mkrtych), United Kingdom; Moscow, Russia; DOB 09 Mar 1990; POB Arioneshty, Moldova; nationality Russia; Gender Male; Tax ID No. 772985834179 (Russia) (individual) [RUSSIA-EO14024] (Linked To: OKROYAN, Mkrtych Okroevich).

Designated pursuant to section 1(a)(v) of E.O. 14024 for being a spouse or adult child of Mkrtych Okroevich Okroyan, a person whose property and interests in property are blocked pursuant to E.O. 14024, and pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

16. OKROYAN, Arutyun Okroevich, Poland; Moscow, Russia; DOB 07 May 1974; POB Turtshkh, Georgia; nationality Russia; Gender Male; Tax ID No. 773607384710 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

17. OKROYAN, Mkrtych Okroevich, Russia; United Kingdom; DOB 21 Apr 1965; POB Georgia; nationality Russia; Gender Male; Tax ID No. 772900610951 (Russia) (individual) [RUSSIA-EO14024] (Linked To: OPEN JOINT STOCK COMPANY AERO ENGINE SCIENTIFIC AND TECHNICAL COMPANY SOYUZ; Linked To: OPEN JOINT STOCK COMPANY BALASHIKHINSKIY LITEYNO MEKHANICHESKIY ZAVOD).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Open Joint Stock Company Aero Engine Scientific and Technical Complex Soyuz and Open Joint Stock Company Balashikhinskiy Liteyno Mekhanicheskii Zavod, entities whose property and interests in property are blocked pursuant to E.O. 14024, and pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

18. PERFILEV, Vitalij Viktorovic (Cyrillic: ПЕРФИЛЬЕВ, Виталий Викторович) (a.k.a. PERFILEV, Vitalii Viktorovitch; a.k.a. PERFYLYEV, Vitalij Viktorovij), Bangui, Central African Republic; DOB 11 Sep 1983; POB Novosibirsk, Russian Federation; nationality Russia; citizen Russia; Gender Male; Passport 752987491 (Russia) expires 30 Mar 2026 (individual) [RUSSIA-EO14024] (Linked To: PRIVATE MILITARY COMPANY 'WAGNER').

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Private Military Company Wagner, a person whose property and interests in property are blocked pursuant to E.O. 14024.

#### Entities:

1. RUSSIAN HIGHWAYS STATE COMPANY (a.k.a. AVTODOR GK; a.k.a. GOSUDARSTVENNAYA KOMPANIYA AVTODOR; a.k.a. GOSUDARSTVENNAYA KOMPANIYA ROSSISKIE AVTOMOBILNYE DOROGI), B-R Strastnoi D. 9, Moscow 127006, Russia; Organization Established Date 12 Aug 2009; Tax ID No. 7717151380 (Russia); Government Gazette Number 94158138 (Russia); Registration Number 1097799013652 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the construction sector of the Russian Federation economy.

2. JOINT STOCK COMMERCIAL BANK AK BARS PUBLIC JOINT STOCK COMPANY (a.k.a. AK BARS BANK; a.k.a. AKTSIONERNY KOMMERCHESKI BANK AK BARS PAO), D. 1, ul. Dekabristov, Kazan 420066, Russia; SWIFT/BIC ARRSRU2K; Website www.akbars.ru; Organization Established Date 26 Jul 2002; Target Type Financial Institution; Tax ID No. 1653001805 (Russia); Identification Number ZDFUFB.00000.LE.643 (Russia); Legal Entity Number 253400XEMNQ5WBP5635 (Russia); Registration Number 1021600000124 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

3. DEMIRCI BILISIM TICARET SANAYI LIMITED SIRKETI, Mahmutlar Mah. Tepe 1 Sk. 8 No: 8 Ic Kapi No: 68, Alanya, Antalya, Turkey; Organization Established Date 17 Mar 2022; Identification Number 0282075065700001 (Turkey) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

4. AKTSIONERNOE OBSHCHESTVO PLUTON, Ul. Nizhnyaya Syromyatnicheskaya D. 11, Moscow 105120, Russia; Tax ID No. 7709093255 (Russia); Registration Number 1027739057356 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

5. VELESSTROI LIMITED LIABILITY COMPANY (f.k.a. AMERKO OOO; a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU VELESSTROI; a.k.a. VELESSTROY LIMITED LIABILITY COMPANY; a.k.a. "VELESSTROY"), Ul. 2-YA Tverskaya-Yamskaya D. 10, Moscow 125047, Russia; Organization Established Date 04 Apr 2008; Tax ID No. 7709787790 (Russia); Government Gazette Number 85762734 (Russia); Registration Number 1087746466950 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the construction sector of the Russian Federation economy.

6. FLYTECHGROUP LIMITED LIABILITY COMPANY (a.k.a. OBSHCHESTVO S OGRANICHENNOY OTVETSTVENNOSTYU FLAYTEKGRUPP; a.k.a. "OOO

FTG"), Mkr. Skhodnya, Tup. 1-I Oktyabrskii D. 1, Khimki 141420, Russia; Ul. Leningradskaya, D. 11, Pomeschch. 006, Khimki 141402, Russia; Tax ID No. 5047135637 (Russia); Registration Number 1125047015532 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

7. GLOBALTRANS LIMITED (a.k.a. "GT LTD"), Ul. Respublikanskaya D. 24, K. 1 Str. 1, Pomeschch. 22-N, Office 2, Saint Petersburg 195112, Russia; Tax ID No. 7806582269 (Russia); Registration Number 1217800018204 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

8. LIMITED LIABILITY COMPANY ASERVICE (a.k.a. OOO AVIASERVIS), Pl. Morskoi Slavy D. 1, Lit. A, Chast Pomeshcheniya 3-N, Chast Pomeshcheniya #691, Saint Petersburg 199106, Russia; Tax ID No. 7801671250 (Russia); Registration Number 1197847181388 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

9. NPK FOTONIKA LIMITED LIABILITY COMPANY (a.k.a. NPK PHOTONICA; a.k.a. OBSHCHESTVO S OGRANICHENNOY OTVETSTVENNOSTYU NAUCHNOPROIZVODSTVENNAYA KOMPANIYA FOTONIKA), Pr-Kt Yuriya Gagarina D. 2, Saint Petersburg 196105, Russia; Ul. Sofiiskaya D. 54, Lit. A, Office 214, Saint Petersburg 192241, Russia; Tax ID No. 7813547434 (Russia); Registration Number 1127847581058 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

10. OOO MAYAK, Proezd 1-I Perova Polya D. 9, Str. 1, Moscow 111141, Russia; Plekhanova D. 15A, Str. 3, Office 1, Moscow 111141, Russia; Tax ID No. 7722344853 (Russia); Registration Number 5157746008195 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

11. JOINT STOCK COMPANY GAVRILOV YAM MACHINE BUILDING PLANT AGAT (a.k.a. "JSC GMZ AGAT"), 1, Pr. Mashinostroiteley, GavriloV Yam 152240, Russia; Tax ID No. 7616002417 (Russia); Registration Number 1027601067944 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

12. JOINT STOCK COMPANY STAR (a.k.a. "AO ODK STAR"; a.k.a. "JSC UEC STAR"), ul. Kuibysheva D. 140A, Perm 614990, Russia; Tax ID No. 5904100329 (Russia); Registration Number 1025900895712 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

13. GAZ GROUP (a.k.a. GAZ JSC; a.k.a. GAZ PAO), 88 Lenin Avenue, Nizhny Novgorod 603950, Russia; 15/1 Rochdelskaya Str., Moscow 123022, Russia; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201 and/or 589.209; Organization Established Date 1929; Tax ID No. 5200000046 (Russia); Registration Number 1025202265571 (Russia) [UKRAINE-EO13661] [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: DERIPASKA, Oleg Vladimirovich; Linked To: RUSSIAN MACHINES).

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

14. KSK GROUP (a.k.a. "OOO KSK"), Ul. Zemlyanoi Val D. 68/18, Str. 3, Moscow 109004, Russia; Tax ID No. 7725685410 (Russia); Registration Number 1107746010052 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

15. OOO KSK AUDIT, Ul. Zemlyanoi Val D. 68/18, Str. 3, Moscow 109004, Russia; Tax ID No. 7725546209 (Russia); Registration Number 1057747830337 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the accounting sector of the Russian Federation economy.

16. JOINT STOCK COMPANY MECHANICAL ENGINEERING RESEARCH INSTITUTE (a.k.a. AKTSIONERNOE OBSHCHESTVO NAUCHNOISLEDOVATELSKI MASHINOSTROITELNY INSTITUT IMENI V V BAKHIREVA (Cyrillic: АКЦИОНЕРНОЕ ОБЩЕСТВО НАУЧНОИССЛЕДОВАТЕЛЬСКИЙ МАШИНОСТРОИТЕЛЬНЫЙ ИНСТИТУТ ИМЕНИ В В БАХИРЕВА); a.k.a. NIMI IM V V BAKHIREVA AO; a.k.a. NIMI NAMED AFTER V V BAKHIREV JSC), Sh. Leningradskoe D. 58, Moscow 125212, Russia; Tax ID No. 7743873015 (Russia); Registration Number 1127747236341 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

17. LIMITED LIABILITY COMPANY GAZPROM NEDRA, ul. Novocheremushkinskaya D. 65, Moscow 117418, Russia; Tax ID No. 7709769582 (Russia); Registration Number 1077763601948 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the engineering sector of the Russian Federation economy.

18. KRIOGENMASH OAO (a.k.a. CRYOGENMASH; a.k.a. CRYOGENMASH JOINT STOCK COMPANY; f.k.a. OPEN JOINT STOCK COMPANY CRYOGENMASH; a.k.a. OPEN JOINT-STOCK COMPANY KRIOGENNOGO MASHINOSTROYENIA; a.k.a. PUBLICHNOE AKTSIONERNOE OBSHCHESTVO KRIOGENNOGO MASHINOSTROENIYA), 67, Lenin Avenue, Balashikha, Moscow Region 143907, Russia; 36 Lenina Prospekt, Balashikha G. 143907, Russia; Website [www.cryogenmash.ru](http://www.cryogenmash.ru); Executive Order 13662 Directive Determination - Subject to Directive 1; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201 and/or 589.209; Organization Established Date 03 Oct 1945; Registration ID 1025000513878 (Russia); Tax ID No. 5001000066 (Russia); Government Gazette Number 05747985 (Russia); For more information on directives, please visit the following link: <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives> [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: GAZPROMBANK JOINT STOCK COMPANY).

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

19. AKTSIONERNOE OBSHCHESTVO TASKOM (a.k.a. AO TASKOM; a.k.a. TACKOM), Ter. Severnaya Promyshlennaya Zona, Vladenie 6, Str. 1, Vorsino 249020, Russia; Tax ID No. 4025422770 (Russia); Registration Number 1094025002246 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

20. EASTERN TRADE LIMITED LIABILITY COMPANY (a.k.a. EASTERN TRADE LLC; a.k.a. OOO ISTERN TREYD), Ul. Obrucheva D. 30/1, Str. 1, Pomeshch. III, Kom. 1, Moscow 117485, Russia; Tax ID No. 9728061541 (Russia); Registration Number 1227700215335 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

21. INTECH ENGINEERING LTD (a.k.a. OOO INTEKH INZHINIRING), Proezd Garazhnyi D. 1, Lit. K, Office 16, Saint Petersburg 192289, Russia; Tax ID No. 7810840000 (Russia); Registration Number 1117847384445 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

22. OOO AITI TSENTR, Per. Perevedenovskii D. 16, Pomeshch. 1P, Moscow 105082, Russia; Tax ID No. 7743266807 (Russia); Registration Number 1187746700767 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

23. OOO BITTERIYA, Proezd Ogorodnyi D. 20, Str. 4, Office 415, Moscow 127322, Russia; Ul. Dobrolyubova D. 3, Str. 1, Pomeschch. III, Kom. 1, Moscow 127254, Russia; Tax ID No. 9715297229 (Russia); Registration Number 1177746290611 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

24. OOO ENKOR GRUPP, Ul. Teatralnaya D. 35, K. LIII, Office 312, Kaliningrad 236006, Russia; Tax ID No. 3906389800 (Russia); Registration Number 1203900003450 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

25. OOO LANPRINT, Ul. Iskry D. 17A, Str. 3, Floor 5, Office 3/5/P-5/2/1, Moscow 129344, Russia; Tax ID No. 7751016335 (Russia); Registration Number 1167746122686 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

26. OOO MAKRO GRUPP, Ul. Sveaborgskaya D. 12, Lit. A, Pom.54-N, Office #1, Saint Petersburg 196105, Russia; Tax ID No. 7816336223 (Russia); Registration Number 1167847333961 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

27. OOO NOVYI AI TI PROEKT (a.k.a. 3LOGIC GROUP), Nab. Berezhkovskaya D. 20, Str. 33, Moscow 121059, Russia; Ul. Nagatinskaya D. 16, Str. 9, Pomeschch. VII, Kom. 15, Office 5, Moscow 115487, Russia; Ul. Kiyevskaya D. 7, Korp. 2, Pod. 7, Moscow 121059, Russia; Tax ID No. 7724338125 (Russia); Registration Number 1157746958830 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

28. OOO TRIALKOM, Ul. Ivana Chernykh D. 29, Lit. A, Pomeschch. 37-N, Office 503-2, Saint Petersburg 198095, Russia; Tax ID No. 7805791446 (Russia); Registration Number 1227800044460 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

29. OOO VNESHEKOSTIL, Sh. Kashirskoe D. 55, K. 5, Pomeschch. 1/1, Moscow 115211, Russia; Tax ID No. 7724362880 (Russia); Registration Number 1167746423382 (Russia) [RUSSIA-EO14024].



Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

30. SILKWAY LIMITED LIABILITY COMPANY (a.k.a. OOO SILKVEY; a.k.a. SILKWAY LLC), Pr-d Olminkogo D. 3A, Str. 3, Floor 2, Pom. II, Kom 13, Moscow 129085, Russia; Tax ID No. 9717089129 (Russia); Registration Number 1197746757559 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

31. TRANSMASHHOLDING JSC (a.k.a. AO TRANSMASHHOLDING; a.k.a. "TMH"), ul. Efremova D. 10, Moscow 119048, Russia; Tax ID No. 7723199790 (Russia); Registration Number 1027739893246 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

32. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU ROST PROGRESS (a.k.a. ROST PROGRESS OOO), d.27 Prospekt Engelsa, Saint Petersburg 194156, Russia; Organization Established Date 10 Oct 2016; Tax ID No. 7802596430 (Russia); Registration Number 1167847364791 (Russia) [RUSSIA-EO14024] (Linked To: SVETLANA ROST JOINT STOCK COMPANY).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Svetlana Rost Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

33. SVETLANA ROST JOINT STOCK COMPANY (a.k.a. AKTSIONERNOE OBSHCHESTVO SVETLANA ROST), d.27 Prospekt Engelsa, Saint Petersburg 194156, Russia; Organization Established Date 01 Nov 2004; Tax ID No. 7802309269 (Russia); Registration Number 1047855125592 (Russia) [RUSSIA-EO14024]

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

34. FEDERAL STATE ENTITY UNITARY ENTERPRISE ROSTOV ON DON RESEARCH INSTITUTE OF RADIO COMMUNICATIONS (a.k.a. "RNIIRS"), ul. Nansena d. 130, Rostov-na-Donu 344038, Russia; Tax ID No. 6152001024 (Russia); Registration Number 1026103711204 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

35. JOINT STOCK COMPANY AVTOVAZ (a.k.a. AO AVTOVAZ; a.k.a. OPEN JOINT STOCK COMPANY AVTOVAZ), Sh. Yuzhnoe D. 36, Tol'yatti 445024, Russia; Organization Established Date 20 Jul 1966; Tax ID No. 6320002223

(Russia); Government Gazette Number 00232934 (Russia); Registration Number 1026301983113 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

36. JOINT STOCK COMPANY MOSCOW AUTOMOTIVE FACTORY MOSKVICH (a.k.a. CLOSED JOINT STOCK COMPANY RENO RUSSIA; a.k.a. JSC MAF MOSKVICH; a.k.a. MOSCOW AUTOMOBILE PLANT MOSKVICH AO), Pr-Kt Volgogradskii D. 42, K. 36, Moscow 109316, Russia; Organization Established Date 17 Aug 1998; Tax ID No. 7709259743 (Russia); Government Gazette Number 18609799 (Russia); Registration Number 1027739178202 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

37. LIMITED LIABILITY COMPANY MACHINE BUILDING PLANT TONAR (a.k.a. LIMITED LIABILITY COMPANY PRODUCTION AND COMMERCIAL FIRM TONAR; a.k.a. MZ TONAR; a.k.a. OOO MZ TONAR), Ul. 1-Aya Leninskaya D. 76 A, Srednyaya Matrenka 142635, Russia; Organization Established Date 30 Nov 1990; Tax ID No. 5034016022 (Russia); Government Gazette Number 48806669 (Russia); Registration Number 1025007458200 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

38. PUBLICHNOE AKTSIONERNOE OBSHESTVO SOLLERS (a.k.a. PUBLIC JOINT STOCK COMPANY SOLLERS; a.k.a. SOLLERS PUBLIC JOINT STOCK COMPANY), Moscow International Business Centre, Northern Tower, 10, Testovskaya Street, Moscow 123317, Russia; Organization Established Date 2002; Tax ID No. 3528079131 (Russia); Government Gazette Number 57126933 (Russia); Registration Number 1023501244524 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

39. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU INFORSER INZHINIRING, Pr. Ryazanskii D. 24, Korp. 2, Moscow 109428, Russia; Organization Established Date 21 Jan 2008; Tax ID No. 7721609433 (Russia); Registration Number 1087746084524 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

40. ARKTEC TEHNOLOGIJE NA PODROCJU ELEKTRONIKE DOO (a.k.a. ARKTEC DOO), Grajski Trg 15, Zuzemberk 8360, Slovenia; Tax ID No. 16665236 (Slovenia); Registration Number 6186700000 (Slovenia) [RUSSIA-EO14024] (Linked To: KHOKHLUN, Andrei Rostislavovich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Andrei Rostislavovich Khokhlun, a person whose property and interests in property are blocked pursuant to E.O. 14024.

41. LIMITED LIABILITY COMPANY KEKO R, Pr-d Zavodskoi, D. 2, Office 625A, Fryazino 141190, Russia; Tax ID No. 5050129055 (Russia); Registration Number 1165050056203 (Russia) [RUSSIA-EO14024] (Linked To: KHOKHLUN, Andrei Rostislavovich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Andrei Rostislavovich Khokhlun, a person whose property and interests in property are blocked pursuant to E.O. 14024.

42. JSC POWER MACHINES (a.k.a. OPEN JOINT STOCK COMPANY POWER MACHINES - ZTL, LMZ, ELECTROSILA, ENERGOMACHEXPORT; f.k.a. PJSC POWER MACHINES; a.k.a. PUBLICHNOE AKTSIONERNOE OBSHCHESTVO SILOVYE MASHINY - ZTL, LMZ, ELEKTROSILA, ENERGOMASHEKSPORT; a.k.a. SILOVYE MASHINY, PAO), 3A Vatutina St., St. Petersburg 195009, Russia; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201 and/or 589.209; Registration ID 1027700004012 (Russia); Tax ID No. 7702080289 (Russia) [UKRAINE-EO13685] [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

43. OPEN JOINT STOCK COMPANY TIKHORETSK MACHINE CONSTRUCTION PLANT V.V. VOROVSKY (a.k.a. JSC TIKHORETSK MACHINE BUILDING PLANT; a.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO TIKHORETSKI MASHINOSTROITELNY ZAVOD IM V.V. VOROVSKOGO; a.k.a. TMCP V.V. VOROVSKY; a.k.a. TMZ IM. V.V. VOROVSKOGO PAO; a.k.a. V.V. VOROVSKY TIKHORETSK MACHINE CONSTRUCTION PLANT JOINT STOCK COMPANY), 3, Sokolnicheskaya Street, Moscow 107014, Russia; Krasnoarmeyskaya St., 67, Tikhoretsk, Krasnodar Territory 352127, Russia; Organization Established Date 12 Nov 1992; Tax ID No. 2321003173 (Russia); Government Gazette Number 00210743 (Russia); Registration Number 1022303184738 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

44. AKTSIONERNOE OBSHCHESTVO BASHVZRYVTEKHNologii (a.k.a. BASHVZRYVTEKHNologii JSC; a.k.a. "BVT AO"; a.k.a. "JSC BVT"), Ul. Rabochaya D. 42, Samara 443041, Russia; Ul. Rostovskaya D. 18, Ufa, Republic of Bashkortostan 450071, Russia; Organization Established Date 10 Nov 2000; Tax ID No. 0276061770 (Russia); Government Gazette Number 52989204 (Russia); Registration Number 1030204205382 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

45. JOINT STOCK COMPANY HMS GROUP (a.k.a. AKTSIONERNOE OBSHCHESTVO GRUPPA GMS; f.k.a. GRUPPA GMS OAO; a.k.a. HMS GROUP JSC; f.k.a. INVESTITSIONNO PROMYSHLENNAYA GRUPPA GIDRAVLICHESKIE MASHINY I SISTEMY OOO), Ul. Chayanova D. 7, Moscow 125047, Russia; Organization Established Date 02 Mar 2004; Registration ID 5087746036483 (Russia); Tax ID No. 7708678325 (Russia); Government Gazette Number 72718329 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

46. TRANSSTROIMEKHANIZATSIYA LIMITED LIABILITY COMPANY (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU TRANSSTROIMEKHANIZATSIYA; a.k.a. TRANSSTROIMEKHANIZATSIYA OOO; a.k.a. TRANSSTROYMEKHANIZATSIYA), Ul. Kievskaya D. 7, Moscow 121059, Russia; Organization Established Date 08 Jul 2005; Tax ID No. 7715568411 (Russia); Government Gazette Number 7800228 (Russia); Registration Number 1057747413767 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the construction sector of the Russian Federation economy.

47. OOO SOLAR SEKYURITI (a.k.a. ROSTELEKOM SOLAR; a.k.a. "RT SOLAR"), Ul. Vyatskaya, 35/4 Bts Vyatka, Moscow 127015, Russia; Per. Nikitskiy, 7c1, Moscow 125009, Russia; Tax ID No. 7718099790 (Russia); Registration Number 1157746204230 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

48. LIMITED LIABILITY COMPANY STRELOI (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU STRELOI; a.k.a. STRELOI OOO; a.k.a. STRELOY LLC), Per. Dmitrovskii D. 13, Office 7, Saint Petersburg 191025, Russia; Organization Established Date 19 Nov 2023; Tax ID No. 7840498176 (Russia); Registration Number 1137847445999 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

49. LUMINOR OY (a.k.a. LUMINOR LOGISTICS), Hakintie 7A, Vantaa, Uusimaa 01380, Finland; Organization Established Date 01 Dec 2015; Tax ID No. 2725693-8 (Finland) [RUSSIA-EO14024] (Linked To: TEMIN, Gabriel).

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy, and pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Gabriel Temin, a person whose property and interests in property are blocked pursuant to E.O. 14024.

50. SIBERICA OY, Hakintie 7A, Vantaa, Uusimaa 01380, Finland; Organization Established Date 28 Oct 2020; Tax ID No. 3167410-4 (Finland) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

51. VERTIKAL LIMITED, Pr-Kt Moskovskii D. 148, Lit. D, Pomeschch. 8, Saint Petersburg 196084, Russia; Organization Established Date 24 Mar 2009; Tax ID No. 7840410492 (Russia); Registration Number 1097847083839 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

52. OOO VMK, ul. im Kutyakova I.S. d. 64a, office 32A, Saratov 410012, Russia; Samara, Russia; Tax ID No. 6450104152 (Russia); Registration Number 1186451024759 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

53. JOINT STOCK COMPANY UNITED METALLURGICAL COMPANY (a.k.a. "AO OMK"), Nab. Ozerkovskaya D. 28, Str. 2, Moscow 115184, Russia; Organization Established Date 23 Nov 1992; Tax ID No. 7736030085 (Russia); Registration Number 1027700121173 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

54. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU KOMMERCHESKI BANK SINKO BANK (a.k.a. COMMERCIAL BANK SINKO BANK; a.k.a. SINKO BANK LTD), D. 11, Str. 1, Per. Posledni, Moscow 107045, Russia; SWIFT/BIC SNKBRUMM; Website www.sinko-bank.ru; Organization Established Date 18 Nov 2002; Target Type Financial Institution; Tax ID No. 7703004072 (Russia); Identification Number FNLZ43.99999.SL.643 (Russia); Legal Entity Number 2534001TS0M7VRJK2567; Registration Number 1027739563610 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

55. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU A1 (a.k.a. LIMITED LIABILITY COMPANY A1; a.k.a. "A1 OOO"; a.k.a. "OOO A1"), d. 12 etazh 13 pom. IAZH kom. 43, naberezhnaya Krasnopresnenskaya, Moscow, Moscow 123610, Russia; Organization Established Date 24 Nov 2017; Tax ID No. 7703437911 (Russia); Registration Number 5177746257035 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

56. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU INVESTITSIONNAYA KOMPANIYA A1 (a.k.a. INVESTITSIONNAYA KOMPANIYA A1 OOO; a.k.a. LIMITED LIABILITY COMPANY INVESTMENT COMPANY A1), d. 12 str. 1 ofis 415, ul. 3-Ya Magistralnaya, Moscow, Moscow 123007, Russia; Organization Established Date 22 Sep 2004; Tax ID No. 7709567988 (Russia); Registration Number 1047796703074 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

57. NAUCHNO PROIZVODSTVENNOE PREDPRIYATIE ITELMA, Sh. Varshavskoe D.47/4, Moscow 115230, Russia; Tax ID No. 7724685256 (Russia); Registration Number 5087746597648 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

58. MARGIANA INSAAT DIS TICARET LIMITED SIRKETI, Koza Mahallesi 1638.Sk.No:1C/7, Esenyurt, Turkey; Organization Established Date 10 Oct 2019; Istanbul Chamber of Comm. No. 212357-5 (Turkey); Central Registration System Number 612129479900001 (Turkey) [RUSSIA-EO14024] (Linked To: SATURN EK OOO; Linked To: LIMITED LIABILITY COMPANY SMT-ILOGIC).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of Limited Liability Company SMT-iLogic and Saturn EK OOO, persons whose property and interests in property are blocked pursuant to E.O. 14024.

59. JOINT STOCK COMPANY GAZSTROYPPROM (a.k.a. AKTSIONERNOE OBSHCHESTVO GAZSTROIIPROM; a.k.a. AO GAZSTROYPPROM; a.k.a. GAZSTROIIPROM AO), Ul. Tashkentskaya D. 3, Korpus 3 Lit. B, Saint Petersburg 196084, Russia; Organization Established Date 21 Jun 2018; Tax ID No. 7842155505 (Russia); Government Gazette Number 29749701 (Russia); Registration Number 1187847178705 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the construction sector of the Russian Federation economy.

60. JOINT STOCK COMPANY ECHELON UNION FOR SCIENCE AND DEVELOPMENT (Cyrillic: АКЦИОНЕРНОЕ ОБЩЕСТВО НАУЧНО-ПРОИЗВОДСТВЕННОЕ ОБЪЕДИНЕНИЕ ЭШЕЛОН) (a.k.a. JOINT STOCK COMPANY SCIENTIFIC PRODUCTION ASSOCIATION ECHELON; a.k.a. JSC NPO ECHELON), D. 24 Str. 1, Ul. Elektrozavodskaya, Moscow, Russia 107023, Russia; Website [www.npo.echelon.ru](http://www.npo.echelon.ru); alt. Website [cnpo.ru](http://cnpo.ru); Organization Established Date 22 Nov 2007; Organization Type: Other information technology

and computer service activities; Tax ID No. 7718676447 (Russia); Registration Number 1077762808683 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

61. JOINT STOCK COMPANY KRAFTWAY CORPORATION PLS (Cyrillic: АКЦИОНЕРНОЕ ОБЩЕСТВО КРАФТВЭЙ КОРПОРАЦИОН ПЛС) (a.k.a. AO KRAFTVEI KORPOREISHN PLS; a.k.a. AO KRAFTWAY PSC; a.k.a. CRAFTWAY CORPORATON PLS; a.k.a. JOINT STOCK COMPANY KRAFTVEY KORPOREYSHN PLS; a.k.a. JSC KRAFTVEY KORPOREYSHN PLS; a.k.a. JSC KRAFTWAY CORPORATION PLC), Sh. Kievskoe d. 64, Obninsk, Kaluga Region 249032, Russia; 16, 3rd Mytishchinskaya Street, Moscow 129626, Russia; Website kraftway.ru; Organization Type: Other information technology and computer service activities; Tax ID No. 5018037096 (Russia); Registration Number 1025002041525 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

62. JOINT STOCK COMPANY SIGNALTEK (Cyrillic: АКЦИОНЕРНОЕ ОБЩЕСТВО СИГНАЛТЕК) (a.k.a. AO SIGNALTEK; a.k.a. JSC SIGNALTEK; a.k.a. SIGNALTEK CLOSED CORPORATION), Ul. Ivovaya D. 2 Et/Pom/Kom 4/I/45, Moscow, Russia 129329, Russia; Website signaltec.ru; Organization Established Date 20 Sep 2011; Organization Type: Other information technology and computer service activities; Tax ID No. 7722756624 (Russia); Registration Number 1117746741210 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

63. LIMITED LIABILITY COMPANY BALTINFOKOM (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ БАЛТИНФОКОМ) (a.k.a. BALTINFOKOM; a.k.a. LIMITED LIABILITY COMPANY BALTINFOCOM; a.k.a. LLC BALTINFOCOM; a.k.a. OOO BALTINFOKOM), Pr-Kt Yaroslavskii D.78, Lit. A, Pom.19N, Saint Petersburg 194214, Russia; 7H, 71, Komstromskoy Avenue, Saint Petersburg 194214, Russia; Website www.baltinfocom.ru; Organization Established Date 06 Jul 2007; Organization Type: Other information technology and computer service activities; Tax ID No. 7810481785 (Russia); Registration Number 1077847481535 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

64. LIMITED LIABILITY COMPANY INFORION (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ИНФОРИОН) (a.k.a. INFORION OOO; a.k.a. LLC INFORION), Ul. Bolshaya Semenovskaya d. 45, Moscow 107023, Russia; Website inforion.ru; Organization Established Date 17 Feb 2006; Organization Type: Other information technology and computer service activities;

Tax ID No. 7715592358 (Russia); Registration Number 1067746288323 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

65. LIMITED LIABILITY COMPANY KVARTA VK (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ КВАРТА ВК) (a.k.a. KVARTA VK; a.k.a. KVARTA VK OOO; a.k.a. LLC KVARTA VK; a.k.a. QVARTA VK COMPANY LIMITED; a.k.a. "QUARTA"), D. 9 Str. 1 Pomeschch/Etazh 3/0/2 Pomeschch/Kom III; IV/1-8, 8, Naberezhnaya Moskvoretskaya, Moscow 109240, Russia; Website quarta.su; Organization Type: Other information technology and computer service activities; Tax ID No. 7704198800 (Russia); Registration Number 1027700300693 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

66. LIMITED LIABILITY COMPANY STATUS COMPLAINS (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ СТАТУС КОМПЛАЙНС) (a.k.a. LLC STATUS COMPLAINS; a.k.a. STATUS COMPLIANCE; a.k.a. STATUS KOMPLAINS; a.k.a. STATUS KOMPLAINS OOO; a.k.a. "STATUS-IT"), Ul. Bolshaya Semenovskaya D. 45, Moscow, Russia 107023, Russia; Website status-it.com/index/php/ru; alt. Website status-it.com; Organization Type: Other information technology and computer service activities; Tax ID No. 7719404118 (Russia); Registration Number 1157746136052 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

67. LIMITED LIABILITY COMPANY TRIBIT (a.k.a. LLC TRIBIT; a.k.a. TRIBIT; a.k.a. TRIBIT OOO), d. 27/8 pom. P53, ul. Varvaskaya, Nizhni Novgorod Region 603006, Russia; Website tribit.ru; Organization Established Date 20 Sep 2018; Organization Type: Other information technology and computer service activities; Tax ID No. 5260457937 (Russia); Registration Number 1185275050905 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

68. KIROVSKY ZAVOD PUBLIC JOINT STOCK COMPANY (f.k.a. KIROVSKI ZAVOD OAO; a.k.a. KIROVSKI ZAVOD PAO; a.k.a. KIROVSKII ZAVOD; a.k.a. KIROVSKY ZAVOD GROUP; a.k.a. PUBLICHNOE AKTSIONERNOE OBSHCHESTVO KIROVSKI ZAVOD), PR-KT Stachek D. 47, Saint Petersburg 198097, Russia; Organization Established Date 05 Nov 1992; Tax ID No. 7805019279 (Russia); Government Gazette Number 07519047 (Russia); Registration Number 1027802712365 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.



69. OPEN JOINT STOCK COMPANY AERO ENGINE SCIENTIFIC AND TECHNICAL COMPANY SOYUZ (a.k.a. AESTC SOYUZ; f.k.a. MOSKOVSKOYE NAUCHNO-PROIZVODSTVENNOYE OBYEDINENIYE SOYUZ), 2/4, Luzhnetskaya Naberezhnaya, Moscow 119270, Russia; Tax ID No. 7704104217 (Russia); Registration Number 1027739017162 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

70. OPEN JOINT STOCK COMPANY BALASHIKHINSKIY LITEYNO MEKHANICHESKIY ZAVOD (a.k.a. BALASHIKHA CASTING MECHANICAL PLANT OJSC; a.k.a. "BLMZ"), 4, Entuziastov, Balashikha 143912, Russia; Tax ID No. 5001000027 (Russia); Registration Number 1025000510534 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

71. AKTSIONERNOE OBSHCHESTVO MOSINZHPROEKT (a.k.a. MOSINZHPROEKT AO; a.k.a. MOSINZHPROEKT JSC), B-R Khodynskii D.10, Moscow 125252, Russia; Per. Sverchkov D. 4/1, Moscow 101000, Russia; Organization Established Date 03 Aug 2010; Tax ID No. 7701885820 (Russia); Government Gazette Number 03997784 (Russia); Registration Number 1107746614436 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the construction sector of the Russian Federation economy.

72. GRIB DIAMONDS, Schupstraat 21, Antwerpen 2018, Belgium; Organization Established Date 12 Apr 2012; V.A.T. Number BE0845338469 (Belgium); Tax ID No. 0845338469 (Belgium); Company Number 2.208.926.263 (Belgium) [RUSSIA-EO14024] (Linked To: JSC AGD DIAMONDS).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, JSC AGD Diamonds, a person whose property and interests in property are blocked pursuant to E.O. 14024.

73. JSC AGD DIAMONDS (a.k.a. AO AGD DAIMONDS), Pr-Kt Troitski D.168, Arkhangel'sk 163001, Russia; Organization Established Date 22 Apr 1931; Tax ID No. 2901071160 (Russia); Registration Number 1022900508036 (Russia) [RUSSIA-EO14024]

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

74. JOINT STOCK COMPANY SPECIAL ECONOMIC ZONE TECHNOLIS MOSCOW (a.k.a. JSC SEZ TECHNOLIS MOSCOW; f.k.a. SEZ ZELENOGRAD; f.k.a. TVZ ZELENOGRAD), Per. Pechatnikov D. 12, Moscow

107045, Russia; Tax ID No. 7735143008 (Russia); Registration Number 1157746364060 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

75. AKTSIONERNOE OBSHCHESTVO ULYANOVSKII PATRONNYI ZAVOD (a.k.a. JSC THE ULYANOVSK CARTRIDGE WORKS; a.k.a. ULNAMMO; a.k.a. "AO UPZ"), ul. Shoferov D. 1, Ulyanovsk 432007, Russia; Tax ID No. 7328500127 (Russia); Registration Number 1047301521520 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

- B. On September 14, 2023, OFAC updated the entry on the SDN List for the following person, whose property and interests in property subject to U.S. jurisdiction continues to be blocked under the relevant sanctions authority listed below.

1. LIMITED LIABILITY COMPANY PERM OIL MACHINE COMPANY, Ul. Tekhnicheskaya D. 5, Perm 614070, Russia; Organization Established Date 11 Jun 1996; Tax ID No. 7727653358 (Russia); Registration Number 1087746698137 (Russia) [RUSSIA-EO14024].

-to-

LIMITED LIABILITY COMPANY PERM OIL MACHINE COMPANY, Ul. Tekhnicheskaya D. 5, Perm 614070, Russia; Organization Established Date 11 Jun 1996; Tax ID No. 5906999380 (Russia); Registration Number 1145958033055 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

- C. On September 25, 2023, OFAC updated the entry on the SDN List for the following person, whose property and interests in property subject to U.S. jurisdiction continues to be blocked under the relevant sanctions authority listed below.

1. LIMITED LIABILITY COMPANY STRELOI (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU STRELOI; a.k.a. STRELOI OOO; a.k.a. STRELOY LLC), Per. Dmitrovskii D. 13, Office 7, Saint Petersburg 191025, Russia; Organization Established Date 19 Nov 2023; Tax ID No. 7840498176 (Russia); Registration Number 1137847445999 (Russia) [RUSSIA-EO14024].

-to-

LIMITED LIABILITY COMPANY STRELOI (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU STRELOI; a.k.a. STRELOI OOO; a.k.a. STRELOY LLC), Per. Dmitrovskii D. 13, Office 7, Saint Petersburg 191025, Russia; Organization Established Date 19 Nov 2013; Tax ID No. 7840498176 (Russia); Registration Number 1137847445999 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

D. On September 14, 2023, OFAC removed from the SDN List the person listed below, who was subject to prohibitions imposed pursuant to E.O. 14024.

1. ALYMOVA, Natalya Andreevna (Cyrillic: АЛЫМОВА, Наталья Андреевна), Russia; DOB 27 Feb 1979; POB Moscow, Russia; nationality Russia; Gender Female (individual) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Dated: September 25, 2023.

**Bradley T. Smith,**

*Director, Office of Foreign Assets Control,  
U.S. Department of the Treasury.*

[FR Doc. 2023–21224 Filed 9–27–23; 8:45 am]

**BILLING CODE 4810–AL–C**

#### Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

#### Notice of OFAC Actions

OFAC previously determined on October 6, 2022 that the individual listed below met one or more of the criteria under Executive Order 14014 of February 10, 2021, “Blocking Property With Respect to the Situation in Burma” (“E.O. 14014”). On September 25, 2023, the Director of OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following individual are no longer blocked, and the individual has been removed from the SDN list.

#### Individual

1. MYINT, Hlaing Moe, Burma; DOB 09 Jun 1971; nationality Burma; Gender Male; Registration Number 12/YAKANA(N)006982 (Burma) (individual) [BURMA–EO14014] (Linked To: DYNASTY INTERNATIONAL COMPANY LIMITED).

*Authority:* E.O. 14014, 86 FR 9429.

Dated: September 25, 2023.

**Bradley T. Smith,**

*Director, Office of Foreign Assets Control,  
U.S. Department of the Treasury.*

[FR Doc. 2023–21185 Filed 9–27–23; 8:45 am]

**BILLING CODE 4810–AL–P**

#### DEPARTMENT OF THE TREASURY

##### Office of Foreign Assets Control

##### Notice of OFAC Sanctions Actions

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons whose property and interests in property have been unblocked and who have been removed from the SDN 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:

#### DEPARTMENT OF THE TREASURY

##### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice to Account Holder for Garnishment of Accounts Containing Federal Benefit Payments

**AGENCY:** Departmental Offices, Department of the Treasury.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** The Department of the Treasury 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. The public is invited to submit comments on this request.

**DATES:** Comments should be received on or before October 30, 2023 to be assured of consideration.

**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:**

Copies of the submissions may be obtained from Spencer W. Clark by emailing [PRA@treasury.gov](mailto:PRA@treasury.gov), calling (202) 927–5331, or viewing the entire information collection request at [www.reginfo.gov](http://www.reginfo.gov).

**SUPPLEMENTARY INFORMATION:**

**Departmental Offices (DO)**

*Title:* Notice to Account Holder for Garnishment of Accounts Containing Federal Benefit Payments.

*OMB Control Number:* 1505–0230.

*Type of Review:* Extension without change of a currently approved collection.

*Description:* On May 29, 2013, the Department of the Treasury, Social Security Administration, Department of Veterans Affairs, Railroad Retirement Board and the Office of Personnel Management (Agencies) published a final rule, which governed the garnishment of certain federal benefit payments that are directly deposited to accounts at financial institutions. Social Security benefits, Supplemental Security Income benefits, VA benefits, Federal Railroad retirement benefits, Civil Service Retirement System and Federal Employee Retirement System benefits are exempt under federal law from garnishment orders. The final rule gave force and effect to the federal anti-garnishment statutes. The rule also addressed the hardships that recipients of federal benefit payments encountered when a financial institution placed a freeze on an account containing certain types of exempt federal benefit payments that had been directly deposited, and the difficulties that financial institutions had in determining whether funds deposited into an account are exempt from garnishment. The primary goals of the rule were (1) to ensure that benefit recipients have full and customary access to exempt funds; (2) to protect financial institutions from liability when, having received a garnishment order for an account holder receiving exempt federal benefit payments, they allow the account holder access to exempt funds in the account; and (3) to establish straightforward, uniform, cost effective procedures addressing the

extent to which financial institutions may, pursuant to garnishment orders, freeze or seize funds in accounts that contain federal benefits.

The collection of information in the Final Rule is found in §§ 212.6 Rules and procedures to protect benefits and is authorized under 12 U.S.C. 1786 and 12 U.S.C. 1818.

*Form:* None.

*Affected Public:* Private Sector; State, Local and Tribal governments.

*Estimated Number of Respondents:* 487,750.

*Frequency of Response:* On occasion.  
*Estimated Total Number of Annual Responses:* 487,750.

*Estimated Time per Response:* 5–10 minutes.

*Estimated Total Annual Burden Hours:* 76,688.

*Authority:* 44 U.S.C. 3501 *et seq.*

**Spencer W. Clark,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2023–21282 Filed 9–27–23; 8:45 am]

**BILLING CODE 4810–AK–P**

**DEPARTMENT OF THE TREASURY**

**Senior Executive Service; Performance Review Boards**

**AGENCY:** Department of the Treasury.

**ACTION:** Notice of Appointments to Performance Review Boards (PRBs).

**SUMMARY:** This notice announces the appointment of members to the Department of the Treasury’s Performance Review Boards (PRBs). The purpose of these Boards are to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions in the Department.

**DATES:** Membership is effective on the date of this notice.

**FOR FURTHER INFORMATION CONTACT:**

Kimberly Jackson or Tanya Everett, Office of Executive Resources, 1500 Pennsylvania Avenue NW, ATTN: 1722 Eye Street, 9th Floor, Washington, DC 20220, Telephone: 202–622–0774.

**SUPPLEMENTARY INFORMATION:**

*Composition of the PRB:* The Boards shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The persons listed below may be selected to serve on one or more PRB within Treasury.

**Names for Federal Register Publication Top Officials**

- Anna Canfield Roth, Assistant Secretary for Management

- Patricia Greiner, Deputy Director, Chief Administrative Officer, Bureau of Engraving and Printing
- Charlene Williams, Deputy Director, Chief Operating Officer, Bureau of Engraving and Printing and
- Timothy Gribben, Commissioner for the Bureau of the Fiscal Service
- Tami Perriello, Deputy Commissioner (Transformation and Modernization), Bureau of the Fiscal Service
- Matthew J. Miller, Deputy Commissioner (Financing and Operations), Bureau of the Fiscal Service
- Jeffrey J. Schramek, Executive Director Administrative Resource Center, Bureau of the Fiscal Service
- Andrea Gackie, Director, Financial Crimes Enforcement Network
- Kristie L. McNally, Deputy Director of the Mint
- Jeffrey Tribiano, Deputy Commissioner for Operations Support (IRS)
- Douglas O’Donnell, Deputy Commissioner for Services and Enforcement (IRS)
- Mary G. Ryan, Administrator for the Alcohol and Tobacco Tax and Trade Bureau
- David Wulf, Deputy Administrator for the Alcohol and Tobacco Tax and Trade Bureau
- David Lebryk, Fiscal Assistant Secretary
- Laurie Schaffer, Principal Deputy General Counsel
- Addar Levi, Deputy General Counsel
- Eric Nguyen, Deputy General Counsel

**Departmental Offices**

- Didem Nisanci, Chief of Staff
- Aditi Hardikar, Deputy Chief of Staff
- Kayla Arslanian, Executive Secretary
- Donna Ragucci, Director for the Office of Small and Disadvantaged Business Utilization
- Janis Bowdler, Counselor for Racial Equity
- Aditi Hardikar, Deputy Chief of Staff
- Ethan Zindler, Climate Counselor to the Secretary
- Andy Baukol, Counselor to the Secretary
- Diane Lim, Director, Treasury Equity Hub
- Laurel Blatchford, Chief Implementation Officer for the IRA
- Ari Krupkin, Director of Strategic Planning and Protocol
- Brian Reissaus, DAS Investment Security Operations
- Andrew Fair, Director, Reviews and Investigations
- David Shogren, Director, Monitoring and Enforcement
- James Secreto, Counselor
- Patricia Pollard, Deputy Assistant Secretary for International Money and Financial Policy

- Evangelia Bouzidis, Senior Advisor
- Mary Svenstrup, Director, Office of International Monetary Policy
- Brian McCauley, Deputy Assistant Secretary, Europe and Eurasia
- Jeffrey Baker, Director, Office of Development Results and Accountability
- Margaret Kuhlow, DAS International Development Finance and Policy
- Alejandro Mares, Director, Western Hemisphere Office
- Robert Kaproth, Deputy Assistant Secretary for South and East Asia
- Michael Kaplan, Deputy Assistant Secretary for Western Hemisphere and South Asia
- Albert Lee, Director, Market Rooms
- Shannon Ding, Director, Office of East Asia
- Lailee Moghtader, Deputy Assistant Secretary for Trade Policy
- Charles Moravec, Director, Multilateral Development Banks
- Clarence Severens, Senior Advisor
- Lida Fitts, Director, Office of Energy and Infrastructure
- Margaret Crane, Director, Office of African Nations
- Mathew Haarsager, Treasury Attaché
- Eric Meyer, Deputy Assistant Secretary, Africa and Middle East
- Jason R. Orlando, Director, Office of Technical Assistance
- Sean Hoskins, Director of Policy
- Nicholas Steele, Director of Analysis
- Renata Miskell, Deputy Assistant Secretary for Accounting Policy and Financial Transparency
- Gregory Till, Deputy Assistant Secretary for Fiscal Operations and Policy
- Christopher H. Kubeluis, Director for the Office of Fiscal Projections
- Walter Kim, Director for the Office of Financial Institutions Policy
- Noel Poyo, Deputy Assistant Secretary for Community and Economic Development
- Brian Peretti, Director of International Coordination and Mission Support
- Steven E. Seitz, Director Federal Insurance Office
- Stephanie Schmelz, Deputy Director of the Federal Insurance Office
- Todd Conklin, Deputy Assistant Secretary for Cybersecurity and Critical Infrastructure Protection
- Natalia Li, Director Office of Consumer Policy
- Suzanna Fritzberg, Deputy Assistant Secretary for Capital Access
- Dennis E. Nolan, Deputy Director for Finance and Operations
- Marcia Sigal, Deputy Director for Policy and Programs
- Brian M. Smith, Deputy Assistant Secretary for Federal Finance
- Gary Grippio, Deputy Assistant Secretary for Public Finance
- Fred Pietrangeli, Director for the Office of Debt Management
- Nandini Ajmani, Deputy Assistant Secretary for Capital Markets
- Melissa Moye, Director, Office of State and Local Finance
- Jeffrey Kim, Director, Federal Program Finance
- Paul Ahern, Counselor to the Under Secretary for Terrorism and Financial Intelligence
- Bradley T. Smith, Deputy Director for the Office of Foreign Assets Control
- Gregory Gatjanis, Associate Director for the Office of Global Targeting
- Lisa M. Palluconi, Associate Director, Sanctions Policy and Implementation
- John H. Battle, Associate Director, Office of Sanctions Support & Operations
- John M. Farley, Director, Executive Office for Asset Forfeiture
- Billy Bradley, Deputy Director, Treasury Executive Office for Asset Forfeiture
- Lawrence Scheinert, Associate Director for the Office of Compliance and Enforcement
- Ripley Quinby, IV, Deputy Associate Director, Office of Global Targeting
- Scott Rembrandt, Deputy Assistant Secretary for the Office of Strategic Policy, Terrorist Financing and Financial Crimes
- Anna Morris, Deputy Assistant Secretary for Global Affairs
- Jesse Baker, Deputy Assistant Secretary for Global Affairs (Asia/Middle East)
- Rhett Skiles, Deputy Assistant Secretary, Cyber Intelligence
- Thomas Wolverton, Deputy Assistant Secretary for Security and Counterintelligence
- Katherine Amlin, Deputy Assistant Secretary for Analysis and Production
- Michael Doyle, Director, Office of Security Programs
- Michael Neufeld, Principal Deputy Assistant Secretary for Support and Technology
- Patrick Conlon, Director for Civil Liberties, Privacy Protection and Transparency
- Ronald Storhaug, Deputy Assistant Secretary for Legislative Affairs (Tax & Budget)
- Corey Tellez, Principal Deputy Assistant Secretary for Legislative Affairs
- Christopher Burdick, Deputy Assistant Secretary for Legislative Affairs (Terrorism and Financial Intelligence)
- Angel Nigagliioni, Deputy Assistant Secretary for Legislative Affairs (Appropriations and Management)
- Isabella More, Deputy Assistant Secretary for Legislative Affairs (Oversight)
- Diana Pilipenko, Deputy Assistant Secretary for Legislative Affairs (International Affairs)
- Michael Gwin, Deputy Assistant Secretary for Public Affairs (Terrorism and Financial Intelligence)
- Scott Arceneaux, Deputy Assistant Secretary for Public Engagement
- Eric Van Nostrand, Deputy Assistant Secretary for Financial Economics
- Christopher Soares, Director, Microeconomic Analysis
- Jonathan S. Jaquette, Director for Receipts Forecasting
- Thomas West, Jr., Deputy Assistant Secretary for Tax Policy
- Neviana Petkova, Director for Business and International Taxation
- Robert Gillette, Director for the Office of Tax Analysis
- Curtis Carlson, Director of Business Revenue
- Adam Cole, Director for Individual Taxation
- Seth Hanlon, Deputy Assistant Secretary for Tax & Climate Policy
- Gregory Leiserson, Deputy Assistant Secretary for Tax Analysis
- Michael Plowgian, Deputy Assistant Secretary for International Tax Affairs
- Jaime Rullan, Deputy Chief Financial Officer
- Jessica Milano, Chief Program Officer
- Victoria Collin, Chief Compliance and Finance Officer, Office of Recovery Programs
- Jeffrey Stout, Deputy Chief Program Officer for Small Business and Industry
- Ryan Law, Deputy Assistant Secretary for Privacy Transparency and Records
- Robert Mahaffie, Deputy Assistant Secretary for Management and Budget
- Tonya Burton, Director for the Office of Financial Management
- Lenora Stiles, Director, Strategic Planning and Performance Improvement
- Kawan Taylor, Director, Financial Reporting, Policy and Operations
- William Sessions, Departmental Budget Director
- Carole Y. Banks, Deputy Chief Financial Officer
- Nicole K. Evans, Director, Office of the Procurement Executive
- J. Trevor Norris, Deputy Assistant Secretary for Human Resources and Chief Human Capital Officer
- Snider Page, Director, Office of Civil Rights and Equal Employment Opportunity
- Lorraine Cole, Chief Diversity and Inclusion for Departmental Offices
- Colleen Heller-Stein, Deputy Chief Human Capital Officer
- Nancy Ostrowski, Director, Office of DC Pensions
- David Aten, Director, Associate Chief Human Capital Officer, IRS Human Capital Transformation

- Antony P. Arcadi, Deputy Assistant Secretary, Information Systems and Chief Information Officer
- Roger Adams, Associate Chief Information Officer for Enterprise Infrastructure Operations Services
- Roger Mishoe, Chief Data Officer
- Sarah Nur, Associate Chief Information Officer for Cyber Security
- Nicolaos Totten, Associate Chief Information Officer for Enterprise Application Services
- Nancy Sieger, Chief Technology Officer
- Verline Shepherd, Bureau Chief Information Officer for Departmental Offices
- Jeffrey King, Deputy Chief Information Officer

#### Office of the General Counsel

- Mark Vetter, Deputy Assistant General Counsel (Ethics)
- Jacob Loshin, Assistant General Counsel (Enforcement and Intelligence)
- Frank P. Menna, Deputy Assistant General Counsel (Enforcement and Intelligence)
- Eric Froman, Assistant General Counsel (Banking and Finance)
- Stephen Milligan, Deputy Assistant General Counsel (Banking and Finance)
- Nayla Kawerk, Deputy Assistant General Counsel (International Affairs)
- Theodore Posner, Assistant General Counsel (International Affairs)
- Alexandra Yestrumskas, Deputy Assistant General Counsel (International Affairs)
- Jeffrey M. Klein, Deputy Assistant General Counsel (International Affairs)
- Brian J. Sonfield, Assistant General Counsel (General Law, Ethics and Regulation)
- Michael Briskin, Deputy Assistant General Counsel (General Law and Regulation)
- Lindsay Kitzinger, International Tax Counsel
- Krishna Prasad Vallabhaneni, Tax Legislative Counsel
- Carol Ann Weiser, Benefits Tax Counsel
- Helen Morrison, Deputy Benefits Tax Counsel
- Brett Steven York, Deputy Tax Legislative Counsel
- Michelle Dickerman, Deputy Assistant General Counsel for Litigation, Oversight and Financial Stability
- Katrina Carroll, Chief Counsel for the Financial Crimes Enforcement Network
- Heather Book, Chief Counsel for the Bureau of Engraving and Printing

- John F. Schorn, Chief Counsel for the U.S. Mint
- Lillian Lai-Lin Cheng, Chief Counsel for the Bureau of the Fiscal Service
- Christina McMahon, Chief Counsel for Alcohol and Tobacco Tax and Trade Bureau

#### Bureau of Engraving and Printing

- Dwayne Thomas, Associate Director
- Steven Fisher, Associate Director (Chief Financial Officer)
- Richard Roy Clark, Associate Director (Quality)
- Craig Deitrick, Associate Director (Management)
- Justin D. Draheim, Associate Director (Product Design and Development)
- Harinder Singh, Associate Director, (Chief Information Officer)
- Ronald Voelker, Associate Director, Manufacturing (WCF)
- Yolanda Ward, Associate Director, Manufacturing (DCF)

#### Financial Crimes Enforcement Network

- Himamauli Das, Counselor to the Director of the Financial Crimes and Enforcement Network
- Amy L. Taylor, Associate Director, Technology Solutions and Services Division/CIO
- Peter Bergstrom, Associate Director, Management/CFO
- Felicia Swindells, Associate Director, Policy Division
- Jimmy Kirby Jr., Associate Director, Intelligence Division
- Whitney Case, Associate Director, Enforcement and Compliance Division
- Kenneth L. O'Brien, Deputy Associate Director
- Matthew R. Stiglitz, Associate Director, Global Investigations Division

#### U.S. Mint

- Kenyatta Fletcher, Associate Director for Financial Management/CFO
- Francis O'Hearn, Associate Director for Information Technology
- Robert Kuryzna, Plant Manager, Philadelphia
- Randall Johnson, Plant Manager for Denver

#### Alcohol and Tobacco Tax and Trade Bureau

- Emily Streett, Assistant Administrator, Headquarters Operations
- Caroline F. May, Assistant Administrator, Field Operations
- Gregory Greeley, Assistant Administrator, Information Resources/CIO
- Amy Graydon, Assistant Administrator, External Affairs/Chief of Staff

- Anthony Gledhill, Assistant Administrator, Permitting and Taxation
- Elisabeth C. Kann, Chief Strategy Officer

#### Bureau of the Fiscal Service

- Joseph Gioeli, Assistant Commissioner (Chief Information Officer/Information and Security Services)
- Peter T. Genova, Deputy Chief Information Officer
- Nathaniel Reboja, Deputy Assistant Commissioner and Chief Technology Officer
- Daniel Berger, Chief Financial Officer
- Erica Gaddy, Deputy Chief Financial Officer
- Dara Seaman, Associate Commissioner Financial Operations
- Linda C. Chero, Assistant Commissioner, Disbursing and Debt Management
- Marisa F. Anthony, Deputy Assistant Commissioner (Payment Management)
- Vona Susan Robinson, Regional Financial Center Executive Director—Kansas City
- Sandra Paylor, Assistant Commissioner (Fiscal Accounting)
- Tannura Elie, Director, Revenue Collection Group
- Madiha D. Latif, Director, Director, Cash Management Infrastructure Group
- Lori Santamorenna, Government Securities Regulations Staff
- Douglas Anderson, Assistant Commissioner (Retail Securities Services)
- Paula E. Corbin, Assistant Managing Director (Service Delivery)
- Daniel J. Vavasour, Managing Director (MMCC)
- Christina M. Cox, Deputy Assistant Commissioner (Debt Management Services)
- Wallace H. Ingram, Director (Debt Management Services Operations Center—West)
- Keith Alderson, Director (Debt Management Services Operations Center—East)
- David T. Copenhaver, Assistant Commissioner (Wholesale Securities Services)
- Thomas T. Vannoy, Deputy Assistant Commissioner (Wholesale Securities Services)
- Adam H. Goldberg, Business Transformation Executive
- D. Michael Linder, Assistant Commissioner Federal Finance
- Tamela Saiko, Deputy Assistant Commissioner (Fiscal Accounting Operations)
- Matthew Garber, Chief Customer Officer

- Justin Marsico, Chief Data Officer
- Paul E. Deuley, Managing Director (Service Delivery)
- Jason T. Hill, Assistant Managing Director (MMCC)
- Amanda M. Kupfner, Chief Strategy Integration Officer
- Alyssa W. Riedl, Deputy Assistant Commissioner (Retail Securities Services)
- Angela Jones, Chief Human Resource Officer

**Kimberly Jackson,**

*Human Resources Specialist, Office of Executive Resources.*

[FR Doc. 2023–21197 Filed 9–27–23; 8:45 am]

**BILLING CODE 4810-AK-P**

## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0031]

### Agency Information Collection Activity Under OMB Review: Veteran/ Servicemember's Supplemental Application for Assistance in Acquiring Specially Adapted Housing

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration,

Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

**DATES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](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. Refer to “OMB Control No. 2900–0031.”

#### FOR FURTHER INFORMATION CONTACT:

Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email [maribel.aponte@va.gov](mailto:maribel.aponte@va.gov). Please refer to “OMB Control No. 2900–0031” in any correspondence.

#### SUPPLEMENTARY INFORMATION:

*Authority:* Public Law 104–13; 44 U.S.C. 3501–3521.

*Title:* Veteran/Servicemember's Supplemental Application for Assistance in Acquiring Specially Adapted Housing, VA Form 26–4555c.

*OMB Control Number:* 2900–0031.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Title 38, U.S.C., chapter 21, authorizes a VA program of grants for specially adapted housing for disabled veterans or service members. Section 2101(a) of this chapter specifically outlines those determinations that must be made by VA before such grant is approved for a particular veteran or service member. VA Form 26–4555c is used to collect information that is necessary for VA to meet the requirements of 38 U.S.C. 2101(a). Also, see 38 CFR 36.4402(a), 36–4404(a), and 36.4405.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at: 88 FR 47948 on July 25, 2023, page 47948.

*Affected Public:* Individuals or Households.

*Estimated Annual Burden:* 350 Hours.

*Estimated Average Burden per Respondent:* 15 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 1,400.

By direction of the Secretary.

**Maribel Aponte,**

*VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.*

[FR Doc. 2023–21210 Filed 9–27–23; 8:45 am]

**BILLING CODE 8320–01–P**



# FEDERAL REGISTER

---

Vol. 88

Thursday,

No. 187

September 28, 2023

---

## Part II

### Department of Energy

---

10 CFR Parts 429 and 431

Energy Conservation Program: Energy Conservation Standards for  
Dedicated Purpose Pool Pump Motors; Final Rule



## DEPARTMENT OF ENERGY

## 10 CFR Parts 429 and 431

[EERE–2017–BT–STD–0048]

RIN 1904–AF27

**Energy Conservation Program: Energy Conservation Standards for Dedicated Purpose Pool Pump Motors**

**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 dedicated purpose pool pump motors. When DOE is considering adopting energy conservation standards, EPCA requires that the standards be designed to achieve the maximum improvement in energy efficiency, which DOE determines is technologically feasible and economically justified. In this final rule, DOE is adopting amended energy conservation standards for dedicated purpose pool pump motors. It has determined that the new energy conservation standards for these products would result in significant conservation of energy, and are technologically feasible and economically justified.

**DATES:** The effective date of this rule is November 27, 2023. Compliance with the new standards established for dedicated purpose pool pump motors with motor total horsepower <0.5 THP in this final rule is required on and after September 29, 2025. Compliance with the new standards established for dedicated purpose pool pump motors with motor total horsepower ≥0.5 THP and <1.15 THP in this final rule is required on and after September 28, 2027. Finally, compliance with the new standards established for dedicated purpose pool pump motors with motor total horsepower ≥1.15 THP and ≤5 THP in this final rule is required on and after September 29, 2025. The incorporation of reference of certain material listed in this rule is approved by the Director of the Federal Register on November 27 2023.

**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 [www.regulations.gov/docket/EERE-2017-BT-STD-0048](http://www.regulations.gov/docket/EERE-2017-BT-STD-0048). 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:**

Mr. Jeremy Domm, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

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

**SUPPLEMENTARY INFORMATION:** DOE incorporates by reference the following standard into parts 429 and 431:

UL 1004–10, *Standard for Safety for Pool Pump Motors*, Revised First Edition, Dated March 24, 2022 (“UL 1004–10:2022”).

Copies of UL 1004–10:2022 can be obtained from: Underwriters Laboratories (“UL”), 333 Pfingsten Road, Northbrook, IL 60062, (841) 272–8800, or go to [www.ul.com](http://www.ul.com).

For a further discussion of this standard, see section VI.N of this document.

**Table of Contents**

## I. Synopsis of the Final Rule

- A. Benefits and Costs to Consumers
- B. Impact on Manufacturers
- C. National Benefits and Costs
- D. Conclusion

## II. Introduction

- A. Authority
- B. Background
  - 1. Current Standards
  - 2. History of Standards Rulemaking for DPPP Motors

## III. General Discussion

- A. General Comments
- B. Test Procedure
- C. Technological Feasibility
  - 1. General
  - 2. Maximum Technologically Feasible Levels
- D. Energy Savings
  - 1. Determination of Savings

## 2. Significance of Savings

## E. Economic Justification

## 1. Specific Criteria

- a. Economic Impact on Manufacturers and Consumers
- b. Savings in Operating Costs Compared to Increase in Price (LCC and PBP)
- c. Energy Savings
- d. Lessening of Utility or Performance of Products
- e. Impact of Any Lessening of Competition
- f. Need for National Energy Conservation
- g. Other Factors
  - 2. Rebuttable Presumption

## IV. Methodology and Discussion of Related Comments

## A. Market and Technology Assessment

- 1. Scope of Coverage and Definitions
- 2. Market Review
- 3. Equipment Classes
- 4. Technology Options

## B. Screening Analysis

## C. Engineering Analysis

- 1. Efficiency Analysis
  - a. Representative Units
  - b. Baseline Efficiency
  - c. Higher Efficiency Levels
- 2. Cost Analysis
- D. Markups Analysis
- E. Energy Use Analysis

## 1. DPPP Motor Applications

## 2. DPPP Motor Consumer Sample

## 3. Self-Priming and Non-Self-Priming Pool Pump Motor Input Power

## 4. Pressure Cleaner Booster Pumps Motor Input Power

## 5. Daily Operating Hours

## 6. Annual Days of Operation

## F. Life-Cycle Cost and Payback Period Analysis

- 1. Equipment Cost
- 2. Installation Costs
- 3. Annual Energy Consumption
- 4. Energy Prices
- 5. Maintenance and Repair Costs
- 6. Equipment Lifetime
- 7. Discount Rates
- 8. Energy Efficiency Distribution in the No-New-Standards Case
- 9. Payback Period Analysis
- G. Shipments Analysis
  - 1. Base-Year Shipments
  - 2. No-New-Standards Case Shipment Projections

## 3. Standards Case Shipment Projections

## H. National Impact Analysis

- 1. Product Efficiency Trends
- 2. National Energy Savings
- 3. Net Present Value Analysis
- I. Consumer Subgroup Analysis
- J. Manufacturer Impact Analysis

## 1. Overview

- 2. Government Regulatory Impact Model and Key Inputs
  - a. Manufacturer Production Costs
  - b. Shipments Projections
  - c. Product and Capital Conversion Costs
  - d. Markup Scenarios
- 3. Manufacturer Interviews

## 4. Comments From Interested Parties

## K. Emissions Analysis

- 1. Air Quality Regulations Incorporated in DOE’s Analysis

## L. Monetizing Emissions Impacts

- 1. Monetization of Greenhouse Gas Emissions

- a. Social Cost of Carbon
- b. Social Cost of Methane and Nitrous Oxide
- 2. Monetization of Other Emissions Impacts
- M. Utility Impact Analysis
- N. Employment Impact Analysis
- V. Analytical Results and Conclusion
  - A. Trial Standard Levels
  - B. Economic Justification and Energy Savings
    - 1. Economic Impacts on Individual Consumers
      - a. Life-Cycle Cost and Payback Period
      - b. Consumer Subgroup Analysis
      - c. Rebuttable Presumption Payback
    - 2. Economic Impacts on Manufacturers
      - a. Industry Cash Flow Analysis Results
      - b. Direct Impacts on Employment
      - c. Impacts on Manufacturing Capacity
      - d. Impacts on Subgroups of Manufacturers
      - e. Cumulative Regulatory Burden
    - 3. National Impact Analysis
      - a. Significance of Energy Savings
      - b. Net Present Value of Consumer Costs and Benefits
      - c. Indirect Impacts on Employment
    - 4. Impact on Utility or Performance of Products
    - 5. Impact of Any Lessening of Competition
    - 6. Need of the Nation To Conserve Energy
    - 7. Other Factors
    - 8. Summary of Economic Impacts
  - C. Conclusion
    - 1. Benefits and Burdens of TSLs Considered for DPPP Motor Standards
    - 2. Annualized Benefits and Costs of the Adopted Standards
- VI. Procedural Issues and Regulatory Review
  - A. Review Under Executive Orders 12866, 13563, and 14904
  - B. Review Under the Regulatory Flexibility Act

- 1. Need for, Objectives of, and Legal Basis for, Rule
- 2. Significant Comments in Response to the IRFA
- 3. Comments Filed by the Chief Counsel for Advocacy
- 4. Description on Estimated Number of Small Entities Regulated
- 5. Description and Estimate of Compliance Requirements Including Differences in Cost, if Any, for Different Groups of Small Entities
- 6. Significant Alternatives to the Rule
- C. Review Under the Paperwork Reduction Act
- D. Review Under the National Environmental Policy Act of 1969
- E. Review Under Executive Order 13132
- F. Review Under Executive Order 12988
- G. Review Under the Unfunded Mandates Reform Act of 1995
- H. Review Under the Treasury and General Government Appropriations Act, 1999
- I. Review Under Executive Order 12630
- J. Review Under the Treasury and General Government Appropriations Act, 2001
- K. Review Under Executive Order 13211
- L. Information Quality
- M. Congressional Notification
- N. Description of Materials Incorporated by Reference
- VII. Approval of the Office of the Secretary

### I. Synopsis of the Final Rule

The Energy Policy and Conservation Act, Public Law 94–163, as amended (“EPCA”),<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 the Energy Policy and Conservation Act, as

amended (EPCA)<sup>2</sup> established the Energy Conservation Program for Certain Industrial Equipment. (42 U.S.C. 6311–6317) Such equipment includes electric motors, which include dedicated-purpose pool pump motors (“DPPP motors” or “DPPPMs” or “pool pump motors”), the subject of this rulemaking. (42 U.S.C. 6311(1)(A)). This rulemaking does not concern standards for dedicated-purpose pool pumps (“DPPPs”), which are being addressed in a separate rulemaking.<sup>3</sup>

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

In accordance with these and other statutory provisions discussed in this document, DOE is adopting new energy conservation standards for DPPP motors. The adopted standards, which are expressed in full-load efficiency and design requirements, are shown in Table I.1. DOE is finalizing standards that apply to all products listed in Table I.1 and manufactured in, or imported into, the United States starting on the dates provided in the table.

TABLE I.1—ENERGY CONSERVATION STANDARDS FOR DPPP MOTORS (TSL 7)

| Motor total horsepower (THP) | Performance standard: full-load efficiency (%) | Design requirement: speed capability | Design requirement: freeze protection                   | Compliance date     |
|------------------------------|------------------------------------------------|--------------------------------------|---------------------------------------------------------|---------------------|
| THP <0.5 .....               | 69%                                            | None .....                           | None .....                                              | September 29, 2025. |
| 0.5 ≤ THP < 1.15 .....       | .....                                          | Variable speed control * ...         | Only for DPPP motors with freeze protection controls**. | September 28, 2025. |
| 1.15 ≤ THP ≤ 5 .....         | .....                                          | Variable speed control * ...         | Only for DPPP motors with freeze protection controls**. | September 29, 2025. |

\* A variable speed motor is a DPPP motor that meets the definition of “variable-speed control dedicated-purpose pool pump motor” as defined by UL 1004–10:2022.

\*\* DPPP motors with freeze protection controls are to be shipped with the freeze protection feature disabled, or with the following default, user-adjustable settings: (a) the default dry-bulb air temperature setting shall be no greater than 40 °F; (b) the default run time setting shall be no greater than 1 hour (before the temperature is rechecked); and (c) the default motor speed in freeze protection mode shall not be more than half of the maximum operating speed.

### A. Benefits and Costs to Consumers

Table I.2 summarizes DOE’s evaluation of the economic impacts of the adopted standards on consumers of DPPP motors, as measured by the

average life-cycle cost (“LCC”) savings and the simple payback period (“PBP”).<sup>4</sup> The average LCC savings are positive for each equipment class, and the PBP is less than the average lifetime

of DPPP motors, which is estimated to be 4.5 years (see section IV.F of this document).

<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.

<sup>3</sup> Docket No. EERE–2022–BT–STD–0001, which is maintained at [www.regulations.gov/docket/EERE-2022-BT-STD-0001](http://www.regulations.gov/docket/EERE-2022-BT-STD-0001).

<sup>4</sup> The average LCC savings refer to consumers that are affected by a standard and are measured relative to the distribution of purchased DPPP motors, and their associated energy efficiency, distribution in

the no-new-standards case, which depicts the market in the compliance year in the absence of new or amended standards (see section IV.F.9 of this document). The simple PBP, which is designed to compare specific efficiency levels, is measured relative to the baseline product (see section IV.C of this document).

TABLE I.2—IMPACTS OF ADOPTED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF DPPP MOTORS

| DPPP Motors equipment class          | Average LCC savings (2022\$) | Simple payback period (years) |
|--------------------------------------|------------------------------|-------------------------------|
| Extra-small-size (THP <0.5) .....    | \$3                          | 0.9                           |
| Small-size (0.5 ≤ THP < 1.15) .....  | 4                            | 3.4                           |
| Standard-size (1.15 ≤ THP ≤ 5) ..... | 236                          | 1.3                           |

DOE's analysis of the impacts of the adopted standards on consumers is described in section IV.F of this document.

#### B. Impact on Manufacturers

The industry net present value ("INPV") is the sum of the discounted cash flows to the industry, which align with the industry profits from producing DPPP motors, from the base year through the end of the analysis period (2024–2055).<sup>5</sup> Using a real discount rate of 7.2 percent, DOE estimates that the INPV for manufacturers of DPPP motors in the case without new standards is \$661 million in 2022\$. Under the adopted standards, DOE estimates the change in INPV to range from –32.4 percent to 12.0 percent, which is approximately –\$214.2 million to \$79.0 million change in profits. In order to bring products into compliance with new standards, it is estimated that industry will incur total conversion costs of \$56.2 million.<sup>6</sup>

DOE's analysis of the impacts of the adopted standards on manufacturers is described in sections IV.J and V.B.2 of this document.

#### C. National Benefits and Costs<sup>7</sup>

DOE's analyses indicate that the adopted energy conservation standards for DPPP motors would save a significant amount of energy. Relative to the case without new standards, the lifetime energy savings for DPPP motors purchased in the 30-year period that begins in the anticipated first full year of compliance with the new standards (2026–2055),<sup>8</sup> amount to 1.56

quadrillion British thermal units ("Btu"), or quads.<sup>9</sup> This represents a savings of 27.5 percent relative to the energy use of these products in the case without new standards (referred to as the "no-new-standards case").

The cumulative net present value ("NPV") of total consumer benefits of the standards for DPPP motors ranges from \$5.4 billion (at a 7-percent discount rate) to \$10.2 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased equipment and installation costs for DPPP motors purchased in 2026–2055 relative to the no-new-standards case.<sup>10</sup>

In addition, the adopted standards for DPPP motors are projected to yield significant environmental benefits. DOE estimates that the standards will result in cumulative emission reductions (over the same period as for energy savings) of 31.2 million metric tons (Mt)<sup>11</sup> of carbon dioxide (CO<sub>2</sub>), 9.8 thousand tons of sulfur dioxide (SO<sub>2</sub>), 56.4 thousand tons of nitrogen oxides (NO<sub>x</sub>), 247.2 thousand tons of methane (CH<sub>4</sub>), 0.32 thousand tons of nitrous oxide (N<sub>2</sub>O), and 0.07 tons of mercury (Hg).<sup>12</sup>

DOE estimates the value of climate benefits from a reduction in greenhouse gases (GHG) using four different estimates of the social cost of CO<sub>2</sub> (SC–CO<sub>2</sub>), the social cost of methane (SC–

CH<sub>4</sub>), and the social cost of nitrous oxide (SC–N<sub>2</sub>O). Together these represent the social cost of GHG (SC–GHG). DOE used interim SC–GHG values developed by an Interagency Working Group on the Social Cost of Greenhouse Gases (IWG).<sup>13</sup> The derivation of these values is discussed in section IV.L of this document. For presentational purposes, the climate benefits associated with the average SC–GHG at a 3-percent discount rate over the period of analysis are estimated to be \$2.0 billion. DOE does not have a single central SC–GHG point estimate and it emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates.

DOE estimated the monetary health benefits of SO<sub>2</sub> and NO<sub>x</sub> emissions reductions, using benefit per ton estimates from the Environmental Protection Agency,<sup>14</sup> as discussed in section IV.L of this document. DOE estimated the present value of the health benefits would be \$2.0 billion using a 7-percent discount rate, and \$3.9 billion using a 3-percent discount rate. DOE is currently only monetizing health benefits from changes in ambient fine particulate matter (PM<sub>2.5</sub>) concentrations from two precursors (SO<sub>2</sub> and (for NO<sub>x</sub>) and from changes in ambient ozone from one precursor (NO<sub>x</sub>), but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct PM<sub>2.5</sub> emissions.

Table I.3 summarizes the monetized benefits and costs expected to result from the amended standards for DPPP motors. There are other important unquantified effects, including certain unquantified climate benefits,

<sup>5</sup> This time period captures manufacturers' profits starting with the years leading up to the compliance date, at which time they are making investments to comply with standards, and throughout the 30-year analysis period after the compliance date.

<sup>6</sup> Conversion costs are included in the INPV calculation.

<sup>7</sup> All monetary values in this document are expressed in 2021 dollars and, where appropriate, are discounted to 2024 unless explicitly stated otherwise.

<sup>8</sup> DOE conducted the analysis over a 30-year period starting in 2026 (2026–2055). As discussed in section III.A of this document, for all TSLs DOE considered a 2-year lead time resulting in a first full year of compliance of 2026, except for small-size DPPP motors at TSL 7 where DOE uses a 4-year

compliance lead time, resulting in a compliance year of 2028. In this case, DOE considered 28 years of shipments (2028–2055).

<sup>9</sup> The quantity refers to full-fuel-cycle (FFC) energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.*, coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.1 of this document.

<sup>10</sup> For small size DPPP motors, as noted previously, DOE considered 28 years of shipments (2028–2055).

<sup>11</sup> A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO<sub>2</sub> are presented in short tons.

<sup>12</sup> DOE calculated emissions reductions relative to the no-new-standards-case, which reflects key assumptions in the *Annual Energy Outlook 2023* (AEO2023). AEO2023 represents current Federal and State legislation and final implementation of regulations as of the time of its preparation. See section IV.K of this document for further discussion of AEO2023 assumptions that effect air pollutant emissions.

<sup>13</sup> To monetize the benefits of reducing GHG emissions this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the IWG. ("February 2021 SC–GHG TSD"). [www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument\\_SocialCostofCarbonMethaneNitrousOxide.pdf](http://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf).

<sup>14</sup> U.S. EPA. Estimating the Benefit per Ton of Reducing Directly Emitted PM<sub>2.5</sub>, PM<sub>2.5</sub> Precursors and Ozone Precursors from 21 Sectors. Available at [www.epa.gov/benmap/estimating-benefit-ton-reducing-pm25-precursors-21-sectors](http://www.epa.gov/benmap/estimating-benefit-ton-reducing-pm25-precursors-21-sectors).

unquantified public health benefits from the reduction of toxic air pollutants and other emissions, unquantified energy security benefits, and distributional effects, among others.

TABLE I.3—PRESENT VALUE IN 2024 OF MONETIZED BENEFITS AND COSTS OF ADOPTED ENERGY CONSERVATION STANDARDS FOR DPPP MOTORS

|                                              | Billion 2022\$ |
|----------------------------------------------|----------------|
| <b>3% discount rate</b>                      |                |
| Consumer Operating Cost Savings .....        | 14.0           |
| Climate Benefits * .....                     | 2.0            |
| Health Benefits ** .....                     | 3.9            |
| Total Monetized Benefits † .....             | 19.9           |
| Consumer Incremental Equipment Costs ‡ ..... | 3.9            |
| Net Monetized Benefits .....                 | 16.0           |
| Change in Producer Cashflow (INPV ††) .....  | (0.21)–0.08    |
| <b>7% discount rate</b>                      |                |
| Consumer Operating Cost Savings .....        | 7.9            |
| Climate Benefits * (3% discount rate) .....  | 2.0            |
| Health Benefits ** .....                     | 2.0            |
| Total Monetized Benefits † .....             | 11.9           |
| Consumer Incremental Equipment Costs ‡ ..... | 2.6            |
| Net Monetized Benefits .....                 | 9.3            |
| Change in Producer Cashflow (INPV ††) .....  | (0.21)–0.08    |

**Note:** This table presents the present value of the monetized costs and benefits associated with product name shipped in 2026–2055, except for small-size DPPP motors where shipments in 2028–2055 are considered. These results include consumer, climate, and health benefits which accrue after 2055 from the products shipped in 2026–2055 (or 2028–2055).

\* Climate benefits are calculated using four different estimates of the social cost of carbon (SC–CO<sub>2</sub>), methane (SC–CH<sub>4</sub>), and nitrous oxide (SC–N<sub>2</sub>O) (model average at 2.5-percent, 3-percent, and 5-percent discount rates; 95th percentile at 3-percent discount rate) (see section IV.L of this document). Together these represent the global SC–GHG. For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are shown, but DOE does not have a single central SC–GHG point estimate. To monetize the benefits of reducing greenhouse gas emissions this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG).

\*\* Health benefits are calculated using benefit-per-ton values for NO<sub>x</sub> and SO<sub>2</sub>. DOE is currently only monetizing (for SO<sub>2</sub> and NO<sub>x</sub>) PM<sub>2.5</sub> precursor health benefits and (for NO<sub>x</sub>) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct PM<sub>2.5</sub> emissions. See section IV.L of this document for more details.

† Total and net benefits include those consumer, climate, and health benefits that can be quantified and monetized. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but DOE does not have a single central SC–GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates.

‡ Costs include incremental equipment costs as well as installation costs.

†† Operating Cost Savings are calculated based on the life cycle costs analysis and national impact analysis as discussed in detail below. See sections IV.F and IV.H of this document. DOE's NIA includes all impacts (both costs and benefits) along the distribution chain beginning with the increased costs to the manufacturer to manufacture the equipment and ending with the increase in price experienced by the consumer. DOE also separately conducts a detailed analysis on the impacts on manufacturers (the MIA). See section IV.J of this document. In the detailed MIA, DOE models manufacturers' pricing decisions based on assumptions regarding investments, conversion costs, cashflow, and margins. The MIA produces a range of impacts, which is the rule's expected impact on the INPV. The change in INPV is the present value of all changes in industry cash flow, including changes in production costs, capital expenditures, and manufacturer profit margins. Change in INPV is calculated using the industry weighted average cost of capital value of 7.2% that is estimated in the MIA (see chapter 12 of the Final Rule TSD for a complete description of the industry weighted average cost of capital). For DPPP motors, those values are -\$214 million and \$79 million. DOE accounts for that range of likely impacts in analyzing whether a TSL is economically justified. See section V.C of this document. DOE is presenting the range of impacts to the INPV under two markup scenarios: the Preservation of Gross Margin scenario, which is the manufacturer markup scenario used in the calculation of Consumer Operating Cost Savings in this table, and the Preservation of Operating Profit Markup scenario, where DOE assumed manufacturers would not be able to increase per-unit operating profit in proportion to increases in manufacturer production costs. DOE includes the range of estimated INPV in the above table, drawing on the MIA explained further in Section IV.J of this document, to provide additional context for assessing the estimated impacts of this rule to society, including potential changes in production and consumption, which is consistent with OMB's Circular A–4 and E.O. 12866. If DOE were to include the INPV into the net benefit calculation for this final rule, the net benefits would range from \$15.79 billion to \$16.08 billion at 3-percent discount rate and range from \$9.09 billion to \$9.38 billion at 7-percent discount rate.

The benefits and costs of the standards can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are (1) the reduced consumer operating costs, minus (2) the increase in product purchase prices and installation costs, plus (3) the monetized

value of climate and health benefits of emission reductions, all annualized.<sup>15</sup>

<sup>15</sup> To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2024, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the

The national operating cost savings are domestic private U.S. consumer

shipments occur (e.g., 2030 or 2040), and then discounted the present value from each year to 2024. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year, that yields the same present value.

monetary savings that occur as a result of purchasing the covered products and are measured for the lifetime of DPPP motors shipped in (2026–2055).<sup>16</sup> The benefits associated with reduced emissions achieved as a result of the adopted standards are also calculated based on the lifetime of DPPP motors shipped in (2026–2055).<sup>16</sup> Total benefits for both the 3-percent and 7-percent cases are presented using the average GHG social costs with 3-percent discount rate. Estimates of SC–GHG values are presented for all four discount rates in section V.B.6 of this document.

Table I.4 presents the total estimated monetized benefits and costs associated with the standard, expressed in terms of annualized values. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and health benefits from reduced NO<sub>x</sub> and SO<sub>2</sub> emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated monetized cost of the standards adopted in this rule is \$221 million per year in increased equipment costs, while the estimated annual benefits are \$684 million in reduced equipment operating

costs, \$103 million in monetized climate benefits, and \$173 million in monetized health benefits. In this case, the monetized net benefit would amount to \$739 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated monetized cost of the standards is \$204 million per year in increased equipment costs, while the estimated annual monetized benefits are \$738 million in reduced operating costs, \$103 million in monetized climate benefits, and \$205 million in monetized health benefits. In this case, the monetized net benefit would amount to \$841 million per year.

TABLE I.4—ANNUALIZED MONETIZED BENEFITS AND COSTS OF ADOPTED STANDARDS FOR DPPP MOTORS

|                                              | Million 2022\$/year |                           |                            |
|----------------------------------------------|---------------------|---------------------------|----------------------------|
|                                              | Primary estimate    | Low-net-benefits estimate | High-net-benefits estimate |
| <b>3% discount rate</b>                      |                     |                           |                            |
| Consumer Operating Cost Savings .....        | 738                 | 721                       | 760                        |
| Climate Benefits * .....                     | 103                 | 103                       | 103                        |
| Health Benefits ** .....                     | 205                 | 205                       | 205                        |
| Total Monetized Benefits † .....             | 1,046               | 1029                      | 1,068                      |
| Consumer Incremental Equipment Costs ‡ ..... | 204                 | 235                       | 173                        |
| Monetized Net Benefits .....                 | 841                 | 793                       | 895                        |
| Change in Producer Cashflow (INPV ††) .....  | (17)–6              | (17)–6                    | (17)–6                     |
| <b>7% discount rate</b>                      |                     |                           |                            |
| Consumer Operating Cost Savings .....        | 684                 | 671                       | 703                        |
| Climate Benefits * (3% discount rate) .....  | 103                 | 103                       | 103                        |
| Health Benefits ** .....                     | 173                 | 173                       | 173                        |
| Total Monetized Benefits † .....             | 960                 | 947                       | 979                        |
| Consumer Incremental Equipment Costs ‡ ..... | 221                 | 250                       | 190                        |
| Monetized Net Benefits .....                 | 739                 | 696                       | 790                        |
| Change in Producer Cashflow (INPV ††) .....  | (17)–6              | (17)–6                    | (17)–6                     |

**Note:** This table presents the costs and benefits associated with DPPP motors shipped in 2026–2055, except for small-size DPPP motors where shipments in 2028–2055 are considered. These results include consumer, climate, and health benefits which accrue after 2055 from the products shipped in 2026–2055 (or 2028–2055). The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the AEO2023 Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect a medium decline rate in the Primary Estimate, an increasing rate in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in sections IV.F.1 and IV.H.3 of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

\* Climate benefits are calculated using four different estimates of the global SC–GHG (see section IV.L of this document). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but DOE does not have a single central SC–GHG point estimate, and it emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates. To monetize the benefits of reducing greenhouse gas emissions this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG).

\*\* Health benefits are calculated using benefit-per-ton values for NO<sub>x</sub> and SO<sub>2</sub>. DOE is currently only monetizing (for SO<sub>2</sub> and NO<sub>x</sub>) PM<sub>2.5</sub> precursor health benefits and (for NO<sub>x</sub>) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct PM<sub>2.5</sub> emissions. See section IV.L of this document for more details.

† Total benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but DOE does not have a single central SC–GHG point estimate.

‡ Costs include incremental equipment costs as well as installation costs.

<sup>16</sup> For small size DPPP motors, as noted previously, DOE considered 28 years of shipments (2028–2055).

†† Operating Cost Savings are calculated based on the life cycle costs analysis and national impact analysis as discussed in detail below. See sections IV.F and IV.H of this document. DOE's NIA includes all impacts (both costs and benefits) along the distribution chain beginning with the increased costs to the manufacturer to manufacture the equipment and ending with the increase in price experienced by the consumer. DOE also separately conducts a detailed analysis on the impacts on manufacturers (the MIA). See section IV.J of this document. In the detailed MIA, DOE models manufacturers' pricing decisions based on assumptions regarding investments, conversion costs, cashflow, and margins. The MIA produces a range of impacts, which is the rule's expected impact on the INPV. The change in INPV is the present value of all changes in industry cash flow, including changes in production costs, capital expenditures, and manufacturer profit margins. Annualized change in INPV is calculated using the industry weighted average cost of capital value of 7.2% that is estimated in the MIA (see chapter 12 of the Final Rule TSD for a complete description of the industry weighted average cost of capital). For DPPP motors, those values are –\$17 million and \$6 million. DOE accounts for that range of likely impacts in analyzing whether a TSL is economically justified. See section V.C of this document. DOE is presenting the range of impacts to the INPV under two markup scenarios: the Preservation of Gross Margin scenario, which is the manufacturer markup scenario used in the calculation of Consumer Operating Cost Savings in this table, and the Preservation of Operating Profit Markup scenario, where DOE assumed manufacturers would not be able to increase per-unit operating profit in proportion to increases in manufacturer production costs. DOE includes the range of estimated annualized change in INPV in the above table, drawing on the MIA explained further in section IV.J of this document, to provide additional context for assessing the estimated impacts of this rule to society, including potential changes in production and consumption, which is consistent with OMB's Circular A–4 and E.O. 12866. If DOE were to include the INPV into the annualized net benefit calculation for this final rule, the annualized net benefits would range from \$824 million to \$847 million at 3-percent discount rate and range from \$722 million to \$745 million at 7-percent discount rate.

DOE's analysis of the national impacts of the adopted standards is described in sections IV.G.2, IV.K, and IV.L of this document.

#### D. Conclusion

DOE concludes that the standards adopted in this final rule represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. Specifically, equipment are able to achieve these standard levels using technology options currently available in the DPPP market. As for economic justification, DOE's analysis shows that the benefits of the standards exceed the burdens of the standards.

Using a 7-percent discount rate for consumer benefits and costs and NO<sub>x</sub> and SO<sub>2</sub> reduction benefits, and a 3-percent discount rate case for GHG social costs, the estimated monetized cost of the standards for DPPP motors is \$221 million per year in increased equipment costs, while the estimated annual monetized benefits are \$684 million in reduced equipment operating costs, \$103 million in monetized climate benefits, and \$173 million in monetized ambient air pollutant health benefits. The monetized net benefit amounts to \$739 million per year.

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.<sup>17</sup> For example, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with

relatively constant demand.

Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis.

As previously mentioned, the standards are projected to result in estimated national energy savings<sup>18</sup> of 1.56 quads FFC, the equivalent of the primary annual energy use of 16.8 million homes. In addition, they are projected to reduce CO<sub>2</sub> emissions by 31.2 Mt. Based on these findings, DOE has determined the energy savings from the standard levels adopted in this final rule are “significant” within the meaning of 42 U.S.C. 6295(o)(3)(B). A more detailed discussion of the basis for these conclusions is contained in the remainder of this document and the accompanying TSD.

## 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 DPPP motors.

#### 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. This equipment includes those electric motors that are DPPP motors, the subject of this document. (42 U.S.C. 6311(1)(A))

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. 6316 (a); 42 U.S.C. 6295), 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); 42 U.S.C. 6297) There are currently no Federal energy conservation standards for DPPP motors. DOE noted in the July 2021 Final Rule that efforts by States to set energy conservation standards, test procedures, or labeling requirements for DPPP motors—or any other electric motor—are preempted as a matter of law. 86 FR 40765, 40767.

Upon further consideration, however, DOE is clarifying here that none of the provisions in 42 U.S.C. 6313 apply to DPPP motors because, although they are a category of electric motor, DPPP motors are not among the category of electric motors for which Congress established standards and a rulemaking schedule in 42 U.S.C. 6313(b). Thus, State DPPP motor standards are not already preempted as a matter of law. EPCA outlines rules of preemption for State energy conservation standards before a Federal standard promulgated becomes effective. 42 U.S.C. 6316(a); 42 U.S.C. 6297(b). Specifically, it provides that no State regulation concerning energy efficiency or energy use of covered equipment shall be effective with respect to the covered equipment—in the absence of a Federal regulation—unless the State regulation is a regulation regulating electric motors other than those to which 42 U.S.C. 6313 is applicable. 42 U.S.C. 6316(a)(7); 42 U.S.C. 6297(b)(4). As discussed in

<sup>17</sup> Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment, 86 FR 70892, 70901 (Dec. 13, 2021).

<sup>18</sup> Associated with DPPP motors shipped in 2026–2055, except for small-size DPPP motors where shipments in 2028–2055 are considered.

section III.A. of this document, DPPP motors are a category of electric motor, but are excepted from the requirements of 42 U.S.C. 6313(b). *See* 42 U.S.C. 6313(b)(1). Further, there are no other provisions in 42 U.S.C. 6313 that would apply to DPPP motors. Therefore, any State regulations establishing or amending standards for DPPP motors are not currently preempted.

Instead, under 42 U.S.C. 6297(c), upon the compliance date for the Federal standards in this final rule, the Federal standards will supersede the CEC standards requirements for replacement dedicated-purpose pool pump motors (“RDPPP”) for the first time. For extra-small-size and standard-size DPPP motors, the CEC standards will be superseded on the compliance date applicable to these DPPP motors, which is 2 years after the publication of this final rule. For small-size DPPP motors, which have an additional two-year lead time, the CEC standards would be superseded on the compliance date applicable to small-size DPPP motors, which is 4 years after the publication of this final rule. 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(a) (applying the preemption waiver provisions of 42 U.S.C. 6297))

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. (*See* 42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(3)(A) and (r)) 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(a); 42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)) The DOE test procedures for DPPP motors appear at title 10 of the Code of Federal Regulations (“CFR”) § 431.484.

DOE must follow specific statutory criteria for prescribing new or amended standards for covered equipment, including DPPP motors. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy (“Secretary”) determines is

technologically feasible and economically justified. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6295(o)(3)(B)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(3)) Moreover, DOE may not prescribe a standard (1) for certain products, including DPPP motors, if no test procedure has been established for the product, or (2) if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(3)(A)–(B)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(3)(A)–(B)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

- (1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;
- (2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;
- (3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;
- (4) Any lessening of the utility or the performance of the covered products likely to result from the standard;
- (5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;
- (6) The need for national energy and water conservation; and
- (7) Other factors the Secretary considers relevant.

(42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(iii))

DOE must also periodically evaluate the energy conservation standards for certain covered equipment, including electric motors, and publish either a notification of determination that the

standards do not need to be amended, or a notice of proposed rulemaking (“NOPR”) that includes new proposed energy conservation standards (proceeding to a final rule, as appropriate). *See* 42 U.S.C. 6316(a) and 42 U.S.C. 6295(m)(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. 6316(a); 42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of products that has the same function or intended use if DOE determines that products within such group (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6316(a); 42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of such a feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6316(a); 42 U.S.C. 6295(q)(2))

## B. Background

### 1. Current Standards

DPPP motors are electric motors, which are defined as machines that convert electrical power into rotational mechanical power. 10 CFR 431.12. DOE has established test procedures, labeling requirements, and energy conservation standards for certain electric motors (10 CFR part 431, subpart B), but those

requirements do not apply to DPPP motors. DOE has separately established a test procedure for DPPP motors in 10 CFR 431.484. The scope of the DPPP motor definition includes DPPP motors regardless of how the equipment is sold; *i.e.*, incorporated in a DPPP or sold separately.

Currently, DPPP motors that would be subject to the energy conservation standards are not subject to any Federal energy conservation standards or labeling requirements because they do not fall within any of the specific classes of electric motors that are currently regulated by DOE.<sup>19</sup> However, DPPP motors are electric motors and, therefore, are and have been among the types of industrial equipment for which Congress has authorized DOE to establish applicable regulations under EPCA without the need for DOE to undertake any additional prior administrative action. (42 U.S.C. 6311(1)(A))

## 2. History of Standards Rulemaking for DPPP Motors

On January 18, 2017, DOE published a direct final rule establishing energy conservation standards for DPPPs. 82 FR 5650 (the “January 2017 Direct Final Rule”).<sup>20</sup>

In comments submitted in response to the direct final rule, several interested parties discussed the issue of the efficiency of electric motors used in DPPPs. Comments were received from a broad range of interested parties, including manufacturers, trade associations, and energy efficiency advocacy organizations suggesting that energy conservation standards were also needed for motors used in pool pumps.

<sup>19</sup> The current energy conservation standards at 10 CFR 431.25 apply to electric motors that satisfy nine criteria listed at 10 CFR 431.25(g), subject to the exemptions listed at 10 CFR 431.25(l). The nine criteria are as follows: (1) are single-speed, induction motors; (2) are rated for continuous duty (MG1) operation or for duty type S1 (IEC); (3) contain a squirrel-cage (MG1) or cage (IEC) rotor; (4) operate on polyphase alternating current 60-hertz sinusoidal line power; (5) are rated 600 volts or less; (6) have a 2-, 4-, 6-, or 8-pole configuration; (7) are built in a 3-digit or 4-digit NEMA frame size (or IEC metric equivalent), including those designs between two consecutive NEMA frame sizes (or IEC metric equivalent), or an enclosed 56 NEMA frame size (or IEC metric equivalent); (8) produce at least 1 horsepower (0.746 kW) but not greater than 500 horsepower (373 kW), and; (9) meet all of the performance requirements of one of the following motor types: A NEMA Design A, B, or C motor or an IEC Design N or H motor. The exemptions listed at 10 CFR 431.25(l) are: (1) air-over electric motors; (2) component sets of an electric motor; (3) liquid-cooled electric motors; (4) submersible electric motors; and (5) inverter-only electric motors.

<sup>20</sup> DOE confirmed the adoption of the standards and the effective date and compliance date in a notice published on May 26, 2017. 82 FR 24218. DOE also established a test procedure for DPPPs. 82 FR 36858 (August 7, 2017).

Commenters wanted to ensure that consumers who purchased pool pumps compliant with the new standards at 10 CFR 431.465(f), who subsequently needed to replace their motor, would do so with a motor of equal or greater efficiency. All comments received that discussed DPPP motors supported further rulemaking to address these motors. (Docket No. EERE–2015–BT–STD–0008; Regal Beloit Corporation (“Regal Beloit”), No. 122 at p. 1; Hayward Industries, Inc. (“Hayward”), No. 125 at p. 1; Pentair Water Pool and Spa, Inc. (“Pentair”), No. 132 at pp. 1–2; Zodiac Pool Systems (“Zodiac”), No. 134 at pp. 1–2; Association of Pool and Spa Professionals (“APSP”), No. 127 at p. 2; Appliance Standards Awareness Project (“ASAP”), No. 133 at pp. 4–5; Natural Resource Defense Council (“NRDC”), No. 121 at p. 4; California Investor Owned Utilities (“CA IOUs”), No. 130 at p. 2)

Acknowledging comments received in response to the direct final rule in support of regulating DPPP motors that would serve as replacement motors to the regulated pool pumps, DOE published a notice of public meeting on July 3, 2017 and held a public meeting on August 10, 2017 to consider potential scope, definitions, equipment characteristics, and metrics for pool pump motors. 82 FR 30845. DOE also requested comment on potential requirements for DPPP motors in a request for information (“RFI”) pertaining to test procedures for small electric motors and electric motors. 82 FR 35468 (July 31, 2017). On August 14, 2018, DOE received a petition submitted by a variety of entities (collectively, the “Joint Petitioners”) <sup>21</sup> requesting that DOE issue a direct final rule to establish prescriptive standards and a labeling requirement for DPPP motors (“Joint Petition”).<sup>22</sup> The Joint Petitioners stated that the motor on a pool pump will often fail before the pump itself needs to be replaced, and motor-only replacements are common. (Joint

<sup>21</sup> The Joint Petitioners are: the Association of Pool & Spa Professionals, Alliance to Save Energy, American Council for an Energy-Efficient Economy, Appliance Standards Awareness Project, Arizona Public Service, California Energy Commission, California Investor Owned Utilities, Consumer Federation of America, Florida Consumer Action Network, Hayward Industries, National Electrical Manufacturers Association, Natural Resources Defense Council, Nidec Motor Corporation, Northwest Power and Conservation Council, Pentair Water Pool and Spa, Regal Beloit Corporation, Speck Pumps, Texas ROSE (Ratepayers’ Organization to Save Energy), Waterway Plastics, WEG Commercial Motors, and Zodiac Pool Systems.

<sup>22</sup> The Joint Petition is available at [www.regulations.gov/document?D=EERE-2017-BT-STD-0048-0014](http://www.regulations.gov/document?D=EERE-2017-BT-STD-0048-0014).

Petition, No. 14 at p. 2) They added that without a complementary standard for DPPP motors, upon replacing a pool pump motor, consumers may install replacement motors that are less efficient than the motor with which the DPPP was originally equipped. (*Id.*) To address this concern, the Joint Petitioners asked DOE to establish a direct final rule establishing prescriptive standards and a labeling requirement for DPPP motors. (Joint Petition, No. 14 at pp. 6–9) The Joint Petitioners sought a compliance date of July 19, 2021, to align with the standards compliance date for DPPPs. (*Id.*) See also 82 FR 24218 (May 26, 2017). DOE published a notice of the Joint Petition and sought comment on whether to proceed with the proposal, as well as any data or information that could be used in DOE’s determination of whether to issue a direct final rule. 83 FR 45851 (Sept. 11, 2018).<sup>23</sup>

On December 12, 2018, representatives from the Association of Pool & Spa Professionals (“APSP”), the National Electrical Manufacturers Association (“NEMA”), Nidec Motors, Regal Beloit, and Zodiac met with DOE to reiterate the need for implementation of the Joint Petition. (December 2018 *Ex Parte* Meeting, No. 42 at p. 1)<sup>24</sup> On February 5, 2019, APSP, NEMA, Hayward, Pentair, Nidec Motors, Regal Beloit, WEG Commercial Motors, and Zodiac Pool Systems met with DOE to present an alternative approach to the Joint Petition, suggesting DOE propose a labeling requirement for DPPP motors. (February 2019 *Ex Parte* Meeting, No. 43 at p. 1)<sup>25</sup> These interested parties specifically requested that DOE base the labeling requirement on a newly available industry standard for pool pump motors published on July 1, 2019 (UL 1004–10:2019, “Pool Pump Motors”), a design standard that incorporates some of the proposals

<sup>23</sup> Docket No. EERE–2017–BT–STD–0048, available at [www.regulations.gov/docket?D=EERE-2017-BT-STD-0048](http://www.regulations.gov/docket?D=EERE-2017-BT-STD-0048).

<sup>24</sup> With respect to each of the *ex parte* communications noted in this document, DOE posted a memorandum submitted by the interested party/parties that summarized the issues discussed in the relevant meeting as well as its date and attendees, in compliance with DOE’s Guidance on *Ex Parte* Communications. 74 FR 52795–52796 (Oct. 14, 2009). The memorandum of the meeting as well as any documents given to DOE employees during the meeting were added to the docket as specified in that guidance. See *Id.* at 74 FR 52796.

<sup>25</sup> The parenthetical reference provides a reference for information located in the docket of DOE’s rulemaking to develop the test procedure and labeling requirements for DPPP motors. (Docket No. EERE–2017–BT–STD–0048, which is maintained at [www.regulations.gov/docket/EERE-2017-BT-STD-0048](http://www.regulations.gov/docket/EERE-2017-BT-STD-0048)). The references are arranged as follows: (commenter, comment docket ID number, page of that document).



contained in the Joint Petition. (February 2019 *Ex Parte* Slides, No. 43 at pp. 9–10) A follow-up memorandum was submitted to DOE on March 1, 2019, providing additional information related to UL 1004–10:2019. (March 2019 *Ex Parte* Memo, No. 44) The interested parties noted the timelines and costs that would be involved in applying a label to the affected pool pump motors and the impacts flowing from past labeling efforts. (*See generally* *Id.* at 1–3.)

On April 7, 2020, the California Energy Commission (“CEC”) adopted new regulations for RDPPPMs, with an effective date of July 19, 2021. The adopted standards included nominal efficiency at full-load and maximum operating speed requirements, in addition to a requirement that RDPPPMs with a total horsepower (“THP”) greater than or equal to 0.5 THP manufactured on or after July 19, 2021, must be variable-speed.<sup>26</sup>

On October 5, 2020, in response to the Joint Petition and the alternative recommendation presented by several of the Joint Petitioners following submission of the Joint Petition, DOE published a NOPR proposing to establish a test procedure and an accompanying labeling requirement for DPPP motors. 85 FR 62816 (“October 2020 NOPR”). Specifically, DOE proposed to incorporate by reference UL Standard 1004–10:2019 “Outline of Investigation for Pool Pump Motors” (“UL 1004–10:2019”) pertaining to

DPPP motor definitions and marking requirements; require the use of Canadian Standards Association (“CSA”) C747–09 (R2014), “Energy Efficiency Test Methods for Small Motors” (“CSA C747–09”) for testing the energy efficiency of DPPP motors; require the nameplate of a subject DPPP motor (1) to include the full-load efficiency of the motor as determined under the proposed test procedure, and (2) if the DPPP motor is certified to UL–1004–10:2019, to include the statement, “Certified to UL 1004–10:2019”; require that catalogs and marketing materials include the full-load efficiency of the motor; require manufacturers to notify DOE of the subject DPPP motor models in current production (according to the manufacturer’s model number) and whether the motor model is certified to UL 1004–10:2019; and require manufacturers to report to DOE the full-load efficiency of the subject DPPP motor models as determined pursuant to the proposed test procedure. 85 FR 62816, 62820. Additionally, if a DPPP motor model is certified to UL 1004–10:2019, DOE proposed to require manufacturers to report the THP and speed configuration of the motor model as provided on the nameplate pursuant to the UL certification. *Id.*

On July 29, 2021, DOE published a final rule adopting a test procedure for DPPP motors. 86 FR 40765. (“July 2021 Final Rule”). Specifically, the test procedure requires use of CSA C747–09 (R2014), “Energy Efficiency Test

Methods for Small Motors” (“CSA C747–09”) for testing the full-load efficiency of DPPP motors and incorporates by reference UL 1004–10:2020 “Standard for Pool Pump Motors” (“UL 1004–10:2020”) pertaining to definitions and scope. The new test procedure is currently located at 10 CFR 431.484. 86 FR 40765, 40768. DOE did not establish a labeling requirement and stated that it intends to address any such labeling and/or energy conservation standards requirement in a separate notification. *Id.*

On June 21, 2022, DOE published a NOPR proposing energy conservation standards for DPPP motors. 87 FR 37122. (“June 2022 NOPR”). DOE proposed a performance standard for a class of DPPP motors and design requirements for certain classes of DPPP motors. Specifically, DOE proposed to require that DPPP motors less than 0.5 THP must have a full-load efficiency of 69 percent, and DPPP motors greater than or equal to 0.5 THP must be variable speed control DPPP motors. In addition, for DPPP motors greater than or equal to 0.5 THP, DOE also proposed to implement freeze-protection requirements. 87 FR 37122, 37123–37124. On July 26, 2022, DOE presented the proposed standards and accompanying analysis in a public meeting.

DOE received comments in response to the June 2022 NOPR from the interested parties listed in Table II.1.

TABLE II.1—JUNE 2022 NOPR WRITTEN COMMENTS

| Commenter(s)                                                                                                                                                                                                                                                                 | Abbreviation             | Comment No. in the Docket | Commenter type                                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|---------------------------|-----------------------------------------------|
| Anonymous .....                                                                                                                                                                                                                                                              | Anonymous .....          | 89                        | Efficiency Organizations.                     |
| Appliance Standards Awareness Project (ASAP), American Council for an Energy-Efficient Economy (ACEEE), National Consumer Law Center, on behalf of its low-income clients (NCLC), Natural Resources Defense Council (NRDC), and Northwest Energy Efficiency Alliance (NEEA). | Joint Advocates .....    | 97                        |                                               |
| California Energy Commission and New York State Energy Research and Development Authority.                                                                                                                                                                                   | CEC and NYSERDA          | 94                        | State Agencies.                               |
| Center for Climate and Energy Solutions, Institute for Policy Integrity at New York University School of Law, Natural Resources Defense Council, Sierra Club, Union of Concerned Scientists.                                                                                 | Joint SC–GHG Commenters. | 95                        | Efficiency Organizations and Legal Institute. |
| Fluidra .....                                                                                                                                                                                                                                                                | Fluidra .....            | 91, 101                   | Pool Pump Manufacturer.                       |
| Hayward Industries, Inc. ....                                                                                                                                                                                                                                                | Hayward .....            | 93                        | Pool Pump Manufacturer.                       |
| Northwest Energy Efficiency Alliance .....                                                                                                                                                                                                                                   | NEEA .....               | 99                        | Efficiency Organization.                      |
| Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric (SDG&E), and Southern California Edison (SCE).                                                                                                                                                           | CA IOUs .....            | 96                        | Utilities.                                    |
| Pentair Water Pool and Spa, Inc. ....                                                                                                                                                                                                                                        | Pentair .....            | 90                        | Pool Pump Manufacturer.                       |
| The Pool & Hot Tub Alliance and National Electrical Manufacturers Association.                                                                                                                                                                                               | PHTA and NEMA .....      | 92                        | Trade Associations.                           |
| The Pool & Hot Tub Alliance .....                                                                                                                                                                                                                                            | PHTA .....               | 100                       | Trade Association.                            |
| Regal Rexnord .....                                                                                                                                                                                                                                                          | Regal .....              | 98                        | Motor Manufacturer.                           |

<sup>26</sup> See Docket # 19–AAER–02 at [www.energy.ca.gov/rules-and-regulations/](http://www.energy.ca.gov/rules-and-regulations/)

[appliance-efficiency-regulations-title-20/appliance-efficiency-proceedings-2](https://www.energy.ca.gov/rules-and-regulations/appliance-efficiency-regulations-title-20/appliance-efficiency-proceedings-2).

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.<sup>27</sup> To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the July 26, 2022 public meeting, DOE cites the written comments throughout this final rule. Any oral comments provided during the webinar that are not substantively addressed by written comments are summarized and cited separately throughout this final rule.

### 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.

#### A. General Comments

This section summarizes general comments received from interested parties regarding rulemaking timing and process.

In the June 2022 NOPR, DOE proposed a performance standard (*i.e.*, full-load efficiency) and design requirements (*i.e.*, speed capability) based on DPPP motor THP. Specifically, for motors <0.5 THP, DOE proposed DPPP motors to meet a full-load efficiency of 69 percent. For motors ≥0.5 THP, DOE proposed variable speed control design requirements, and freeze protection control requirements for DPPP motors with freeze protection controls. 87 FR 37122, 37124.

Waterway Plastics commented that the proposal does not align with CEC scope because that scope is only for replacement DPPP motors and requested clarity on the scope of the June 2022 NOPR. (Waterway Plastics, Public Meeting, No. 88 at p. 6) The scope of the final rule includes DPPP motors regardless of how the equipment is sold *i.e.*, incorporated in a DPPP or sold separately (*i.e.*, as a replacement motor).

One anonymous commenter stated that the proposed standard for DPPP motors is more stringent than the standard for DPPPs that went into effect in 2021 and would make the DPPP rule obsolete. Specifically, the anonymous commenter stated that with the DPPP

standard, a 1 hp single-speed pump would still meet the weighted energy factor (“WEF”) requirement, but this does not seem to be the case in the proposed DPPP motor rule. In addition, the anonymous commenter stated that the WEF DPPP standard was less stringent for non-self-priming pumps, whereas the proposed DPPP motor level does not separate non-self-priming pumps motors. The anonymous commenter stated that typically rules for subcomponents (motors) would have less stringent or equal requirements to the fully assembled product (*i.e.*, pumps), otherwise the standard for pool pumps would be obsolete due to the more stringent motor rule. (Anonymous, No. 89 at p. 1) Waterway Plastics commented that the proposal could affect the DPPPs that are being manufactured in the United States, and that they had concerns that the June 2022 NOPR proposal does not align with the DPPP standards. (Waterway Plastics, Public Meeting, No. 88 at p. 6)

In addition to setting freeze protection requirements, the standard for DPPPs at 10 CFR 431.465(f) would likely require DPPP motors sold in DPPPs to be variable speed for standard-size self priming pool pumps (using DPPP motors greater than or equal to 1.15 THP)<sup>28</sup> and to have a higher efficiency for small-size self priming pumps, non-self priming pumps, and PCBP.<sup>29</sup> The DPPP standards apply to DPPPs only and do not apply to DPPP motors sold alone as replacement motors. As stated previously, motor-only replacements are common and comments were received from a broad range of interested parties, including manufacturers, trade associations, and energy efficiency advocacy organizations suggesting that energy conservation standards were also needed for motors used in pool pumps to ensure that consumers who purchased pool pumps compliant with the new standards at 10 CFR 431.465(f), who subsequently needed to replace their motor, would do so with a motor of equal or greater efficiency. In contrast, the CEC standards apply to replacement DPPP motors only and would require variable speed replacement DPPP motors at or above 0.5 THP, and also sets requirements for

nominal efficiency at full-load and maximum operating speed.<sup>30</sup> In this final rule, DOE establishes DPPP motor standard for both motors sold in DPPPs and sold alone for replacement purposes. While the motor improvements realized by this DPPP motor final rule could be enough to improve a DPPP such that the DPPP would meet the DPPP standard, DOE notes that the DPPP energy conservation standards and the DPPP motor standards are complementary to help ensure a harmonized approach to DPPP and DPPP motors that are replacements. The DPPP standards includes the hydraulic efficiency of the pump, the motor efficiency, and the efficiency of the associated controls and drives supporting the DPPP. By contrast, the DPPP motor standard focuses on just the motor aspect and is meant to complement the DPPP standard by ensuring the replacement motors are at least as efficient as originally intended by the DPPP manufacturer in the DPPP design. Therefore, DOE does not agree with the commenter that these two standards are overlapping. Instead, DOE believes it is addressing complementary but different equipment regulations to help ensure the efficiencies that consumers expect when purchasing their DPPPs are maintained when replacing the motor. Since the regulations apply to both domestically produced equipment and imported equipment and are intended to be complementary by design, DOE does not agree with Waterway Plastics that domestic manufacturers will be disadvantaged.

Regarding pressure cleaner booster pumps (“PCBP”), Fluidra recommended separating PCBP into their own equipment class, requiring 69-percent efficiency for motors less than 1.15 THP, and implementing further review of energy use, efficiency, and cost effectiveness for the motors at 1.15 to 5 THP. (Fluidra, No. 91 at p. 2). PHTA and NEMA recommended that if DOE confirms that a variable speed requirement is not cost-effective for PCBP, DOE should not require variable speed for PCBP motors below 1.15 THP. (PHTA and NEMA, No. 92 at p. 5)

On the other hand, CEC and NYSEDA supported DOE’s proposed standards, specifically the proposal to require variable-speed motors, and encouraged that DOE finalize the rule as soon as possible. CEC and NYSEDA stated that the proposed standards will

<sup>27</sup> The parenthetical reference provides a reference for information located in the docket of DOE’s rulemaking to develop energy conservation standards for DPPP motors. (Docket No. EERE–2017–BT–STD–0048, 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).

<sup>28</sup> The 0.711 hhp threshold in the DPPP standards for self-priming pool filter pumps aligns with a 1.15 THP motor threshold (1.15 THP is roughly equivalent to 0.711 hhp). See section IV.A.3 of this document.

<sup>29</sup> The DPPP standard at 10 CFR 431.465(f) would likely require DPPP motors sold in DPPPs to meet the requirements equivalent to TSL 6, while this DFR establishes standards at TSL 8 for DPPP motors, regardless of how they are sold (*i.e.*, incorporated in a DPPP or sold separately). See section V.A of this document.

<sup>30</sup> See Docket # 19–AAER–02 at [www.energy.ca.gov/rules-and-regulations/appliance-efficiency-regulations-title-20/appliance-efficiency-proceedings-2](http://www.energy.ca.gov/rules-and-regulations/appliance-efficiency-regulations-title-20/appliance-efficiency-proceedings-2).

extend the 2017 DPPP final rule energy efficiency benefits to replacement DPPP motors, which currently are unregulated on the Federal level, and provide additional energy efficiency improvements to new DPPPs. CEC and NYSERDA also stated that some of the energy savings in this NOPR are already being realized in California through that State's Replacement DPPP Motor Regulations, which went into effect July 19, 2021, and which are projected to provide 451 GWh in annual electricity savings and \$82 million in annual savings to California businesses and individuals. (CEC and NYSERDA, No. 94 at p. 2) Further, CEC and NYSERDA commented that variable-speed motors are extremely beneficial to consumers, as DPPPs have different operational modes with different speed requirements, and because real-world pool design complicates the size selection of DPPP motors. Further, CEC and NYSERDA stated that the benefit of variable-speed motors for PCBP applications, which is the ability to adjust motor speed, will eliminate the need to use pressure discs or pressure relief valves. (CEC and NYSERDA, No. 94 at p. 3)

The Joint Advocates commented that they support the proposed standards for DPPP motors, which generally align with the existing California standards for replacement DPPP motors, and would ensure that all DPPP motors greater than or equal to 0.5 THP are variable-speed. The Joint Advocates also supported the proposed freeze protection control requirements. (Joint Advocates, No. 97 at p. 1)

The CA IOUs supported DOE's proposal to adopt TSL 7 for DPPP motors. The CA IOUs commented that they surveyed the CEC certifications database and the DOE Compliance Certification Management System ("CCMS") database and noted that small-size DPPP motors represent motors in PCBPs, small self-priming pool filter pumps, and small non-self-priming pool filter pumps. The CA IOUs agreed that the 0.5 THP to 1.15 THP threshold is an appropriate range for the DOE analysis and standard. Further, the CA IOUs commented that the standard-sized DPPP motor range, between 1.15 to 5.0 THP, represents motors mostly found in standard-size self-priming pool filter pump applications. (CA IOUs, No. 96 at pp. 1–2) The CA IOUs commented that the proposed standard for a small-size DPPP motor will provide technically feasible and cost-effective consumer savings through variable speed motor technology, allowing consumers to choose the lowest speed that meets their pool maintenance needs

and reducing pressure head losses through the pump affinity laws. The CA IOUs noted that this energy savings strategy is consistent with the industry standard American National Standards Institute/Pool and Hot Tub Alliance/International Code Council (ANSI/PHTA/ICC)-15:2021, which recommends that "for maximum energy efficiency, pool filtration should be operated at the lowest possible flowrate for a time period that provides sufficient water turnover for clarity and sanitation." (CA IOUs, No. 96 at p. 2) Further, the CA IOUs supported DOE's proposal to adopt freeze protection setting requirements, which aligns with the requirements of the DPPP rule and provides essential energy savings by ensuring that products shipped with freeze protection have the appropriate settings to protect equipment from freezing while not using excessive energy. (CA IOUs, No. 96 at p. 2)

Regal commented that they generally support DOE moving forward with the DPPP energy conservation standards rule. Regal commented that they believe the proposed rule will enable the achievement of significant energy savings, if careful consideration is given to the rule's underlying technical analysis and the timeline for implementation. (Regal, No. 98 at p.1) ASAP commented in support of DOE's proposed standards for DPPP motors and noted that these generally align with the existing standards in California. (ASAP, Public Meeting, No. 88 at p.5) As part of this final rule, DOE considered comments received regarding the technical analysis and made any needed updates, as discussed in section IV of this document. DOE also updated the market data information to match the current market of DPPP motors available, as discussed in section IV.A.2 of this document. Finally, DOE notes that DOE conducted DPPP motor manufacturer interviews as part of the June 2022 NOPR, as discussed in the manufacturer impact analysis, and incorporated feedback to estimate the manufacturer impacts of setting variable-speed requirements as standards. 87 FR 37122, 37154.

In regard to creating an equipment class for DPPP motors used in PCBP applications, DOE generally does not consider end-use applications (for DPPP motors, end-use would be DPPPs) when analyzing equipment classes for covered equipment. See further discussion in IV.A.3 of this document. DOE also notes that, assuming the same motor output power, there are no technological features that distinguish a DPPP motor used in a PCBP from a DPPP motor used in a self-priming or non-self-priming

application. As such, DOE continues to base the analysis in this final rule only on DPPP motor equipment classes determined only by motor THP, as defined in Table III.1 of this document.

DOE reviewed the cost-effectiveness of the trial standard levels considered with the updates for this final rule and continues to conclude that the proposal from the June 2022 NOPR is technologically feasible and economically justified. See section V of this document for analytical results. Section IV provides further details on the analysis conducted, the analysis inputs, and responses to any analysis-specific comments that were received regarding the June 2022 NOPR.

In the June 2022 NOPR, DOE proposed that new standards would apply to DPPP motors manufactured two years after the date on which any new or amended standard is published.<sup>31</sup> DOE estimated the publication of a final rule in the second half of 2023. Therefore, in the June 2022 NOPR, for purposes of its analysis, DOE used 2026 as the first full year of compliance with any new standards for DPPP motors. 87 FR 37122, 37144.

Several commenters recommended that DOE consider a two-step approach to allow for further analysis and data collection and coordinate between DPPP and DPPP motors. As a first step, PHTA, NEMA, and Hayward recommended that DOE adopt a final rule as soon as possible that would adopt and require a DPPP motor listing to UL 1004–10:2022 "Standard for Pool Pump Motors" ("UL 1004–10:2022") in its entirety, which would provide alignment with the current DPPP rule and a means for certification and labeling that will provide for easier enforcement. Further, PHTA, NEMA, and Hayward noted that manufacturers anticipated compliance with UL 1004–10, which was established in the 2018–2020 efforts to obtain a corresponding DPPP motor rule. Therefore, PHTA, NEMA, and Hayward stated that manufacturers are ready and able to provide compliant product 12 months after a final rule effective date. As a second step, PHTA, NEMA, and Hayward commented that DOE should set up a negotiation working group on both DPPP and DPPP motor rules to dig deeper into the concerns highlighted in their comment submission and ensure performance and timing alignments long term. PHTA, NEMA, and Hayward commented that they are committed to initiating step two as soon as possible and stated that if a two-step approach is unfeasible, that

<sup>31</sup> In the June 2022 NOPR, DOE followed the same 2-year lead time. See 87 FR 37122, 37144 at FN67.

prior to issuing a final DPPP motor rule, the cost-effective concerns laid out in their comments should be further analyzed and manufacturer interviews conducted. PHTA, NEMA, and Hayward stated that although this approach will slow down obtaining a final rule, the current NOPR deviates from the Joint Petition and the commenters have provided multiple concerns that require attention. (PHTA and NEMA, No. 92 at p. 9; Hayward, No. 93 at pp. 2–3)

In response, Fluidra requested a 5-year transition period to implement compliance with the DPPP motor regulation proposal. Fluidra noted that this transition period would give manufacturers adequate time to develop, test, certify, launch, and transition product lines, as well as educate distributors, pool builders, and consumers on this product transition. (Fluidra, No. 91 at p. 2) Hayward, PHTA, and NEMA requested a compliance date of at least 5 years following the effective date if DOE decides against the implementation of UL 1004–10 based rule. Hayward, PHTA, and NEMA noted that more time is required to: address the limited product that currently exists in the small fractional motor category; find solutions to the design of other products impacted by a DPPP motor rule; and provide better alignment with any coming revisions to the current DPPP rule. (Hayward, No. 93 at pp. 2–3; PHTA and NEMA, No. 92 at p. 9) PHTA stated that any final DPPP rule compliance date should be extended a minimum of 5 years to allow manufacturers to recover investments made to comply with the pump rule. (PHTA, No. 100 at p. 3) In addition, Hayward recommended the alignment of the DPPP and DPPP motor implementation dates. (Hayward, No. 93 at p. 2) Regal recommended that DOE endeavor to better align both the performance requirements and compliance deadlines between the DPPP and DPPP motor rules. Regal commented that this will allow for maximizing energy savings, while avoiding unintended market disruptions and significant fiscal impacts to industry and consumers. (Regal, No. 98 at p. 1) Specifically, PHTA and NEMA commented that they were concerned the different implementation dates of the DPPP and DPPP motor rules will cause confusion and difficulties for manufacturers and risk the potential to undercut savings by unaligned implementation of the two rules. (PHTA and NEMA, No. 92 at pp. 2)

DOE notes that PHTA and NEMA's original recommendation to DOE was to adopt UL 1004–10:2022 in its entirety

(PHTA and NEMA, No. 92 at p. 9, 10), which includes the requirement that DPPP motors rated greater or equal to 1.15 THP shall not be marked for single-speed, two-speed, or multi-speed (*i.e.*, shall instead be marked for variable-speed). (section 7.1(b) of UL 1004–10:2022). Further, PHTA and NEMA stated that manufacturers were ready and able to provide products compliant with UL 1004–10:2022 12 months after a final rule effective date. (PHTA and NEMA, No. 92 at p. 9) Finally, PHTA and NEMA suggested that DOE require compliance with the entire UL 1004–10 standard and not just the scope and definitions sections because doing so would better align and provide consistency with the DPPP rule. They also stated that doing so would provide an easier enforcement tool for DOE by requiring nameplate markings on those motors captured in the scope of the NOPR and in UL 1004–10, and would also ensure products not within the scope, such as rigid electric spa motors, be labelled for that intended use only. (PHTA and NEMA, No. 92 at p. 10) This is an energy conservation standard and not a labeling rulemaking. In this final rule, DOE is requiring variable speed control for standard-size DPPP motors (*i.e.*,  $1.15 \leq \text{THP} \leq 5$ ), consistent with UL 1004–10:2022. However, DOE is also requiring variable-speed control for small-size DPPP motors (*i.e.*,  $0.5 \leq \text{THP} < 1.15$ ), which is more stringent than UL 1004–10:2022. In this final rule, DOE has concluded that the proposal from the June 2022 NOPR is technologically feasible and economically justified. *See* section V for analytical results.

As noted previously, PHTA, NEMA, and Hayward recommended a two-step approach. In addition, most if not all comments to the June 2022 NOPR concerned the transition to variable-speed for the small-size equipment class.<sup>32</sup> DOE reviewed the compliance dates proposed in the June 2022 NOPR with specific concern for the compliance dates applicable to that class. In the June 2022 NOPR, DOE provided a two-year compliance timeline for DPPP motors based on the statutorily mandated rulemaking schedule provided in section 6313. *See* 87 FR 37122, 37144 at FN 67, and 37186. Upon further review, DOE has determined that the rulemaking schedule provided in 42 U.S.C. 6313(b) does not apply to DPPP. As discussed in section II.A. of this document,

<sup>32</sup> *See*: (Anonymous, No. 89 at p. 1), (Pentair, No. 90 at p. 1, 3), (Fluidra, No. 91 at p. 2), (Hayward, No. 93 at p. 2), (CA IOUs, No. 96 at p. 1–2), (Joint Advocates, No. 97 at p. 1), (PHTA and NEMA, No. 92 at p. 10), (PHTA, No. 100 at p. 3)

DPPPM are a type of electric motor, but not among the types of electric motor for which Congress established standards and a rulemaking schedule in 42 U.S.C. 6313(b). DPPPM are definite purpose motors. *See* 42 U.S.C. 6311(13)(C). As such, they are excepted from the requirements of 42 U.S.C. 6313(b), including the compliance deadlines provided in that section. Because 42 U.S.C. 6316(a) applies certain requirements of section 6295(l)-(s) of EPCA to certain equipment, including electric motors, DOE considered whether the compliance deadlines of section 6295(m)(4) applied to DPPPM. Section 6295(m)(4)(A) defines compliance deadlines for specific products. But electric motors and DPPPMs are not listed, nor does section 6316 apply a cross reference on how to apply these paragraphs to electric motors or DPPPMs. Accordingly, DOE determined that these compliance deadlines do not apply to DPPPM. Additionally, DOE reviewed section 6296(m)(4)(B), which states that DOE cannot apply new standards to a product with respect to which other new standards have been required in the prior 6-year period. As this is the first time DOE is establishing standards for this product, this paragraph also does not apply. As such, DOE has determined that it has discretion to establish compliance deadlines for DPPPM.

DOE notes CEC's standards for RDPPM, which include standards for the small-size equipment class, require compliance beginning July of 2021. Docket #19-AAER-02. The CEC standards set a variable speed motor requirement for motors at or above 0.5 THP as well as minimum motor full-load efficiency requirements. 20 CA ADC 1605.3(g)(6)(B). DOE's final rule matches the stringency of the California standards (requiring variable speed controls for all motors over 0.5 THP) for replacement DPPP motors but DOE's proposal extends the variable speed requirement to all DPPP motors, regardless of whether they are sold with a DPPP or on their own. DOE believes manufacturers are already producing standard-size and extra-small DPPPMs that will have to comply with DOE's standards in this final rule. In addition, some manufacturers already produce small-size DPPPMs that align with CEC's variable speed RDPPM standards.<sup>33</sup> However, DOE understands that some manufacturers may need additional time to scale up their

<sup>33</sup> <https://www.regalrexnord.com/products/electric-motors/ac-motors-nema/pump-motors/pool-pump-motors/pool-pump-motor-01-85-hp-1-ph-60-hz-115-v-3600-rpm-48v-frame-tefc-elv08tb>.

manufacturing lines, especially for the small-size DPPP motors.<sup>34</sup> Therefore, DOE is adopting two different compliance dates in this final rule depending on the total horsepower of the motor. Doing so will allow DOE to begin the transition to a Federal standard for DPPP motors quickly, which will help alleviate any circumvention and unintended consequences that may be occurring because of the DPPP Federal standard, while balancing the needs of industry to have additional time to increase manufacturing scale of the small DPPP motors. Based on the comments received, DOE has concluded that the need for additional time is particularly relevant for small-size equipment. Accordingly, DOE is extending the compliance timeline to 4 years, instead of the proposed two years, for the small-size equipment class as DOE believes this provides industry sufficient time to scale up their manufacturing lines.

For the extra-small-size and standard-size equipment classes, DOE is maintaining the two-year compliance timelines as proposed. For the extra-small-size and standard-size equipment classes, the adopted TSL (TSL7) aligns with the requirements in UL 1004–10:2022 and as noted by PHTA and NEMA, manufacturers are ready and able to provide products compliant with UL 1004–10:2022 12 months after a final rule effective date. Therefore, for the extra-small-size and standard-size equipment classes DOE has determined that two years provides sufficient lead time.

The CA IOUs recommended that DOE update the DPPP ECS to align with the proposed DPPP motor standards. The CA IOUs commented that the proposed standard requires variable speed capability for small and standard size DPPP motors, which will impact the motors installed in DPPPs. The CA IOUs added that the non-self-priming pool filter pump and PCBP WEF standards allow performance levels achievable by single-speed, dual-speed, and variable-speed motors. (CA IOUs, No. 96 at p. 6) DOE appreciates CA IOUs comments. However, because this rulemaking is concerning DPPP motors only and not DPPPs, DOE may consider coordinating compliance timelines as part of any upcoming DPPP rulemakings.

Finally, Pentair stated that after the DPPP rule, it saw a large increase in internet activity selling illegal pumps and motors that do not meet DOE

requirements. (Pentair, No. 90 at pp. 1–2) Fluidra commented that American manufacturers may also be negatively impacted by imports of non-compliant DPPPs and DPPP motors from foreign manufacturers who unknowingly or knowingly disregard enforcement of this regulation. (Fluidra, No. 91 at p. 2) Based on input from five manufacturers, PHTA and NEMA commented that they estimate approximately 5 percent of the current market to be made up of inexpensive imported pumps sold through online retailers that likely do not comply with DOE's current energy conservation standard. PHTA and NEMA commented that these manufacturers have indicated that the current value (5 percent) is approximately double what it was prior to the compliance date for the DPPP standard. PHTA and NEMA commented that the manufacturers also estimate that a DPPP motor standard, established as currently proposed by DOE, will double the percentage of the market made up of non-compliant DPPPs, increasing it to 10 percent. (PHTA and NEMA, No. 92 at pp. 7–8) PHTA and NEMA also stated that the misalignment of the compliance dates for the DPPP energy conservation standards and the proposed DPPP motor standards could cause confusion for manufacturers and importers, potentially leading to more non-compliant DPPP motors being imported. PHTA and NEMA reiterated NEMA's concerns about port of entry enforcement that they have separately commented on numerous times. (PHTA and NEMA, No. 92 at p. 8) Nidec commented that they were concerned that because of the disconnect of the proposal to the current DPPP regulations (DPPPMs between 0.5 to 1.15 THP), there may be issues with enforcement of pumps assembled offshore and coming into the U.S. with non-compliant DPPPMs. Nidec commented that because of the rulemaking, there is a high risk that DPPPs may not get assembled anymore in the U.S. and instead will be done offshore unless there is proper enforcement that brings the DPPP regulations and the proposed DPPPM regulations into harmony. (Nidec, Public Meeting, No. 88, at pp. 45–46) DOE currently does not have any energy conservation standards for DPPP motors. This final rule will finalize standards for DPPP motors and product-specific enforcement requirements at § 429.134. Any enforcement-related issues, particularly compliance dates, regarding DPPPs will be addressed as part of the DPPP rulemaking, or through a separate avenue.

Nidec requested comment on whether there are any other examples where an end-product rule defines a lower threshold for compliance versus a component threshold and how DOE has successfully managed that. They stated that in their experience, the end-product generally overrides the component standard, and for the DPPPM proposal, it would not be the case. (Nidec, Public Meeting, No. 88 at p. 47) EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. This equipment includes those electric motors that are DPPP motors, the subject of this document, and also pumps (42 U.S.C. 6311(1)(A)) Accordingly, DOE has the authority to regulate both a component (DPPPM) and the end-product (DPPPs). Given the current misalignment amongst the Federal DPPP standards and the CA DPPP replacement motor standards along with DOE's authority for electric motors, DOE is taking an approach to facilitate harmonization of the standards at the Federal level and ensure a complimentary regulatory approach for DPPPs and replacement DPPP motors which will help ensure energy savings are realized in the field.

#### Scope of Coverage

This document covers equipment meeting the definition of a DPPP motor as defined in § 431.483 and the scope specified in 10 CFR 431.481(b). Specifically, the scope covers DPPP motors with a total THP of less than or equal to 5, but does not apply to: (i) DPPP motors that are polyphase motors capable of operating without a drive and distributed in commerce without a drive that converts single-phase power to polyphase power; (ii) waterfall pump motors; (iii) rigid electric spa pump motors; (iv) storable electric spa pump motors; (v) integral cartridge-filter pool pump motors; and (vi) integral sand-filter pool pump motors.<sup>35</sup>

When evaluating and establishing energy conservation standards, DOE divides covered equipment into equipment classes by the type of energy used or by capacity or other performance-related features, which other products within such type (or class) do not have, that justify differing standards. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the

<sup>34</sup> DOE included the capital and product conversion costs necessary for these DPPP motor manufacturers to introduce variable-speed DPPP motor models for the small-size equipment class. See section III.J of this document.

<sup>35</sup> These terms are defined in UL 1004–10:2020, which is incorporated by reference in DOE's test procedure at 10 CFR 431.484. In this final rule, DOE is incorporating by reference the latest version of the UL standard, UL 1004–10:2022; see discussion in section III.A.1 of this document.

feature to the consumer and other factors DOE determines are appropriate. (42 U.S.C. 6316(a); 42 U.S.C. 6295(q))

DOE is establishing equipment classes for DPPP motors based on THP. DOE is proposing an extra-small-size equipment class corresponding to motors with a THP less than 0.5 THP, a small-size equipment class corresponding to motors with a total horsepower rating greater than or equal to 0.5 THP but less than 1.15 THP, and a standard-size equipment class corresponding to a motor with a THP greater than or equal to 1.15 THP and less than or equal to 5 THP. Table III.1 provides a summary of the equipment classes. See section IV.A.3 for further details on the reasoning as to why DOE determined these equipment classes are appropriate and justify having separate standards.

TABLE III.1—EQUIPMENT CLASSES FOR DPPP MOTORS

| Equipment class        | Motor total horsepower (Hp) |
|------------------------|-----------------------------|
| Extra-small-size ..... | THP <0.5.                   |
| Small-size .....       | 0.5 ≤ THP < 1.15.           |
| Standard-size .....    | 1.15 ≤ THP ≤ 5.             |

See section IV.A.1 of this document for discussion of the equipment classes analyzed in this final rule.

#### B. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6314(a)) Manufacturers of covered products must use these test procedures to certify to DOE that their product complies with energy conservation standards and to quantify the efficiency of their product. (42 U.S.C. 6314(d)(1); 42 U.S.C. 6316(a), 42 U.S.C. 6295(s))

The test procedure references UL 1004–10:2020 “Standard for Safety for Pool Pump Motors” for the definitions (10 CFR 431.483) and references CSA C747–09 as the energy efficiency test method for DPPP motors (10 CFR 431.484(b)). The test procedure establishes full-load efficiency as the metric for DPPP motors. 10 CFR 431.484(b). In this final rule, DOE is incorporating by reference the latest version of the UL standard, UL 1004–10:2022; further discussion on this topic and any comments received are provided in section IV.A.1 of this document. In addition, DOE is also finalizing product-specific enforcement requirements at 10 CFR 429.134 that require DPPP motors to be tested in accordance with UL 1004–10:2022 to

verify variable-speed capability and applicable freeze protection design requirements.

#### C. Technological Feasibility

##### 1. General

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

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

##### 2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6316(a); 42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (“max-tech”) improvements in energy efficiency for DPPP motors, using the design parameters for the most efficient products available on the market or in

working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section IV.C of this final rule and in chapter 5 of the final rule TSD.

#### D. Energy Savings

##### 1. Determination of Savings

For each trial standard level (“TSL”), DOE projected energy savings from application of the TSL to DPPP motors purchased in the 30-year period that begins in the first full year of compliance with the standards (2026–2055).<sup>36</sup> The savings are measured over the entire lifetime of equipment purchased in the 30-year analysis period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of energy conservation standards.

DOE used its national impact analysis (“NIA”) spreadsheet models to estimate national energy savings (“NES”) from standards for DPPP motors. The NIA spreadsheet model (described in section IV.G.2 of this document) calculates energy savings in terms of site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports national energy savings in terms of primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. For natural gas, the primary energy savings are considered to be equal to the site energy savings. DOE also calculates NES in terms of FFC<sup>37</sup> energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.*, coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards.<sup>37</sup> DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.H.2 of this document.

##### 2. Significance of Savings

To adopt any new or amended standards for a covered product, DOE

<sup>36</sup> DOE also presents a sensitivity analysis that considers impacts for products shipped in a 9-year period.

<sup>37</sup> The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (Aug. 18, 2011), as amended at 77 FR 49701 (Aug. 17, 2012).

must determine that such action would result in significant energy savings. (42 U.S.C. 6295(o)(3)(B))

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.<sup>38</sup> For example, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis, taking into account the significance of cumulative FFC national energy savings, the cumulative FFC emissions reductions, and the need to confront the global climate crisis, among other factors.

As stated, the standard levels adopted in this final rule are projected to result in national energy savings of 1.56 quads FFC, the equivalent of the electricity use of 16.8 million homes in one year. Based on the amount of FFC savings, the corresponding reduction in emissions, and the need to confront the global climate crisis, DOE has determined the energy savings from the standard levels adopted in this final rule are “significant” within the meaning of 42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(3)(B).

#### *E. Economic Justification*

##### *1. Specific Criteria*

As noted previously, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

##### *a. Economic Impact on Manufacturers and Consumers*

In determining the impacts of potential amended standards on manufacturers, DOE conducts an MIA, as discussed in section IV.J of this document. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply

with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include (1) INPV, which values the industry on the basis of expected future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and payback period (“PBP”) associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the consumer costs and benefits expected to result from particular standards. DOE also evaluates the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard.

##### *b. Savings in Operating Costs Compared to Increase in Price (LCC and PBP)*

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(III)) DOE conducts this comparison in its LCC and PBP analysis.

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

The PBP is the estimated amount of time (in years) it takes consumers to

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

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

##### *c. Energy Savings*

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section IV.G.2 of this document, DOE uses the NIA spreadsheet models to project national energy savings.

##### *d. Lessening of Utility or Performance of Products*

In establishing equipment classes, and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered equipment. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards adopted in this document would not reduce the utility or performance of the equipment under consideration in this rulemaking.

##### *e. Impact of Any Lessening of Competition*

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a standard. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(V)). It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6316(a); 42 U.S.C.

<sup>38</sup> Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment, 86 FR 70892, 70901 (Dec. 13, 2021).



6295(o)(2)(B)(ii)) To assist the Department of Justice (“DOJ”) in making such a determination, DOE transmitted copies of its proposed rule and the NOPR TSD 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 noted the possibility of anticompetitive effects stemming from the differences between the energy conservation standards for DPPP motors and DPPP, as well as the high cost of compliance for domestic small businesses identified by DOE. DOJ elaborated that the difference in standards between DPPP motors and DPPP would force domestic manufacturers to comply with both standards while foreign manufacturers could import DPPP that are compliant with the DPPP rule but contain a non-compliant motor. DOJ ultimately concluded that they do not have sufficient information to conclude that the proposed energy conservation standards for DPPP motor are likely to have a significant adverse impact on competition. DOE notes that DPPP motors that are a component of an imported DPPP are subject to energy conservation standards. DOE is publishing the Attorney General’s assessment at the end of this final rule.

#### f. Need for National Energy Conservation

DOE also considers the need for national energy and water conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(VII)) The energy savings from the adopted standards are likely to provide improvements to the security and reliability of the Nation’s energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the Nation’s electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the Nation’s needed power generation capacity, as discussed in section IV.M of this document.

DOE maintains that environmental and public health benefits associated with the more efficient use of energy are important to take into account when considering the need for national energy conservation. The adopted standards are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases (“GHGs”) associated with energy production and use. DOE conducts an emissions analysis to estimate how potential standards may affect these emissions, as discussed in

section IV.K of this document; the estimated emissions impacts are reported in section V.B.6 of this document. DOE also estimates the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L this document.

#### g. Other Factors

In determining whether an energy conservation standard is economically justified, DOE may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent DOE identifies any relevant information regarding economic justification that does not fit into the other categories described previously, DOE could consider such information under “other factors.”

#### 2. Rebuttable Presumption

EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the equipment that meets the standard is less than three times the value of the first year’s energy savings resulting from the standard, as calculated under the applicable DOE test procedure. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(iii)) DOE’s LCC and PBP analyses generate values used to calculate the effect potential amended energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE’s evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.F of this final rule.

#### IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this rulemaking with regard to DPPP motors. Separate subsections address each component of DOE’s analyses.

DOE used several analytical tools to estimate the impact of the standards considered in this document. The first tool is a spreadsheet that calculates the

LCC savings and PBP of potential amended or new energy conservation standards. The national impacts analysis uses a second spreadsheet set that provides shipments projections and calculates national energy savings and net present value of total consumer costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (“GRIM”), to assess manufacturer impacts of potential standards. These three spreadsheet tools are available on the DOE website for this rulemaking: [www.eere.energy.gov/buildings/appliance\\_standards/standards.aspx?productid=76](http://www.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=76). Additionally, DOE used output from the latest version of the Energy Information Administration’s (“EIA’s”) *Annual Energy Outlook* (“AEO”) for the emissions and utility impact analyses.

#### A. Market and Technology Assessment

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

#### 1. Scope of Coverage and Definitions

This document covers equipment meeting the definition of a DPPP motor as defined in 10 CFR 431.483 and the scope specified in 10 CFR 431.481(b). Specifically, the scope covers DPPP motors with a THP of less than or equal to 5, but does not apply to: (i) DPPP motors that are polyphase motors capable of operating without a drive and distributed in commerce without a drive that converts single-phase power to polyphase power; (ii) waterfall pump motors; (iii) rigid electric spa pump motors; (iv) storable electric spa pump motors; (v) integral cartridge-filter pool



pump motors; and (vi) integral sand-filter pool pump motors.<sup>39</sup> The scope includes DPPP motors regardless of how the equipment is sold; *i.e.*, incorporated in a DPPP or sold separately. The DPPP motors in the scope of this rule are used primarily in the residential sector and light commercial applications, in self-priming pool filter pumps (typically used in inground pools), non-self-priming pool filter pumps (typically used in above-ground pools), and pressure cleaner booster pumps (typically used for pressure-side pool cleaner applications).

DOE received some comments on scope and definitions. PHTA and NEMA commented that storable pools use non-integral pumps, which are certified to DPPP, but the current direct motor replacements are not variable-speed capable per what the NOPR would require. PHTA and NEMA stated that the replacement motors made for this type of pool are motors integrated with the control unit, and that these motors are specific to a set pump for the storable pool and cannot be used in other applications, as there is no way to (dis)connect them. PHTA and NEMA further stated that these pools are purchased in retail stores, and based on input from two manufacturers, have an average retail price slightly over \$400. Accordingly, PHTA and NEMA recommended that DOE consider exempting this specific type of motor based on application and obtain additional manufacturer information about this specific product related to the current market, shipments, and pricing for this type of pool, and to consider the limited use of replacement motors. (PHTA and NEMA, No. 92 at p. 5)

DPPP motors in scope are those electric motors identified in sections 1.2, 1.3, and 1.4 of UL 1004–10:2022. 10 CFR 431.481(n), as updated in this final rule. DOE notes that the DPPP definition comprises self-priming pool filter pumps, non-self-priming pool filter pumps, waterfall pumps, PCBPs, integral sand-filter pool pumps, integral-cartridge filter pool pumps, storable electric spa pumps, and rigid electric spa pumps. 10 CFR 431.462. In addition, section 1.4 of UL 1004–10:2022 specifically excludes DPPP motors that are polyphase motors capable of operating without a drive and distributed in commerce without a drive that converts single-phase power to polyphase power, waterfall pump

motors, rigid electric spa pump motors, storable electric spa pump motors, integral cartridge-filter pool pump motors, and integral sand-filter pool pump motors. As such, the example application provided by PHTA and NEMA would need to meet the definition of DPPP and not be one of the aforementioned exclusions to be considered within the scope of DPPP motor.

As previously noted, storable electric spa pump motors are specifically excluded from the scope of this rulemaking. Section 2 of UL 1004–10:2022 defines storable electric spa pump motor as a DPPP motor that is a component of a storable electric spa pump as defined 10 CFR 431.462, subpart Y, Pumps. Storable electric spa pumps are defined to include an integral heater and an integral air pump. 10 CFR 431.462. The example application provided by PHTA and NEMA specifically stated that it has a non-integral pump. However, PHTA and NEMA did not provide details on what type of DPPP the example would be considered to be.

As such, DOE attempted to determine what type of product PHTA and NEMA were referring to and reviewed manufacturer data and specification sheets to confirm what type of DPPP the example could be considered to be. Based on DOE's review, DOE did not identify any DPPPs for storable pumps that would not be applicable to variable-speed motors as defined due to their integration with controls and other components, and not already be excluded for other reasons. Specifically, of the examples DOE was able to find of variable-speed motors integrated with controllers, they were applicable to integral-cartridge or integral-sand filter pumps, both of which are already excluded from DPPP motor scope. Otherwise, DOE also reviewed an outlier filtration system for storable pools, but could not identify any apparent integration of the DPPP motor with controls, and there was also no indication that it would not be able to be replaceable with a variable-speed option being considered in this rulemaking. As such, DOE could not definitively conclude that there is a need for the exclusion recommended by PHTA and NEMA, and therefore maintains the scope from the June 2022 NOPR.

Regarding the variable-speed definition, CEC and NYSERDA recommended that DOE update the definition to align with the definition used in the California Code of Regulations, Title 20, section 1602(g)(4), instead of the current definition based

on UL 1004–10:2022. CEC and NYSERDA stated that with the current definition, at minimum, only four operating speeds are required to meet the definition, whereas the California code specifies “operating at a variety of user-determined speeds,” which CEC and NYSERDA suggested described a truly variable-speed motor and aligns with how variable-speed is understood by consumers. CEC and NYSERDA noted that they were unaware of any DPPP motors that meet the current definition of variable speed, but do not meet the Title 20 California definition. However, CEC and NYSERDA also commented that if such a motor exists, having only four operating speeds would constrain operational flexibility and lead to non-optimal operation and unnecessary electricity consumption. CEC and NYSERDA stated that allowing for the potential introduction of less energy efficient “variable-speed” motors is unnecessary and might jeopardize some of the energy savings associated with this proposed rule. (CEC and NYSERDA, No. 94 at pp. 3–4)

DOE incorporated by reference UL 1004–10:2020, which includes a definition of variable speed in the July 2021 Final Rule. 86 FR 40765, 40769–40770. UL 1004–10 is an industry standard specific to DPPP motors and has been used by industry since 2019. In this final rule, DOE is not considering any changes in scope; rather, this rulemaking is finalizing standards based on the scope and definitions established in the July 2021 Final Rule, and which are currently in 10 CFR 431.481. Further, as noted by commenters, there are no DPPP motors that meet the current definition of variable speed but do not meet the Title 20 California definition. As such, if there is any discrepancy in the future, DOE may consider this issue in a future rulemaking.

In the June 2022 NOPR, DOE also proposed to update the UL 1004–10 reference to the latest version of the industry standard, from UL 1004–10:2020 to UL 1004–10:2022, in sections 10 CFR 431.481(b), 10 CFR 431.482(c)(1), and 10 CFR 431.483. 87 FR 37122, 37133–37134. DOE concluded that the only update was the addition of a glossary term for “factory default setting” in section 2.7.A, which did not change the content and requirements of UL 1004–10:2020, but only provided a clarification regarding the factory default setting as it applies to the industry standard. *Id.* Further, DOE also proposed product-specific enforcement requirements at 10 CFR 429.134 that require DPPP motors be tested in accordance with UL 1004–

<sup>39</sup> These terms are defined in UL 1004–10:2020, which is incorporated by reference in DOE's test procedure at 10 CFR 431.484. In this NOPR, DOE is proposing to reference the latest version of the UL standard, UL 1004–10:2022; see discussion in section III.A.1 of this document.

10:2022 to verify variable-speed capability and applicable freeze protection design requirements. 87 FR 37122, 37131.

In response, PHTA and NEMA supported the DOE's decision to update from the 2020 to the 2022 version of the UL 1004–10 Standard. (PHTA and NEMA, No. 92 at p. 10) In this final rule, DOE is incorporating by reference the latest version of the UL standard, UL 1004–10:2022 to be consistent with industry practice.

Separately, the Joint Advocates supported the proposed product-specific enforcement provisions because they will provide clarity regarding how DOE would determine whether a DPPP motor complies with the requirements regarding variable-speed capability and freeze protection design. (Joint Advocates, No. 97 at p. 2) As such, DOE is also finalizing the proposed product-specific enforcement requirements at 10 CFR 429.134.

## 2. Market Review

In the June 2022 NOPR, to review the current market of DPPP motors incorporated in DPPPs, DOE relied on information from the DOE Compliance and Certification Database, the CEC, and the ENERGY STAR program. (“2021 DPPP Database”) To supplement the market review, DOE also reviewed general motor catalog data from 2020 and created a database that contained information regarding motor speed-control, topology, THP, motor application, and full-load efficiency (“2020 Motor Database”). To make the two databases more comparable, DOE filtered the 2020 Motor Database to analyze only motors used in DPPP applications. 87 FR 37122, 37134.

DOE received a number of comments regarding the data that were used for the market analysis. Pentair commented that a lot has changed in the past 7 years and DOE should consider the latest data versus data used for the DPPP rule in 2015. (Pentair, No. 90 at p. 1) Hayward commented that DOE should update its information on the current market. Specifically, Hayward noted that it has stopped selling any pumps that were not compliant with the minimum WEF requirements and modified other pumps that were marginal in performance. In addition, Hayward noted that variable-speed pumps have continued to gain market share and therefore would provide a different baseline. (Hayward, No. 93 at p. 2) PHTA and NEMA commented that DOE relied heavily on the analysis performed during the 2017 DPPP DFR and recommended that DOE conduct interviews to obtain current market information, pricing, and

shipments data. (PHTA and NEMA, No. 92 at p. 2) Regal commented that it agrees with PHTA and NEMA's comments that DOE should consider conducting additional interviews and analyses to better understand current market offerings, pricing, and shipments. (Regal, No. 98 at p. 1) PHTA commented that using 2015 market data is not accurate because the DPPP market has substantially changed since then and the 2015 data is invalid in its application to the DPPP analysis. PHTA provided data showing that nearly 60 percent of pool pump listings were non-compliant with the 2017 DPPP rule and had to be modified or removed by the July 19, 2021 compliance date. (PHTA, No. 100 at p. 2) On the other hand, CEC and NYSERDA stated that DOE's analysis is robust and appropriately representative. (CEC and NYSERDA, No. 94 at p. 3)

First, DOE notes that DOE did consider the latest DPPP market data available for the analysis conducted in the June 2022 NOPR, as previously discussed. In addition, for this final rule, DOE updated the market review using current information from the DOE Compliance and Certification Database, the CEC, and the ENERGY STAR program. (“2022 DPPP Database”) DOE supplemented this review with information from general motor catalogs surveyed in 2022; these motor catalogs contained information regarding motor THP, topology, full-load efficiency, pole configuration, and speed-control. DOE then analyzed the range of efficiencies offered at a given THP, topology, and pole configuration as well as the average efficiency of that subset of motors. DOE found that the average and range of efficiency offered for a given THP, topology, and pole configuration were not significantly different than what was observed in the data provided by manufacturers for the January 2017 Direct Final Rule. Based on the similar efficiencies being offered, DOE concluded that the technology used to meet each efficiency level has not substantially changed since the analysis for the January 2017 Direct Final Rule.

DOE notes that the shipments efficiency distribution are based on a review of the 2022 DPPP Database and that this updated database captures the changes to the DPPP market that have occurred since 2017, including those changes due to the January 2017 Direct Final Rule (See section IV.F.8 of this document for more details). For details on how DOE accounted for the DPPP motor price changes since the January 2017 Direct Final Rule, see section IV.C.2 of this document. DOE also notes that it had conducted manufacturer

interviews as part of the January 2017 Direct Final Rule and incorporated the updated manufacturer feedback in its analysis. DOE also conducted DPPP motor manufacturer interviews as part of the June 2022 NOPR, as discussed in the manufacturer impact analysis, and incorporated feedback to estimate the manufacturer impacts of setting variable-speed requirements as standards. 87 FR 37122, 37154. As such, DOE concluded that additional manufacturer interviews were not needed since DOE performed interviews, and already considered recent market offering, pricing, and shipments information in this final rule.

## 3. Equipment Classes

When evaluating and establishing energy conservation standards, DOE shall establish separate standards for a group of covered products (*i.e.*, establish a separate equipment class) if DOE determines that separate standards are justified based on the type of energy used, or if DOE determines that a product's capacity or other performance-related feature, which other products within such type (or class) do not have, justifies a different standard. (42 U.S.C. 6316(a); 42 U.S.C. 6295(q)) In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (*Id.*)

In the June 2022 NOPR, DOE proposed to establish equipment classes for DPPP motors based on THP. DOE proposed an extra-small-size equipment class corresponding to motors with a THP less than 0.5 THP, a small-size equipment class corresponding to motors with a total horsepower rating greater than or equal to 0.5 THP but less than 1.15 THP, and a standard-size equipment class corresponding to motors with a THP greater than or equal to 1.15 THP and less than or equal to 5 THP. 87 FR 37122, 37130.

In response to the June 2022 NOPR, DOE received a number of comments regarding equipment classes. PHTA and NEMA recommended that DOE analyze DPPP motors based on equipment classes considered in the DPPP rule. PHTA and NEMA commented that it is critical to differentiate by application, not just size, to really determine what is or is not cost-effective. As such, PHTA and NEMA commented that if the analysis was separated based on PCBP self-priming and non-self-priming, it would show that not all the current proposed requirements were cost-effective. Specifically, PHTA and NEMA

stated that when looking at PCBP as a separate equipment class, a variable-speed requirement is not cost-effective (PHTA and NEMA, No. 92 at pp. 4–5) In addition, PHTA and NEMA commented that DOE should break down the 0.5–1.15 THP and analyze the following additional THP ranges:  $0.5 < 0.75$  THP;  $0.75 < 1$  THP;  $1 > 1.15$  THP based on the assessment of available products and previously recommended THP disaggregation. (PHTA and NEMA, No. 92 at p. 5; PHTA, No. 100 at p. 3) Further, PHTA and NEMA commented that breaking down the 0.5–1.15 THP into smaller categories for an analysis would provide a truer picture of cost-effectiveness when combined with breaking out PCBP self-priming and non-self-priming applications. PHTA and NEMA stated that to do otherwise will cause market confusion and unintended consequences with non-compliant products being distributed. For example, PHTA and NEMA commented that imported pump products with THP ratings between 0.50 and 1.14 can meet the DPPP rule and bypass the DPPP motor proposal, which will negate the DPPP motor proposed rule and not deliver the intended energy savings. (PHTA and NEMA, No. 92 at p. 10)

Hayward stated that equipment class should be disaggregated by pump size and application and noted that THP misrepresents the overall effect and impact of the rule. Hayward also supported PHTA and NEMA's recommendations on disaggregation. (Hayward, No. 93 at p. 2) Fluidra recommended that equipment be disaggregated not only by THP, but also by application type. Specifically, Fluidra commented that it was concerned that PCBP and pool filtration pumps were combined into the same equipment class. (Fluidra, No. 91 at p. 1)

Waterway Plastic commented that in the negotiations that resulted in the January 2017 Direct Final Rule, there was consideration of a separate category for non-self-priming pool pumps that are used in above-ground pool pump applications, that range from 0.75 to 1 THP, and are typically two-speed or single-speed pumps. Accordingly, they stated that the DPPP rule would not consider this separate category of DPPPs, which allowed for single- or two-speed DPPPMs to be used to meet the ultimate WEF standard, and were concerned on how the DPPP rulemaking would overwrite the conclusions from the January 2017 Direct Final Rule. (Waterway Plastic, Public Meeting Transcript, No. 88 at pp. 16–17) Dose also commented asking if

DOE considered breaking the small-size THP range into subcategories after they suggested the favorable results would be from the higher THPs. (Dose, Public Meeting Transcript, No. 88 at pp. 39–40)

DOE notes that this rule concerns DPPP motors, not DPPP. Further, DOE notes that the scope includes DPPP motors regardless of how the equipment is sold (*i.e.*, incorporated in a DPPP or sold separately). Accordingly, imported pump products that include a DPPP motor would be subject to the DPPP motor standard as well.

When considering equipment classes, DOE determines whether separate standards are justified based on the type of energy used for the equipment in question (which in this rulemaking is DPPP motors only), or if a DPPP motor's capacity or other DPPP performance-related feature justifies a different standard. Manufacturers of covered equipment must use the Federal test procedure as the basis for certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)). The metric for DPPP motors based on the DOE test procedure is full-load efficiency (10 CFR 431.484(b)), and full-load efficiency does not take into consideration the ultimate application of the DPPP motor in a DPPP and the motor is tested without an associated DPPP. The DPPP motors in this rule also consume the same type of energy. Further, DOE notes that there are no physical or technological distinguishing factors in a DPPP motor that could be used to identify a particular end-use DPPP application (*e.g.*, PCBP, self-priming, non-self-priming). If sized correctly, a given DPPP motor could serve any of the DPPP applications discussed in this rulemaking. The ranges of motor THP that serve each application overlap and preclude DOE from setting equipment classes using the motor THP to distinguish each application. Accordingly, DOE is not considering DPPP application in addition to motor THP when setting equipment classes and energy conservation standards for this final rule.

In the June 2022 NOPR, DOE discussed that full-load efficiency generally correlates with motor horsepower. DOE explained motor horsepower dictates the maximum load that a motor can drive, which means that a motor's rated horsepower can influence and limit the end use applications where that motor can be used, which in this case is dedicated purpose pool pumps. Horsepower is a critical performance attribute of a DPPP

motor, and since horsepower has a direct relationship with full load efficiency and consumer utility, used this element as a criterion for distinguishing among equipment classes. 87 FR 37122, 37134. In determining the proposed equipment classes, DOE considered how motor total horsepower can be used to decide whether separate standards are justified based on the utility of the DPPP motor. Accordingly, DOE first justified a utility argument for the 0.5 THP cut-off based on maximum efficiency potential in non-self-priming pool filter pumps (*i.e.*, two-speed or variable-speed motors below 0.5 THP would provide inadequate flow to the pool pump). Finally, DOE justified a utility argument for the 1.15 THP cut-off based on how almost all DPPP motors greater than or equal to 1.15 THP are primarily used in standard-size self-priming pool filter pumps, while pool pump motors below 1.15 THP are typically found in small-size, self-priming pool filter pumps, non-self-priming pool filter pumps, and PCBPs. 87 FR 37122, 37135.

To review the recommendation from PHTA and NEMA to further break down the 0.5–1.15 THP range (*i.e.*, small-size equipment class), DOE analyzed the 2022 DPPP Database to determine whether there was any other utility argument to consider. DOE identified DPPP motors used in PCBP applications primarily in the 0.75–1.15 DPPP motor THP range; however, PCBPs in that range were only 4 percent of the total model count (96 percent of the models were either self-priming or non-self-priming). Further, DPPP motors in self-priming pool filter pumps and non-self-priming pool filter pumps were identified throughout the small-size equipment class THP range. Accordingly, there was no THP range within the small-size equipment class that clearly illustrated that only PCBP motors would be used and therefore have a specific utility, and so, DOE was unable to determine a clear utility argument that would allow for the small-size equipment class to be segregated further. Therefore, because DOE is not considering DPPP application in addition to motor total horsepower for creating equipment classes, DOE is maintaining the June 2022 NOPR proposed equipment classes in this final rule.

Fluidra recommended including a definition for a PCBP DPPP motor as “a motor used for a pressure cleaner booster pump”, and a definition for pressure cleaner booster pump as “an end suction, dry rotor pump designed and marketed for pressure-side pool cleaner applications, and which may be

UL listed under ANSI/UL 1081–2016. (Fluidra, No. 91 at p. 2) PHTA and NEMA recommended that DOE define a PCBP DPPP motor as “an electric motor that is single phase or poly phase and is designed and/or marketed for use on pressure cleaner booster pumps, as defined in 10 CFR 431.462.” PHTA and NEMA commented that this definition aligns with the definitions of a DPPP motor and PCBP, both of which define the respective equipment based on the design and marketed purpose of the equipment. (PHTA and NEMA, No. 92 at pp. 4–5) DOE understands that the definitions provided by the commenters were intended for distinguishing PCBP within the equipment class structure. As discussed previously, DOE is not separating equipment classes based on application. As such, DOE does not need to incorporate a definition for a PCBP motor and is therefore not including a definition in this final rule.

#### 4. Technology Options

In the June 2022 NOPR market analysis and technology assessment, DOE identified several technology options initially determined to improve the efficiency of DPPP motors. Specifically, DOE stated that the efficiency of a DPPP motor is dependent on motor topology, capacity, and operating speed. Because DOE proposed to delineate equipment classes based on motor capacity (*i.e.*, motor horsepower), DOE considered motor topology and operating speed as technology options. 87 FR 37122, 37135–37136.

For motor topology, DOE considered AC induction motors and permanent magnet DPPP motors. Within AC induction motors, DOE identified six categories of motors, including shaded-pole, split-phase, capacitor-start (capacitor-start induction-run “CSIR” and capacitor-start capacitor-run “CSCR”), permanent-split capacitor (“PSC”), and polyphase. 87 FR 37122, 37135–37136. For operating speed, DOE considered single-speed, multi-speed, and variable-speed DPPP motors. Single-speed motors can operate at one predefined speed, and therefore the associated pool pump can provide only a single flow rate in any given pool system. Two-speed motors can be sized so that high-flow functions like pool cleaning are effective at full-speed operation and low-flow tasks like filtration can be completed at low-speed operation. Multi-speed motors function similarly to two-speed motors, but provide additional flexibility. Finally, variable-speed motors can provide greater energy savings than two-speed or multi-speed motors due to the ability to program these motors to operate at user-

defined speed settings. 87 FR 37122, 37136. Variable-speed motors can also offer non-energy-saving benefits like reduced pool system wear and reduced noise levels during operation, both due to the reduced amount of water flow during pumping. DOE requested comment on the technologies considered for higher DPPP motor efficiency. *Id.*

PHTA and NEMA commented that to meet the current DPPP rulemaking, synchronous motor technologies with a variable frequency drive are already being utilized to meet system efficiency requirements. As such, PHTA and NEMA suggested that small additional increments in already implemented synchronous motor efficiency will have minimal impact on system efficiency, but significant impact on costs. (PHTA and NEMA, No. 92 at p. 10) DOE notes that this rule is specifically regarding the DPPP motor, not DPPP, and therefore technology options considered are with regards to DPPP motors and not the whole DPPP system. DOE also understands that meeting the current DPPP WEF standards would not require synchronous motor technologies for the range of DPPP motor equipment classes being considered. Specifically, in the October 2020 NOPR, DOE specified that only standard-size self-priming pool filter pumps, which are subject to the DOE DPPP energy conservation standards, would likely require a variable-speed control motor. 85 FR 62816, 62824. DOE noted that this generally reflects DPPP motors with a THP greater than or equal to 1.15. *Id.* As such, there are potential savings to be considered for the full scope of DPPP motors being considered, and as discussed previously, the synchronous motor technology option allows for multiple operating speeds, which can provide energy savings. Finally, DOE included the incremental costs for requiring variable speed as part of the engineering analysis, which is discussed further in section IV.C.2 of this document.

Similarly, PHTA and NEMA commented that variable-speed fractional HP pumps cannot provide minimum flow at required lower speeds. (PHTA and NEMA, No. 100 at p. 3) DOE notes that variable-speed motors are only considered as a design option for DPPP motors where the associated pump can provide adequate flow at lower speeds, and that the representative units analyzed in the January 2017 Direct Final Rule contained fractional THP variable-speed motors. *See* Table 5.6.5 of the January 2017 Direct Final Rule TSD, where a .44 hhp pump is driven by a .75 THP

variable-speed motor and provides adequate flow.

Separately, Fluidra, PHTA, and NEMA suggested that the operating window of a PCBP in practical application is limited to an approximate motor speed of 2,900 RPM–3,450 RPM (max speed); runs on a timer for 2–2.5 hours a day at a single operating speed; and, once set, is typically not further adjusted for speed like one would for a filtration pump. (Fluidra, No. 101 at p. 1; PHTA and NEMA, No. 100 at p. 3) Accordingly, Fluidra and PHTA stated that the definition for a variable-speed control DPPP motor does not make practical sense in a PCBP application, and therefore recommended separating PCBP requirements from other DPPP applications. (Fluidra, No. 101 at pp. 1–3; PHTA, No. 100 at pp. 2–3) DOE notes that the definition for variable speed comes from UL 1004–10:2020, which is an industry standard DOE incorporated by reference in the July 2021 Final Rule based on recommendations from several stakeholders. 86 FR 40765, 40769–40770. (July 29, 2021). Further, the scope of UL 1004–10:2020 does not specifically exclude PCBP applications for DPPP motors. *See* section 1 of UL 1004–10:2020. As such, DOE concludes that the definitions from UL 1004–10:2020 are applicable to all DPPP motors in scope, including PCBPs, and there is no technical reasoning to exclude application to PCBPs.

Separately, in the January 2017 Direct Final Rule, DOE also considered variable-speed motors for PCBPs (82 FR 5650, 5684), as the WEF metric accounts for energy savings available from reducing the pump speed to reach the minimum required pressure of 60 feet. *See* section 3.6.2 of the January 2017 Direct Final Rule TSD. While the test procedure specifies only one load point for testing PCBPs (*see* Table 1 of appendix C to subpart Y of 10 CFR part 431), the test procedure does not specify that PCBPs are tested at maximum speed; rather, it specifies that PCBPs are tested at the lowest speed that can achieve 60 feet of head at the 10 gpm test condition. Therefore, a PCBP may be able to achieve a higher (more beneficial) WEF score if it has the ability to operate at reduced speeds, and as such, the definition for a variable-speed control DPPP motor would still make practical sense in terms of examining energy savings potential.

Finally, as part of the January 2017 Direct Final Rule, the DPPP Working Group discussed that PCBPs on the market supply between 100 and 125 feet of head at the pump outlet at the test condition of 10 gpm, but these pumps provide more pressure than the cleaner

requires because the pump must overcome head losses imposed by piping, couplings, and hoses between the pump and the cleaner. In pool installations with high head loss, these pumps may deliver the recommended amount of head to the cleaner when operating at maximum speed with no flow restriction; in pool installations with low head loss, these pumps may supply more head than is needed to drive the pressure cleaner. As such, the DPPP Working Group discussed how, in installations with low head loss, energy could be conserved by operating the pressure cleaner booster pump at a reduced speed rather than by releasing pressure that was supplied unnecessarily. Therefore, there is benefit to variable-speed control for PCBP applications. See section 3.6.2.2 of the January 2017 Direct Final Rule TSD.

NEEA recommended that DOE include non-proprietary, standardized connectivity design requirements for DPPP motors consistent with the voluntary requirements in the ENERGY STAR Product Specification for Pool Pumps Version 3.1. The ENERGY STAR specification presents connected product criteria for a connected pool pump system (“CPPS”). As part of the CPPS criteria, ENERGY STAR requires communication and demand response functionality. Specifically, ENERGY STAR requires that the CPPS shall meet the communication and equipment performance standards for OpenADR 2.0 and/or CTA–2045. NEEA commented that this requirement to use these non-proprietary communication protocols and hardware standards ensures there is an open-source platform that allows demand response service providers and utilities to interface with as many demand response customers as possible. NEEA noted that the DOE DPPP motor rule would benefit from this additional demand response design requirement because the DPPP motor serves as the energy-consuming component of the pool pump. However, NEEA further recommended that this requirement additionally be applied to the pool pumps themselves, so that the pump controller can provide interface for response signals. Finally, NEEA noted that connectivity design requirements would provide the greatest benefits to two-speed or variable-speed motors, and that DOE should assess the additional cost requirements for integrating connectivity requirements into DPPP motors with the multitude of efficiency and grid benefits that grid-connected pool pumps can provide. NEEA also provided an example of a case study by

Electric Power Research Institute,<sup>40</sup> which showed connected pool pumps systems can provide significant grid benefits. (NEEA, No. 99 at pp. 1–2)

The subject of this final rule is DPPP motors, which are within the scope of electric motors. DOE notes that these potential design criteria described by NEEA would not directly impact the measured efficiency of DPPP motors per the DOE test procedure, but could serve an important purpose for grid flexibility generally, when used in conjunction with the DPPP. For this final rule, DOE is only considering technology options that can be directly implemented as part of the DPPP motor to improve measured efficiency. As such, an additional connectivity design requirement would be beyond the scope of this final rule and therefore is not being considered at this time.

### B. Screening Analysis

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

#### (1) *Technological feasibility.*

Technologies that are not incorporated in commercial products or in commercially viable, existing prototypes will not be considered further.

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

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

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

<sup>40</sup> Performance Test Results: CTA–2045 Variable Speed Pool Pumps, <https://www.bpa.gov/-/media/Aep/energy-efficiency/emerging-technologies/ET-Documents/NREL-testing-CTA-2045-VariableSpeedPoolPump-Nov2017-000000003002011749.pdf>.

(5) *Unique-pathway proprietary technologies.* If a technology has proprietary protection and represents a unique pathway to achieving a given EL, it will not be considered further, due to the potential for monopolistic concerns. 10 CFR 431.4; 10 CFR part 430, subpart C, appendix A, sections 6(c)(3) and 7(b).

In sum, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis. The reasons for eliminating any technology are discussed in the following sections.

In the June 2022 NOPR, DOE determined that all the technology options considered continue to be technologically feasible because they are being used or have previously been used in commercially available products or working prototypes. DOE also found that the technology options continue to meet the other screening criteria (*i.e.*, practicable to manufacture, install, and service; do not result in adverse impacts on consumer utility, product availability, health, or safety; and are not unique-pathway proprietary technologies). 87 FR 37122, 37137. As such, DOE screened-in all technology options considered.

DOE did not receive any comments regarding the screening analysis. As such, through a review of each technology, similar to the conclusions from the June 2022 NOPR, DOE concludes that all of the identified technologies listed in section IV.A.4 of this document met all five screening criteria to be examined further as design options in DOE’s final rule analysis.

### C. Engineering Analysis

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

## 1. Efficiency Analysis

DOE typically uses one of two approaches to develop energy efficiency levels for the engineering analysis: (1) relying on observed efficiency levels in the market (*i.e.*, the efficiency-level approach), or (2) determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (*i.e.*, the design-option approach). Using the efficiency-level approach, the efficiency levels established for the analysis are determined based on the market distribution of existing products (in other words, based on the range of efficiencies and efficiency level “clusters” that already exist on the market). Using the design-option approach, the efficiency levels established for the analysis are determined through detailed engineering calculations and/or computer simulations of the efficiency improvements from implementing specific design options that have been identified in the technology assessment.

DOE may also rely on a combination of these two approaches. For example, the efficiency-level approach (based on actual products on the market) may be extended using the design-option approach to interpolate to define “gap fill” levels (to bridge large gaps between other identified efficiency levels) and/or to extrapolate to the “max-tech” level (particularly in cases where the “max-tech” level exceeds the maximum efficiency level currently available on the market).

In this final rule, DOE applied a combination of the two approaches. In line with the January 2017 Direct Final Rule, DOE considered three tiers of motor efficiency (low, medium, and high efficiency) and design requirements specifically for two-speed, multi-speed, and variable-speed motors. As discussed in sections IV.A.2 and IV.A.4 of this document, the motor technologies applicable to pool pump motors analyzed in the January 2017 Direct Final Rule remain relevant and applicable in the current DPPP motor market.

## a. Representative Units

In the June 2022 NOPR, DOE opted to use representative units for each equipment class for the engineering analysis. The associated motor THP of the proposed representative units were consistent with the motor THPs provided in Table 5.7.1 of the January 2017 Direct Final Rule TSD, with three exceptions: (1) Representative unit 2A was added to represent standard-size DPPP motors that are used in small-size self-priming DPPPs; (2) Representative unit 6 was added to analyze standard-size DPPP motors used in non-self-priming filter pump applications; and (3) Representative unit 7 at 1.125 THP, instead of 1.25 THP was considered so as to keep this representative unit in the small-size equipment class (EC 2), and to better represent the THP range of motors in PCBP.<sup>41</sup> 87 FR 37122, 37137–37138. The proposed representative units are provided in Table IV.1.

TABLE IV.1—REPRESENTATIVE UNITS THP AND DPPP APPLICATION

| Rep. unit | Equipment class       | THP   | DPPP application *                                         |
|-----------|-----------------------|-------|------------------------------------------------------------|
| 1 .....   | 2 (Small) .....       | 0.75  | Self-priming Filter Pump, Small-size (0.44 hhp).           |
| 2 .....   | 3 (Standard) .....    | 1.65  | Self-priming Filter Pump, Standard-size (0.95 hhp).        |
| 2A .....  | 3 (Standard) .....    | 1.65  | Self-priming Filter Pump, Small-size (0.65 hhp).           |
| 3 .....   | 3 (Standard) .....    | 3.45  | Self-priming Filter Pump, Standard-size (1.88 hhp).        |
| 4 .....   | 1 (Extra-small) ..... | 0.22  | Non-Self-priming Filter Pump, Extra-Small-size (0.09 hhp). |
| 5 .....   | 2 (Small) .....       | 1     | Non-Self-priming Filter Pump, Standard-size (0.52 hhp).    |
| 6 .....   | 3 (Standard) .....    | 1.5   | Non-Self-priming Filter Pump, Standard-size (0.87 hhp).    |
| 7 .....   | 2 (Small) .....       | 1.125 | Pressure Cleaner Booster Pump.                             |

\* For self-priming pumps, the terms small and standard refer to the hydraulic horsepower (“hhp”). Small-size designates pool pump applications with hydraulic horsepower less than 0.711 hhp, while standard-size designates pool pump applications with hydraulic horsepower greater than or equal to 0.711 hhp. DOE distinguishes extra-small non-self-priming filter pumps (less than 0.13 hhp) and standard-size non-self-priming filter pumps (less than 2.5 hhp and greater than 0.13 hhp).

In response to the proposal, DOE received a number of comments. Fluidra commented that Rep. Unit #4 appears too small and irrelevant and may only be used for pump/filter combos or spas, which is out of the scope of this regulation. (Fluidra, No. 91 at p. 3) Based on the 2022 DPPP Database, DOE notes that there are at least 15 non-self-priming filter pumps having DPPP motors at or less than 0.22 THP. While Rep. Unit #4 may be a small segment of the whole DPPP market (3 percent; see shipments in Table IV.9), these are DPPP motors that would be in scope as they are part of the non-self-priming DPPP motor class. For this final rule, DOE specifically included an extra-small-size equipment class because

DPPP motors in that class have different maximum efficiency potential than small- or standard-size equipment classes and therefore need to be analyzed separately. As such, DOE continues to include Rep. Unit #4 as part of the analysis.

Fluidra also stated that Rep. Unit #7 only represents single-stage booster pumps and not multi-stage, which are typically >1.125 THP and significantly higher WEF, and therefore should be reviewed separately. (Fluidra, No. 91 at p. 3) PHTA stated that DOE should review the improvements made in booster pump hydraulic efficiency and go on to note that a multi-stage booster pump can result in a 40-percent higher WEF than a single-stage booster pump.

(PHTA, No. 100 at p. 3) DOE notes that representative units exemplify typical capacities in each equipment class and are used to quantify the manufacturing costs and the energy savings potential for each equipment class. As discussed previously, almost all DPPP motors used in PCBP have THPs less than 1.15 THP. DOE also confirmed the same in the 2022 DPPP Database, with PCBP applications having DPPPs ranging from 0.75 to 1.13 THP, with the majority of the models in the 1.1 to 1.13 THP range. Accordingly, the chosen DPPP motor representative unit for the PCBP application, Rep. Unit #7 at 1.125 THP, was considered to represent the full THP range of motors in PCBP, which

<sup>41</sup> The Joint Petition noted that almost all motors used in pressure cleaner booster pumps have THPs less than 1.15 THP. (Joint Petition, No. 14 at p. 8).

are primarily in the small-size equipment class.

The pump performance curve associated with the DPPP motor Rep. Unit #7 and used in the analysis was based on the pump performance curve used in the January 2017 Direct Final Rule. Section 5.8.2.3 of the January 2017 Direct Final Rule TSD specifically notes that DOE developed the equations by aggregating pump test data that were submitted by manufacturers, and does not specify that the test data was only for single-stage pumps. In reviewing the underlying data that were used to develop the equations, DOE can confirm that the selection of a representative PCBP unit and its corresponding performance characteristics was informed by the presence of more efficient multi-stage pumps available on the market to the extent they represent PCBP units with the exceptionally high hydraulic efficiency. However, DOE believed that these motors do not comprise as significant of a share of the market as single-stage pumps. Consequently, the ultimate representative unit and performance characteristics more closely resembled the single-stage PCBP.

PHTA and NEMA commented that PCBP motors at or above 1.15 THP were not included in the DOE analysis, and if DOE intends to regulate these products, PHTA and NEMA requested that DOE update the analysis. (PHTA and NEMA, No. 92 at p. 5) Further, in a separate comment, PHTA restated the need for analysis of PCBP motors above 1.15 THP. (PHTA, No. 100 at p. 2) Based on the 2022 DPPP Database, DOE identifies only one DPPP motor used in a PCBP application that would be above the 1.15 THP threshold. Further, based on the 2022 DPPP Database, DOE notes that the majority of DPPP motors above 1.15 THP are self-priming DPPP applications (74 percent based on model count), with non-self-priming DPPP applications being the next highest percentage (26 percent based on model count). DOE generally selects representative units based on the quantity of motor models available within an equipment class. Considering that the number of DPPP motors above 1.15 THP with a PCBP application is not significant, and that most DPPP motors with a PCBP application are in the small-size equipment class, DOE continues to consider Rep. Unit #7 only for PCBP applications.

#### b. Baseline Efficiency

For each product/equipment class, DOE generally selects a baseline model as a reference point for each class and measures changes resulting from

potential energy conservation standards against the baseline. The baseline model in each product/equipment class represents the characteristics of a product/equipment typical of that class (e.g., capacity, physical size). Generally, a baseline model is one that just meets current energy conservation standards, or, if no standards are in place, the baseline is typically the most common or least efficient unit on the market.

In the June 2022 NOPR, mirroring the January 2017 Direct Final Rule, DOE considered the least-efficient single-speed DPPP motor on the market for each representative unit. 87 FR 37122, 37138. DOE did not receive any comments regarding the baseline efficiencies, and therefore is maintaining the same levels from the June 2022 NOPR in this final rule.

#### c. Higher Efficiency Levels

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

In the June 2022 NOPR, DOE proposed higher efficiency levels by substituting higher full-load efficiency DPPP motors and DPPP motors with finer levels of speed control, consistent with the January 2017 Direct Final Rule. 87 FR 37122, 37138. Efficiency levels 0 through 2 were consistent with Table 5.6.3 of the January 2017 Direct Final Rule TSD and represented the low-efficiency, medium-efficiency, and high-efficiency performance of single-speed DPPP motors. Efficiency levels 3 through 6 incorporated certain design requirements based on motor speed capability and topology.<sup>42</sup> DOE proposed that EL 3 require motors that are two-speed, multi-speed, or variable-speed, but with no restrictions on motor topology. EL 4 required motors that are two-speed or multi-speed, but did not allow for the low-efficiency motor topologies (split-phase, shaded-pole, CSIR)—or—required variable-speed motors. EL 5 required motors that are two-speed or multi-speed, but did not allow for PSC motors in addition to the other low-efficiency motor topologies—or—requires variable-speed motors. Finally, EL 6 included variable speed only, which provides the highest energy savings. 87 FR 37122, 37139.

In response, CEC and NYSERDA commented that DOE should reevaluate

the "max-tech" levels considered for small-size and standard-size DPPP motors, and work toward a performance metric that captures the benefits of variable-speed motors. Specifically, CEC and NYSERDA noted that not all variable-speed DPPP motors are created equal, because an AC induction motor paired with a variable-frequency drive and a permanent magnet motor with an integral drive exist and provide different performance characteristics depending on speed settings. Accordingly, CEC and NYSERDA encouraged DOE to update the DPPP motor test method and performance metric that can distinguish between different speed DPPP motors and between different categories of variable-speed DPPP motors. While CEC and NYSERDA noted that this approach may be outside the scope of the current rulemaking, they stated that it is important to acknowledge that the proposed efficiency levels for small-size and standard-size DPPP motors do not represent "max-tech," and that there are potential future improvements for both the DPPP motor test method and the DPPP motor energy conservation standards. (CEC and NYSERDA, No. 94 at p. 6)

The DOE test procedure in 10 CFR 431.484(b) establishes full-load efficiency as the metric for DPPP motors. For the engineering analysis, while DOE considers full-load efficiency per the DOE test procedure for ELs 0 through 3, the higher ELs only consider design requirements based on speed control. Accordingly, the variable-speed requirement considered as part of the analysis is based on the definition of variable-speed control dedicated-purpose pool pump motor in section 2 "Glossary" of UL 1004–10:2020.<sup>43</sup> 10 CFR 431.483. The variable-speed definition includes specific requirements for motor operation that are supposed to be met, but does not distinguish between the designs on the motors. As such, for this rulemaking, DOE is basing the engineering analysis on the definitions and test procedures prescribed at 10 CFR 431.484. DOE concurs that there may be future improvements for efficiency, and would consider these improvements in the next stage rulemaking.

As such, in this final rule, DOE maintains the DPPP motor engineering

<sup>42</sup> For the purposes of the analysis, however, DOE did consider the full-load efficiencies presented in Table 5.6.3 of the January 2017 Direct Final Rule TSD for efficiency levels 3 through 6.

<sup>43</sup> In this final rule, DOE is updating UL 1004–10:2020 to UL 1004–10:2022. See further discussion in section IV.A.1 of this document.



analysis from the June 2022 NOPR, as presented in Table IV.2.

TABLE IV.2—PERFORMANCE AND DESIGN REQUIREMENTS FOR DPPP MOTOR ELS

| EC      | Rep. unit | Motor THP | DPPP application                                           | EL0 (%) | EL1 (%) | EL2 (%) | EL3 *                                       | EL4 *                                                                                 | EL5 *                                                                                          | EL6 *                |
|---------|-----------|-----------|------------------------------------------------------------|---------|---------|---------|---------------------------------------------|---------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|----------------------|
| 1 ..... | 4         | 0.22      | Non-self-priming Filter Pump, Extra-Small-size (0.09 hhp). | 55      | 69      | 76      | .....                                       | .....                                                                                 | .....                                                                                          | .....                |
| 2 ..... | 1         | 0.75      | Self-priming Filter Pump, Small-size (0.44 hhp).           | 55      | 69      | 76      | Two-speed—OR—Multi-speed—OR—Variable-speed. | Two-speed/Multi-speed, not CSIR, not shaded pole, not split-phase;—OR—Variable-speed. | Two-speed/Multi-speed, not CSIR, not shaded pole, not split-phase, not PSC;—OR—Variable-speed. | Variable-speed only. |
| 2 ..... | 5         | 1         | Non-self-priming Filter Pump, Small-size (0.52 hhp).       | 55      | 69      | 76      | Two-speed—OR—Multi-speed—OR—Variable-speed. | Two-speed/Multi-speed, not CSIR, not shaded pole, not split-phase;—OR—Variable-speed. | Two-speed/Multi-speed, not CSIR, not shaded pole, not split-phase, not PSC;—OR—Variable-speed. | Variable-speed only. |
| 2 ..... | 7         | 1.125     | Pressure Cleaner Booster Pump.                             | 55      | 69      | 76      | Variable-speed only .....                   | Variable-speed only .....                                                             | Variable-speed only .....                                                                      | Variable-speed only. |
| 3 ..... | 6         | 1.5       | Non-self-priming Filter Pump (0.87 hhp).                   | 55      | 69      | 77      | Two-speed—OR—Multi-speed—OR—Variable-speed. | Two-speed/Multi-speed, not CSIR, not shaded pole, not split-phase;—OR—Variable-speed. | Two-speed/Multi-speed, not CSIR, not shaded pole, not split-phase, not PSC;—OR—Variable-speed. | Variable-speed only. |
| 3 ..... | 2         | 1.65      | Self-priming Filter Pump, Standard-size (0.95 hhp).        | 55      | 69      | 77      | Two-speed—OR—Multi-speed—OR—Variable-speed. | Two-speed/Multi-speed, not CSIR, not shaded pole, not split-phase;—OR—Variable-speed. | Two-speed/Multi-speed, not CSIR, not shaded pole, not split-phase, not PSC;—OR—Variable-speed. | Variable-speed only. |
| 3 ..... | 2A        | 1.65      | Self-priming Filter Pump, Small-size (0.65 hhp).           | 55      | 69      | 77      | Two-speed—OR—Multi-speed—OR—Variable-speed. | Two-speed/Multi-speed, not CSIR, not shaded pole, not split-phase;—OR—Variable-speed. | Two-speed/Multi-speed, not CSIR, not shaded pole, not split-phase, not PSC;—OR—Variable-speed. | Variable-speed only. |
| 3 ..... | 3         | 3.45      | Self-priming Filter Pump, Standard-size (1.88 hhp).        | 75      | 79      | 84      | Two-speed—OR—Multi-speed—OR—Variable-speed. | Two-speed/Multi-speed, not CSIR, not shaded pole, not split-phase;—OR—Variable-speed. | Two-speed/Multi-speed, not CSIR, not shaded pole, not split-phase, not PSC;—OR—Variable-speed. | Variable-speed only. |

\* Includes freeze protection control design requirements.

PHTA and NEMA commented that if DOE finds this 0.5 THP requirement feasible from a lifecycle cost analysis, motor manufacturers can produce motors meeting the performance requirements; however, this may result in replacement market fit issues as the product will become larger in size. (PHTA and NEMA, No. 92 at p. 10) Pentair stated concern with the proposal to require replacement motors as small as 0.5 THP to meet variable speed. Specifically, that if motors meeting the DPPP rule fail, then those motors will not be able to be replaced with an original single-speed motor. (Pentair, No. 90 at p. 1)

A DPPP motor is subject to standards regardless of how it is sold (*i.e.*, with or without a corresponding DPPP). As such, Pentair is correct that if DPPPs using a 0.5 THP motor or smaller sold before the compliance date of this rule fail after the compliance date of this rule, consumers would likely be unable to replace the original single-speed motor with a similar single-speed motor. See section IV.G.3 for more discussion of repair scenarios in the standards

cases. Additionally, DOE notes that there are a number of variable-speed DPPP motors on the market that are currently being used in DPPPs. DOE also notes that PHTA, NEMA, and Pentair did not provide information supporting the claim that there may be fit issues. In other industries, variable-speed motors (particularly electronically commutated motors, or ECMs) have been produced to be drop-in replacements in larger equipment (*i.e.*, with no fit issues) for single-phase and polyphase motors in horsepower ranges identified by commenters.<sup>44</sup> There are no unique design characteristics of DPPP motors that would prevent variable-speed motors from being drop-in replacements to single-speed DPPP motors.<sup>45</sup> Accordingly, DOE cannot

<sup>44</sup> [www.regalrexnord.com/brands/genteq/aftermarket-products/Evergreen-Motors/Evergreen-VS-Motor](http://www.regalrexnord.com/brands/genteq/aftermarket-products/Evergreen-Motors/Evergreen-VS-Motor).

<sup>45</sup> As noted in section 5.7.1 of the January 2017 Direct Final Rule TSD, DOE researched the design and engineering constraints associated with motor substitution by examining manufacturer interview responses and holding discussions with the DPPP Working Group. DOE concluded that for the representative equipment capacities being considered, the wet end of the pump can be paired

conclude that there will be fit issues for DPPP motors in this lower THP range, and that in the scenario identified by Pentair the single-speed motor could be replaced by a variable-speed motor.

#### Motor Input Power and Pump Hydraulic Power

Each efficiency level presented in Table IV.2 has an associated energy factor (in Gallons/Watt-hour “G/Wh”) and flow (in gallons per minute “gpm”) used to determine efficiency of the pump system. In the June 2022 NOPR, DOE used the pump performance curves consistent with the January 2017 Direct Final Rule TSD to represent the energy factors and flows. 87 FR 37122, 37139.

The CA IOUs commented that DOE should update its analysis to show motor turn-down savings from variable-speed motors. Specifically, the CA IOUs commented that the DOE analysis for PCBP assumes an operating point of 10

with a range of motors with various efficiencies and speed configurations without significant adaptations. See chapter 5 of the dedicated-purpose pool pumps direct final rule TSD, at [www.regulations.gov/document?D=EERE-2015-BT-STD-0008-0105](http://www.regulations.gov/document?D=EERE-2015-BT-STD-0008-0105).



gpm and 112 ft of head, which is not representative of variable-speed capability at EL 3 nor consistent with the DPPP test procedure. The CA IOUs recommended that DOE consider an operating point consistent with the DOE test procedure of 10 gpm and 60 ft of head, which the CA IOUs noted the industry and advocates agreed to this test point during the ASRAC negotiation for DPPP standard. The CA IOUs provided estimates of the input power and WEF for a variable-speed PCBP corresponding to a 60 ft head, and showing a 52-percent decrease compared to the values used in DOE's NOPR analysis. (CA IOUs, No. 96 at p. 4) Nidec commented that PCBPs and variable speed will have to run at nearly full speed or maybe slightly less than full speed. Therefore, they stated that representation of power usage on variable speed is most likely incorrect in the analysis, which would make an assumption of actually having the ability to slow the speed down to take advantage of the power savings in lower speed. (Nidec, Public Meeting, No. 88 at pp. 28–29) As discussed in section IV.A.4, the DPPP Working Group considered variable-speed technology option for PCBPs because in installations with low head loss, energy could be conserved by operating the pressure cleaner booster pump at a reduced speed. In reviewing the January 2017 Direct Final Rule TSD, DOE notes that the analysis does only account for motor and hydraulic efficiency improvements for variable-speed efficiency levels of PCBPs, and does not account for any change in energy consumption from the reduction of motor speed. As such, DOE agrees that a revised approach is necessary to reflect the expected reduced energy use of variable-speed PCBPs resulting more accurately from motor turndowns. Additionally, DOE acknowledges the method of calculation in the CA IOUs comment as properly representative. As such, in this final rule, DOE has updated the pump curves for PCBPs to be consistent with the recommendation by the CA IOUs. Further discussion is provided in chapter 5 of the final rule TSD.

Fluidra stated that, at maximum speed, the variable-speed PCBP consumed more energy than the single-speed system. As such, Fluidra commented that a consumer with operating conditions and equipment similar to those used in this analysis would never be able to recover the additional cost of variable-speed control. (Fluidra, No. 91 at pp. 1–2) In addition, Fluidra stated that while this

test represents only two sites and two PCBP models, Fluidra feels that the operating conditions are reasonably representative. (Fluidra, No. 91 at p. 6) Finally, Fluidra stated that the power consumption of the booster pump variable-speed motor operating at maximum speed measured noticeably higher than the single-speed base comparison. Specifically, Fluidra commented that operating the PCBP at maximum speed is necessary in many pool applications due to plumbing head loss from extended pipe runs where the pool equipment pad is further from the pool for aesthetics and noise reduction. (Fluidra, No. 91 at pp. 1–2).

PHTA and NEMA referenced the same Fluidra study and assertions in their comment submission. (PHTA and NEMA, No. 92 at pp. 2–3) Further, PHTA and NEMA commented that the restrictor plates in PCBPs have multiple purposes and should not be mistaken as used for flow rate tuning. PHTA and NEMA commented that industry uses restrictor plates/discs in testing to decrease flow and pressure, and that they start off with the largest plates and determine if sufficient flow is present, and if not, go down in size, and if needed, remove completely. PHTA and NEMA pointed out that the plates are ultimately used because many times consumers do not turn off the booster pump when they remove the pressure cleaner; therefore, the plate protects the booster pump if the pressure cleaner is removed. (PHTA and NEMA, No. 92 at p. 3)

On the other hand, the CA IOUs supported the technical feasibility of energy savings from variable-speed motors in PCBP applications and discussed the PCBP variable-speed-motor retrofit study that the CA IOUs had conducted for the DPPP rulemaking. Specifically, the CA IOUs stated that the results showed that a variable-speed motor could provide substantial energy savings by reducing the PCBP pump speed, while maintaining consumer utility. The CA IOUs stated that the definition of consumer utility for a pressure side pool cleaner (pool sweep) is the correct number of wheel revolutions per minute in cleaning operation. In addition, the CA IOUs stated that a single-speed PCBP produces more pressure than the pool sweep requires, and the consumer may use the included flow restrictor discs and a bleed to reduce the pressure and flow to the sweep's required operating condition. Accordingly, the flow restrictor and bleed valve allow unused energy from the pump to escape to the pool, and variable-speed PCBP offers an energy-saving alternative by

allowing the consumer to set the speed of the pump to deliver the pressure and flow needed to operate the sweep, with low or no usage of the bleed valve and restrictor rings. The CA IOUs demonstrated the variable-speed capability by retrofitting a variable-speed motor to two PCBPs, which resulted in energy savings of 54 percent to 67 percent. (CA IOUs, No. 96 at p. 3)

In the January 2017 Direct Final Rule, for the analysis conducted for PCBPs, DOE selected a DPPP capacity that was representative of the cluster of model capacities on the market. As such, the resulting representative capacity was 10 gpm of flow and 112 ft of head, which equated to 0.28 hhp. *See* section 5.4.3 of the January 2017 Direct Final Rule TSD. DOE notes that the flow rate of 10 gpm aligns with the testing load point specified in the test procedure. *See* Table 1 of appendix C to subpart Y of 10 CFR part 431. In addition, while the DPPP Working Group initially recommended that PCBPs be tested at 90 ft of head and a volumetric flow rate that corresponds to 90 ft of head, the DPPP Working Group revised its recommendation for PCBPs to be tested at the load point of 10 gpm and a head greater than 60 ft. *See* section 5.4.3 of the January 2017 Direct Final Rule TSD.

In reviewing the 2022 DPPP Database, DOE observed DPPPMs in PCBP applications ranging from 0.22 to 0.33 hhp, and therefore concluded that 0.28 hhp is in the middle of that range and would still be representative of the PCBP models currently available on the market. As such, with the required test procedure flow rate for PCBPs at 10 gpm (*see* Table 1 of appendix B to subpart Y of 10 CFR part 431), the representative DPPP head will continue to be around 112 ft.<sup>46</sup> In reviewing the analysis that Fluidra, PHTA, and NEMA submitted, the measured sites #1 and #2 are not representative of typical PCBP application, as the supplied heads of 74 ft and 71.5 ft, respectively, which are well below the January 2017 Direct Final Rule analysis representative dynamic head of 112 ft. *See* section 5.4.3 of the January 2017 Direct Final Rule TSD. In addition, as noted in the January 2017 Direct Final Rule, the DPPP Working Group did acknowledge the existence of ideal systems with head demands as low as 50 ft, they determined that pumps typically supplied 100 ft of head or more. *See* section 3.6.2.2 of the January 2017 Direct Final Rule TSD. As such, DOE understands that the smaller difference

<sup>46</sup> Section 3.3.3 of the January 2017 Direct Final Rule TSD specifies the relationship between pump flow, head, and power.

between the operating head of the single-speed and variable-speed PCBP is responsible for the smaller savings potential and reduced cost-effectiveness. DOE does not have any evidence to suggest that the representative capacity used in the January 2017 Direct Final Rule and subsequently in the June 2022 NOPR should be revised. As such, DOE maintains the pump performance inputs from the June 2022 NOPR in this final rule.

Further, in chapter 3 of the January 2017 Direct Final Rule TSD, DOE noted that for installations where the PCBP supplies more pressure than is recommended for the cleaner, pressure may be reduced using a throttling valve or restrictor rings, or excess pressure may be relieved using a pressure relief valve. The pressure relief valve is attached to the hose line that connects the pump outlet to the pressure cleaner, and the valve bypasses the cleaner and releases pressure into the pool being serviced. Further, in reviewing manufacturer operating instructions online, DOE observed directions to remove or replace restrictor discs, or to unscrew pressure relief valves, to reduce the pump flow rate. This is consistent with the information provided by the CA IOUs. Further discussion and responses to the commenters' payback period analysis are provided in section IV.F.9 of this document.

Hayward stated that it reviewed energy and cost savings for six of its currently compliant single-speed pumps, including self and non-self-priming, and estimated that the average payback period for conversion to variable speed was over 12 years. Hayward provided details of its analysis as part of its comment, and noted use of a flow rate of 24.7 gpm, even though some pool equipment requires a greater flow rate. (Hayward, No. 93 at p. 2) In reviewing the analysis provided by Hayward, DOE first notes that the prices used were for the pump. The analysis DOE conducted in the June 2022 NOPR, however, considers the motor only, as this rule is specific to the cost-effectiveness of the DPPP motor. While the engineering analysis determines the manufacturer selling price ("MSP") (see section IV.C.2 for further discussion), DOE uses the markups from the markups analysis (in section IV.D of this document) to convert the MSP to consumer prices as it relates to the DPPP motor. Accordingly, the costs included in the Hayward analysis do

not directly translate to the analysis at hand, which is for the DPPP motor. Further discussion and responses to the commenters' payback period analysis are provided in section IV.F.9 of this document.

## 2. Cost Analysis

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

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

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

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

In the June 2022 NOPR, DOE used feedback from manufacturers presented in the January 2017 Direct Final Rule to determine the cost of DPPP motors, and updated the cost data to be representative of the market in 2020. DOE adjusted the 2015\$ costs to 2020\$ using the historical Bureau of Labor Statistics Producer Price Index ("PPI") for each product's industry.<sup>47</sup> DOE also conducted physical teardowns to determine updated DPPP motor controller costs for variable-speed motors. To account for manufacturers' non-production costs and profit margin, DOE applied a non-production cost

multiplier (the manufacturer markup) to the MPC to determine the manufacturer selling price ("MSP"). DOE developed an average manufacturer markup of 1.37 by examining the annual Securities and Exchange Commission ("SEC") 10-K reports filed by publicly traded manufacturers primarily engaged in DPPP manufacturing and whose combined product range includes a variety of pool products. 87 FR 37122, 37139–37140.

In response, Fluidra noted that single-speed motor costs have increased roughly 20–22 percent in the last 3 years. This is just material costs and does not include transportation costs, which have risen exponentially since 2020. Further, Fluidra noted that component shortages and inflation have dramatically increased material costs since 2020, and that should be evaluated. (Fluidra, No. 91 at p. 3) To account for the recent price changes to the DPPP motor market, DOE inflated the cost data in 2020\$ to 2022\$ using the updated PPI values for each industry.<sup>48</sup> DOE notes that these indices sufficiently characterize the change in motor prices due to material price changes, transportation costs, and changes in labor costs.

PHTA and NEMA commented that they believe the 1.37 manufacturer markup is a reasonable markup for domestically produced product, but it may be a little low if the product is produced overseas. (PHTA and NEMA, No. 92 at p. 10) As previously discussed, the 1.37 markup was based on publicly available financial information for manufacturers of DPPP motors. The calculation includes general and administrative ("SG&A") expenses, research and development ("R&D") expenses, interest, and profit. DOE does not have data to suggest that these costs would change if a DPPP motor is not manufactured domestically, nor have PHTA and NEMA provided any additional data on how the markup would need to be updated. As such, for this analysis, DOE maintains the manufacturer markup from the June 2022 NOPR.

Table IV.3 lists the MSPs of each EL for DPPP motors. See TSD chapter 5 for additional detail on the engineering analysis and complete cost-efficiency results.

<sup>47</sup> Series IDs: Integral motors (≥1 hp): WPU117304, Fractional motors (<1 hp): WPU117303, Environmental Controls: WPU1181; [www.bls.gov/ppi/](http://www.bls.gov/ppi/).

<sup>48</sup> Series IDs: Integral motors (≥1 hp): WPU117304, Fractional motors (<1 hp): WPU117303, Environmental Controls: WPU1181; [www.bls.gov/ppi/](http://www.bls.gov/ppi/).

TABLE IV.3—MSPs IN 2022\$ FOR DPPP MOTORS

| EC      | Rep. unit | THP   | DPPP application                                                | EL 0    | EL 1    | EL 2    | EL 3   | EL 4   | EL 5   | EL 6   |
|---------|-----------|-------|-----------------------------------------------------------------|---------|---------|---------|--------|--------|--------|--------|
| 1 ..... | 4         | 0.22  | Non-self-priming Filter Pump, Extra-Small-size (0.09 hhp) ..... | \$24.84 | \$31.04 | \$50.71 | .....  | .....  | .....  | .....  |
| 2 ..... | 1         | 0.75  | Self-priming Filter Pump, Small-size (0.44 hhp) .....           | 56.92   | 70.37   | 90.03   | 93.13  | 103.48 | 114.87 | 353.97 |
| 2 ..... | 5         | 1     | Non-self-priming Filter Pump, Small-size (0.52 hhp) .....       | 51.94   | 56.45   | 76.21   | 78.47  | 93.71  | 110.09 | 353.97 |
| 2 ..... | 7         | 1.125 | Pressure Cleaner Booster Pump .....                             | 59.84   | 77.91   | 97.67   | .....  | .....  | .....  | 353.97 |
| 3 ..... | 6         | 1.5   | Non-self-priming Filter Pump (0.87 hhp) .....                   | 67.86   | 89.31   | 107.38  | 108.51 | 127.70 | 148.03 | 353.97 |
| 3 ..... | 2         | 1.65  | Self-priming Filter Pump, Standard-size (0.95 hhp) .....        | 74.52   | 95.97   | 114.04  | 115.17 | 134.36 | 154.68 | 353.97 |
| 3 ..... | 2A        | 1.65  | Self-priming Filter Pump, Small-size (0.65 hhp) .....           | 74.52   | 95.97   | 114.04  | 115.17 | 134.36 | 154.68 | 353.97 |
| 3 ..... | 3         | 3.45  | Self-priming Filter Pump, Standard-size (1.88 hhp) .....        | 160.33  | 199.85  | 223.56  | 255.17 | 269.85 | 285.66 | 475.85 |

*D. Markups Analysis*

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

In the June 2022 NOPR, DOE identified distribution channels for DPPP motors incorporated in pumps and replacement DPPP motors sold

alone as well as the fraction of shipments sold through each channel. To characterize these channels, DOE referred to information collected in support of the January 2017 Direct Final Rule, which reflects the consensus of the Appliance Standards and Rulemaking Federal Advisory Committee (“ASRAC”) DPPP Working Group. 87 FR 37122, 37140.

Nidec stated that for motors sold alone, they estimate that the market is not 50 percent from the motor manufacturer to a retailer. Instead, Nidec commented that it is significantly weighted to the motor manufacturer, to the wholesaler, to the retailer, then to the end user. (Nidec, Public Meeting, No. 88 pp. 24–25)

PHTA and NEMA provided updated estimates of fraction of sales by distribution channels. In addition, for DPPP motors sold within DPPPs and going into new pool installations, NEMA and PHTA commented that these also go through a wholesaler step. For DPPP motors sold alone as replacement motors, NEMA and PHTA also recommended adding an additional channel to capture 5 percent of the market being sold through pool product retailers. (PHTA and NEMA, No. 92 at p. 11)

For this final rule, DOE revised its distribution channels to incorporate the feedback from PHTA and NEMA as presented in Table IV.4 and Table IV.5.

TABLE IV.4—DISTRIBUTION CHANNELS FOR DPPP MOTORS INCORPORATED IN PUMPS

| Distribution channel                                                                                | June 2022 NOPR fraction of shipments (%) | Fraction of shipments (%) |
|-----------------------------------------------------------------------------------------------------|------------------------------------------|---------------------------|
| DPPP Motor Manufacturer → DPPP Manufacturer → Wholesaler → Pool Service Contractor → Consumer ..... | 75                                       | 65                        |
| DPPP Motor Manufacturer → DPPP Manufacturer → Pool Product Retailer → Consumer .....                | 20                                       | 15                        |
| DPPP Motor Manufacturer → DPPP Manufacturer → Pool Builder → Wholesaler → Consumer .....            | 5                                        | 20                        |

TABLE IV.5—DISTRIBUTION CHANNELS FOR REPLACEMENT DPPP MOTORS SOLD ALONE

| Distribution channel                                                              | June 2022 NOPR fraction of shipments (%) | Fraction of shipments (%) |
|-----------------------------------------------------------------------------------|------------------------------------------|---------------------------|
| DPPP Motor Manufacturer → Wholesaler → Contractor → End-User .....                | 25                                       | 45                        |
| DPPP Motor Manufacturer → Wholesaler → Retailer → End-User .....                  | 25                                       | 25                        |
| DPPP Motor Manufacturer → Pool Pump Retailer → End-User .....                     | 50                                       | 25                        |
| DPPP Motor Manufacturer → DPPP Manufacturer → Pool Pump Retailer → End-User ..... | .....                                    | 5                         |

DOE developed baseline and incremental markups for each actor in the distribution chain. Baseline markups are applied to the price of products with baseline efficiency, while incremental markups are applied to the difference in price between baseline and higher-efficiency models (the incremental cost increase). The incremental markup is typically less than the baseline markup and is

designed to maintain similar per-unit operating profit before and after new or amended standards.<sup>49</sup>

<sup>49</sup> Because the projected price of standards-compliant products is typically higher than the price of baseline products, using the same markup for the incremental cost and the baseline cost would result in higher per-unit operating profit. While such an outcome is possible, DOE maintains that in markets that are reasonably competitive it is unlikely that standards would lead to a sustainable increase in profitability in the long run.

To estimate average baseline and incremental markups DOE relied on several sources including: (1) for DPPP wholesalers, SEC form 10-K from Pool Corp;<sup>50</sup> (2) for pool product retailers, SEC form 10-K from several major home

<sup>50</sup> U.S. Securities and Exchange Commission. *SEC 10-K Reports* for Pool Corp (2017–2021). Available at [www.sec.gov/](http://www.sec.gov/) (last accessed July 26, 2021.)

improvement centers<sup>51</sup> and U.S. Census Bureau 2017 Annual Retail Trade Survey for the miscellaneous store retailers sector (NAICS 453);<sup>52</sup> (3) for pool contractors and pool builders, U.S. Census Bureau 2017 Economic Census data for the plumbing, heating, and air-conditioning contractor sector (NAICS 238220) and all other specialty trade contractors sector (NAICS 238990);<sup>53</sup> (4) for motor wholesalers, U.S. Census Bureau 2017 Annual Wholesale Trade Survey for the household appliances and electrical and electronic goods merchant wholesaler sector (NAICS 4536);<sup>54</sup> (5) for electrical contractors, 2022 RSMMeans Electrical Cost Data;<sup>55</sup> (6) for motor retailers, U.S. Census Bureau 2017 Annual Retail Trade Survey for the building material and garden equipment and supplies dealers (NAICS 444); and (7) for pool pump retailers, U.S. Census Bureau 2017 Annual Retail Trade Survey for the miscellaneous store retailers sector (NAICS 453).

In addition to the markups, DOE obtained State and local taxes from data provided by the Sales Tax Clearinghouse.<sup>56</sup> These data represent weighted average taxes that include county and city rates. DOE derived shipment-weighted average tax values for each State considered in the analysis.

Chapter 6 of the final rule TSD provides details on DOE's development of markups for DPPP motors.

### E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of DPPP motors at different efficiencies in representative U.S. single-family homes, multi-family residences, and commercial buildings, and to assess the energy savings potential of increased DPPP motors efficiency. The energy use analysis

estimates the range of energy use of DPPP motors in the field (*i.e.*, as they are actually used by consumers). The energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards.

#### 1. DPPP Motor Applications

The annual energy consumption of a DPPP motor is expressed in terms of electricity consumption and depends on the DPPP motor efficiency level, the pool pumping requirement, the performance of the DPPP incorporating the motor, and the DPPP annual operating hours. This electricity consumption is identical to the annual electricity consumption of the DPPP incorporating the motor. The DPPP motor energy consumption value is the sum of the energy consumption values in each mode of operation. Each mode of operation corresponds to a motor speed setting. Single-speed motors only have one mode of operation while dual- and variable-speed pool pump motors operate at a low-speed and a high-speed mode. The unit energy consumption values in each mode are calculated based on the DPPP usage, which is calculated based on the pool pump system curve that the DPPP is operating on, the pump flow rate of the mode, the pump energy factor of the mode (which in turn determines the motor input power)<sup>57</sup> and the annual run time of the pool pump spent in that mode. In the June 2022 NOPR, DOE calculated the pool pump annual run time based on the application (residential or commercial), the assumed pool size, the assumed number of turns per day, and the sample application's geographic location, which implies the corresponding pool seasons. 87 FR 37122, 37141. A typical DPPP application, characterized by the DPPP equipment class and hydraulic horsepower ("hhp"), was associated to each representative unit in equipment classes 1, 2, and 3 based on inputs from the engineering analysis. *See* section IV.C.1.a of this document.

DOE did not receive comments regarding this methodology and retained the same approach in the final rule.

#### 2. DPPP Motor Consumer Sample

In the June 2022 NOPR, DOE created individual consumer samples for five DPPP motor markets: (1) single-family homes with a swimming pool; (2) indoor swimming pools in commercial applications; (3) single-family community swimming pools; (4) multi-family community swimming pools; and (5) outdoor swimming pools in commercial applications. DOE used the samples to determine DPPP motor annual energy consumption and to conduct the LCC and PBP analyses. 87 FR 37122, 37141.

PTHA and NEMA commented that within the scope of the document, there is little to no distinction between the types of motors that would be used across community and commercial pool applications. As a result, PHTA and NEMA commented that DOE could consider combining community pool types (single and multi-family), as well as commercial (indoor and outdoor). (PTHA and NEMA, No. 92 at p. 12)

In the June 2022 NOPR analysis, as noted by NEMA and PHTA, community pools and commercial pools were combined and analyzed as the commercial sector by DOE. In this final rule, DOE continued to use the same approach. 87 FR 37122, 37141 *See* section 7.3 of chapter 7 of the final rule TSD for details of community and commercial indoor and outdoor pool samples used.

DOE used the Energy Information Administration's ("EIA") 2020 Residential Energy Consumption Survey ("RECS 2020") to establish a sample of single-family homes that have a swimming pool.<sup>58</sup> For DPPPs used in indoor swimming pools in commercial applications, DOE developed a sample using the 2018 Commercial Building Energy Consumption Survey ("CBECS 2018").<sup>59</sup> RECS and CBECS include information such as the household or building owner demographics and the location of the household or building.

Neither RECS nor CBECS provide data on community pools or outdoor swimming pools in commercial applications, so DOE created samples based on other available data. To develop samples for DPPPs in single or

<sup>51</sup> U.S. Securities and Exchange Commission. *SEC 10-K Reports* for Home Depot, Lowe's, Wal-Mart and Costco. (2017–2021) Available at [www.sec.gov/](http://www.sec.gov/) (last accessed July 26, 2022.)

<sup>52</sup> U.S. Census Bureau, *2017 Annual Retail Trade Survey*, available at [www.census.gov/retail/index.html](http://www.census.gov/retail/index.html) (last accessed July 26, 2021).

<sup>53</sup> U.S. Census Bureau, *2017 Economic Census Data*, available at [www.census.gov/econ/](http://www.census.gov/econ/) (last accessed July 26, 2021).

<sup>54</sup> U.S. Census Bureau, *2017 Annual Wholesale Trade Survey*, available at [www.census.gov/awts](http://www.census.gov/awts) (last accessed July 26, 2021).

<sup>55</sup> RSMMeans Electrical Cost Data, available at [www.rsmeans.com](http://www.rsmeans.com) (last accessed July 26, 2022).

<sup>56</sup> Sales Tax Clearinghouse Inc., *State Sales Tax Rates Along with Combined Average City and County Rates*, available at [theetc.com/STRates.stm](http://theetc.com/STRates.stm) (last accessed Jan. 04, 2023).

<sup>57</sup> The motor input power is equal to the DPPP flow (gpm) divided by the DPPP Energy Factor (G/Wh) and multiplied by 60 (number of minutes in an hour).

<sup>58</sup> U.S. Department of Energy–Energy Information Administration. *2020 RECS Survey Data*. [www.eia.gov/consumption/residential/data/2020/](http://www.eia.gov/consumption/residential/data/2020/) (last accessed February 2, 2023).

<sup>59</sup> U.S. Department of Energy–Energy Information Administration. *2018 CBECS Survey Data*. <https://www.eia.gov/consumption/commercial/data/2018/> (last accessed: February 2, 2023).

multi-family communities, DOE used a combination of RECS 2020, U.S. Census 2009 and 2011 American Home Survey Data (AHS),<sup>60 61 62</sup> and the 2022 PK Data report.<sup>63</sup> To develop a sample for pool pumps in outdoor commercial swimming pools, DOE relied on data from both CBECS 2018 and the 2022 PK Data report.

DPPPs can be installed with either above-ground or in-ground swimming pools. In the June 2022 NOPR, DOE established separate sets of consumer samples for in-ground pools and above-ground pools by adjusting the original sample weights using data on the number of installed in-ground and above-ground pools gathered during the January 2017 Direct Final Rule, which relied on 2014 data per State provided by APSP.<sup>64</sup> The consumer samples for DPPP motors used in self-priming and pressure cleaner booster pumps are drawn from the in-ground pool samples; the consumer samples for motors used with non-self-priming pool pumps are obtained from the above-ground pool samples. 87 FR 37122, 37142. See chapter 8 of the June 2022 NOPR TSD. DOE did not receive comments on this approach and retained the same method in this final rule.

See chapter 7 of the final rule TSD for more details about the creation of the consumer samples and the regional breakdowns.

### 3. Self-priming and Non-Self-Priming Pool Pump Motor Input Power

The input power of DPPP motors used in self-priming and non-self-priming pump applications is calculated based on the flow rates (gpm) and typical energy factor (G/Wh) associated with each representative unit.<sup>65</sup> At efficiency levels corresponding to single-speed and two-speed motors, the flow and energy factor values were based on input from the engineering analysis and provided for each system curve (A, B, or

C).<sup>66</sup> In the June 2022 NOPR, for each user of self-priming and non-self-priming pool pumps in the consumer sample, DOE specified the system curve used (A, B, or C) by drawing from a probability distribution in which 35 percent of the pool pumps follow curve A, 10 percent of the pool pumps follow curve B, and the remaining 55 percent follow curve C. The probability distribution was based on inputs from the ASRAC DPPP Working Group gathered during the January 2017 Direct Final Rule.<sup>67 87 FR 37122, 37142.</sup>

DOE did not receive any comments on this approach and retained the same methodology and inputs for this final rule.

At efficiency levels corresponding to variable-speed motors, the engineering analysis only provides flow and energy factor values for the high-speed mode on each system curve. In the June 2022 NOPR, for the low-speed mode, DOE used data on pool volume and desired time per turnover from the January 2017 Direct Final Rule TSD to calculate a consumer-specific low-speed flow.<sup>68</sup> These relied on inputs from stakeholders and several other references.<sup>69 70 71</sup> DOE then used the equation provided by the engineering analysis to calculate the energy factor as a function of Q for each representative unit on each system curve. 87 FR 37122, 37142. The equations from the engineering analysis are provided in chapter 5 of the final rule TSD.

Pentair and PHTA and NEMA commented that the minimum flow rate of 24.7 gpm that is being used in the energy use analysis is not high enough to operate certain equipment. (Pentair, No. 90 at p. 2; PHTA and NEMA, No. 92 at p. 4)

Specifically, PHTA and NEMA commented that in looking at filtration pump motors, DOE did not consider additional factors, such as whether the

requirements apply to existing pool versus new construction, and whether the requirements to operate certain equipment. PHTA and NEMA commented that when designing a new pool, the piping and equipment are selected in conjunction with the pump system to ensure the pool works properly and safely. However, in existing pools, the piping and much of the equipment, including sanitation items such as skimmers, main drains, and filters, are already in place and would be cost prohibitive for consumers to replace. As such, PHTA and NEMA commented that any replacement motor needs to be capable to provide the flow rates needed to work with the existing system. PHTA and NEMA stated that previous norm in the pool construction industry was small pipe and bigger pump; and although that has changed over the last 15 years, there are 5.4 million existing inground pools<sup>3</sup> with a significant percentage that may have 1.5-inch piping. PHTA and NEMA commented that the smaller more restrictive piping size impacts the pump size, which also impacts the filter maintenance. Further, PHTA and NEMA added that many existing pools have skimmers that need a certain minimum flow rate (historically 30–35 gpm) to properly remove surface debris. A skimmer is one part of the sanitation system of the pool and removes containments off the surface to protect swimmers from infections. In some existing pool cases, PHTA and NEMA commented that this will be compromised based on the requirements found in the NOPR and possibly increase the risk of recreational water illnesses for bathers. PHTA and NEMA commented that the energy savings analysis for filtration pumps assumes a minimum flow rate of 24.7 gpm for all filtration pump systems. However, PHTA and NEMA stated that different equipment has minimum flow rates higher than this value (*e.g.*, electrolytic chlorinators, pool heaters, suction cleaners and skimmers). Further, PHTA and NEMA stated that as equipment begins to wear out over time, higher flow rates may be needed to continue having the equipment work properly. PHTA and NEMA added that while the minimum flow rate of 24.7 gpm was established as a reasonable estimate of the low-flow conditions a pool may see, different equipment have minimum flowrates above 24.7 gpm. PHTA and NEMA commented that through a review of the various equipment, four manufacturers identified products that require flowrates above 24.7 gpm. These manufacturers indicated that they sell

<sup>60</sup> U.S. Census Bureau. 2009 AHS survey data. [www.census.gov/programs-surveys/ahs/data/2009/ahs-2009-public-use-file-puf-/2009-ahs-national-puf-microdata.html](http://www.census.gov/programs-surveys/ahs/data/2009/ahs-2009-public-use-file-puf-/2009-ahs-national-puf-microdata.html) (last accessed: February 2, 2023).

<sup>61</sup> U.S. Census Bureau. 2011 AHS survey data. [www.census.gov/programs-surveys/ahs/data/2011/ahs-2011-summary-tables/h150-11.html](http://www.census.gov/programs-surveys/ahs/data/2011/ahs-2011-summary-tables/h150-11.html) (last accessed: February 2, 2023).

<sup>62</sup> The earlier versions of AHS was used due to the lack of pool ownership information in the more recent AHS.

<sup>63</sup> PK Data. 2022 Swimming Pool and Pool Heater Customized Report for LBNL. [pkdata.com/annual-reports/](http://pkdata.com/annual-reports/) (last accessed: February 2, 2023).

<sup>64</sup> For more details see chapter 7 of the January 2017 Direct Final Rule TSD at [www.regulations.gov/document?D=EERE-2015-BT-STD-0008-0105](http://www.regulations.gov/document?D=EERE-2015-BT-STD-0008-0105).

<sup>65</sup> The motor input power is equal to the flow (gpm) divided by the energy factor (G/Wh) and multiplied by 60 (number of minutes in an hour).

<sup>66</sup> When a pump is tested on a system curve (such as curve C), any one of the measurements hydraulic power, P (hp), volumetric flow, Q (gpm) and total dynamic head, H (ft of water) can be used to calculate the other two measurements.

<sup>67</sup> For more details see chapter 7 of the January 2017 Direct Final Rule TSD, at [www.regulations.gov/document?D=EERE-2015-BT-STD-0008-0105](http://www.regulations.gov/document?D=EERE-2015-BT-STD-0008-0105).

<sup>68</sup> Flow (in gpm) is equal to the pool volume (in gallons) divided by the desired time per turnover (in minutes).

<sup>69</sup> CEE Residential Swimming Pool Initiative, December 2021.

<sup>70</sup> California Energy Commission Pool Heater CASE. [efiling.energy.ca.gov/GetDocument.aspx?tn=71754&DocumentContentId=8285](http://efiling.energy.ca.gov/GetDocument.aspx?tn=71754&DocumentContentId=8285) (last accessed July 28, 2016).

<sup>71</sup> Evaluation of potential best management practices—Pools, Spas, and Fountains 2010. [calwep.org/wp-content/uploads/2021/03/Pools-Spas-and-Fountains-PBMP-2010.pdf](http://calwep.org/wp-content/uploads/2021/03/Pools-Spas-and-Fountains-PBMP-2010.pdf) (last Accessed July 28, 2016).

various products, including gas heaters, sand filters, high efficiency heaters, skimmers, and suction cleaners that all have minimum flowrates at or above 30 gpm. PHTA and NEMA commented that the NOPR analysis did not assume a range of minimum flow rates, and as a result, does not account for the decreased savings (or incompatibility of small variable-speed motors) associated with existing systems that have higher minimum flow rates. PHTA and NEMA commented that a minimum flow rate of 24.7 gpm would result in an existing small-size pump being run at high speed—once installed with a small variable-speed motor—to ensure the equipment continues to run as intended, and would defeat the energy savings and purpose for requiring variable speed. (PHTA and NEMA, No. 92 at pp. 3–4) Pentair added that the ICC/ANSI/PHTA 15 Energy Standard has a minimum flow rate of 36 gpm that is being enforced nationwide by many building departments. Therefore, Pentair noted that a variable-speed fractional hp motor would have to operate at a max speed or close to it to produce this minimum flow rate needed at any reasonable total dynamic head loss. (Pentair, No. 90 at p. 2) Pentair further added that in the exiting DPPP rule, there was a minimum filtration rate of 36 gpm. (Pentair, Public Meeting Transcript, No. 88 at p. 62)

PHTA commented that DOE's analysis does not consider the range of minimum flow rates required for certain pool equipment. PHTA stated that in doing so, the analysis does not account for the decreased savings associated with existing systems with and that higher minimum flow rates require the motor to run at higher speeds. (PHTA, No. 100 at p. 4)

The CA IOUs commented that during the 2015–2016 ASRAC DPPP Working Group, DOE, industry representatives, and energy efficiency advocates unanimously agreed to a low flow test point of 24.7 gpm on Curve C. The CA IOUs commented that the test point is equivalent to 5 ft of head, the minimum head loss required to account for static losses in the system from the pool filter, pool heater, and skimmer. The CA IOUs recommended that, at this operating point, there would be enough head to push water through the complete pool filtration system, including pool piping, pool filter, and pool heater.<sup>72</sup> (CA IOUs, No. 96 at pp. 2–3)

The Joint Advocates stated that DOE's analysis accurately captures the energy

savings for variable speed. The Joint Advocates noted that DOE did not assume that the low speed of a variable-speed pump is a fixed percentage of high speed, but rather calculated an appropriate low-speed flow rate and the associated energy factor for each consumer in its sample, taking into account the minimum flow rate thresholds. (Joint Advocates, No. 97 at pp. 1–2)

In the June 2022 NOPR, DOE calculated the low-speed flow rate as the sampled pool size (drawn from a distribution) divided by the desired number of hours to complete one turnover of the pool and divided by 60 minutes per hour to get the low-flow rate per minute. In addition, if the calculated low-speed flow rate obtained was below 24.7 gpm or 31.1 gpm, DOE used below 24.7 gpm or 31.1 gpm instead. Such an approach results in a range of low-speed flow rates that are higher than minimum flow rates. See chapter 7 of the June 2022 NOPR TSD. This is consistent with the comments provided by PHTA and NEMA, Pentair, PHTA, and the CA IOUs. As noted by the Joint Advocates, DOE clarifies that the minimum flow rate is used as a threshold to ensure all low-speed flow rates (at which the pump is assumed to operate) would be greater than 24.7 or 31.1 gpm, as appropriate. The minimum flow rate does not represent the assumed flow rate at which the variable speed pump operates. As noted by the CA IOUs, the minimum flow rate of 24.7 gpm was developed during the 2015–2016 ASRAC DPPP Working Group. Specifically, the CA IOUs commented that the minimum flow rates for two-speed pumps of 24.7 gpm for two-speed pool filter pumps that have a rated hydraulic horsepower less than or equal to 0.75 hp (small pool filter pumps) and 31.1 gpm for two-speed pool filter pumps that have a rated hydraulic horsepower greater than 0.75 (large pool filter pumps) are consistent with the DPPP Working Group's recommended low-flow rates for multi-speed and variable-speed pool filter pumps (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #6 at p. 5). The DPPP Working Group developed these low-flow rates based on the minimum effective flow rates for typical pool sizes.<sup>73</sup> DOE believes these flow rates are also representative of minimum flow rates for two-speed pool

filter pumps and effectively prevent the inclusion of unreasonably low speeds on two-speed pool filter pumps for the sole purpose of inflating WEF ratings. 82 FR 36858, 36880 (Aug. 7, 2017) (citing 81 FR 64580, 64606 (Sept. 20, 2016)). DOE believes that the proposed load points for two-speed pool filter pumps are representative of typical pool filter pump operation and energy performance, and that the load points characterize the efficiency of the pump speeds and flow points in typical applications (*i.e.*, cleaning/mixing and filtration). 82 FR 36858, 36880. In addition, while Pentair, NEMA, and PHTA recommended using a range of minimum flow rates, they did not provide supporting information to develop such distribution. In addition, DOE believes that a single value of minimum flow rate is sufficient to set a threshold and has developed a range of low-flow rates. Therefore, in this final rule, DOE retained the same approach as in the June 2022 NOPR.

#### 4. Pressure Cleaner Booster Pumps Motor Input Power

The input power of DPPP motors used in pressure cleaner booster pumps is calculated using the relationship between input power and flow and the system curve provided by the engineering analysis. To characterize operating flow for each consumer in the sample, in the June 2022 NOPR, DOE drew a value from a statistical distribution of flow established during the January 2017 Direct Final Rule. This distribution was developed around the test procedure test point of 10 gpm of flow rate, as recommended by the ASRAC DPPP Working Group. (Docket EERE–2015–BT–STD–0008, No. 92 at p. 311) For single-speed pressure cleaner booster pumps, DOE then calculated the input power using the power curve from the engineering analysis. For variable-speed motors used in pressure cleaner booster pumps, DOE also calculated the pool pump motor input power in a low-speed setting. Based on information from the January 2017 Direct Final Rule, DOE used a value of 10 gpm to characterize the low-speed flow and calculate the hydraulic horsepower using the system curve.<sup>74</sup> Then, DOE calculated the input power using the relationship between input power and flow as provided by the engineering analysis. 87 FR 37122, 37142.

The Joint Advocates commented that for PCBP's, DOE estimated savings

<sup>72</sup> The CA IOUs provided the following reference: ASRAC DPPP term sheet, [www.regulations.gov/document/EERE-2015-BT-STD-0008-0051](http://www.regulations.gov/document/EERE-2015-BT-STD-0008-0051), rec 6.

<sup>73</sup> The minimum values of 24.7 and 31.1 gpm were used to provide a threshold when developing low flow values in the 2017 DPPP DFR. DOE did not use a value of 36 gpm as stated by Pentair. See Chapter 7 of the January 2017 Direct Final Rule TSD, at [www.regulations.gov/document?D=EERE-2015-BT-STD-0008-0105](http://www.regulations.gov/document?D=EERE-2015-BT-STD-0008-0105), p.7–6, footnote c.

<sup>74</sup> For more details, see chapter 7 of the January 2017 Direct Final Rule TSD, at [www.regulations.gov/document?D=EERE-2015-BT-STD-0008-0105](http://www.regulations.gov/document?D=EERE-2015-BT-STD-0008-0105).

associated with reducing flow rate to the 10 gpm specified in the test procedure, which is the typical flow rate required or recommended for suction-side pressure cleaners to function. In addition, the Joint Advocates noted that the savings associated with variable-speed pressure cleaner booster pump motors are supported by testing conducted by the CA IOUs during the DPPP rulemaking, which demonstrated that variable-speed control can reduce pressure cleaner booster pump energy consumption by 54 to 67 percent. Finally, the Joint Advocates commented that because of the cubic relationship between pump speed and power, reducing the speed of a pump by a small amount can yield large energy savings. (Joint Advocates, No. 97 at p. 2)

As previously described in section IV.C.1.c of this document, DOE developed a revised pump curve and input power curves as a function of flow rate for PCBP with variable-speed motors. Accordingly, for both single-speed and variable-speed PCBPs, DOE calculated the power directly from the equation providing power as a function of flow developed in the from the engineering analysis. For variable-speed PCBPs, as noted by the Joint Advocates, DOE maintained a value of 10 gpm to characterize the flow in the low-speed setting.

#### 5. Daily Operating Hours

In the June 2022 NOPR, DOE relied on information gathered during the January 2017 Direct Final Rule to develop estimates of pool pump daily operating hours. For self-priming and non-self-priming pool filter pumps in residential applications, operating hours are calculated uniquely for each consumer based on pool size, number of turnovers per day (itself based on ambient conditions), and the pump flow rate. In commercial applications, DOE assumed that these pumps operate 24 hours per day. 87 FR 37122, 37142–37143. For PCBPs, operating hours were drawn from a distribution based on the January 2017 Direct Final Rule and assumed a minimum operation of 2 hours per day and a maximum of 3 hours per day. See section 7.4.2.2. of the June 2022 NOPR TSD.

PHTA and NEMA commented in support using the same methodology and inputs to estimate DPPP motor energy use that were used in the dedicated-purpose pool pump direct final rule TSD. (PHTA and NEMA, No. 92 at p. 12)

PHTA commented that PCBP motors operate within a small window of 2–2.5 hours per day and that once a PCBP is set, customers have no reason to further

adjust the speed of the PCBP motor. (PHTA, No. 100 at pp. 2–3)

In the June 2022 NOPR analysis, as noted above, DOE assumed that PCBP motors operate between 2 and 3 hours per day, which is in line with the information provided by PHTA regarding PCBP operating windows. In addition, as noted in section IV.A.4 of this document, DOE believes that variable speed is an appropriate design option for these motors and would result in energy savings to the consumer.

DOE did not receive any other comments on daily operating hours and retained its approach for calculating the daily operating hours during the pool operating season.

#### 6. Annual Days of Operation

In the July 2022 NOPR, DOE calculated the annual unit energy consumption by multiplying the daily operating hours by the annual days of operation, which depend on the number of months of pool operation. For each consumer sample, DOE assigned different annual days of operation depending on the region in which the DPPP is installed. This assignment was based on information related to pool pump operating season based on geographical locations collected during the January 2017 Direct Final Rule. 87 FR 37122, 37143–37144.

DOE did not receive any comments on this topic and continued to use the same inputs regarding annual days of operation by region.

Chapter 7 of the January 2017 Direct Final Rule TSD provides details on DOE's energy use analysis for DPPP motors.

#### *F. Life-Cycle Cost and Payback Period Analysis*

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

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

purchase and sums them over the lifetime of the product.

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

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

For each considered efficiency level in each product class, DOE calculated the LCC and PBP for a nationally representative set of consumers. As stated previously, DOE developed consumer samples from various data sources including 2009 AHS, 2011 AHS, 2020 RECS, 2018 CBECS and 2022 PK data. For each sample consumer, DOE determined the energy consumption for DPPP motors and the appropriate energy price. By developing a representative sample of households, the analysis captured the variability in energy consumption and energy prices associated with the use of DPPP motors.

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

The computer model DOE uses to calculate the LCC relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and DPPP motors user samples. For this rulemaking, the Monte Carlo approach is implemented in MS Excel together with the Crystal Ball™ add-on.<sup>75</sup> The

<sup>75</sup> Crystal Ball™ is a commercially available software tool to facilitate the creation of these types



model calculated the LCC for products at each efficiency level for 10,000 consumers per simulation run. The analytical results include a distribution of 10,000 data points showing the range of LCC savings for a given efficiency level relative to the no-new-standards case efficiency distribution. In performing an iteration of the Monte Carlo simulation for a given consumer, product efficiency is chosen based on its probability. If the chosen product efficiency is greater than or equal to the efficiency of the standard level under consideration, the LCC calculation reveals that a consumer is not impacted by the standard level. By accounting for

consumers who already purchase more-efficient products, DOE avoids overstating the potential benefits from increasing product efficiency.

DOE calculated the LCC and PBP for consumers of DPPP motors as if each were to purchase a new product in the first year of required compliance with new or amended standards. As discussed in section III.A of this document, for all TSLs except TSL 7, new standards apply to DPPP motors manufactured 2 years after the date on which any new standard is published, which corresponds to a first full year of compliance of 2026.<sup>76</sup> At TSL 7, new standards would also apply 2 years after the publication of any new standard

except for small-size DPPP motors, for which new standards apply to DPPP motors manufactured 4 years after the date on which any new standard is published. For the purposes of the LCC and PBP analysis, DOE used 2026 as the first full year of compliance with any amended standards for DPPP motors.

Table IV.6 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the final rule TSD and its appendices.

TABLE IV.6—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS \*

| Inputs                             | Source/method                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Equipment Cost .....               | Derived by multiplying MPCs by manufacturer and distribution channel markups and sales tax, as appropriate. Used historical data to derive a price scaling index to project equipment costs.                                                                                                                                                                                                                            |
| Installation Costs .....           | Baseline installation costs determined using data from manufacturer gathered during the January 2017 Direct Final Rule.                                                                                                                                                                                                                                                                                                 |
| Annual Energy Use .....            | The daily energy consumption multiplied by the number of operating days per year.<br><i>Variability:</i> Based on the 2009 AHS, 2011 AHS, 2020 RECS, 2018 CBECS, 2022 PK data and other data sources.                                                                                                                                                                                                                   |
| Energy Prices .....                | <i>Electricity:</i> Based on EEI data for 2021.<br><i>Variability:</i> Regional energy prices determined for nine census divisions for pool pump motors in individual single-family homes and nine census divisions for pool pump motors in community and commercial pool pump motors.                                                                                                                                  |
| Energy Price Trends .....          | Average and marginal prices used for electricity.                                                                                                                                                                                                                                                                                                                                                                       |
| Repair and Maintenance Costs ..... | Based on AEO2023 price projections.                                                                                                                                                                                                                                                                                                                                                                                     |
| Equipment Lifetime .....           | Assumed no repair or maintenance on pool pump motors.<br><i>Average:</i> 3.6 to 5 years depending on the DPPP applications.<br><i>Variability:</i> Based on Weibull distribution.                                                                                                                                                                                                                                       |
| Discount Rates .....               | <i>Residential:</i> Approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances.<br><i>Commercial:</i> Calculated as the weighted average cost of capital for entities purchasing pool pumps. Primary data source was Damodaran Online. |
| Compliance Date .....              | 2026 (first full year for analytical purposes).                                                                                                                                                                                                                                                                                                                                                                         |

\* Not used for PBP calculation. References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the 2017 Direct Final Rule TSD.

## 1. Equipment Cost

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

In the June 2022 NOPR, to project an equipment price trend, DOE derived an inflation-adjusted index of the Producer Price Index (“PPI”) for integral and

fractional horsepower motors and generators manufactured over the period 1967–2020.<sup>77</sup> For fractional horsepower motors, the data showed a slightly downward trend prior to the early 2000s, and then the price index increased to a small degree. For integral horsepower motors, the trend was mostly flat before the early 2000s, and then the price index increased slightly. The trend aligned with the copper and steel deflated price indices to some extent, as they are the major materials used in small electric motors. Given the degree of uncertainty, in the June 2022

NOPR, DOE used a constant price assumption as the default price factor index to project future DPPP motor prices. For two-speed DPPP motors<sup>78</sup>, however, DOE assumed that the timer control portion of the installation cost would be affected by price learning. DOE used PPI data on “Automatic environmental control manufacturing” between 1980 and 2020 to estimate the historic price trend of the electronic components in the timer control.<sup>79</sup> For variable-speed DPPP motors, DOE assumed that the controls portion of the DPPP motor would be affected by price

of models by generating probability distributions and summarizing results within Excel, available at [www.oracle.com/technetwork/middleware/crystalball/overview/index.html](http://www.oracle.com/technetwork/middleware/crystalball/overview/index.html) (last accessed February 3, 2023).

<sup>76</sup> At this time, DOE estimates publication of a final rule in the second half of 2023. Therefore, for

purposes of its analysis, DOE used 2026 as the first full year of compliance with any amended standards for DPPP motors.

<sup>77</sup> Series ID PCU 3353123353121; [www.bls.gov/ppi/](http://www.bls.gov/ppi/).

<sup>78</sup> DOE uses the terms “dual-speed” and “two-speed” interchangeably throughout this document.

<sup>79</sup> Automatic environmental control manufacturing PPI series ID PCU334512334512; [www.bls.gov/ppi/](http://www.bls.gov/ppi/).



learning. Similarly, DOE used PPI data on “Semiconductors and related device manufacturing” between 1967 and 2020 to estimate the historic price trend of electronic components in the control.<sup>80</sup> 87 FR 37122, 37145.

DOE did not receive any comments on the equipment price trends. DOE updated the data used to include an additional year (2021) and retained the same approach to develop equipment price trends.

## 2. Installation Costs

Installation costs include labor, overhead, and any miscellaneous materials and parts needed to install the equipment. In the June 2022 NOPR, DOE simplified the calculation and only accounted for the difference of installation costs by efficiency levels. Specifically, for two-speed pumps, DOE included the cost of a timer control and its installation where applicable. DOE also incorporated the supplemental installation labor costs for variable-speed pumps where applicable. *Id.*

Pentair commented that older pools with large single-speed pumps would begin to fail and need replacement, as older pools usually do not have any automation to control the pool equipment and automation is needed to be able to program and control a variable-speed pump easily. Pentair commented that the cost to automate is between \$2,000 to \$3,000, and because of this cost, many pool owners rebuild the motor or purchase a foreign-made motor and pump. (Pentair, No. 90 at p. 1)

DOE understands Pentair’s comment regarding automation systems as relating to additional control systems that can be used to further automate the operation of a DPPP via computer or mobile devices. These systems permit sophisticated control over e.g. filtration, pumps, lighting chemical management, wireless remote control.<sup>81</sup> DOE notes that these systems are not necessary to operate a variable-speed DPPP. As noted in section 5.7.1 of the January 2017 Direct Final Rule TSD,<sup>82</sup> DOE researched the design and engineering constraints associated with motor substitution by examining manufacturer interview responses and holding

discussions with the DPPP Working Group. DOE concluded that for the representative equipment capacities being considered, the wet end of the pump can be paired with a range of motors with various efficiencies and speed configurations without significant adaptations. In other words, a motor swap results in negligible incremental costs to the non-motor components of the DPPP. Thus, DOE concluded that the incremental MPC of the motor swap design options (improved motor efficiency and ability to operate at reduced speeds) may be considered equivalent to the incremental MPC of the motor component being swapped. Therefore, for variable-speed DPPP motors, DOE is not including the additional cost of automation systems in its analysis.

DOE did not receive other comments on installation costs and retained the same estimates as in the June 2022 NOPR as applied to two-speed and variable-speed DPPP motors.<sup>83</sup>

## 3. Annual Energy Consumption

For each sampled consumer, DOE determined the energy consumption for a DPPP motor at different efficiency levels using the approach described previously in section IV.E of this document.

## 4. Energy Prices

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

DOE derived electricity prices in 2022 using data from EEI Typical Bills and Average Rates reports. Based upon comprehensive, industry-wide surveys, this semi-annual report presents typical monthly electric bills and average kilowatt-hour costs to the customer as charged by investor-owned utilities. For the residential sector, DOE calculated electricity prices using the methodology described in Coughlin and Beraki (2018).<sup>84</sup> For the commercial sector,

DOE calculated electricity prices using the methodology described in Coughlin and Beraki (2019).<sup>85</sup>

DOE’s methodology allows electricity prices to vary by sector, region, and season. In the analysis, variability in electricity prices is chosen to be consistent with the way the consumer economic and energy use characteristics are defined in the LCC analysis. For DPPP motors, regional weighted-average values for both average and marginal prices were calculated for the nine census divisions. Each EEI utility in a region was assigned a weight based on the number of consumers it serves. Consumer counts were taken from the most recent EIA Form EIA-861 data (2021). See chapter 8 of the final rule TSD for details.

To estimate energy prices in future years, DOE multiplied the 2022 energy prices by the projection of annual average price changes for each of the nine census divisions from the Reference case in *AEO2023*, which has an end year of 2050.<sup>86</sup> To estimate price trends after 2050, DOE used the average of 2046–2050 values, held constant.

## 5. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing product components that have failed in the equipment; maintenance costs are associated with maintaining the operation of the equipment. Typically, small incremental increases in equipment efficiency entail no, or only minor, changes in repair and maintenance costs compared to baseline efficiency products. In the June 2022 NOPR, DOE assumed that for maintenance costs, there is no change with efficiency level, and therefore DOE did not include those costs in the model. In addition, DPPP motors are not typically repaired and DOE assumed no repair costs. 87 FR 37122, 37146.

DOE did not receive any comments regarding maintenance and repair costs and maintained the same approach in this final rule.

## 6. Equipment Lifetime

In the June 2022 NOPR, for DPPP motors used in residential applications, DOE calculated lifetime estimates using DPPP lifetime data and rates of repair

<sup>80</sup> Semiconductors and related device manufacturing PPI series ID PCU334413334413; [www.bls.gov/ppi/](http://www.bls.gov/ppi/).

<sup>81</sup> See for example: [www.pentair.com/en-us/products/residential/pool-spa-equipment/pool-automation/easytouch\\_pl4\\_andpsl4poolandspacontrolsyste.html?queryID=b1f890f14ae08bf7d162fc1ae8f116e8&objectID](http://www.pentair.com/en-us/products/residential/pool-spa-equipment/pool-automation/easytouch_pl4_andpsl4poolandspacontrolsyste.html?queryID=b1f890f14ae08bf7d162fc1ae8f116e8&objectID).

<sup>82</sup> See chapter 5 of the dedicated-purpose pool pumps direct final rule TSD, at [www.regulations.gov/document?D=EERE-2015-BT-STD-0008-0105](http://www.regulations.gov/document?D=EERE-2015-BT-STD-0008-0105).

<sup>83</sup> Adjusted to 2021\$.

<sup>84</sup> Coughlin, K. and B. Beraki. 2018. Residential Electricity Prices: A Review of Data Sources and Estimation Methods. Lawrence Berkeley National Lab, Berkeley, CA. Report No. LBNL-2001169. [ees.lbl.gov/publications/residential-electricity-prices-review](http://ees.lbl.gov/publications/residential-electricity-prices-review).

<sup>85</sup> Coughlin, K. and B. Beraki. 2019. Non-residential Electricity Prices: A Review of Data Sources and Estimation Methods. Lawrence Berkeley National Lab, Berkeley, CA. Report No. LBNL-2001203. [ees.lbl.gov/publications/non-residential-electricity-prices](http://ees.lbl.gov/publications/non-residential-electricity-prices).

<sup>86</sup> U.S. Department of Energy—Energy Information Administration. *Annual Energy Outlook 2023 with Projections to 2050*. Washington, DC. Available at [www.eia.gov/forecasts/aeo/](http://www.eia.gov/forecasts/aeo/) (last accessed May 23, 2023).

from the January 2017 Direct Final Rule, which estimated that motor replacement occurs at the halfway point in a pump's lifetime, but only for those DPPP's whose lifetime exceeds the average lifetime for the relevant equipment class.<sup>87</sup> The data allowed DOE to develop a survival function, which provides a distribution of lifetime ranging from a minimum of 1 year based on a period covered by warranty, to a maximum of 10 years, with a mean value of 5 years for self-priming pumps, to a maximum of 8 years, with a mean value of 3.6 years for non-self-priming and pressure cleaner booster pumps. These values are applicable to DPPP motors in residential applications. For commercial applications, DOE adjusted the lifetimes to account for the higher operating hours compared to residential applications, resulting in a reduced average lifetime of 3.2 years for self-priming pumps and 3.5 years for pressure cleaner booster pumps. The resulting shipments-weighted average lifetime across all DPPP motor equipment classes is 4.5 years. *Id.*

The CA IOUs recommended that DOE increase the PCBP lifetimes to account for shorter operating hours compared to non-self-priming pump applications, similar to how DOE assumed longer lifetimes for DPPP motors used in the residential sector vs. commercial sector. The CA IOUs estimated the PCBP operating hours are about 40 percent shorter than the non-self-priming pool filter pump. (CA IOUs, No. 96 at pp. 5–6)

The CEC and NYSERDA recommended that DOE revise its lifetime estimates for PCBPs pumps, as well as for variable-speed DPPP's as compared to single- or two-speed DPPP's. The CEC and NYSERDA commented that they expected that more up-to-date information would be available to support increased lifetime estimates for PCBPs, as well as for variable-speed DPPP's generally. (CEC and NYSERDA, No. 94 at p. 6)

DOE does not have lifetime data for PCBP motors. As stated previously, DOE calculated PCBP motor lifetimes based on information on PCBP lifetimes. DOE developed separate DPPP motor lifetimes by DPPP applications in line with the lifetime estimates from the January 2017 Direct Final Report. Specifically, for PCBPs, a shorter

average lifetime was considered compared to self-priming pumps to reflect a higher risk of failure typical of these DPPP's. (Docket EERE–2015–BT–STD–0008; No. 94 p. 221) The PCBP lifetimes were developed with input from the Working Group and DOE believes these are representative of PCBP lifetimes. In addition, the CA IOUs, the CEC, and NYSERDA did not provide data to support longer lifetimes for DPPP motors used in PCBPs, nor did they provide data to support longer lifetimes for DPPP motors used in variable-speed DPPP's. Therefore, DOE believes its current approach is valid and retains its lifetime estimates for DPPP motors used in PCBPs.

The CEC and NYSERDA stated although the approach<sup>88</sup> described in the June 2022 NOPR is reasonable, DOE should revisit its underlying assumptions for the LCC calculations and ensure the product lifetime estimates are consistent with the assumptions for motor replacements and warranty lengths. Specifically, the CEC and NYSERDA noted that there was a mismatch between the assumptions made for product lifetime, repair frequency, and warranty length in the January 2017 Direct Final Rule, and because of this, the resulting estimated equipment lifetime used in this NOPR underestimates the actual lifetimes of DPPP motors. The CEC and NYSERDA stated that they believed the Working Group members did not factor in potential repairs or warranties when coming up with product lifetime estimates. (Docket EERE–2015–BT–STD–0008; No. 94 pp. 209–223). The CEC and NYSERDA added that motor failure is the major failure mode for DPPP's and so if the motor is replaced after failure, the estimated lifetime of a DPPP is doubled. Further, the CEC and NYSERDA noted that if the DPPP fails during the warranty period and is replaced at no cost to the consumer, then the estimated lifetime of the DPPP is increased by the number of years the DPPP worked before it failed. The CEC and NYSERDA provided the example of the lifetime distribution for variable-speed non-self-priming pumps from the January 2017 Direct Final Rule and stated that the assumptions regarding lifetime, repair frequency, and warranty period were incompatible and required increasing the mean and maximum values of the Weibull distributions used to estimate the equipment lifetime. The

CEC and NYSERDA commented that DOE relied on an overly conservative assessment of equipment lifetime, which would mean that the economics of the proposed standard, in reality, would be even more favorable than what DOE presented in the LCC analysis. The CEC and NYSERDA, therefore, commented that DOE should ensure that the product lifetime estimates are consistent with the assumptions on motor replacements and warranty lengths. (CEC and NYSERDA, No. 94 at pp. 4–6)

DOE reviewed the DPPP lifetime assumptions and notes in the January 2017 Direct Final Rule TSD; the average lifetimes and associated Weibull distributions represent the age at which the equipment is retired from service and include any repairs<sup>89</sup> or motor replacement during the warranty period. (See section 8.2.2.4 of the January 2017 Direct Final Rule TSD)<sup>90</sup> As noted by the CEC and NYSERDA, the DPPP lifetimes used in the January 2017 Direct Final Rule were developed primarily based on input from manufacturers (in responses found in DOE's manufacturer interviews) and feedback from the ASRAC DPPP Working Group. The manufacturers interview guide reflects that DPPP lifetime is considered to include any motor replacement that would occur. (See section 12A.9 of the January 2017 Direct Final Rule TSD)<sup>91</sup> As such, DOE believes that the lifetimes estimated in the January 2017 Direct Final Rule are inclusive of any repair and warranty periods. In addition, while the CEC and NYSERDA recommended revising equipment lifetimes, they did not provide alternative estimates and DOE retains the lifetimes as calculated in the June 2022 NOPR.

## 7. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to consumers to estimate the present value of future operating cost savings. DOE estimated a distribution of discount rates for DPPP motors based on the opportunity cost of consumer funds.

DOE applies weighted average discount rates calculated from consumer debt and asset data, rather than marginal

<sup>87</sup> For DPPP's that do not include a repair, the DPPP motor lifetime is equal to the DPPP lifetime. For DPPP's that are repaired, the DPPP motor lifetime is equal to half of the DPPP lifetime. See chapter 8 of the dedicated-purpose pool pumps January 2017 Direct Final Rule TSD, at [www.regulations.gov/document?D=EERE-2015-BT-STD-0008-0105](http://www.regulations.gov/document?D=EERE-2015-BT-STD-0008-0105).

<sup>88</sup> The CEC and NYSERDA referred to the following description: “for DPPP's that do not include a repair, the DPPP motor lifetime is equal to the DPPP lifetime. For DPPP's that are repaired, the DPPP motor lifetime is equal to half of the DPPP lifetime.” 87 FR 37122, 37146.

<sup>89</sup> The warranty period is represented by the location or delay parameter of the Weibull distribution.

<sup>90</sup> See chapter 8 of the January 2017 Direct Final Rule TSD, at [www.regulations.gov/document?D=EERE-2015-BT-STD-0008-0105](http://www.regulations.gov/document?D=EERE-2015-BT-STD-0008-0105).

<sup>91</sup> See appendix 12A of the January 2017 Direct Final Rule TSD, at [www.regulations.gov/document?D=EERE-2015-BT-STD-0008-0105](http://www.regulations.gov/document?D=EERE-2015-BT-STD-0008-0105).

or implicit discount rates.<sup>92</sup> The LCC analysis estimates net present value over the lifetime of the product, so the appropriate discount rate will reflect the general opportunity cost of household funds, taking this time scale into account. Given the longtime horizon modeled in the LCC, the application of a marginal interest rate associated with an initial source of funds is inaccurate. Regardless of the method of purchase, consumers are expected to continue to rebalance their debt and asset holdings over the LCC analysis period, based on the restrictions consumers face in their debt payment requirements and the relative size of the interest rates available on debts and assets. DOE estimates the aggregate impact of this rebalancing using the historical distribution of debts and assets.

To establish residential discount rates for the LCC analysis, DOE identified all relevant household debt or asset classes in order to approximate a consumer's opportunity cost of funds related to appliance energy cost savings. It estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's triennial Survey of Consumer Finances<sup>93</sup> ("SCF") starting in 1995 and ending in 2019. Using the SCF and other sources, DOE developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which amended standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions. The average rate across all types of household debt and equity and income groups, weighted by the shares of each type, is 4.26 percent.

To establish commercial discount rates for the small fraction of applications where businesses purchase and use DPPP motors, DOE estimated the weighted-average cost of capital

using data from Damodaran Online.<sup>94</sup> The weighted-average cost of capital is commonly used to estimate the present value of cash flows to be derived from a typical company project or investment. Most companies use both debt and equity capital to fund investments, so their cost of capital is the weighted average of the cost to the firm of equity and debt financing. DOE estimated the cost of equity using the capital asset pricing model, which assumes that the cost of equity for a particular company is proportional to the systematic risk faced by that company. The average commercial discount rate is 6.77 percent.

DOE did not receive any comments related to discount rates. DOE retained the same methodology used in NOPR and updated the discount rate distributions based on the most recent available data.

See chapter 8 of the January 2017 Direct Final Rule TSD for further details on the development of consumer discount rates.

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

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

In the June 2022 NOPR, to estimate the efficiency distribution of DPPP motors in 2026, DOE first established efficiency distributions in 2021. Then, as in the January 2017 Direct Final Rule, DOE projected the 2026 efficiency distribution by assuming a 1-percent market shift from EL 0–EL 2 (single-speed DPPP motors) to EL 6 (variable-speed DPPP motors) where applicable. To establish the efficiency distributions of DPPP motors in 2021, DOE considered two market segments: (1) DPPP motors incorporated in DPPPs and (2) replacement DPPP motors sold alone. 87 FR 37122, 37147.

For DPPP motors incorporated in DPPPs, in the June 2022 NOPR, DOE relied on the 2021 DPPP Database that included a total of 345 models of DPPPs with WEF ratings and on the ELs developed in the January 2017 Direct Final Rule to establish the 2021 efficiency distributions of DPPPs. DOE also used the scenario of roll-up market response to the DPPP standards as

presented in the January 2017 Direct Final Rule. DOE then assumed that the distributions of DPPP motors incorporated in DPPPs would be equivalent to the 2021 efficiency distributions of DPPPs, based on the equivalent structure of the ELs used in this NOPR and in the January 2017 Direct Final Rule. For representative units 4 (*i.e.*, DPPP motors used in non-self-priming pumps, extra-small) and 7 (*i.e.*, DPPP motors used in pressure cleaner booster pumps), the 2021 DPPP Database did not include any information specific to these DPPPs. Instead, for these representative units, DOE relied on the efficiency distributions provided in the January 2017 Direct Final Rule and applied a scenario of roll-up market response to the upcoming DPPP standards. *Id.*

For replacement DPPP motors sold alone, in the June 2022 NOPR, for the United States, not including California,<sup>95</sup> DOE assumed that the DPPP standards would have no impact on the DPPP motor efficiency distributions. Therefore, to establish the efficiency distributions of replacement DPPP motors sold alone, DOE relied on the 2021 no-new-standards case efficiency distributions provided in the January 2017 Direct Final Rule, which reflect efficiency distributions prior to the compliance date of the DPPP standards. DOE then assumed that the efficiency distributions of replacement DPPP motors sold alone would be equivalent to the efficiency distributions of DPPPs, based on the equivalent structure of the ELs used in this NOPR and in the January 2017 Direct Final Rule. For California, DOE applied a scenario of roll-up market response to the upcoming California replacement DPPP motor standards.<sup>96</sup> DOE then relied on the market shares of replacement DPPP motors sold in California<sup>97</sup> and in the rest of the United States to establish the nationwide 2021 replacement DPPP motor efficiency distributions. *Id.*

In response to the June 2022 NOPR, PHTA and NEMA commented that DOE

<sup>92</sup> The implicit discount rate is inferred from a consumer purchase decision between two otherwise identical goods with different first cost and operating cost. It is the interest rate that equates the increment of first cost to the difference in net present value of lifetime operating cost, incorporating the influence of several factors: transaction costs; risk premiums and response to uncertainty; time preferences; interest rates at which a consumer is able to borrow or lend. The implicit discount rate is not appropriate for the LCC analysis because it reflects a range of factors that influence consumer purchase decisions, rather than the opportunity cost of the funds that are used in purchases.

<sup>93</sup> U.S. Board of Governors of the Federal Reserve System. *Survey of Consumer Finances*. 1995, 1998, 2001, 2004, 2007, 2010, 2013, 2016, and 2019. [www.federalreserve.gov/econresdata/scf/scfindex.htm](http://www.federalreserve.gov/econresdata/scf/scfindex.htm) (last accessed September 1, 2022).

<sup>94</sup> Damodaran Online, *Data Page: Costs of Capital by Industry Sector* (2021). [pages.stern.nyu.edu/~adamodar/](https://pages.stern.nyu.edu/~adamodar/) (last accessed April 22, 2022).

<sup>95</sup> DOE considered California separately in light of the July 2021 California standards for replacement DPPP motors adopted April 7, 2020 with an effective date July 19, 2021. See Docket 19-AAER-02 at [www.energy.ca.gov/rules-and-regulations/appliance-efficiency-regulations-title-20/appliance-efficiency-proceedings-2](http://www.energy.ca.gov/rules-and-regulations/appliance-efficiency-regulations-title-20/appliance-efficiency-proceedings-2).

<sup>96</sup> For the purposes of this analysis, DOE considered EL 1 (for motors below 0.5 THP) and EL 6 (for motors above 0.5 THP) as equivalent levels to the California standards.

<sup>97</sup> California Energy Commission, *Final Analysis of Efficiency Standards for Replacement Dedicated-Purpose Pool Pump Motors*, February 20, 2020. Docket 9-AAER-02 <https://efiling.energy.ca.gov/GetDocument.aspx?tn=232151> (last accessed August 2021).

overestimated the percentage of PCBP and small filter pumps that would be variable speed in 2026. PHTA and NEMA commented that based on a review of the CCMS data, there is limited availability of fractional THP motors currently on the market. Further, PHTA and NEMA commented that the limited models available are not mass produced. Recognizing the limited models of motors that exist in the small motor category, PHTA and NEMA cited this as a rationale for the fact that there are zero or very limited variable-speed replacement motors in the CEC database since the July 19, 2021, compliance date of CEC's replacement motor rule (the database appears to not identify whether products listed are variable speed or not; it lists only model information). PHTA and NEMA commented that in discussions with the California pool service, installer, and distribution industry as well as PHTA and NEMA manufacturers, it was revealed that small fractional VS motors are simply not being sold and instead consumers are choosing to replace the entire pump or repair the existing motor due to the cost justification and lack of product availability. (PHTA and NEMA, No. 92 at pp. 6–7)

Fluidra commented that DOE's estimate for the share of DPPP motors used in PCBP at EL 2 appears to be too low. Specifically, Fluidra commented that EL 2 represents multistage booster pumps, which it estimates to be approximately a third of total booster pump market share. Fluidra further commented that DOE's estimated market share of DPPP motors used in PCBP at EL 6 appears to be too high. Although technologically feasible, Fluidra noted that it is not economically practical and there appears to be no availability of this type of pump in distribution at this time. Fluidra also noted that DOE's estimate for DPPP motors used in small-size 0.75 hp self-priming DPPP at EL 6 appears to be too high because there are currently no or very limited variable-speed DPPPs of this size in the market. Fluidra added that for representative unit 7, the estimated 35 percent of replacement variable-speed PCBP motors is much too

high and should be 0–1 percent, instead. (Fluidra, No. 91 at pp. 3–4)

Pentair questioned whether variable-speed motors are being shipped in large numbers and stated that this is not the case. (Pentair, No. 90 at p. 2)

PHTA stated that there are no variable-speed pumps on the market below 0.75 hp. (PHTA, No. 100 at p. 3) Hayward recommended that DOE review the availability of low-horsepower variable-speed DPPP motors in the current market, and that Hayward offers three basic variable-speed pump models that can achieve a rating of 0.85 THP, but only when installed with 115V power. Accordingly, Hayward noted that each of these models is made with dual-voltage capability, and estimated that over 98 percent are installed with 230V power which yields 1.65 THP. (Hayward, No. 93 at p. 2)

In this final rule, DOE revised the no-new-standards case efficiency distributions to incorporate stakeholder feedback. First, DOE revised the approach used to develop the no-new-standards case efficiency distributions for replacement DPPP motors in California (which was based on a roll-up scenario) and assumed shipments of replacement variable-speed DPPP motors would not always increase as a result of the California standard. Instead, in cases where the California standard requires a variable-speed replacement DPPP motor and the current DOE standards for DPPPs can be met without the use of a variable-speed motor (*i.e.*, for small-size DPPP motors and for standard-size DPPP motors used in non-self priming DPPPs), DOE assumed that consumers would choose to purchase a new, cheaper, non-variable-speed DPPP instead of purchasing a more expensive variable-speed replacement motor.<sup>98</sup> This approach results in a lower market share of variable-speed DPPP motors overall (*i.e.*, lower shipments), and specifically for DPPP motors used in PCBP as recommended by NEMA, PHTA, and Fluidra. This approach also results in a decrease in the market share of DPPP motors used in small size 0.75 hp self-priming DPPP at EL 6 compared to the estimates from the June 2022 NOPR, as

recommended by Fluidra. In addition, DOE updated the information used to develop the efficiency distributions based on the 2022 DPPP Database. Further to derive the efficiency distributions for each representative unit, DOE relied on all models of DPPP with a DPPP motor THP included in the range represented by the representative unit (*e.g.*, for representative unit 1, DOE relied on DPPP motor data with DPPP motor THP greater than 0.5 and less than 1.15 THP). For this analysis, DOE considered the DPPP motor THP as rated by manufacturers when submitting compliance to the DOE Compliance and Certification Database, the CEC, and the ENERGY STAR program (which DOE collected as part of the 2022 DPPP Database), which may include ratings at different voltages. As a result, although DOE did not find DPPP motors at 0.75 THP, DOE found several variable-speed DPPP motors within the 0.5–1.15 THP range. In addition, DOE does not have any technical basis for, or has not received any comments on, variable-speed technology not being feasible at 0.75 THP (*See* section IV.A.4 of this document), and believes the efficiency distributions as established are representative of the 0.5–1.15 THP range associated with representative unit 1.

Regarding Fluidra's comment related to the share of shipments at EL 2 for PCBP, Fluidra did not provide supporting data to justify the recommended one-third market share. In addition, DOE notes that EL 2 represents a level achieved by a higher-efficiency DPPP motor and does not relate to the pump design (*e.g.*, multistage). The market shares from the June 2022 NOPR were based on information collected during the January 2017 Direct Final Rule. DOE maintained the same approach as the 2022 DPPP Database and did not have sufficient information<sup>99</sup> to revise these estimates.

The projected 2026 market shares by EL for the no-new-standards case for DPPP motors are shown in Table IV.7 and Table IV.8 by market segment. *See* chapter 8 of the final rule TSD for further information on the derivation of the efficiency distributions.

TABLE IV.7—DPPP MOTORS INCORPORATED IN DPPPS 2026 NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTIONS

| Equipment class        | Rep. unit | THP  | DPPP application                                           | EL 0 (%) | EL 1 (%) | EL 2 (%) | EL 3 (%) | EL 4 (%) | EL 5 (%) | EL 6 (%) |
|------------------------|-----------|------|------------------------------------------------------------|----------|----------|----------|----------|----------|----------|----------|
| Extra-Small-size ..... | 4         | 0.22 | Non-self-priming Filter Pump, Extra-Small-size (0.09 hhp). | 0        | 67       | 33       | .....    | .....    | .....    | .....    |
| Small-size .....       | 1         | 0.75 | Self-priming Filter Pump, Small-size (0.44 hhp) .....      | 0        | 0        | 45       | 9        | 0        | 1        | 44       |
| Small-size .....       | 5         | 1    | Non-self-priming Filter Pump, Small-size (0.52 hhp)        | 0        | 38       | 27       | 10       | 6        | 1        | 18       |

<sup>98</sup> As noted by NEMA and PHTA, a consumer may also choose to repair its existing motor. However, DOE notes in section IV.F.5 of this

document that DPPP motors are typically not repaired and DOE believes that the purchase of a new DPPP represents the more likely scenario.

<sup>99</sup> The 2022 DPPP Database includes 12 models of PBCPs.

TABLE IV.7—DPPP MOTORS INCORPORATED IN DPPPs 2026 NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTIONS—Continued

| Equipment class     | Rep. unit | THP   | DPPP application                                         | EL 0 (%) | EL 1 (%) | EL 2 (%) | EL 3 (%) | EL 4 (%) | EL 5 (%) | EL 6 (%) |
|---------------------|-----------|-------|----------------------------------------------------------|----------|----------|----------|----------|----------|----------|----------|
| Small-size .....    | * 7       | 1.125 | Pressure Cleaner Booster Pump .....                      | 0        | 81       | 10       | .....    | .....    | .....    | 9        |
| Standard-size ..... | 6         | 1.5   | Non-self-priming Filter Pump (0.87 hhp) .....            | 0        | 38       | 27       | 10       | 6        | 1        | 18       |
| Standard-size ..... | 2         | 1.65  | Self-priming Filter Pump, Standard-size (0.95 hhp) ..... | 0        | 0        | 0        | 0        | 0        | 0        | 100      |
| Standard-size ..... | 2A        | 1.65  | Self-priming Filter Pump, Small-size (0.65 hhp) .....    | 0        | 0        | 45       | 9        | 0        | 1        | 44       |
| Standard-size ..... | 3         | 3.45  | Self-priming Filter Pump, Standard-size (1.88 hhp) ..... | 0        | 0        | 0        | 0        | 0        | 0        | 100      |

\* For Pressure cleaner booster pumps EL 3, EL 4, and EL 5 are equivalent to EL 6.

**Note:** may not sum to 100% due to rounding.

TABLE IV.8—REPLACEMENT DPPP MOTORS SOLD ALONE 2026 NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTIONS

| Equipment class        | Rep. unit | THP   | DPPP application                                                | EL 0 (%) | EL 1 (%) | EL 2 (%) | EL 3 (%) | EL 4 (%) | EL 5 (%) | EL 6 (%) |
|------------------------|-----------|-------|-----------------------------------------------------------------|----------|----------|----------|----------|----------|----------|----------|
| Extra-small-size ..... | 4         | 0.22  | Non-self-priming Filter Pump, Extra-Small size (0.09 hhp) ..... | 29       | 38       | 33       | .....    | .....    | .....    | .....    |
| Small-size .....       | 1         | 0.75  | Self-priming Filter Pump, Small-size (0.44 hhp) .....           | 33       | 11       | 9        | 2        | 2        | 2        | 42       |
| Small-size .....       | 5         | 1     | Non-self-priming Filter Pump, Small-size (0.52 hhp) .....       | 26       | 26       | 31       | 2        | 1        | 1        | 12       |
| Small-size .....       | * 7       | 1.125 | Pressure Cleaner Booster Pump .....                             | 11       | 65       | 10       | .....    | .....    | .....    | 14       |
| Standard-size .....    | 6         | 1.5   | Non-Self-priming Filter Pump (0.87 hhp) .....                   | 26       | 26       | 31       | 2        | 1        | 1        | 12       |
| Standard-size .....    | 2         | 1.65  | Self-priming Filter Pump, Standard-size (0.95 hhp) .....        | 27       | 9        | 7        | 1        | 1        | 1        | 52       |
| Standard-size .....    | 2A        | 1.65  | Self-priming Filter Pump, Small-size (0.65 hhp) .....           | 33       | 11       | 9        | 2        | 2        | 2        | 42       |
| Standard-size .....    | 3         | 3.45  | Self-priming Filter Pump, Standard-size (1.88 hhp) .....        | 27       | 9        | 7        | 1        | 1        | 1        | 52       |

\* For Pressure cleaner booster pumps EL 3, EL 4, and EL 5 are equivalent to EL 6.

The LCC Monte Carlo simulations draw from the efficiency distributions and randomly assign an efficiency to the DPPP motor purchased by each sample household in the no-new-standards case. The resulting percent shares within the sample match the market shares in the efficiency distributions.

In the June 2022 NOPR, when assigning an equipment efficiency to a sample consumer, DOE relied on a random assignment of no-new-standards case efficiencies (sampled from the developed efficiency distribution) in the LCC model. 87 FR 37142. 37144. DOE did not receive any comments on this approach and continued to rely on a random assignment in this final rule.

#### 9. Payback Period Analysis

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

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. DOE refers to this as a “simple PBP” because it does not consider changes over time in operating cost savings. The PBP calculation uses the same inputs as the LCC analysis when deriving first-year operating costs.

As noted previously, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the first year’s energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year’s energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price projection for the year in which compliance with the new standards would be required.

Fluidra presented a study of PCBP power consumption taken from two typical residential in-ground pool installations to compare the power consumption of a production multi-stage single-speed booster pump, with a multi-stage and a single-stage booster pump fitted with the most compatible variable-speed DPPP motor currently available. Fluidra commented that in the study, power was measured at various motor rotations per minute (“RPM”) down the lowest possible RPM to maintain the necessary flow and pressure for pool cleaner operation. Fluidra concluded from the study that a minimum payback period of approximately 9 years was needed, and this was larger than the average lifetime of the PCBP motor (at 3.6 years from the 2017 Direct Final Rule TSD). Further,

Fluidra noted that the power consumption of the booster pump variable-speed motor operating at maximum speed measured noticeably higher than the single-speed base comparison. Specifically, Fluidra commented that operating a PCBP at maximum speed is necessary because of the plumbing head loss from extended pipe runs where the pool equipment pad is further from the pool for aesthetics and noise reduction. Accordingly, Fluidra concluded that the variable speed would have incremental costs, without ever realizing the fiscal benefit of potential energy savings, and with limited impact to energy and waste reduction. (Fluidra, No. 91 at pp. 1–2, 6–9)

Hayward stated that it reviewed energy and cost savings for six of its currently compliant single-speed pumps, including self-priming and non-self-priming, and estimated that the average payback period for conversion to variable speed was over 12 years. Hayward provided a separate analysis spreadsheet of this evaluation. Hayward also noted use of a 24.7 gpm flow rate, although Hayward knows of pool equipment requiring a greater flow rate. (Hayward, No. 93 at p. 2)

PHTA and NEMA provided the results of field tests of two separate variable-speed PCBPs showing payback periods of 9–30 years, while a PCBP has an average lifetime of 3.6 years. In addition, PHTA and NEMA noted that in some cases, the variable-speed PCBP consumed more energy than the constant-load system. PHTA and NEMA noted that these results are consistent

with the LCC results from the January 2017 Direct Final Rule. (PHTA and NEMA, No. 92 at pp. 2–3)

PHTA restated that PCBP, when analyzed as their own equipment class, would not show cost-effective results; thus, it requested that DOE confirm its analysis and not require variable speed for these motors. (PHTA, No. 100 at p. 2) PHTA added that the rule is not cost-effective and pointed to data provided by Hayward that calculated a 12-year payback period for both self-priming and non-self-priming pumps under 1 hp as well as data submitted by Fluidra that calculated a 9-year payback period for a variable-speed PCBP. (PHTA, No. 100 at pp. 3–4)

Waterway Plastics commented that savings are application-related. Waterway Plastics noted that non self-priming pool pumps are used on smaller swimming pools that have less filtration load, and some of them are seasonal. Therefore, they questioned the representativeness of average values for all applications. (Waterway Plastics, Public Meeting, No. 88 at p. 32) Waterway Plastics added that above-ground swimming pool and non-self-priming pump is used to filter a much smaller body of water on average and therefore averaging and combining the non-self-priming application with the self-priming application do not provide an accurate economic analysis. Further, Waterway Plastics added that using variable speed motors results in energy savings because they are flexible on the speed of operation and do not provide significant savings when used a maximum speed compared to single speed motors. (Waterway Plastics, Public Meeting, No. 88 at pp. 58–59)

While the Fluidra and Hayward studies analyzed a number of specific installations, DOE notes that the LCC analyzes a larger consumer sample and characterizes inputs using statistical distributions to reflect variability in the field (see description in sections IV.E. and IV.F of this document). DOE does not believe that the two or six installations considered by Fluidra and Hayward are representative of the entire market as they do not reflect the entire range of possible installation costs, energy usage and usage conditions (e.g. as noted by Hayward, they relied on a single value of 24.7 gpm flow rate, although pool equipment typical runs at

higher rates), and related operating costs. Further, as previously described, DOE believes that variable-speed motors can lead to energy savings in PCBP as discussed in section IV.A.4 of this document. Instead, in the LCC and PBP analysis, DOE considers a distribution of installations with variations in heads and flow rates and efficiency as described in sections IV.E and IV.F.8 of this document. In addition, as presented in section IV.A.3 of this document, DOE's LCC and PBP analysis results are provided at the equipment-class level and not at the DPPP-application level (e.g., PCBP). The resulting payback periods are presented in section V.B.1.a of this document.

### G. Shipments Analysis

DOE uses projections of annual product shipments to calculate the national impacts of potential amended or new energy conservation standards on energy use, NPV, and future manufacturer cash flows.<sup>100</sup> The shipments model takes an accounting approach, tracking market shares of each product class and the vintage of units in the stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution of in-service product stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock.

#### 1. Base-Year Shipments

In the June 2022 NOPR, DOE estimated motor shipments by DPPP application and considered two pool pump motor market segments: (1) DPPP motors incorporated in DPPPs and (2) replacement DPPP motors sold alone. For DPPP motors incorporated in DPPPs, DOE used the 2015 shipments of DPPPs by DPPP application from the January 2017 Direct Final Rule, which were based on manufacturer interviews. For replacement DPPP motors sold alone, DOE used estimates of historical shipments of DPPPs for the period 2007–2014 and estimates of repair frequency as provided by the ASRAC DPPP Working Group during the

<sup>100</sup> DOE uses data on manufacturer shipments as a proxy for national sales, as aggregate data on sales are lacking. In general, one would expect a close correspondence between shipments and sales.

January 2017 Direct Final Rule to calculate the resulting number of failing DPPP motors each year, and corresponding replacement DPPP motor shipments by DPPP application.<sup>101</sup> DOE also used 2018 confidential DPPP motor shipments data and information from the 2021 DPPP Database to estimate market share of motor shipments by total horsepower and distribution of DPPP motor shipments by representative unit. 87 FR 37122, 37148.

Regarding DOE's base year shipments estimate, Fluidra commented that shipments of replacement DPPP motors for booster pumps appear to be too high. Fluidra stated that it offers two Pressure Cleaner Booster Pump Models (PB4–60 and PB4SQ), and combined ships less than 1,000 replacement motors per year, which includes warranty replacements. Fluidra added that due to the low price point of booster pumps, the cost of a replacement motor and service/repair of a booster pump outweighs the cost of simply replacing the entire booster pump, which also comes with a manufacturer warranty. (Fluidra, No. 91 at p. 4)

In this final rule, as described in section IV.F.8 of this document, DOE revised the base year 2021 shipments to account for consumers that elect to purchase a new pump, rather than a replacement motor in California.<sup>102</sup> This resulted in reduced shipments of replacement DPPP motors sold alone and increased shipments of motors sold in DPPP for PCBP, small-size self-priming, small and standard-size non-self-priming filter pump applications.

Table IV.9 provides the breakdown of DPPP motor shipments by market segment and representative unit.

<sup>101</sup> DOE relied on a repair frequency of 40 percent as provided in the January 2017 Direct Final Rule. At the end of life of a motor, the motor is replaced (i.e., pump repair) 40 percent of the time, and in the remaining 60 percent of the time, the pump is replaced by a new pump. For more details, see chapter 9 of the January 2017 Direct Final Rule TSD, at [www.regulations.gov/document?D=EERE-2015-BT-STD-0008-0105](http://www.regulations.gov/document?D=EERE-2015-BT-STD-0008-0105).

<sup>102</sup> As noted in section IV.F.8 of this document, DOE considered California separately in light of the July 2021 California standards for replacement DPPP motors adopted April 8, 2020 with an effective date July 19, 2021. See Docket 19–AAER–02 at [www.energy.ca.gov/rules-and-regulations/appliance-efficiency-regulations-title-20/appliance-efficiency-proceedings-2](http://www.energy.ca.gov/rules-and-regulations/appliance-efficiency-regulations-title-20/appliance-efficiency-proceedings-2).

TABLE IV.9—2021 SHIPMENTS OF DPPP MOTORS BY MARKET SEGMENT AND REPRESENTATIVE UNIT

| Equipment class        | Rep. unit * | THP   | DPPP category                           | Represented THP range within the DPPP category | DPPP motors incorporated in pumps (thousand units) | Replacement DPPP motors sold alone (thousand units) |
|------------------------|-------------|-------|-----------------------------------------|------------------------------------------------|----------------------------------------------------|-----------------------------------------------------|
| Small-size .....       | 1           | 0.75  | Small Size Self-priming Filter Pump.    | $0.5 \leq \text{THP} < 1.15$ .....             | 148.3                                              | 37.4                                                |
| Standard-size .....    | 2A          | 1.65  |                                         | $1.15 \leq \text{THP} \leq 5$ .....            | 103.8                                              | 26.1                                                |
| Standard-size .....    | 2           | 1.65  | Standard Size Self-priming Filter Pump. | $1.15 \leq \text{THP} < 1.7$ .....             | 155.2                                              | 151.7                                               |
| Standard-size .....    | 3           | 3.45  |                                         | $1.7 \leq \text{THP} \leq 5$ .....             | 243.1                                              | 237.5                                               |
| Extra-Small-size ..... | 4           | 0.22  | Non-self-priming Filter Pump.           | $< 0.5$ .....                                  | 47.4                                               | 16.2                                                |
| Small-size .....       | 5           | 1     |                                         | $0.5 \leq \text{THP} < 1.15$ .....             | 299.3                                              | 86.9                                                |
| Standard-size .....    | 6           | 1.5   |                                         | $1.15 \leq \text{THP} \leq 5$ .....            | 116.4                                              | 33.8                                                |
| Small-size .....       | 7           | 1.125 | Pressure Cleaner Booster Pump.          | $0.5 \leq \text{THP} < 1.15$ .....             | 151.8                                              | 39.7                                                |

\* Representative unit.

## 2. No-New-Standards Case Shipment Projections

DOE projected shipments of DPPP motors incorporated in DPPPs and shipments of replacement DPPP motors sold alone separately.

In the June 2022 NOPR, in the no-new-standards case, DOE assumed the total shipments of DPPP motors incorporated in DPPPs was equal to the total shipments of DPPPs as projected in the January 2017 Direct Final Rule, at the trial standard level corresponding to the DPPP energy conservation standard.<sup>103</sup> 87 FR 37122, 37149. DOE did not receive any comments on this approach and retained the same method to estimate DPPP motors incorporated in DPPPs.

In the June 2022 NOPR, in the no-new-standards case, for replacement DPPP motors sold alone, DOE used the projected shipments of DPPPs and estimates of repair frequency to calculate the resulting number of failing motors each year and corresponding motor replacement sales. For replacement motors sold alone outside of California, DOE relied on repair frequency rates as provided in the January 2017 Direct Final Rule. For standard-size, self-priming pump motors sold before 2021 and at efficiency levels below the DPPP standards, DOE assumed that the repair frequency would increase from 40 percent to 60 percent to calculate corresponding replacement DPPP

motors sales.<sup>104</sup> For other categories of DPPPs, DOE relied on a 40-percent repair frequency as provided in the January 2017 Direct Final Rule. These repair-replace rates were based on inputs from the ASRAC DPPP Working Group during the January 2017 Direct Final Rule. For replacement motors sold alone in California, DOE projects that with the California efficiency standards for replacement DPPPs,<sup>105</sup> the repair frequency of standard-size, self-priming pump motors will remain at its pre-2021 rate of 40 percent as estimated in the January 2017 Direct Final Rule, rather than increasing to 60 percent due to the smaller price difference between replacing the entire pump and replacing the motor only. *Id.*

In response to the June 2022 NOPR, Fluidra commented that a 60-percent estimate for replacement motors may be too high, adding that the tendency for the consumer is to replace motors only when they are under warranty, and once the motor warranty expires, the consumer purchases a whole new pump to get a new manufacturer's warranty

(typically a 3-year warranty). (Fluidra, No. 91 at p. 4)

In the June 2022 NOPR, in order to estimate shipments of DPPP motors, DOE relied on a 40-percent DPPP repair rate for the majority of DPPPs. See footnote 85 of the June 2022 NOPR. 87 FR 37122, 37148. As previously noted, for standard-size self-priming pump motors sold outside California before 2021 and at efficiency levels below the DPPP standards, DOE assumed that the repair frequency would increase from 40 percent to 60 percent to calculate corresponding replacement DPPP motors sales. See 87 FR 37122, 37149. Similar to the assumptions used in the January 2017 Direct Final Rule, DOE assumed that users of standard-size self-priming pool pumps purchased before compliance year of the DPPP standards (*i.e.*, 2021), at efficiency levels below the upcoming DPPP standards, would seek to increase the pump's lifetime by performing an additional repair (*i.e.*, cheaper motor replacement with a non-variable-speed motor), rather than replacing the entire pump with a more efficient and variable-speed DPPP (due to the DPPP energy conservation standards at 10 CFR 431.465(f), which correspond to variable-speed efficiency levels for these DPPPs). See footnote 87 of the June 2022 NOPR 87 FR 37122, 37149. DOE believes this approach is appropriate and continues to rely on a 60-percent DPPP repair rate for DPPPs sold prior to 2021 below the current DPPP standards. For all other categories of DPPPs, DOE relied on a 40-percent repair rate as using a 60-percent rate would be too high as noted by Fluidra. DOE did not receive any other comments on this topic and relied on the same repair rates and approach to estimate replacement DPPP motors sold alone in the no-new-standards case.

<sup>103</sup> These were calculated based on input from the ASRAC DPPP Working Group and using a repair-replace model, and accounted for price elasticity of demand. A price elasticity of -0.02 was used for standard-size self-priming pool pumps. For more details see chapter 9 of the January 2017 Direct Final Rule TSD, at [www.regulations.gov/document?D=EERE-2015-BT-STD-0008-0105](http://www.regulations.gov/document?D=EERE-2015-BT-STD-0008-0105).

<sup>104</sup> In the January 2017 Direct Final Rule, DOE assumed that users of standard-size self-priming pool pumps purchased before compliance year of the DPPP standards (*i.e.*, 2021), at efficiency levels below the upcoming DPPP standards, would seek to increase their pump's lifetime by performing an additional repair (*i.e.*, cheaper motor replacement with a non-variable speed motor), rather than replacing the entire pump with a more efficient and variable-speed DPPP (due to the DPPP energy conservation standards at 10 CFR 431.465(f) which correspond to a variable-speed efficiency levels for these DPPPs). In the January 2017 Direct Final Rule, DOE therefore increased the repair frequency of these DPPPs from 40 percent to 60 percent. For more details see chapter 9 of the January 2017 Direct Final Rule TSD, at [www.regulations.gov/document?D=EERE-2015-BT-STD-0008-0105](http://www.regulations.gov/document?D=EERE-2015-BT-STD-0008-0105).

<sup>105</sup> Adopted April 7, 2020 with an effective date July 19, 2021. See Docket #19-AAER-02 at [www.energy.ca.gov/rules-and-regulations/appliance-efficiency-regulations-title-20/appliance-efficiency-proceedings-2](http://www.energy.ca.gov/rules-and-regulations/appliance-efficiency-regulations-title-20/appliance-efficiency-proceedings-2).



### 3. Standards Case Shipment Projections

The standards-case shipments projections account for the effects of potential standards on shipments.

In the June 2022 NOPR, in the standards cases for which the DPPP motor efficiency level was set below the level equivalent to the standard-size self-priming DPPP standards, DOE assumed the increase in repair frequency (*i.e.*, 60 percent) of standard-size self-priming pool pumps, which was accounted for in the no-new-standards case, was maintained for the entire United States except for California (*i.e.*, TSLs 1 to 5 as described in section V.A of this document). In California, due to the California efficiency standards for replacement DPPP motors, DOE estimated that the repair frequency of standard-size self-priming pump motors in California would remain at its pre-2021 rate of 40 percent in the standards case (the same as in the no-new-standards case) because California standards are at or above the levels equivalent to the DPPP standards at 10 CFR 431.465(f) for all equipment classes. 87 FR 37122, 37149.

In the June 2022 NOPR, outside of California, in the standards cases for which the DPPP motor efficiency levels are set at or above the level equivalent to the standard-size self-priming DPPP standard, DOE assumed the increase in repair for standard-size self-priming pumps would no longer occur starting from the compliance year due to the smaller price difference between replacing the entire pump and replacing the motor only. Under these scenarios, DOE assumed the pumps were repaired 40 percent of the time, and new pumps were purchased 60 percent of the time to replace failed pumps (*i.e.*, TSLs 6 to 8 as described in section V.A of this document). *Id.*

In addition, DOE accounted for potential downsizing that could occur as a result of setting different efficiency levels by equipment classes and THP. Specifically, DOE assumed that DPPP manufacturers may not want to incorporate variable-speed motors in DPPPs, where the DPPP energy conservation standard level does not require the use of a variable-speed motor. Therefore, at TSLs requiring a variable-speed motor for certain equipment classes with larger THP (*i.e.*, TSL 8, 7, 6. *See* section V.A), DOE assumed that DPPP manufacturers

might decide to use motors with smaller THP for DPPPs that were not required to comply with a DPPP standard level corresponding to a variable-speed-motor efficiency level. DOE analyzed DPPP motor THP size as a function of DPPP hhp in the 2021 DPPP Database to estimate where such downsizing may occur. For TSL 8 and 7, DOE did not identify any possible downsizing from small-size DPPP motors to extra-small-size DPPP motors. Furthermore, at TSL 8 and 7, small-size and standard-size DPPP motors are both set at EL 6. Therefore, DOE did not consider any downsizing at these TSLs. At TSL 6, based on a review of the 2021 DPPP Database, DOE identified representative unit 2A as a candidate for downsizing. Therefore, at TSL 6, DOE assumed that the majority of shipments of standard-size DPPP motors used in small-size self-priming pool pumps (80 percent) would downsize to small-size DPPP motors. For standard-size DPPP motors used in standard-size non-self-priming pumps (*i.e.*, representative unit 5), DOE did not identify DPPP models with oversized DPPP motors in its 2021 DPPP Database and did not assume any downsizing. 87 FR 37122, 37149–37150.

DOE did not receive any comments on its approach to establish standards-case shipments projections and maintain the same methodology in this final rule with the following update. For those California consumers that elect to purchase a new DPPP rather than a replacement variable-speed motor in the no-new-standards case (based on the discussion in section IV.F.8 of this document), at the TSLs for which the DPPP motor efficiency levels are set at or above the level equivalent to the PCBP, small-size self-priming, small and standard-size non-self-priming DPPP standards, DOE assumed that these California consumers would select to purchase a replacement motor rather than a new DPPP. This results in an increase of shipments of replacement DPPP motors sold alone and a decrease of shipments of motors sold in DPPP at these TSLs, for those DPPP applications. *See* chapter 9 of the final rule TSD for more details.

#### H. National Impact Analysis

The NIA assesses the national energy savings (“NES”) and the NPV from a national perspective of total consumer costs and savings that would be expected to result from new or amended

standards at specific efficiency levels.<sup>106</sup> (“Consumer” in this context refers to consumers of the product being regulated.) DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual product shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the present analysis, DOE projected the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of DPPP motors sold from 2026 through 2055, except at TSL 7 where for small size motors at TSL 7, the analysis considers DPPP motors sold from 2028 through 2055.<sup>107</sup>

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

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

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

<sup>106</sup> The NIA accounts for impacts in the 50 States and U.S. territories.

<sup>107</sup> Because the anticipated compliance date is late in the year, for analytical purposes, DOE conducted the analysis for shipments in 2026–2055 and 2028–2055.



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

| Inputs                                     | Method                                                                                                                                                                                                                                                                                       |
|--------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Shipments .....                            | Annual shipments from shipments model.                                                                                                                                                                                                                                                       |
| Compliance Date of Standard .....          | 2026 (2028 at TSL 7 for small-size DPPP motors) (first full year).                                                                                                                                                                                                                           |
| Efficiency Trends .....                    | <i>No-new-standards case</i> : shifted 1 percent per year of the market share in the single-speed levels to the variable-speed efficiency levels. <i>Standard cases</i> : shifted 1 percent per year of the market share in the single-speed levels to the variable-speed efficiency levels. |
| Annual Energy Consumption per Unit.        | Annual weighted-average values are a function of energy use at each TSL.                                                                                                                                                                                                                     |
| Total Installed Cost per Unit .....        | Annual weighted-average values are a function of cost at each TSL. Incorporates projection of future product prices based on historical data.                                                                                                                                                |
| Annual Energy Cost per Unit .....          | Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.                                                                                                                                                                                    |
| Repair and Maintenance Cost per Unit.      | Annual values do not change with efficiency level.                                                                                                                                                                                                                                           |
| Energy Price Trends .....                  | <i>AEO 2023</i> projections (to 2050) and held constant thereafter.                                                                                                                                                                                                                          |
| Energy Site-to-Primary and FFC Conversion. | A time-series conversion factor based on <i>AEO 2023</i> .                                                                                                                                                                                                                                   |
| Discount Rate .....                        | Three and seven percent.                                                                                                                                                                                                                                                                     |
| Present Year .....                         | 2024.                                                                                                                                                                                                                                                                                        |

### 1. Product Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. Section IV.F.8 of this document describes how DOE developed an energy efficiency distribution for the no-new-standards case (which yields a shipment-weighted average efficiency) for each of the considered product classes for the year of anticipated compliance with an amended or new standard. To project the trend in efficiency absent amended standards for DPPP motors over the entire shipments projection period, DOE relied on the same approach described in section IV.F.8 this document and shifted 1 percent per year of the market share in the single-speed levels to the variable-speed efficiency levels. The approach is further described in chapter 10 of the final rule TSD.

For the standards cases, DOE used a “roll-up” scenario to establish the shipment-weighted efficiency for the year that standards are assumed to become effective (2026 or 2028). In this scenario, the market shares of products in the no-new-standards case that do not meet the standard under consideration would “roll up” to meet the new standard level, and the market share of products above the standard would remain unchanged.

In the June 2022 NOPR, to develop standards case efficiency trends after the first full year of compliance (2026 or 2028), DOE also shifted 1 percent per year of the market share in the single-speed levels to the variable-speed efficiency levels. 87 FR 37122, 37151. This approach is consistent with the assumption made in the 2017 DPPP DFR. See section 8.4 of the June 2022 NOPR TSD. DOE did not receive any

comments on this assumption and retained the same approach in the final rule.

### 2. National Energy Savings

The national energy savings analysis involves a comparison of national energy consumption of the considered products between each potential standards case (“TSL”) and the case with no new or amended energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy consumption (also by vintage). DOE calculated annual NES based on the difference in national energy consumption for the no-new-standards case and for each higher efficiency standard case. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (*i.e.*, the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO 2023*. Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

Use of higher-efficiency products is sometimes associated with a direct rebound effect, which refers to an increase in utilization of the product due to the increase in efficiency. DOE did not find any data on the rebound effect specific to DPPP motors and, in the June 2022 NOPR, DOE did not apply a rebound effect. 87 FR 37122, 37151. DOE did not receive any comments on this topic and maintains the same approach in this final rule.

In 2011, in response to the recommendations of a committee on “Point-of-Use and Full-Fuel-Cycle

Measurement Approaches to Energy Efficiency Standards” appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (Aug. 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that EIA’s National Energy Modeling System (“NEMS”) is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (Aug. 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector<sup>108</sup> that EIA uses to prepare its *Annual Energy Outlook*. The FFC factors incorporate losses in production and delivery in the case of natural gas (including fugitive emissions) and additional energy used to produce and deliver the various fuels used by power plants. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B and 13A of the final rule TSD.

### 3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are (1) total annual installed cost, (2) total annual operating costs (energy costs and repair and maintenance costs), and (3) a

<sup>108</sup> For more information on NEMS, refer to *The National Energy Modeling System: An Overview 2009*, DOE/EIA-0581(2009), October 2009. Available at [www.eia.gov/analysis/pdfs/pages/0581\(2009\)index.php](http://www.eia.gov/analysis/pdfs/pages/0581(2009)index.php) (last accessed September 2, 2021).

discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the projection period.

As discussed in section IV.F.1 of this document, DOE developed DPPP motor price trends based on historical PPI data. DOE applied the same trends to project prices for each equipment class at each considered efficiency level. By 2055, which is the end date of the projection period, the average DPPP motor price is projected to drop between 0 and 52 percent depending on the efficiency level relative to 2026. DOE's projection of product prices is described in appendix 10C of the final rule TSD.

To evaluate the effect of uncertainty regarding the price trend estimates, DOE investigated the impact of different product price projections on the consumer NPV for the considered TSLs for DPPP motors. In addition to the default price trend, DOE considered two product price sensitivity cases: (1) a high price decline case and (2) a low price decline case based on historical PPI data. The derivation of these price trends and the results of these sensitivity cases are described in appendix 10C of the final rule TSD.

The energy cost savings are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE multiplied the average regional energy prices by the projection of annual national-average residential energy price changes in the Reference case from *AEO 2023*, which has an end year of 2050. To estimate price trends after 2050, DOE used the average of 2046 to 2050 prices, held constant. As part of the NIA, DOE also analyzed scenarios that used inputs from variants of the *AEO 2023* Reference case that have lower and higher economic growth. Those cases have lower and higher energy price trends compared to the Reference case. NIA results based on these cases are presented in appendix 10D of the final rule TSD.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this final rule, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget ("OMB") to

Federal agencies on the development of regulatory analysis.<sup>109</sup> The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the "social rate of time preference," which is the rate at which society discounts future consumption flows to their present value.

#### *I. Consumer Subgroup Analysis*

In analyzing the potential impact of new or amended energy conservation standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by a new or amended national standard. The purpose of a subgroup analysis is to determine the extent of any such disproportional impacts. DOE evaluates impacts on particular subgroups of consumers by analyzing the LCC impacts and PBP for those particular consumers from alternative standard levels.

In the June 2022 NOPR, DOE analyzed the impacts of the considered standard levels on one subgroup: senior-only households. The analysis used subsets of the RECS 2015 sample composed of households that meet the criteria for the subgroup. DOE used the LCC and PBP spreadsheet model to estimate the impacts of the considered efficiency levels on this subgroup. DOE did not evaluate low-income consumer subgroup impacts because the sample size of the subgroup was too small for meaningful analysis. 87 FR 37122, 37152 FN97.

NEMA and PHTA commented that DOE should consider the economic impact on lower median income and underserved communities whose consumers utilize above-ground and storable pools that typically fall within the small fractional motor category currently requiring a variable-speed motor in the NOPR. NEMA and PHTA commented that there are 3.3 million permanent above-ground pools in the United States; in 2020, there were 227,000 new above-ground pools installed and in 2021 this number increased to 247,000 (compared to 96,000 in-ground in 2020 and 117,000 in-ground in 2021); the average above-

ground pool price in 2021 was \$3,615 compared to \$56,000 for the average in-ground pool. (PHTA and NEMA, No. 92 at p. 5) PHTA commented that lower-income consumers and underserved communities would be more negatively impacted by a variable-speed requirement for small fractional motors because of the use of such motors in above-ground and storable pools. (PHTA, No. 100 at p. 4)

In the June 2022 NOPR, DOE did not evaluate low-income consumer subgroup impacts because the sample size of the subgroup was too small for meaningful analysis. 87 FR 37122, 37186 FN97. In this final rule, DOE updated the sample based on RECS 2020 and found that RECS 2020 only included 37 low-income consumer samples representing 2.6% of U.S. households with a pool.<sup>110</sup> Therefore, in this final rule, DOE did not evaluate low-income consumer subgroup impacts because the sample size of the subgroup continues to be too small for meaningful analysis.

For this final rule, DOE analyzed the impacts of the considered standard levels on senior-only households. The analysis used subsets of the RECS 2020 sample composed of households that meet the criteria for the considered subgroup. DOE used the LCC and PBP spreadsheet model to estimate the impacts of the considered efficiency levels on these subgroups. Chapter 11 in the final rule TSD describes the consumer subgroup analysis.

#### *J. Manufacturer Impact Analysis*

##### *1. Overview*

DOE performed an MIA to estimate the financial impacts of new energy conservation standards on manufacturers of DPPP motors and to estimate the potential impacts of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects and includes analyses of projected industry cash flows, the INPV, investments in research and development ("R&D") and manufacturing capital, and domestic manufacturing employment. Additionally, the MIA seeks to determine how new energy conservation standards might affect manufacturing employment, capacity, and competition, as well as how standards contribute to overall regulatory burden. Finally, the MIA serves to identify any disproportionate impacts on

<sup>109</sup> United States Office of Management and Budget. *Circular A-4: Regulatory Analysis*. September 17, 2003. Section E. Available at [georgewbush-whitehouse.archives.gov/omb/memoranda/m03-21.html](https://georgewbush-whitehouse.archives.gov/omb/memoranda/m03-21.html) (last accessed Feb. 2, 2023).

<sup>110</sup> After adjusting the RECS sample to represent the geographic distribution of above ground pools, this results in 2.5 percent of consumers of above-ground pools that are low-income.

manufacturer subgroups, including small business manufacturers.

The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model (“GRIM”), an industry cash flow model with inputs specific to this rulemaking. The key GRIM inputs include data on the industry cost structure, unit production costs, product shipments, manufacturer markups, and investments in R&D and manufacturing capital required to produce compliant equipment. The key GRIM outputs are the INPV, which is the sum of industry annual cash flows over the analysis period, discounted using the industry-weighted average cost of capital, and the impact to domestic manufacturing employment. The model uses standard accounting principles to estimate the impacts of energy conservation standards on a given industry by comparing changes in INPV and domestic manufacturing employment between a no-new-standards case and the various standards cases (“TSLs”). To capture the uncertainty relating to manufacturer pricing strategies following new standards, the GRIM estimates a range of possible impacts under different manufacturer markup scenarios.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as a potential standard’s impact on manufacturing capacity, competition within the industry, the cumulative impact of other DOE and non-DOE regulations, and impacts on manufacturer subgroups. The complete MIA is outlined in chapter 12 of the final rule TSD.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the DPPP motors manufacturing industry based on the market and technology assessment, preliminary manufacturer interviews, and publicly available information. This included a top-down analysis of DPPP motors manufacturers that DOE used to derive preliminary financial inputs for the GRIM (e.g., revenues; materials, labor, overhead, and depreciation expenses; selling, general, and administrative expenses (“SG&A”); and R&D expenses). DOE also used public sources of information to further calibrate its initial characterization of the DPPP motors manufacturing industry, including company filings of form 10-K from the SEC,<sup>111</sup> corporate annual reports, the U.S. Census Bureau’s

“Economic Census,”<sup>112</sup> and reports from Dunn & Bradstreet.<sup>113</sup>

In Phase 2 of the MIA, DOE prepared a framework industry cash-flow analysis to quantify the potential impacts of new energy conservation standards. The GRIM uses several factors to determine a series of annual cash flows starting with the announcement of the standard and extending over a 30-year period following the compliance date of the standard. These factors include annual expected revenues, costs of sales, SG&A and R&D expenses, taxes, and capital expenditures. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) creating a need for increased investment, (2) raising production costs per unit, and (3) altering revenue due to higher per-unit prices and changes in sales volumes.

In addition, during Phase 2, DOE developed interview guides to distribute to manufacturers of DPPP motors in order to develop other key GRIM inputs, including product and capital conversion costs, and to gather additional information on the anticipated effects of energy conservation standards on revenues, direct employment, capital assets, industry competitiveness, and subgroup impacts.

In Phase 3 of the MIA, DOE conducted structured, detailed interviews with representative manufacturers. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to validate assumptions used in the GRIM and to identify key issues or concerns. See section IV.J.3 of this document for a description of the key issues raised by manufacturers during the interviews. As part of Phase 3, DOE also evaluated subgroups of manufacturers that may be disproportionately impacted by new standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash flow analysis. Such manufacturer subgroups may include small business manufacturers, low-volume manufacturers (“LVMs”), niche players, and/or manufacturers exhibiting a cost structure that largely differs from the industry average. DOE identified one subgroup for a separate impact analysis: small business manufacturers. The small business subgroup is discussed in section VI.B of

this document, “Review under the Regulatory Flexibility Act” and in chapter 12 of the final rule TSD.

## 2. Government Regulatory Impact Model and Key Inputs

DOE uses the GRIM to quantify the changes in cash flow due to new standards that result in a higher or lower industry value. The GRIM uses a standard, annual discounted cash-flow analysis that incorporates manufacturer costs, manufacturer markups, shipments, and industry financial information as inputs. The GRIM models changes in costs, distribution of shipments, investments, and manufacturer margins that could result from new energy conservation standards. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning in 2024 (the base year of the analysis) and continuing to 2055. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. For manufacturers of DPPP motors, DOE used a real discount rate of 7.2 percent, which was derived from industry financials and then modified according to feedback received during manufacturer interviews.

The GRIM calculates cash flows using standard accounting principles and compares changes in INPV between the no-new-standards case and each standards case. The difference in INPV between the no-new-standards case and a standards case represents the financial impact of the new energy conservation standards on manufacturers. As discussed previously, DOE developed critical GRIM inputs using a number of sources, including publicly available data, results of the engineering analysis, and information gathered from industry stakeholders during the course of manufacturer interviews and subsequent Working Group meetings. The GRIM results are presented in section V.B.2 of this document. Additional details about the GRIM, the discount rate, and other financial parameters can be found in chapter 12 of the final rule TSD.

### a. Manufacturer Production Costs

Manufacturing more efficient equipment is typically more expensive than manufacturing baseline equipment due to the use of more complex components, which are typically more costly than baseline components. The changes in the MPCs of covered equipment can affect the revenues, gross margins, and cash flow of the industry.

DOE initially used data from the January 2017 Direct Final Rule to determine the MSP of DPPP

<sup>111</sup> See online at [www.sec.gov/edgar.shtml](http://www.sec.gov/edgar.shtml) (Last accessed on January 13, 2023).

<sup>112</sup> See online at [www.census.gov/programs-surveys/asm/data/tables.html](http://www.census.gov/programs-surveys/asm/data/tables.html) (Last accessed on January 13, 2023).

<sup>113</sup> See online at [app.avenion.com](http://app.avenion.com) (Last accessed on January 13, 2023).

motors. Specifically, DOE used Table 5.7.1 of the January 2017 Direct Final Rule TSD, which estimated the MSPs of DPPP motors used in the analysis. For this final rule DOE adjusted the MSPs used in the June 2022 NOPR from 2020 dollars into 2021 dollars. For a complete description of the MPCs, *see* chapter 5 of the final rule TSD.

#### b. Shipments Projections

The GRIM estimates manufacturer revenues based on total unit shipment projections and the distribution of those shipments by efficiency level. Changes in sales volumes and efficiency mix over time can significantly affect manufacturer finances. For this analysis, the GRIM uses the NIA's annual shipment projections derived from the shipments analysis from 2024 (the base year) to 2055 (the end year of the analysis period). *See* chapter 9 of the final rule TSD for additional details.

#### c. Product and Capital Conversion Costs

New energy conservation standards could cause manufacturers to incur conversion costs to bring their production facilities and equipment designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered efficiency level in each equipment class. For the MIA, DOE classified these conversion costs into two major groups: (1) product conversion costs; and (2) capital conversion costs. Product conversion costs are investments in research, development, testing, marketing, and other non-capitalized costs necessary to make equipment designs comply with new energy conservation standards. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new compliant equipment designs can be fabricated and assembled.

DOE continued to use the conversion costs estimates from the June 2022 NOPR. DOE updated these conversion cost estimates from 2020 dollars to 2022 dollars using the PPI NAICS code 335312 (motor and generator manufacturing).<sup>114</sup> In the June 2022 NOPR, DOE assumed that DPPP motor manufacturers would not incur any capital conversion costs for efficiency levels that single-speed or dual-speed motors would be able to meet. The same production equipment currently used to manufacture single-speed and dual-speed motors would still be able to be used to manufacture more efficient

single- and dual-speed motors. However, DOE did assume that DPPP motor manufacturers would incur capital conversion costs at efficiency levels that variable-speed motors would be needed to meet the analyzed energy conservation standards. 87 FR 37122, 37153.

Additional production equipment would be needed to manufacture both additional variable-speed motor models and a larger production volume of variable-speed motors than are currently being produced. DOE used feedback from manufacturer interviews to estimate the cost of adding a production line to manufacture variable-speed motors. DOE then estimated the number of additional variable-speed production lines needed at each TSL, based on the increase in variable-speed shipments estimated at the analyzed TSL and the number of DPPP motor manufacturers that would need to introduce variable-speed motor models to meet the analyzed TSL.

DOE assumed that DPPP motor manufacturers would not incur any additional product conversion costs for the standard size equipment classes. All DPPP motor manufacturers currently manufacture multiple variable-speed motor models in the standard size equipment classes. Additionally, the current DOE energy conservation standard for DPPPs that most commonly use the standard size DPPP motors use variable speed motors to meet those efficiency requirements. Therefore, almost all standard size DPPP motors sold as part of a new DPPP are already variable-speed motors. However, DOE did assume that DPPP motor manufacturers would incur product conversion costs for the other equipment classes at each analyzed efficiency level.

Additionally, DPPP motor models would need to be introduced for the extra small-size and small-size DPPP motor equipment classes at each efficiency level analyzed. To evaluate the level of product conversion costs manufacturers would likely incur to comply with the analyzed energy conservation standards for these equipment classes, DOE used a model database to estimate the number of DPPP motor models that would have to be redesigned at each efficiency level for each equipment class. In general, DOE assumes all conversion-related investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the new standards.

PHTA and NEMA commented that manufacturers have already made investments that ranged between

\$50,000 and \$6.5 million to comply with the January 2017 Direct Final Rule and that in order to comply with the standards proposed in the June 2022 NOPR, DPPP motor and DPPP manufacturers may have to make investments that are 10 times larger than the investments required to comply with the January 2017 Direct Final Rule. Additionally, PHTA and NEMA stated that some of the investments that were made to comply with the January 2017 Direct Final Rule will not be able to be recouped by the time compliance with the DPPP motor energy conservation standards are required. (PHTA and NEMA, No. 92 at p. 8) DOE accounted for these additional investments that DPPP motor manufacturers will have to make to comply with the analyzed energy conservation standards for DPPP motors, in the form of conversion costs. These investments are displayed as conversion costs in Table V.15 and Table V.16.

The conversion cost figures used in the GRIM can be found in section V.B.2 of this document. For additional information on the estimated capital and product conversion costs, *see* chapter 12 of the final rule TSD.

#### d. Markup Scenarios

MSPs include direct manufacturing production costs (*i.e.*, labor, materials, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.*, SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied non-production cost markups to the MPCs estimated in the engineering analysis for each product class and efficiency level. Modifying these markups in the standards cases yield different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case markup scenarios to represent uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of new energy conservation standards: (1) a preservation of gross margin scenario; and (2) a preservation of operating profit scenario. These scenarios lead to different manufacturer markup values that, when applied to the MPCs, result in varying revenue and cash flow impacts.

Under the preservation of gross margin scenario, DOE applied a single uniform "gross margin percentage" across all efficiency levels, which assumes that manufacturers would be able to maintain the same amount of profit as a percentage of revenues at all efficiency levels within an equipment class. DOE continued to use a

<sup>114</sup> [www.bls.gov/ppi/databases/](http://www.bls.gov/ppi/databases/) (last accessed on February 9, 2023).

manufacturer markup of 1.37 for all DPPP motors, which is the same manufacturer markup that was used in the June 2022 NOPR.<sup>115</sup> This manufacturer markup scenario represents the upper bound to industry profitability under new energy conservation standards.

Under the preservation of operating profit scenario, DOE modeled a situation in which manufacturers are not able to increase per-unit operating profit in proportion to increases in MPC. Under this scenario, as the MPCs increase, manufacturers are generally required to reduce the manufacturer markup to maintain a cost competitive offering in the market. Therefore, gross margin (as a percentage) shrinks in the standards cases. This manufacturer markup scenario represents the lower bound to industry profitability under new energy conservation standards.

A comparison of industry financial impacts under the two manufacturer markup scenarios is presented in section V.B.2.a of this document.

### 3. Manufacturer Interviews

DOE conducted interviews with manufacturers prior to the publication of the June 2022 NOPR. In these interviews, DOE asked manufacturers to describe their major concerns regarding this rulemaking. The following section highlights manufacturer concerns that helped inform the projected potential impacts of new energy conservation standards on the industry. Manufacturer interviews are conducted under non-disclosure agreements (“NDAs”), so DOE does not document these discussions in the same way that it does public comments in the comment summaries and DOE’s responses throughout the rest of this document.

Some manufacturers stated they only produce single-speed and dual-speed motors within the small-size equipment class ( $0.5 \leq \text{THP} < 1.15$ ) and no longer supply DPPP motors used in new DPPP in that range to the California market after the CEC standard took effect. These manufacturers stated that they would need to design variable-speed motor models to meet any energy conservation standard that would require a variable-speed motor for the small-size equipment class. Additionally, these manufacturers would need to build additional production lines or make significant changes to existing single-speed or dual-speed production lines to be able to meet energy conservation standards requiring variable-speed DPPP motors for this equipment class. DOE included the capital and product

conversion costs necessary for these DPPP motor manufacturers to introduce variable-speed DPPP motor models for the small-size equipment class.

### 4. Comments From Interested Parties

Several interested parties commented on DOE’s NOPR MIA. These comments were made either in writing during the comment period following the publication of the June 2022 NOPR or during the NOPR public meeting for DPPP motors.

PHTA and NEMA commented that the lack of timing alignment between DPPP and DPPP motors standards will impact manufacturer’s ability to make proper investments and product design if the DPPP motor energy conservation standards make the investments made for the DPPP energy conservation standards moot. (PHTA and NEMA, No. 92 at p. 8) PHTA and NEMA also commented that the lack of harmonization between the DPPP energy conservation standards and the DPPP motor energy conservation standard proposed in the NOPR could result in manufacturers being required to produce multiple, separate, motor types to serve aftermarket applications versus OEM applications. PHTA and NEMA stated that harmonization between the two rules would reduce overall regulatory burden on DPPP motor manufacturers by allowing manufacturers to leverage economies of scale. (PHTA and NEMA, No. 92 at p. 13) Pentair also commented that the investments spent to meet the DPPP rule would be wasted because of the new proposal. (Pentair, No. 90 at p. 1) The compliance date for the DPPP energy conservation standards occurred on July 19, 2021. As part of this final rule, and the NOPR, MIA, DOE examined the additional investments that DPPP motor manufacturers will have to make to comply with the analyzed energy conservation standards for DPPP motors. DOE used the methodology described in section IV.J.2.c of this document to estimate the conversion costs for each analyzed TSL. DOE incorporated these conversion costs into the cash flow analysis presented in section V.B.2.a of this document.

Additionally, PHTA and NEMA commented that complex DPPP motor energy conservation standards superimposed on the DPPP energy conservation standards which are not aligned will make compliance with both energy conservation standards matters difficult for manufacturers. PHTA and NEMA stated it is essential that DOE align the performance requirements of the DPPP energy conservation standards with the requirements of the DPPP

motors energy conservation standards in order to facilitate compliance with both standards. (PHTA and NEMA, No. 92 at pp. 8–9) PHTA and NEMA also expressed concerns on how the regulatory burden of complying with both the DPPP and DPPP standards, that are not align in the performance requirements and in the timing, could be burdensome on DPPP motor manufacturers. (PHTA and NEMA, No. 92 at p. 13)

EPCA directs DOE to establish energy conservation standards for DPPP motors that are designed to achieve the maximum improvement in energy efficiency that are technologically feasible and economically justified. 42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6295(o)(3)(B)) As previously stated in this section, DOE accounted for the additional investments that DPPP motor manufacturers will have to make to comply with the analyzed energy conservation standards for DPPP motors. DOE examined the regulatory burden on DPPP motor manufacturers when deciding what energy conservation standard was technologically feasible and economically justified in section V.C. of this document. Lastly, DOE may consider separately coordinating a similar compliance timeline with any upcoming DPPP rulemaking.

Hayward commented that they have already made substantial investments to comply with DPPP energy conservation standards and noted that if they knew DOE planned to initiate DPPP motor energy conservation standards with more stringent requirements than the DPPP energy conservation standards their strategic direction and investments would have been very different. Additionally, Hayward states that if DOE decides against the implementation of a UL 1004–10 based rule, then they requested a compliance date of at least 5 years following effectivity. (Hayward, No. 93. at p. 2) DOE acknowledges that it is adopting more stringent energy conservation standards for small-size DPPP motors in this final rule than the small-size DPPP energy conservation standards established in the January 2017 Direct Final Rule. DOE notes that the compliance date for DPPP was on July 19, 2021, while the compliance date for energy conservation standards for these small-size DPPP motors is in 2028, approximately seven years after the compliance date for the DPPP energy conservation standards. Additionally, DOE has initiated an effort to determine whether to amend the current energy conservation standards for DPPP with

<sup>115</sup> 87 FR 37122, 37154.

the publication of an RFI. 87 FR 3461. If DOE proposes to amend energy conservation standards for DPPP in a future rulemaking, DOE will consider the impacts of the DPPP motor energy conservation standards that are adopted in this rulemaking.

#### K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of CO<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 in emissions of other gases due to “upstream” activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion.

The analysis of electric power sector emissions of CO<sub>2</sub>, NO<sub>x</sub>, SO<sub>2</sub>, and Hg uses emissions intended to represent the marginal impacts of the change in electricity consumption associated with amended or new standards. The methodology is based on results published for the *AEO*, including a set of side cases that implement a variety of efficiency-related policies. The methodology is described in appendix 13A in the final rule TSD. The analysis presented in this notice uses projections from *AEO 2023*. Power sector emissions of CH<sub>4</sub> and N<sub>2</sub>O from fuel combustion are estimated using Emission Factors for Greenhouse Gas Inventories published by the Environmental Protection Agency (EPA).<sup>116</sup>

FFC upstream emissions, which include emissions from fuel combustion during extraction, processing, and transportation of fuels, and “fugitive” emissions (direct leakage to the atmosphere) of CH<sub>4</sub> and CO<sub>2</sub>, are estimated based on the methodology described in chapter 15 of the final rule TSD.

The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. For power sector emissions, specific emissions intensity factors are calculated by sector and end use. Total emissions reductions are estimated using the energy savings calculated in the national impact analysis.

#### 1. Air Quality Regulations Incorporated in DOE's Analysis

DOE's no-new-standards case for the electric power sector reflects the *AEO*, which incorporates the projected impacts of existing air quality regulations on emissions. *AEO 2023* generally represents current legislation and environmental regulations, including recent government actions, that were in place at the time of preparation of *AEO 2023*, including the emissions control programs discussed in the following paragraphs.<sup>117</sup>

SO<sub>2</sub> emissions from affected electric generating units (“EGUs”) are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO<sub>2</sub> for affected EGUs in the 48 contiguous States and the District of Columbia (“DC”). (42 U.S.C. 7651 *et seq.*) SO<sub>2</sub> emissions from numerous States in the eastern half of the United States are also limited under the Cross-State Air Pollution Rule (“CSAPR”). 76 FR 48208 (Aug. 8, 2011). CSAPR requires these States to reduce certain emissions, including annual SO<sub>2</sub> emissions, and went into effect as of January 1, 2015.<sup>118</sup> *AEO 2023* incorporates implementation of CSAPR, including the update to the CSAPR ozone season program emission budgets and target dates issued in 2016. 81 FR 74504 (Oct. 26, 2016). Compliance with CSAPR is flexible among EGUs and is enforced through the use of tradable emissions allowances. Under existing EPA regulations, for states subject to SO<sub>2</sub> emissions limits under CSAPR, any excess SO<sub>2</sub> emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO<sub>2</sub> emissions by another regulated EGU.

<sup>117</sup> For further information, see the Assumptions to *AEO 2022* report that sets forth the major assumptions used to generate the projections in the Annual Energy Outlook. Available at [www.eia.gov/outlooks/aeo/assumptions/](http://www.eia.gov/outlooks/aeo/assumptions/) (last accessed May 23, 2023).

<sup>118</sup> CSAPR requires states to address annual emissions of SO<sub>2</sub> and NO<sub>x</sub>, precursors to the formation of fine particulate matter (“PM<sub>2.5</sub>”) pollution, in order to address the interstate transport of pollution with respect to the 1997 and 2006 PM<sub>2.5</sub> National Ambient Air Quality Standards (“NAAQS”). CSAPR also requires certain states to address the ozone season (May–September) emissions of NO<sub>x</sub>, a precursor to the formation of ozone pollution, in order to address the interstate transport of ozone pollution with respect to the 1997 ozone NAAQS. 76 FR 48208 (Aug. 8, 2011). EPA subsequently issued a supplemental rule that included an additional five states in the CSAPR ozone season program; 76 FR 80760 (Dec. 27, 2011) (Supplemental Rule), and EPA issued the CSAPR Update for the 2008 ozone NAAQS. 81 FR 74504 (Oct. 26, 2016).

However, beginning in 2016, SO<sub>2</sub> emissions began to fall as a result of the Mercury and Air Toxics Standards (“MATS”) for power plants. 77 FR 9304 (Feb. 16, 2012). The final rule establishes power plant emission standards for mercury, acid gases, and non-mercury metallic toxic pollutants. In order to continue operating, coal plants must have either flue gas desulfurization or dry sorbent injection systems installed. Both technologies, which are used to reduce acid gas emissions, also reduce SO<sub>2</sub> emissions. Because of the emissions reductions under the MATS, it is unlikely that excess SO<sub>2</sub> emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO<sub>2</sub> emissions by another regulated EGU. Therefore, energy conservation standards that decrease electricity generation will generally reduce SO<sub>2</sub> emissions. DOE estimated SO<sub>2</sub> emissions reduction using emissions factors based on *AEO 2023*.

CSAPR also established limits on NO<sub>x</sub> emissions for numerous States in the eastern half of the United States. Energy conservation standards would have little effect on NO<sub>x</sub> emissions in those States covered by CSAPR emissions limits if excess NO<sub>x</sub> emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO<sub>x</sub> emissions from other EGUs. In such case, NO<sub>x</sub> emissions would remain near the limit even if electricity generation goes down. Depending on the configuration of the power sector in the different regions and the need for allowances, however, NO<sub>x</sub> emissions might not remain at the limit in the case of lower electricity demand. That would mean that standards might reduce NO<sub>x</sub> emissions in covered States. Despite this possibility, DOE has chosen to be conservative in its analysis and has maintained the assumption that standards will not reduce NO<sub>x</sub> emissions in States covered by CSAPR. Standards would be expected to reduce NO<sub>x</sub> emissions in the States not covered by CSAPR. DOE used *AEO 2023* data to derive NO<sub>x</sub> emissions factors for the group of States not covered by CSAPR.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would be expected to slightly reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO 2023*, which incorporates the MATS.

<sup>116</sup> Available at [www.epa.gov/sites/production/files/2021-04/documents/emission-factors\\_apr2021.pdf](http://www.epa.gov/sites/production/files/2021-04/documents/emission-factors_apr2021.pdf) (last accessed July 12, 2021).

### *L. Monetizing Emissions Impacts*

As part of the development of this final rule, for the purpose of complying with the requirements of Executive Order 12866, DOE considered the estimated monetary benefits from the reduced emissions of CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, NO<sub>x</sub>, and SO<sub>2</sub> that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the projection period for each TSL. This section summarizes the basis for the values used for monetizing the emissions benefits and presents the values considered in this final rule.

To monetize the benefits of reducing GHG emissions this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG).

#### 1. Monetization of Greenhouse Gas Emissions

DOE estimates the monetized benefits of the reductions in emissions of CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O by using a measure of the SC of each pollutant (e.g., “SC-CO<sub>2</sub>”). These estimates represent the monetary value of the net harm to society associated with a marginal increase in emissions of these pollutants in a given year, or the benefit of avoiding that increase. These estimates are intended to include (but are not limited to) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services.

DOE exercises its own judgment in presenting monetized climate benefits as recommended by applicable Executive orders, and DOE would reach the same conclusion presented in this rulemaking in the absence of the social cost of greenhouse gases. That is, the social costs of greenhouse gases, whether measured using the February 2021 interim estimates presented by the Interagency Working Group on the Social Cost of Greenhouse Gases (“IWG”) or by another means, did not affect the rule ultimately adopted by DOE.

DOE estimated the global social benefits of CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O reductions (i.e., “SC-GHGs”) using the estimates presented in the Technical

Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990, published in February 2021 by the IWG. The SC-GHGs is the monetary value of the net harm to society associated with a marginal increase in emissions in a given year, or the benefit of avoiding that increase. In principle, SC-GHGs includes the value of all climate change impacts, including (but not limited to) changes in net agricultural productivity, human health effects, property damage from increased flood risk and natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services. The SC-GHGs therefore, reflects the societal value of reducing emissions of the gas in question by one metric ton. The SC-GHGs is the theoretically appropriate value to use in conducting benefit-cost analyses of policies that affect CO<sub>2</sub>, N<sub>2</sub>O, and CH<sub>4</sub> emissions. As a member of the IWG involved in the development of the February 2021 SC-GHG TSD, DOE agrees that the interim SC-GHG estimates represent the most appropriate estimate of the SC-GHG until revised estimates have been developed reflecting the latest, peer-reviewed science.

The SC-GHGs estimates presented here were developed over many years, using transparent processes, peer-reviewed methodologies, the best science available at the time of that process, and with input from the public. Specifically, in 2009, the IWG, which included the DOE and other executive branch agencies and offices, was established to ensure that agencies were using the best available science and to promote consistency in the SC-CO<sub>2</sub> values used across agencies. The IWG published SC-CO<sub>2</sub> estimates in 2010 that were developed from an ensemble of three widely cited integrated assessment models (“IAMs”) that estimate global climate damages using highly aggregated representations of climate processes and the global economy combined into a single modeling framework. The three IAMs were run using a common set of input assumptions in each model for future population, economic, and CO<sub>2</sub> emissions growth, as well as equilibrium climate sensitivity—a measure of the globally averaged temperature response to increased atmospheric CO<sub>2</sub> concentrations. These estimates were updated in 2013 based on new versions of each IAM. In August 2016, the IWG published estimates of the social cost of methane (“SC-CH<sub>4</sub>”) and nitrous oxide (“SC-N<sub>2</sub>O”) using

methodologies that are consistent with the methodology underlying the SC-CO<sub>2</sub> estimates. The modeling approach that extends the IWG SC-CO<sub>2</sub> methodology to non-CO<sub>2</sub> GHGs has undergone multiple stages of peer review. The SC-CH<sub>4</sub> and SC-N<sub>2</sub>O estimates were developed by Marten *et al.*<sup>119</sup> and underwent a standard double-blind peer review process prior to journal publication. In 2015, as part of the response to public comments received to a 2013 solicitation for comments on the SC-CO<sub>2</sub> estimates, the IWG announced a National Academies of Sciences, Engineering, and Medicine review of the SC-CO<sub>2</sub> estimates to offer advice on how to approach future updates to ensure that the estimates continue to reflect the best available science and methodologies. In January 2017, the National Academies released their final report, *Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide*, and recommended specific criteria for future updates to the SC-CO<sub>2</sub> estimates, a modeling framework to satisfy the specified criteria, and both near-term updates and longer-term research needs pertaining to various components of the estimation process (National Academies, 2017).<sup>120</sup> Shortly thereafter, in March 2017, President Trump issued Executive Order 13783, which disbanded the IWG, withdrew the previous TSDs, and directed agencies to ensure SC-CO<sub>2</sub> estimates used in regulatory analyses are consistent with the guidance contained in OMB’s Circular A–4, “including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates” (E.O. 13783, Section 5(c)). Benefit-cost analyses following E.O. 13783 used SC-GHG estimates that attempted to focus on the U.S.-specific share of climate change damages as estimated by the models and were calculated using two discount rates recommended by Circular A–4, 3-percent and 7-percent. All other methodological decisions and model versions used in SC-GHG calculations remained the same as those used by the IWG in 2010 and 2013, respectively.

On January 20, 2021, President Biden issued Executive Order 13990, which re-

<sup>119</sup> Marten, A.L., E.A. Kopits, C.W. Griffiths, S.C. Newbold, and A. Wolverton. Incremental CH<sub>4</sub> and N<sub>2</sub>O mitigation benefits consistent with the US Government’s SC-CO<sub>2</sub> estimates. *Climate Policy*. 2015. 15(2): pp. 272–298.

<sup>120</sup> National Academies of Sciences, Engineering, and Medicine. *Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide*. 2017. The National Academies Press: Washington, DC.



established the IWG and directed it to ensure that the U.S. Government's estimates of the social cost of carbon and other greenhouse gases reflect the best available science and the recommendations of the National Academies (2017). The IWG was tasked with first reviewing the SC-GHG estimates currently used in Federal analyses and publishing interim estimates within 30 days of the E.O. that reflect the full impact of GHG emissions, including by taking global damages into account. The interim SC-GHG estimates published in February 2021 are used here to estimate the climate benefits for this rulemaking. The E.O. instructs the IWG to undertake a fuller update of the SC-GHG estimates by January 2022 that takes into consideration the advice of the National Academies (2017) and other recent scientific literature. The February 2021 SC-GHG TSD provides a complete discussion of the IWG's initial review conducted under E.O. 13990. In particular, the IWG found that the SC-GHG estimates used under E.O. 13783 fail to reflect the full impact of GHG emissions in multiple ways.

First, the IWG found that the SC-GHG estimates used under E.O. 13783 fail to fully capture many climate impacts that affect the welfare of U.S. citizens and residents, and those impacts are better reflected by global measures of the SC-GHG. Examples of omitted effects from the E.O. 13783 estimates include direct effects on U.S. citizens, assets, and investments located abroad, supply chains, U.S. military assets and interests abroad, and tourism, and spillover pathways such as economic and political destabilization and global migration that can lead to adverse impacts on U.S. national security, public health, and humanitarian concerns. In addition, assessing the benefits of U.S. GHG mitigation activities requires consideration of how those actions may affect mitigation activities by other countries, as those international mitigation actions will provide a benefit to U.S. citizens and residents by mitigating climate impacts that affect U.S. citizens and residents. A wide range of scientific and economic experts have emphasized the issue of reciprocity as support for considering global damages of GHG emissions. If the United States does not consider impacts on other countries, it is difficult to convince other countries to consider the impacts of their emissions on the United States. The only way to achieve an efficient allocation of resources for emissions reduction on a global basis—and so benefit the United States and its

citizens—is for all countries to base their policies on global estimates of damages. As a member of the IWG involved in development of the February 2021 SC-GHG TSD, DOE agrees with this assessment and, therefore, in this proposed rule, DOE centers attention on a global measure of SC-GHG. This approach is the same as that taken in DOE regulatory analyses from 2012 through 2016. A robust estimate of climate damages that accrue only to U.S. citizens and residents does not currently exist in the literature. As explained in the February 2021 TSD, existing estimates are both incomplete and an underestimation of total damages that accrue to the citizens and residents of the United States because they do not fully capture the regional interactions and spillovers discussed above; nor do they include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature. As noted in the February 2021 SC-GHG TSD, the IWG will continue to review developments in the literature, including more robust methodologies for estimating a U.S.-specific SC-GHG value, and explore ways to better inform the public of the full range of carbon impacts. As a member of the IWG, DOE will continue to follow developments in the literature pertaining to this issue.

Second, the IWG found that the use of the social rate of return on capital (7 percent under current OMB Circular A-4 guidance) to discount the future benefits of reducing GHG emissions inappropriately underestimates the impacts of climate change for the purposes of estimating the SC-GHG. Consistent with the findings of the National Academies (2017) and the economic literature, the IWG continued to conclude that the consumption rate of interest is the theoretically appropriate discount rate in an intergenerational context,<sup>121</sup> and recommended that

<sup>121</sup> Interagency Working Group on Social Cost of Carbon. Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866. 2010. United States Government. [www.epa.gov/sites/default/files/2016-12/documents/scr\\_tsd\\_2010.pdf](http://www.epa.gov/sites/default/files/2016-12/documents/scr_tsd_2010.pdf) (last accessed April 15, 2022). Interagency Working Group on Social Cost of Carbon. Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866. 2013. [www.federalregister.gov/documents/2013/11/26/2013-28242/technical-support-document-technical-update-of-the-social-cost-of-carbon-for-regulatory-impact](http://www.federalregister.gov/documents/2013/11/26/2013-28242/technical-support-document-technical-update-of-the-social-cost-of-carbon-for-regulatory-impact) (last accessed April 15, 2022). Interagency Working Group on Social Cost of Greenhouse Gases, United States Government. Technical Support Document: Technical Update on the Social Cost of Carbon for Regulatory Impact Analysis—Under Executive Order 12866. August 2016 (last accessed January 18, 2022). Interagency Working Group on Social Cost of Greenhouse Gases, United States Government. Addendum to Technical Support Document on Social Cost of Carbon for Regulatory

discount rate uncertainty and relevant aspects of intergenerational ethical considerations be accounted for in selecting future discount rates.

Furthermore, the damage estimates developed for use in the SC-GHG are estimated in consumption-equivalent terms, and so an application of OMB Circular A-4's guidance for regulatory analysis would then use the consumption discount rate to calculate the SC-GHG. DOE agrees with this assessment and will continue to follow developments in the literature pertaining to this issue. DOE also notes that while OMB Circular A-4, as published in 2003, recommends using 3-percent and 7-percent discount rates as “default” values, Circular A-4 also reminds agencies that “different regulations may call for different emphases in the analysis, depending on the nature and complexity of the regulatory issues and the sensitivity of the benefit and cost estimates to the key assumptions.” On discounting, Circular A-4 recognizes that “special ethical considerations arise when comparing benefits and costs across generations,” and Circular A-4 acknowledges that analyses may appropriately “discount future costs and consumption benefits . . . at a lower rate than for intragenerational analysis.” In the 2015 Response to Comments on the Social Cost of Carbon for Regulatory Impact Analysis, OMB, DOE, and the other IWG members recognized that “Circular A-4 is a living document” and “the use of 7 percent is not considered appropriate for intergenerational discounting. There is wide support for this view in the academic literature, and it is recognized in Circular A-4 itself.” Thus, DOE concludes that a 7-percent discount rate is not appropriate to apply to value the social cost of greenhouse gases in the analysis presented in this document.

To calculate the present and annualized values of climate benefits, DOE uses the same discount rate as the rate used to discount the value of damages from future GHG emissions, for internal consistency. That approach to discounting follows the same approach that the February 2021 TSD recommends “to ensure internal consistency—i.e., future damages from climate change using the SC-GHG at 2.5 percent should be discounted to the base year of the analysis using the same 2.5-percent rate.” DOE has also

Impact Analysis under Executive Order 12866: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide. August 2016. [www.epa.gov/sites/default/files/2016-12/documents/addendum\\_to\\_sc-ggh\\_tsd\\_august\\_2016.pdf](http://www.epa.gov/sites/default/files/2016-12/documents/addendum_to_sc-ggh_tsd_august_2016.pdf) (last accessed January 18, 2022).



consulted the National Academies’ 2017 recommendations on how SC–GHG estimates can “be combined in RIAs with other cost and benefits estimates that may use different discount rates.” The National Academies reviewed several options, including “presenting all discount rate combinations of other costs and benefits with [SC–GHG] estimates.”

As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agrees with the above assessment and will continue to follow developments in the literature pertaining to this issue. While the IWG works to assess how best to incorporate the latest, peer-reviewed science to develop an updated set of SC–GHG estimates, it set the interim estimates to be the most recent estimates developed by the IWG prior to the group being disbanded in 2017. The estimates rely on the same models and harmonized inputs and are calculated using a range of discount rates. As explained in the February 2021 SC–GHG TSD, the IWG has recommended that agencies revert to the same set of four values drawn from the SC–GHG distributions based on three discount rates as were used in regulatory analyses between 2010 and 2016 and were subject to public comment. For each discount rate, the IWG combined the distributions across models and socioeconomic emissions scenarios (applying equal weight to each) and then selected a set of four values recommended for use in benefit-cost analyses: an average value resulting from the model runs for each of three discount rates (2.5 percent, 3 percent, and 5 percent), plus a fourth value, selected as the 95th percentile of estimates based on a 3-percent discount rate. The fourth value was included to

provide information on potentially higher-than-expected economic impacts from climate change. As explained in the February 2021 SC–GHG TSD, and DOE agrees, this update reflects the immediate need to have an operational SC–GHG for use in regulatory benefit-cost analyses and other applications that was developed using a transparent process, peer-reviewed methodologies, and the best science available at the time of that process. Those estimates were subject to public comment in the context of dozens of proposed rulemakings as well as in a dedicated public comment period in 2013.

There are a number of limitations and uncertainties associated with the SC–GHG estimates. First, the current scientific and economic understanding of discounting approaches suggests discount rates appropriate for intergenerational analysis in the context of climate change are likely to be less than 3 percent—near 2 percent or lower.<sup>122</sup> Second, the IAMs used to produce these interim estimates do not include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature and the science underlying their “damage functions”—i.e., the core parts of the IAMs that map global mean temperature changes and other physical impacts of climate change into economic (both market and nonmarket) damages—lags behind the most recent research. For example, limitations include the incomplete treatment of catastrophic and non-catastrophic impacts in the IAMs, their incomplete treatment of adaptation and technological change, the incomplete way in which inter-regional and intersectoral linkages are modeled, uncertainty in the

extrapolation of damages to high temperatures, and inadequate representation of the relationship between the discount rate and uncertainty in economic growth over long-time horizons. Likewise, the socioeconomic and emissions scenarios used as inputs to the models do not reflect new information from the last decade of scenario generation or the full range of projections. The modeling limitations do not all work in the same direction in terms of their influence on the SC–CO<sub>2</sub> estimates. However, as discussed in the February 2021 TSD, the IWG has recommended that, taken together, the limitations suggest that the interim SC–GHG estimates used in this final rule likely underestimate the damages from GHG emissions. DOE concurs with this assessment.

DOE’s derivations of the SC–CO<sub>2</sub>, SC–N<sub>2</sub>O, and SC–CH<sub>4</sub> values used for this final rule are discussed in the following sections, and the results of DOE’s analyses estimating the benefits of the reductions in emissions of these GHGs are presented in section V.B.6 of this document.

a. Social Cost of Carbon

The SC–CO<sub>2</sub> values used for this final rule were based on the values developed for the IWG’s February 2021 TSD. Table IV.11 shows the updated sets of SC–CO<sub>2</sub> estimates from the IWG’s TSD in 5-year increments from 2020 to 2050. The full set of annual values that DOE used is presented in appendix 14A of the final rule TSD. For purposes of capturing the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate to include all four sets of SC–CO<sub>2</sub> values, as recommended by the IWG.<sup>123</sup>

TABLE IV.11—ANNUAL SC–CO<sub>2</sub> VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050  
[2020\$ per metric ton CO<sub>2</sub>]

| Year       | Discount rate and statistic |            |              |                    |
|------------|-----------------------------|------------|--------------|--------------------|
|            | 5% Average                  | 3% Average | 2.5% Average | 3% 95th percentile |
| 2020 ..... | 14                          | 51         | 76           | 152                |
| 2025 ..... | 17                          | 56         | 83           | 169                |
| 2030 ..... | 19                          | 62         | 89           | 187                |
| 2035 ..... | 22                          | 67         | 96           | 206                |
| 2040 ..... | 25                          | 73         | 103          | 225                |
| 2045 ..... | 28                          | 79         | 110          | 242                |
| 2050 ..... | 32                          | 85         | 116          | 260                |

<sup>122</sup> Interagency Working Group on Social Cost of Greenhouse Gases (IWG). 2021. Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990. February. United States Government.

Available at [www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument\\_SocialCostofCarbonMethaneNitrousOxide.pdf](https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf).  
<sup>123</sup> For example, the February 2021 TSD discusses how the understanding of discounting approaches

suggests that discount rates appropriate for intergenerational analysis in the context of climate change may be lower than 3 percent.

For 2051 to 2070, DOE used SC-CO<sub>2</sub> estimates published by EPA, adjusted to 2020\$.<sup>124</sup> These estimates are based on methods, assumptions, and parameters identical to the 2020–2050 estimates published by the IWG.

DOE multiplied the CO<sub>2</sub> emissions reduction estimated for each year by the SC-CO<sub>2</sub> value for that year in each of the four cases. DOE adjusted the values to 2022\$ using the implicit price deflator for gross domestic product (“GDP”) from the Bureau of Economic

Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SC-CO<sub>2</sub> values in each case.

b. Social Cost of Methane and Nitrous Oxide

The SC-CH<sub>4</sub> and SC-N<sub>2</sub>O values used for this final rule were based on the values developed for the February 2021 TSD. Table IV.12 shows the updated

sets of SC-CH<sub>4</sub> and SC-N<sub>2</sub>O estimates from the latest interagency update in 5-year increments from 2020 to 2050. The full set of annual values used is presented in appendix 14A of the final rule TSD. To capture the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate to include all four sets of SC-CH<sub>4</sub> and SC-N<sub>2</sub>O values, as recommended by the IWG. DOE derived values after 2050 using the approach described above for the SC-CO<sub>2</sub>.

TABLE IV.12—ANNUAL SC-CH<sub>4</sub> AND SC-N<sub>2</sub>O VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050  
[2020\$ per metric ton]

| Year       | SC-CH <sub>4</sub>          |            |              |                    | SC-N <sub>2</sub> O         |            |              |                    |
|------------|-----------------------------|------------|--------------|--------------------|-----------------------------|------------|--------------|--------------------|
|            | Discount rate and statistic |            |              |                    | Discount rate and statistic |            |              |                    |
|            | 5% Average                  | 3% Average | 2.5% Average | 3% 95th percentile | 5% Average                  | 3% Average | 2.5% Average | 3% 95th percentile |
| 2020 ..... | 670                         | 1,500      | 2,000        | 3,900              | 5,800                       | 18,000     | 27,000       | 48,000             |
| 2025 ..... | 800                         | 1,700      | 2,200        | 4,500              | 6,800                       | 21,000     | 30,000       | 54,000             |
| 2030 ..... | 940                         | 2,000      | 2,500        | 5,200              | 7,800                       | 23,000     | 33,000       | 60,000             |
| 2035 ..... | 1,100                       | 2,200      | 2,800        | 6,000              | 9,000                       | 25,000     | 36,000       | 67,000             |
| 2040 ..... | 1,300                       | 2,500      | 3,100        | 6,700              | 10,000                      | 28,000     | 39,000       | 74,000             |
| 2045 ..... | 1,500                       | 2,800      | 3,500        | 7,500              | 12,000                      | 30,000     | 42,000       | 81,000             |
| 2050 ..... | 1,700                       | 3,100      | 3,800        | 8,200              | 13,000                      | 33,000     | 45,000       | 88,000             |

DOE multiplied the CH<sub>4</sub> and N<sub>2</sub>O emissions reduction estimated for each year by the SC-CH<sub>4</sub> and SC-N<sub>2</sub>O estimates for that year in each of the cases. DOE adjusted the values to 2022\$ using the implicit price deflator for GDP from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the cases using the specific discount rate that had been used to obtain the SC-CH<sub>4</sub> and SC-N<sub>2</sub>O estimates in each case.

## 2. Monetization of Other Emissions Impacts

For this final rule, DOE estimated the monetized value of NO<sub>x</sub> and SO<sub>2</sub> emissions reductions from electricity generation using benefit per ton estimates for that sector from the EPA’s Benefits Mapping and Analysis Program.<sup>125</sup> DOE used EPA’s values for PM<sub>2.5</sub>-related benefits associated with NO<sub>x</sub> and SO<sub>2</sub> and for ozone-related benefits associated with NO<sub>x</sub> for 2025 and 2030, and 2040, calculated with discount rates of 3 percent and 7 percent. DOE used linear interpolation to define values for the years not given in the 2025 to 2040 range; for years beyond 2040 the values are held constant. DOE combined the EPA benefit per ton estimates with regional

information on electricity consumption and emissions to define weighted-average national values for NO<sub>x</sub> and SO<sub>2</sub> (See appendix 14B of the final rule TSD).

DOE multiplied the site emissions reduction (in tons) in each year by the associated \$/ton values, and then discounted each series using discount rates of 3 percent and 7 percent as appropriate.

The Joint SC-GHG Commenters stated that DOE appropriately applies the social cost estimates developed by the Interagency Working Group on the Social Cost of Greenhouse Gases to its analysis of emissions reduction benefits. The Joint SC-GHG Commenters stated that there are numerous legal, economic, and policy justifications that further DOE’s adoption of the Working Group’s climate-damage valuations. They added that DOE should consider conducting sensitivity analysis using a sound domestic-only social cost estimate as a backstop, and should explicitly conclude that the rule is cost-benefit justified even using a domestic-only valuation that may still undercount climate benefits. They also stated that their comments offer additional justification for adopting the range of discount rates endorsed by the Working Group and urged DOE to consider

providing additional sensitivity analysis using discount rates of 2 percent or lower for climate impacts. Lastly, the Joint SC-GHG Commenters commented that DOE should clearly state that any criticisms of the SC-GHG are moot in this rulemaking because the proposed rule is easily cost-justified without any climate benefits. (Joint SC-GHG Commenters, No.95 at. pp. 1–3)

In response, DOE maintains that the reasons for using global measures of the SC-GHG previously discussed (See section IV.L.1 of this document) are sufficient for the purposes of this rulemaking. DOE notes that further discussion of this topic is contained in the February 2021 SC-GHG TSD, and DOE agrees with the assessment therein. Regarding conducting sensitivity analysis using a domestic-only social cost estimate, DOE agrees with the assessment in the February 2021 SC-GHG TSD that the only currently-available quantitative characterization of domestic damages from GHG emissions is both incomplete and an underestimate of the share of total damages that accrue to the citizens and residents of the U.S. See section 2 of the February 2021 SC-GHG TSD. Therefore, it would be of questionable value to conduct the suggested sensitivity analysis at this time. DOE considered

<sup>124</sup> See EPA, Revised 2023 and Later Model Year Light-Duty Vehicle GHG Emissions Standards: Regulatory Impact Analysis, Washington, DC, December 2021. Available at [nepis.epa.gov/Exe/](https://nepis.epa.gov/Exe/)

[ZyPDF.cgi?Dockey=P1013ORN.pdf](https://www.epa.gov/benmap/estimating-benefit-ton-reducing-pm25-precursors-21-sectors) (last accessed February 21, 2023).

<sup>125</sup> Estimating the Benefit per Ton of Reducing PM<sub>2.5</sub> Precursors from 21 Sectors. Available at

[www.epa.gov/benmap/estimating-benefit-ton-reducing-pm25-precursors-21-sectors](https://www.epa.gov/benmap/estimating-benefit-ton-reducing-pm25-precursors-21-sectors).

performing sensitivity analysis using discount rates lower than 2.5% for climate impacts, as suggested by the IWG, but it concluded that such analysis would not add meaningful information in the context of this rulemaking.

As noted by the Joint SC-GHG Commenters and previously stated by DOE in section IV.L.1 of this document, the final rule is economically justified without inclusion of climate benefits. See Section V.C.1 of this document for more discussion on economic justification.

#### M. Utility Impact Analysis

The utility impact analysis estimates the changes in installed electrical capacity and generation projected to result for each considered TSL. The analysis is based on published output from the NEMS associated with *AEO 2023*. NEMS produces the *AEO* Reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. For the current analysis, impacts are quantified by comparing the levels of electricity sector generation, installed capacity, fuel consumption and emissions in the *AEO 2023* Reference case and various side cases. Details of the methodology are provided in the appendices to chapters 13 and 15 of the final rule TSD.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity, and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of potential new or amended energy conservation standards.

#### N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a standard. Employment impacts from new or amended energy conservation standards include both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards, their suppliers, and related service firms. The MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy,

other than in the manufacturing sector being regulated, caused by (1) reduced spending by consumers on energy, (2) reduced spending on new energy supply by the utility industry, (3) increased consumer spending on the products to which the new standards apply and other goods and services, and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics ("BLS"). BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.<sup>126</sup> There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.*, the utility sector) to more labor-intensive sectors (*e.g.*, the retail and service sectors). Thus, the BLS data suggest that net national employment may increase due to shifts in economic activity resulting from energy conservation standards.

DOE estimated indirect national employment impacts for the standard levels considered in this final rule using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 4 ("ImSET").<sup>127</sup> ImSET is a special-purpose version of the "U.S. Benchmark National Input-Output" ("I-O") model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET

software includes a computer-based I-O model having structural coefficients that characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use.

DOE notes that ImSET is not a general equilibrium forecasting model, and that the uncertainties involved in projecting employment impacts especially change in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may overestimate actual job impacts over the long run for this rule. Therefore, DOE used ImSET only to generate results for near-term timeframes (2026–2030 or 2028–2030), where these uncertainties are reduced. For more details on the employment impact analysis, see chapter 16 of the final rule TSD.

One of the inputs to the employment impact analysis is the fraction of shipments that are imported vs. domestically manufactured. In the June 2022 NOPR, DOE assumed the fraction of DPPP motors shipments that are imported vs. domestically manufactured was identical to small electric motors and assumed a 40 percent were imported vs 60 percent were domestically manufactured. See Chapter 15 of the June NOPR TSD.

PHTA and NEMA commented that DOE estimated that 60 percent of pool pump motors are manufactured domestically, with the remaining 40 percent imported. PHTA and NEMA commented that DOE did not conduct manufacturer interviews specific to DPPP and that much of the analyses relies on market research conducted in 2016 to support the energy conservation standard established for DPPP. PHTA and NEMA commented that while DPPP are often sold as a component of DPPP, there are different market characteristics that manufacturers feel necessitate new interviews, focused specifically on DPPP. (PHTA and NEMA, No. 92 at p. 7)

In this final rule, DOE revised the fraction of DPPP motors shipments that are imported vs. domestically manufactured used in the employment impact analysis to align with the estimates from the manufacturer impact analysis specific to DPPP motors (See section IV.J of this document) and assumed 50 percent of DPPP motors shipments are imported vs. 50 percent are domestically manufactured.<sup>128</sup>

<sup>126</sup> See U.S. Department of Commerce—Bureau of Economic Analysis. *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System ("RIMS II")*. 1997. U.S. Government Printing Office: Washington, DC. Available at [www.bea.gov/resources/methodologies/RIMSII-user-guide](http://www.bea.gov/resources/methodologies/RIMSII-user-guide) (last accessed Feb. 2, 2023).

<sup>127</sup> Livingston, O.V., S.R. Bender, M.J. Scott, and R.W. Schultz. *ImSET 4.0: Impact of Sector Energy Technologies Model Description and User's Guide*. 2015. Pacific Northwest National Laboratory: Richland, WA. PNNL-24563.

<sup>128</sup> In the NOPR, DOE assumed that 40 percent of DPPP motors are imported based on estimates for small electric motors. In the final rule, DOE revised the percentage imported to be more specific to DPPP motors and align with the estimate used in the MIA.

Finally, DOE notes that DOE conducted DPPP motor manufacturer interviews as part of the June 2022 NOPR, as discussed in the manufacturer impact analysis, and incorporated feedback to estimate this fraction.

## V. Analytical Results and Conclusion

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for DPPP motors. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for DPPP motors, and the standards levels that DOE is adopting in this final rule. Additional details regarding DOE's analyses are contained in the final rule TSD supporting this document.

### A. Trial Standard Levels

In general, DOE typically evaluates potential amended standards for products and equipment by grouping individual efficiency levels for each class into TSLs. Use of TSLs allows DOE to identify and consider manufacturer cost interactions between the equipment classes, to the extent that there are such interactions, and market cross elasticity from consumer purchasing decisions that may change when different standard levels are set.

In the analysis conducted for this final rule, DOE analyzed the benefits

and burdens of eight TSLs for DPPP motors. DOE developed TSLs that combine specific efficiency levels for each of the DPPP motor equipment classes analyzed by DOE. The TSLs that were chosen in the final rule represent DPPP motors at maximum technologically feasible ("max-tech") energy efficiency levels and similar performance (*i.e.*, variable-speed, two-speed, multi-speed, and/or single-speed). DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in Chapter 8 the final rule TSD.<sup>129</sup>

Table V.1 and Table V.2 presents the TSLs and the corresponding efficiency levels that DOE has identified for potential amended energy conservation standards for DPPP motors. TSL 8 represents the max-tech energy efficiency for all equipment classes, as well as freeze protection control requirements for DPPP motors greater than and equal to 0.5 THP. TSL 7 represents the California CEC standards<sup>130</sup> and includes a variable-speed requirement for DPPP motors at or above 0.5 THP, and freeze-protection control requirements for DPPP motors greater than and equal to 0.5 THP. TSL 6 represents the performance requirements included in UL 1004–10:2022, which ensures DPPP motors operate similarly to motors in

DPPPs that comply with the DOE standards at 10 CFR 431.465(f) and includes a variable-speed requirement for DPPP motors at or above 1.15 THP, an EL 1 efficiency requirement below 1.15 THP, and freeze-protection control requirements for DPPP motors greater than and equal to 1.15 THP. TSL 5 represents the two-speed/multi-speed DPPP motor EL 5 level for applicable equipment classes and freeze-protection control requirements for DPPP motors greater than and equal to 0.5 THP. TSL 4 represents the two-speed/multi-speed DPPP motor EL 4 level for applicable equipment classes and freeze protection control requirements for DPPP motors greater than and equal to 0.5 THP. TSL 3 represents the two-speed/multi-speed DPPP motor EL 3 level for applicable equipment classes and freeze-protection control requirements for DPPP motors greater than and equal to 0.5 THP. TSL 2 represents the highest-efficiency single-speed DPPP motor level for all equipment classes. TSL 1 represents the medium-efficiency single-speed DPPP motor level for all equipment classes.

In addition, as discussed in section III.A of this document, for all TSLs, DOE considered a 2-year lead time resulting in a first full year of compliance of 2026, except for small-size DPPP motors at TSL 7 where DOE uses a 4-year compliance lead time, resulting in a first full year of compliance year of 2028.

TABLE V.1—TRIAL STANDARD LEVELS FOR DPPP MOTORS—EL MAPPING

| TSL                            | TSL 1 | TSL 2 | TSL 3  | TSL 4  | TSL 5  | TSL 6  | TSL 7         | TSL 8  |
|--------------------------------|-------|-------|--------|--------|--------|--------|---------------|--------|
| Extra-small (<0.5 THP)         | EL 1  | EL 2  | EL 2   | EL 2   | EL 2   | EL 1   | EL 1 (2026)   | EL 2   |
| Small-size (0.5 ≤ THP < 1.15)  | EL 1  | EL 2  | EL 3 * | EL 4 * | EL 5 * | EL 1   | EL 6 * (2028) | EL 6 * |
| Standard-size (1.15 ≤ THP ≤ 5) | EL 1  | EL 2  | EL 3 * | EL 4 * | EL 5 * | EL 6 * | EL 6 * (2026) | EL 6 * |

\* Includes freeze protection control requirements.

**Note:** the analysis uses 2026 as the first full year of compliance except at TSL 7, where the first full year of compliance varies by equipment class as indicated in the table.

TABLE V.2—TRIAL STANDARD LEVELS FOR DPPP MOTORS—DESCRIPTION

| TSL                             | TSL 1                           | TSL 2                         | TSL 3                                     | TSL 4                                     | TSL 5                                     | TSL 6                           | TSL 7                                  | TSL 8                         |
|---------------------------------|---------------------------------|-------------------------------|-------------------------------------------|-------------------------------------------|-------------------------------------------|---------------------------------|----------------------------------------|-------------------------------|
| Extra-small (<0.5 THP).         | Medium Efficiency Single Speed. | High Efficiency Single Speed. | High Efficiency Single Speed.             | High Efficiency Single Speed.             | High Efficiency Single Speed.             | Medium Efficiency Single Speed. | Medium Efficiency Single Speed (2026). | High Efficiency Single Speed. |
| Small-size (0.5 ≤ THP < 1.15).  | Medium Efficiency Single Speed. | High Efficiency Single Speed. | Two and multi-speed EL 3 *.               | Two and multi-speed EL 4 *.               | Two and multi-speed EL 5 *.               | Medium Efficiency Single Speed. | Variable-Speed * (2028).               | Variable-Speed.*              |
| Standard-size (1.15 ≤ THP ≤ 5). | Medium Efficiency Single Speed. | High Efficiency Single Speed. | Two and multi-speed EL 3 *.               | Two and multi-speed EL 4 *.               | Two and multi-speed EL 5 *.               | Variable-Speed *.               | Variable-Speed * (2026).               | Variable-Speed.*              |
| General Description             | Medium Efficiency Single Speed. | High Efficiency Single Speed. | two and multi-speed EL3 where applicable. | two and multi-speed EL4 where applicable. | two and multi-speed EL5 where applicable. | UL 1004–10:2022 requirements.   | CEC Standards                          | Max-tech.                     |

\* Includes freeze protection control requirements.

**Note:** the analysis uses 2026 as the first full year of compliance except at TSL 7, where the first full year of compliance varies by equipment class as indicated in the table.

<sup>129</sup> Efficiency levels that were analyzed for this final rule are discussed in section IV.C of this

document. Results by efficiency level are presented in Chapter 8.

<sup>130</sup> Best approximation based on the efficiency level analyzed.

### B. Economic Justification and Energy Savings

#### 1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on DPPP motors consumers by looking at the effects that potential standards at each TSL would have on the LCC and PBP. DOE also examined the impacts of potential standards on selected consumer subgroups. These analyses are discussed in the following sections.

##### a. Life-Cycle Cost and Payback Period

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

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

Table V.2 through Table V.7 show the LCC and PBP results for the TSLs considered for each product class. In the first of each pair of tables, the simple payback is measured relative to the baseline product. In the second table,

the impacts are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (*see* section IV.F.8 of this document). Because some consumers purchase products with higher efficiency in the no-new-standards case, the average savings are less than the difference between the average LCC of the baseline product and the average LCC at each TSL. The savings refer only to consumers who are affected by a standard at a given TSL. Those who already purchase a product with efficiency at or above a given TSL are not affected. Consumers for whom the LCC increases at a given TSL experience a net cost.

TABLE V.2—AVERAGE LCC AND PBP RESULTS FOR EXTRA-SMALL-SIZE DPPP MOTORS

| TSL         | Efficiency level | Average costs (2022\$) |                             |                         |       | Simple payback (years) | Average lifetime (years) |
|-------------|------------------|------------------------|-----------------------------|-------------------------|-------|------------------------|--------------------------|
|             |                  | Installed cost         | First year's operating cost | Lifetime operating cost | LCC   |                        |                          |
|             | 0                | \$65                   | \$72                        | \$236                   | \$301 | .....                  | 3.6                      |
| 1,6,7 ..... | 1                | 77                     | 59                          | 192                     | 269   | 0.9                    | 3.6                      |
| 2–5,8 ..... | 2                | 115                    | 54                          | 177                     | 292   | 2.8                    | 3.6                      |

**Note:** The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.3—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR EXTRA-SMALL-SIZE DPPP MOTORS

| TSL         | Efficiency level | Life-cycle cost savings       |                                                   |
|-------------|------------------|-------------------------------|---------------------------------------------------|
|             |                  | Average LCC savings* (2022\$) | Percent of consumers that experience net cost (%) |
| 1,6,7 ..... | 1 .....          | \$3                           | 0                                                 |
| 2–5,8 ..... | 2 .....          | (12)                          | 59                                                |

\* The savings represent the average LCC for affected consumers.

TABLE V.4—AVERAGE LCC AND PBP RESULTS FOR SMALL-SIZE DPPP MOTORS

| TSL       | Efficiency level | Average costs (2022\$) |                             |                         |       | Simple payback (years) | Average lifetime (years) |
|-----------|------------------|------------------------|-----------------------------|-------------------------|-------|------------------------|--------------------------|
|           |                  | Installed cost         | First year's operating cost | Lifetime operating cost | LCC   |                        |                          |
|           | 0                | \$156                  | \$241                       | \$843                   | \$999 | .....                  | 3.9                      |
| 1,6 ..... | 1                | 177                    | 196                         | 685                     | 862   | 0.5                    | 3.9                      |
| 2 .....   | 2                | 218                    | 180                         | 628                     | 846   | 1.0                    | 3.9                      |
| 3 .....   | 3                | 383                    | 190                         | 678                     | 1,060 | 4.5                    | 3.9                      |
| 4 .....   | 4                | 412                    | 166                         | 590                     | 1,001 | 3.4                    | 3.9                      |
| 5 .....   | 5                | 443                    | 158                         | 561                     | 1,003 | 3.4                    | 3.9                      |
| 7,8 ..... | 6                | 655                    | 92                          | 361                     | 1,017 | 3.4                    | 3.9                      |

**Note:** The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.5—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR SMALL-SIZE DPPP MOTORS

| TSL       | Efficiency level | Life-cycle cost savings        |                                                   |
|-----------|------------------|--------------------------------|---------------------------------------------------|
|           |                  | Average LCC savings * (2022\$) | Percent of consumers that experience net cost (%) |
| 1,6 ..... | 1 .....          | \$10                           | 0                                                 |
| 2 .....   | 2 .....          | 14                             | 24                                                |
| 3 .....   | 3 .....          | (54)                           | 52                                                |
| 4 .....   | 4 .....          | (12)                           | 46                                                |
| 5 .....   | 5 .....          | (16)                           | 50                                                |
| 7,8 ..... | 6 .....          | 4                              | 44                                                |

\*The savings represent the average LCC for affected consumers.

TABLE V.6—AVERAGE LCC AND PBP RESULTS FOR STANDARD-SIZE DPPP MOTORS

| TSL       | Efficiency level | Average costs (2022\$) |                             |                         |         | Simple payback (years) | Average lifetime (years) |
|-----------|------------------|------------------------|-----------------------------|-------------------------|---------|------------------------|--------------------------|
|           |                  | Installed cost         | First year's operating cost | Lifetime operating cost | LCC     |                        |                          |
|           | 0                | \$308                  | \$651                       | \$2,637                 | \$2,945 | .....                  | 4.8                      |
| 1 .....   | 1                | 368                    | 558                         | 2,264                   | 2,633   | 0.7                    | 4.8                      |
| 2 .....   | 2                | 412                    | 517                         | 2,098                   | 2,510   | 0.8                    | 4.8                      |
| 3 .....   | 3                | 574                    | 319                         | 1,306                   | 1,879   | 0.8                    | 4.8                      |
| 4 .....   | 4                | 613                    | 284                         | 1,163                   | 1,776   | 0.8                    | 4.8                      |
| 5 .....   | 5                | 654                    | 259                         | 1,063                   | 1,717   | 0.9                    | 4.8                      |
| 6–8 ..... | 6                | 847                    | 243                         | 1,056                   | 1,903   | 1.3                    | 4.8                      |

**Note:** The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.7—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR STANDARD-SIZE DPPP MOTORS

| TSL       | Efficiency level | Life-cycle cost savings        |                                                   |
|-----------|------------------|--------------------------------|---------------------------------------------------|
|           |                  | Average LCC savings * (2022\$) | Percent of consumers that experience net cost (%) |
| 1 .....   | 1 .....          | \$26                           | 0                                                 |
| 2 .....   | 2 .....          | 44                             | 2                                                 |
| 3 .....   | 3 .....          | 109                            | 18                                                |
| 4 .....   | 4 .....          | 141                            | 17                                                |
| 5 .....   | 5 .....          | 151                            | 19                                                |
| 6–8 ..... | 6 .....          | 236                            | 2                                                 |

\*The savings represent the average LCC for affected consumers.

#### b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impact of the considered TSLs on senior-only households. Table V.8 through Table

V.13 compare the average LCC savings and PBP at each efficiency level for the consumer subgroups with similar metrics for the entire consumer sample for DPPP motors. In most cases, the average LCC savings and PBP for senior-

only households at the considered efficiency levels are not substantially different from the average for all households. Chapter 11 of the final rule TSD presents the complete LCC and PBP results for the subgroups.

TABLE V.8—COMPARISON OF AVERAGE LCC SAVINGS AND PBP FOR CONSUMER SUBGROUP AND ALL HOUSEHOLDS FOR EQUIPMENT CLASS 1 EXTRA-SMALL-SIZE DPPP MOTORS

| TSL         | EL | Average life-cycle cost savings (2022\$) |                | Simple payback period (years) |                |
|-------------|----|------------------------------------------|----------------|-------------------------------|----------------|
|             |    | Senior-only households                   | All households | Senior-only households        | All households |
| 1,6,7 ..... | 1  | \$3                                      | \$3            | 0.9                           | 0.9            |
| 2–5,8 ..... | 2  | (12)                                     | (12)           | 2.7                           | 2.8            |

TABLE V.9—COMPARISON OF FRACTION OF CONSUMERS EXPERIENCING NET BENEFIT AND NET COST FOR CONSUMER SUBGROUP AND ALL HOUSEHOLDS FOR EQUIPMENT CLASS 1 EXTRA-SMALL-SIZE DPPP MOTORS

| TSL         | EL | Percent of consumers that experience net cost (%) |                | Percent of consumers that experience net benefit (%) |                |
|-------------|----|---------------------------------------------------|----------------|------------------------------------------------------|----------------|
|             |    | Senior-only households                            | All households | Senior-only households                               | All households |
| 1,6,7 ..... | 1  | 0                                                 | 0              | 8                                                    | 8              |
| 2–5,8 ..... | 2  | 58                                                | 59             | 8                                                    | 8              |

TABLE V.10—COMPARISON OF AVERAGE LCC SAVINGS AND PBP FOR CONSUMER SUBGROUP AND ALL HOUSEHOLDS FOR EQUIPMENT CLASS 2 SMALL-SIZE DPPP MOTORS

| TSL       | EL | Average life-cycle cost savings (2022\$) |                | Simple payback period (years) |                |
|-----------|----|------------------------------------------|----------------|-------------------------------|----------------|
|           |    | Senior-only households                   | All households | Senior-only households        | All households |
| 1,6 ..... | 1  | \$11                                     | \$10           | 0.4                           | 0.5            |
| 2 .....   | 2  | 18                                       | 14             | 0.9                           | 1.0            |
| 3 .....   | 3  | (47)                                     | (54)           | 4.1                           | 4.5            |
| 4 .....   | 4  | (0)                                      | (12)           | 3.1                           | 3.4            |
| 5 .....   | 5  | (2)                                      | (16)           | 3.2                           | 3.4            |
| 7,8 ..... | 6  | 33                                       | 4              | 3.1                           | 3.4            |

TABLE V.11—COMPARISON OF FRACTION OF CONSUMERS EXPERIENCING NET BENEFIT AND NET COST FOR CONSUMER SUBGROUP AND ALL HOUSEHOLDS FOR EQUIPMENT CLASS 2 SMALL-SIZE DPPP MOTORS

| TSL       | EL | Percent of consumers that experience net cost (%) |                | Percent of consumers that experience net benefit (%) |                |
|-----------|----|---------------------------------------------------|----------------|------------------------------------------------------|----------------|
|           |    | Senior-only households                            | All households | Senior-only households                               | All households |
| 1,6 ..... | 1  | 0                                                 | 0              | 6                                                    | 6              |
| 2 .....   | 2  | 23                                                | 24             | 25                                                   | 24             |
| 3 .....   | 3  | 51                                                | 52             | 14                                                   | 13             |
| 4 .....   | 4  | 45                                                | 46             | 27                                                   | 27             |
| 5 .....   | 5  | 48                                                | 50             | 27                                                   | 26             |
| 7,8 ..... | 6  | 42                                                | 44             | 29                                                   | 27             |

TABLE V.12—COMPARISON OF AVERAGE LCC SAVINGS AND PBP FOR CONSUMER SUBGROUP AND ALL HOUSEHOLDS FOR EQUIPMENT CLASS 3 STANDARD-SIZE DPPP MOTORS

| TSL       | EL | Average life-cycle cost savings (2022\$) |                | Simple payback period (years) |                |
|-----------|----|------------------------------------------|----------------|-------------------------------|----------------|
|           |    | Senior-only households                   | All households | Senior-only households        | All households |
| 1 .....   | 1  | \$29                                     | \$26           | 0.6                           | 0.7            |
| 2 .....   | 2  | 50                                       | 44             | 0.7                           | 0.8            |
| 3 .....   | 3  | 128                                      | 109            | 0.7                           | 0.8            |
| 4 .....   | 4  | 165                                      | 141            | 0.8                           | 0.8            |
| 5 .....   | 5  | 178                                      | 151            | 0.8                           | 0.9            |
| 6–8 ..... | 6  | 269                                      | 236            | 1.2                           | 1.3            |

TABLE V.13—COMPARISON OF FRACTION OF CONSUMERS EXPERIENCING NET BENEFIT AND NET COST FOR CONSUMER SUBGROUP AND ALL HOUSEHOLDS FOR EQUIPMENT CLASS 3 STANDARD-SIZE DPPP MOTORS

| TSL       | EL | Percent of consumers that experience net cost (%) |                | Percent of consumers that experience net benefit (%) |                |
|-----------|----|---------------------------------------------------|----------------|------------------------------------------------------|----------------|
|           |    | Senior-only households                            | All households | Senior-only households                               | All households |
| 1 .....   | 1  | 0                                                 | 0              | 8                                                    | 8              |
| 2 .....   | 2  | 2                                                 | 2              | 17                                                   | 17             |
| 3 .....   | 3  | 18                                                | 18             | 24                                                   | 23             |
| 4 .....   | 4  | 17                                                | 17             | 29                                                   | 29             |
| 5 .....   | 5  | 18                                                | 19             | 29                                                   | 29             |
| 6–8 ..... | 6  | 2                                                 | 2              | 17                                                   | 18             |

## c. Rebuttable Presumption Payback

As discussed in section III.E.2, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(iii)) In calculating a rebuttable presumption payback period for each of the considered TSLs, DOE used discrete

values, and, as required by EPCA, based the energy use calculation on the DOE test procedures for DPPP motors. In contrast, the PBP presented in section V.B.1.a were calculated using distributions that reflect the range of energy use in the field.

Table V.14 presents the rebuttable-presumption payback periods for the considered TSLs for DPPP motors. While DOE examined the rebuttable-presumption criterion, it considered whether the standard levels considered

for this rule are economically justified through a more detailed analysis of the economic impacts of those levels, pursuant to 42 U.S.C. 6295(o)(2)(B)(i), that considers the full range of impacts to the consumer, manufacturer, Nation, and environment. The results of that analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification.

TABLE V.14—REBUTTABLE-PRESUMPTION PAYBACK PERIODS (YEARS)

| Equipment class        | Trial standard level |     |     |     |     |     |     |     |
|------------------------|----------------------|-----|-----|-----|-----|-----|-----|-----|
|                        | 1                    | 2   | 3   | 4   | 5   | 6   | 7   | 8   |
| Extra-small-size ..... | 0.9                  | 2.7 | 2.7 | 2.7 | 2.7 | 0.9 | 0.9 | 2.7 |
| Small-size .....       | 0.4                  | 0.9 | 3.8 | 3.0 | 3.0 | 0.4 | 2.7 | 2.7 |
| Standard-size .....    | 0.5                  | 0.6 | 0.7 | 0.7 | 0.8 | 1.0 | 1.0 | 1.0 |

## 2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of new energy conservation standards on manufacturers of DPPP motors. The next section describes the expected impacts on manufacturers at each considered TSL. Chapter 12 of the final rule TSD explains the analysis in further detail.

## a. Industry Cash Flow Analysis Results

In this section, DOE provides GRIM results from the analysis, which examines changes in the industry that would result from new standards. The following tables summarize the estimated financial impacts (represented by changes in INPV) of potential new energy conservation standards on manufacturers of DPPP motors, as well as the conversion costs that DOE estimates manufacturers of DPPP motors would incur at each TSL.

As discussed in section IV.J.2.d of this document, DOE modeled two manufacturer markup scenarios to evaluate a range of cash flow impacts on

the DPPP motor industry: (1) the preservation of gross margin scenario and (2) the preservation of operating profit scenario. DOE considered the preservation of gross margin scenario by applying a “gross margin percentage” for each equipment class across all efficiency levels. As MPCs increase with efficiency, this scenario implies that the absolute dollar markup will increase. DOE assumed a manufacturer markup of 1.37 for all DPPP motors. Because this scenario assumes that a manufacturer’s absolute dollar markup would increase as MPCs increase in the standards cases, it represents the upper-bound to industry profitability under new energy conservation standards.

The preservation of operating profit scenario reflects manufacturers’ concerns about their inability to maintain margins as MPCs increase to meet higher efficiency levels. In this scenario, while manufacturers make the necessary investments required to convert their facilities to produce compliant equipment, operating profit

remains the same in absolute dollars, but decreases as a percentage of revenue.

Each of the modeled manufacturer markup scenarios results in a unique set of cash-flows and corresponding industry values at each TSL. In the following discussion, the INPV results refer to the difference in industry value between the no-new-standards case and each standards case resulting from the sum of discounted cash-flows from 2024 through 2055. To provide perspective on the short-run cash-flow impact, DOE includes in the discussion of results a comparison of free cash flow between the no-new-standards case and the standards case at each TSL in the year before new standards are required.

Table V.15 and Table V.16 show the MIA results for DPPP motor manufacturers at each TSL using the manufacturer markup scenarios previously described.



TABLE V.15—MANUFACTURER IMPACT ANALYSIS FOR DEDICATED-PURPOSE POOL PUMP MOTORS—PRESERVATION OF GROSS MARGIN SCENARIO

|                                 | Units                 | No-new-standards case | Trial standard level * |       |        |        |        |        |        |        |
|---------------------------------|-----------------------|-----------------------|------------------------|-------|--------|--------|--------|--------|--------|--------|
|                                 |                       |                       | 1                      | 2     | 3      | 4      | 5      | 6      | 7      | 8      |
| INPV .....                      | 2022\$ millions ..... | 661                   | 663                    | 672   | 684    | 695    | 708    | 675    | 740    | 755    |
| Change in INPV .....            | 2022\$ millions ..... |                       | 2.6                    | 11.3  | 23.3   | 34.5   | 47.0   | 14.1   | 79.0   | 94.1   |
|                                 | % .....               |                       | 0.4                    | 1.7   | 3.5    | 5.2    | 7.1    | 2.1    | 12.0   | 14.2   |
| Product Conversion Costs .....  | 2022\$ millions ..... |                       | 0.2                    | 0.9   | 7.5    | 7.6    | 7.9    | 0.2    | 10.6   | 10.7   |
| Capital Conversion Costs .....  | 2022\$ millions ..... |                       | 0.0                    | 0.0   | 7.8    | 7.8    | 7.8    | 21.3   | 45.6   | 45.6   |
| Total Investment Required ..... | 2022\$ millions ..... |                       | 0.2                    | 0.9   | 15.3   | 15.4   | 15.7   | 21.5   | 56.2   | 56.4   |
| Free Cash Flow (2025) .....     | 2022\$ millions ..... | 31.2                  | 31.1                   | 30.8  | 23.6   | 23.6   | 23.4   | 19.4   | 9.9    | 1.4    |
| Change in Free Cash Flow .....  | 2022\$ millions ..... |                       | (0.1)                  | (0.4) | (7.6)  | (7.6)  | (7.7)  | (11.8) | (21.2) | (29.8) |
|                                 | % .....               |                       | (0.2)                  | (1.3) | (24.2) | (24.4) | (24.8) | (37.8) | (68.1) | (95.5) |

\* Numbers in parentheses indicate a negative number. Some numbers may not sum exactly due to rounding.

TABLE V.16—MANUFACTURER IMPACT ANALYSIS FOR DEDICATED-PURPOSE POOL PUMP MOTORS—PRESERVATION OF OPERATING PROFIT SCENARIO

|                                 | Units                 | No-new-standards case | Trial standard level * |       |        |        |        |         |         |         |
|---------------------------------|-----------------------|-----------------------|------------------------|-------|--------|--------|--------|---------|---------|---------|
|                                 |                       |                       | 1                      | 2     | 3      | 4      | 5      | 6       | 7       | 8       |
| INPV .....                      | 2022\$ millions ..... | 661                   | 660                    | 655   | 622    | 617    | 612    | 559     | 47      | 436     |
| Change in INPV .....            | 2022\$ millions ..... |                       | (0.8)                  | (6.2) | (38.9) | (43.4) | (48.5) | (101.4) | (214.2) | (224.4) |
|                                 | % .....               |                       | (0.1)                  | (0.9) | (5.9)  | (6.6)  | (7.3)  | (15.3)  | (32.4)  | (34.0)  |
| Product Conversion Costs .....  | 2022\$ millions ..... |                       | 0.2                    | 0.9   | 7.5    | 7.6    | 7.9    | 0.2     | 10.6    | 10.7    |
| Capital Conversion Costs .....  | 2022\$ millions ..... |                       | 0.0                    | 0.0   | 7.8    | 7.8    | 7.8    | 21.3    | 45.6    | 45.6    |
| Total Investment Required ..... | 2022\$ millions ..... |                       | 0.2                    | 0.9   | 15.3   | 15.4   | 15.7   | 21.5    | 56.2    | 56.4    |
| Free Cash Flow (2025) .....     | 2022\$ millions ..... | 31.2                  | 31.1                   | 30.8  | 23.6   | 23.6   | 23.4   | 19.4    | 9.9     | 1.4     |
| Change in Free Cash Flow .....  | 2022\$ millions ..... |                       | (0.1)                  | (0.4) | (7.6)  | (7.6)  | (7.7)  | (11.8)  | (21.2)  | (29.8)  |
|                                 | % .....               |                       | (0.2)                  | (1.3) | (24.2) | (24.4) | (24.8) | (37.8)  | (68.1)  | (95.5)  |

\* Numbers in parentheses indicate a negative number. Some numbers may not sum exactly due to rounding.

At TSL 8, DOE estimated that the impact on INPV would range from –\$224.4 million to \$94.1 million, or a change in INPV of –34.0 percent to 14.2 percent. At TSL 8, industry free cash flow is \$1.4 million, which is a decrease of approximately \$29.8 million compared to the no-new-standards case value of \$31.2 million in 2025, the year leading up to new standards.

TSL 8 will set the energy conservation standards at EL 6 for both the small size and standard size DPPP motor equipment classes and at EL 2 for the extra-small size DPPP motor equipment class. This represents max-tech for all DPPP motor equipment classes. DOE estimated that 33 percent of all extra-small size DPPP motor shipments; 22 percent of all small size DPPP motor shipments; and 62 percent of all standard size DPPP motor shipments will already meet the efficiency levels analyzed at TSL 8 by 2026, in the no-new-standards case.

At TSL 8, DPPP motor manufacturers would need to redesign all small size and standard size DPPP motors that do not use variable-speed controls and would need to redesign all extra-small size DPPP motors not using the most efficient single-speed motors. DOE estimated that this redesign effort would

cost manufacturers approximately \$10.7 million in product conversion costs. In addition to these product conversion costs, DPPP motor manufacturers would need to increase their variable-speed DPPP motor manufacturing production capacity for both the small size and standard size DPPP motors. DOE estimated that expanding their production capacity would cost manufacturers approximately \$45.6 million in capital conversion costs at TSL 8.

At TSL 8, the shipment weighted average MPC for all DPPP motors increases by 60.0 percent relative to the no-new-standards case shipment weighted average MPC for all DPPP motors in 2026. In the preservation of gross margin scenario, manufacturers fully pass on this cost increase to customers. The increase in the shipment weighted average MPC for DPPP motors outweighs the \$56.4 million in conversion costs, causing a positive change in INPV at TSL 8 in the preservation of gross margin scenario.

Under the preservation of operating profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments.

In this scenario, the 60.0 percent shipment weighted average MPC increase results in a reduction in the manufacturer margin after the compliance year. This reduction in the manufacturer margin and the \$56.4 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 8 in the preservation of operating profit scenario.

At TSL 7, DOE estimated that the impact on INPV would range from –\$214.2 million to \$79.0 million, or a change in INPV of –32.4 percent to 12.0 percent. At TSL 7, industry free cash flow is \$9.9 million, which is a decrease of approximately \$21.2 million compared to the no-new-standards case value of \$31.2 million in 2025, the year leading up to new standards for standard size and extra-small size DPPP motors.<sup>131</sup>

TSL 7 sets the energy conservation standards at EL 6 for both the small size and standard size DPPP motor equipment classes and at EL 1 for the extra-small size DPPP motor equipment class. This represents max-tech for the small size and standard size DPPP

<sup>131</sup> The analyzed compliance year for small size DPPP motors is 2028. However, DOE presents the year with the largest decrease in manufacturer cash flow, which is still 2025 for TSL 7.

motor equipment classes. DOE estimates that 93 percent of all extra-small size DPPP motor shipments; 24 percent of all small size DPPP motor shipments; and 62 percent of all standard size DPPP motor shipments would already meet or exceed the efficiency levels analyzed at TSL 7 by 2026 for the extra-small and standard size DPPP motors and by 2028 for the small size DPPP motors, in the no-new-standards case.

At TSL 7, DPPP motor manufacturers would need to redesign all small size and standard size DPPP motors that do not use variable-speed controls and would need to redesign some extra-small size DPPP motors to meet EL 1. DOE estimated that this redesign effort would cost manufacturers approximately \$10.6 million in product conversion costs. In addition to these product conversion costs, DPPP motor manufacturers would need to increase their variable-speed DPPP motor manufacturing production capacity for both the small size and standard size DPPP motors. DOE estimated that expanding their production capacity would cost manufacturer approximately \$45.6 million in capital conversion costs at TSL 7.

At TSL 7, the shipment weighted average MPC for all DPPP motors increases by 46.5 percent relative to the no-new-standards case shipment weighted average MPC for all DPPP motors. In the preservation of gross margin scenario, manufacturers can fully pass on this cost increase to customers. The increase in the shipment weighted average MPC for DPPP motors outweighs the \$56.2 million in conversion costs, causing a positive change in INPV at TSL 7 in the preservation of gross margin scenario.

Under the preservation of operating profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the 46.5 percent shipment weighted average MPC increase results in a reduction in the manufacturer margin after the compliance year. This reduction in the manufacturer margin and the \$56.2 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 7 in the preservation of operating profit scenario.

At TSL 6, DOE estimated that the impact on INPV would range from –\$101.4 million to \$14.1 million, or a change in INPV of –15.3 percent to 2.1 percent. At TSL 6, industry free cash flow is \$19.4 million, which is a decrease of approximately \$11.8 million compared to the no-new-standards case

value of \$31.2 million in 2025, the year leading up to new standards.

TSL 6 would set the energy conservation standards at EL 6 for the standard size DPPP motor equipment class and at EL 1 for both the extra-small size and small size DPPP motor equipment classes. This represents max-tech for the standard size DPPP motor equipment class. DOE estimates that 93 percent of all extra-small size DPPP motor shipments; 95 percent of all small size DPPP motor shipments; and 62 percent of all standard size DPPP motor shipments would already meet or exceed the efficiency levels analyzed at TSL 6 by 2026, in the no-new-standards case.

At TSL 6, DPPP motor manufacturers would need to redesign all standard size DPPP motors that do not use variable-speed controls and would need to redesign some extra-small size and small size DPPP motors to meet EL 1. DOE estimated that this redesign effort would cost manufacturers approximately \$0.2 million in product conversion costs. In addition to these product conversion costs, DPPP motor manufacturers would need to increase their variable-speed DPPP motor manufacturing production capacity for the standard size DPPP motor equipment class. DOE estimated that expanding their production capacity would cost manufacturer approximately \$21.3 million in capital conversion costs at TSL 6.

At TSL 6, the shipment weighted average MPC for all DPPP motors increases by 22.0 percent relative to the no-new-standards case shipment weighted average MPC for all DPPP motors. In the preservation of gross margin scenario, manufacturers can fully pass on this cost increase to customers. The increase in the shipment weighted average MPC for DPPP motors outweighs the \$21.5 million in conversion costs, causing a positive change in INPV at TSL 6 in the preservation of gross margin scenario.

Under the preservation of operating profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the 22.0 percent shipment weighted average MPC increase results in a reduction in the manufacturer margin after the compliance year. This reduction in the manufacturer margin and the \$21.5 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 6 in the preservation of operating profit scenario.

At TSL 5, DOE estimated that the impact on INPV would range from –\$48.5 million to \$47.0 million, or a change in INPV of –7.3 percent to 7.1 percent. At TSL 5, industry free cash flow is \$23.4 million, which is a decrease of approximately \$7.7 million compared to the no-new-standards case value of \$31.2 million in 2025, the year leading up to new standards.

TSL 5 would set the energy conservation standards at EL 5 for both the small size and standard size DPPP motor equipment classes and at EL 2 for the extra-small size DPPP motor equipment class. DOE estimates that 33 percent of all extra-small size DPPP motor shipments; 23 percent of all small size DPPP motor shipments; and 63 percent of all standard size DPPP motor shipments would already meet or exceed the efficiency levels analyzed at TSL 5 by 2026, in the no-new-standards case.

At TSL 5, DPPP motor manufacturers would need to redesign some small size and standard size DPPP motors to meet EL 5 (which is likely to require the most efficient dual-speed motor) and would need to redesign some extra-small size DPPP motors to meet EL 2. DOE estimated that this redesign effort would cost manufacturers approximately \$7.9 million in product conversion costs. In addition to these product conversion costs, DPPP motor manufacturers would need to increase their dual-speed DPPP motor manufacturing production capacity for the small size and standard size DPPP motor equipment classes. DOE estimated that expanding their production capacity would cost manufacturer approximately \$7.8 million in capital conversion costs at TSL 5.

At TSL 5, the shipment weighted average MPC for all DPPP motors increases by 20.2 percent relative to the no-new-standards case shipment weighted average MPC for all DPPP motors. In the preservation of gross margin scenario, manufacturers can fully pass on this cost increase to customers. The increase in the shipment weighted average MPC for DPPP motors outweighs the \$15.7 million in conversion costs, causing a positive change in INPV at TSL 5 in the preservation of gross margin scenario.

Under the preservation of operating profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the 20.2 percent shipment weighted average MPC increase results in a reduction in the manufacturer margin after the

compliance year. This reduction in the manufacturer margin and the \$15.7 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 5 in the preservation of operating profit scenario.

At TSL 4, DOE estimated that the impact on INPV would range from –\$43.4 million to \$34.5 million, or a change in INPV of –6.6 percent to 5.2 percent. At TSL 4, industry free cash flow is \$23.6 million, which is a decrease of approximately \$7.6 million compared to the no-new-standards case value of \$31.2 million in 2025, the year leading up to new standards.

TSL 4 would set the energy conservation standards at EL 4 for both the small size and standard size DPPP motor equipment classes and at EL 2 for the extra-small size DPPP motor equipment class. DOE estimates that 33 percent of all extra-small size DPPP motor shipments; 25 percent of all small size DPPP motor shipments; and 64 percent of all standard size DPPP motor shipments would already meet or exceed the efficiency levels analyzed at TSL 4 by 2026, in the no-new-standards case.

At TSL 4, DPPP motor manufacturers would need to redesign some small size and standard size DPPP motors to meet EL 4 (which is likely to require an intermediate efficient dual-speed motor) and would need to redesign some extra-small size DPPP motors to meet EL 2. DOE estimated that this redesign effort would cost manufacturers approximately \$7.6 million in product conversion costs. In addition to these product conversion costs, DPPP motor manufacturers would need to increase their dual-speed DPPP motor manufacturing production capacity for the small size and standard size DPPP motor equipment classes. DOE estimated that expanding their production capacity would cost manufacturer approximately \$7.8 million in capital conversion costs at TSL 4.

At TSL 4, the shipment weighted average MPC for all DPPP motors increases by 17.0 percent relative to the no-new-standards case shipment weighted average MPC for all DPPP motors. In the preservation of gross margin scenario, manufacturers can fully pass on this cost increase to customers. The increase in the shipment weighted average MPC for DPPP motors outweighs the \$15.4 million in conversion costs, causing a positive change in INPV at TSL 4 in the preservation of gross margin scenario.

Under the preservation of operating profit scenario, manufacturers earn the same per-unit operating profit as would

be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the 17.0 percent shipment weighted average MPC increase results in a reduction in the manufacturer margin after the compliance year. This reduction in the manufacturer margin and the \$15.4 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 4 in the preservation of operating profit scenario.

At TSL 3, DOE estimated that the impact on INPV would range from –\$38.9 million to \$23.3 million, or a change in INPV of –5.9 percent to 3.5 percent. At TSL 3, industry free cash flow is \$23.6 million, which is a decrease of approximately \$7.6 million compared to the no-new-standards case value of \$31.2 million in 2025, the year leading up to new standards.

TSL 3 would set the energy conservation standards at EL 3 for both the small size and standard size DPPP motor equipment classes and at EL 2 for the extra-small size DPPP motor equipment class. DOE estimates that 33 percent of all extra-small size DPPP motor shipments; 31 percent of all small size DPPP motor shipments; and 66 percent of all standard size DPPP motor shipments would already meet or exceed the efficiency levels analyzed at TSL 3 by 2026, in the no-new-standards case.

At TSL 3, DPPP motor manufacturers would need to redesign some small size and standard size DPPP motors to meet EL 3 (which is likely to require a dual-speed motor) and would need to redesign some extra-small size DPPP motors to meet EL 2. DOE estimated that this redesign effort would cost manufacturers approximately \$7.5 million in product conversion costs. In addition to these product conversion costs, DPPP motor manufacturers would need to increase their dual-speed DPPP motor manufacturing production capacity for the small size and standard size DPPP motor equipment classes. DOE estimated that expanding their production capacity would cost manufacturer approximately \$7.8 million in capital conversion costs at TSL 3.

At TSL 3, the shipment weighted average MPC for all DPPP motors increases by 14.2 percent relative to the no-new-standards case shipment weighted average MPC for all DPPP motors. In the preservation of gross margin scenario, manufacturers can fully pass on this cost increase to customers. The increase in the shipment weighted average MPC for DPPP motors outweighs the \$15.3 million in

conversion costs, causing a positive change in INPV at TSL 3 in the preservation of gross margin scenario.

Under the preservation of operating profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the 14.2 percent shipment weighted average MPC increase results in a reduction in the manufacturer margin after the compliance year. This reduction in the manufacturer margin and the \$15.3 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 3 in the preservation of operating profit scenario.

At TSL 2, DOE estimated that the impact on INPV would range from –\$6.2 million to \$11.3 million, or a change in INPV of –0.9 percent to 1.7 percent. At TSL 2, industry free cash flow is \$30.8 million, which is a decrease of approximately \$0.4 million compared to the no-new-standards case value of \$31.2 million in 2025, the year leading up to new standards.

TSL 2 would set the energy conservation standards at EL 2 for all DPPP motor equipment classes. DOE estimates that 33 percent of all extra-small size DPPP motor shipments; 58 percent of all small size DPPP motor shipments; and 78 percent of all standard size DPPP motor shipments would already meet or exceed the efficiency levels analyzed at TSL 2 by 2026, in the no-new-standards case.

At TSL 2, DPPP motor manufacturers would need to redesign some small size and standard size DPPP motors to meet EL 2 (which is likely to require the most efficient single-speed motor) and would need to redesign some extra-small size DPPP motors to meet EL 2. DOE estimated that this redesign effort would cost manufacturers approximately \$0.9 million in product conversion costs. DOE estimated that DPPP motor manufacturers have the existing production capacity to manufacture more efficient single-speed DPPP motors and would not incur any additional capital conversion costs at TSL 2.

At TSL 2, the shipment weighted average MPC for all DPPP motors increases by 3.9 percent relative to the no-new-standards case shipment weighted average MPC for all DPPP motors. In the preservation of gross margin scenario, manufacturers can fully pass on this cost increase to customers. The increase in the shipment weighted average MPC for DPPP motors outweighs the \$0.9 million in conversion costs, causing a positive

change in INPV at TSL 2 in the preservation of gross margin scenario.

Under the preservation of operating profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the 3.9 percent shipment weighted average MPC increase results in a reduction in the manufacturer margin after the compliance year. This reduction in the manufacturer margin and the \$0.9 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 2 in the preservation of operating profit scenario.

At TSL 2, DOE estimated that the impact on INPV would range from –\$0.8 million to \$2.6 million, or a change in INPV of –0.1 percent to 0.4 percent. At TSL 1, industry free cash flow is \$31.1 million, which is a decrease of approximately \$0.1 million compared to the no-new-standards case value of \$31.2 million in 2025, the year leading up to new standards.

TSL 1 would set the energy conservation standards at EL 1 for all DPPP motor equipment classes. DOE estimates that 93 percent of all extra-small size DPPP motor shipments; 95 percent of all small size DPPP motor shipments; and 86 percent of all standard size DPPP motor shipments would already meet or exceed the efficiency levels analyzed at TSL 1 by 2026, in the no-new-standards case.

At TSL 1, DPPP motor manufacturers would need to redesign some extra-small size, small size, and standard size DPPP motors to meet EL 1 (which is likely to require an intermediate efficient single-speed motor). DOE estimated that this redesign effort would cost manufacturers approximately \$0.2 million in product conversion costs. DOE estimated that DPPP motor manufacturers have the existing

production capacity to manufacture more efficient single-speed DPPP motors and would not incur any additional capital conversion costs at TSL 1.

At TSL 1, the shipment weighted average MPC for all DPPP motors increases by 1.2 percent relative to the no-new-standards case shipment weighted average MPC for all DPPP motors. In the preservation of gross margin scenario, manufacturers can fully pass on this cost increase to customers. The increase in the shipment weighted average MPC for DPPP motors outweighs the \$0.2 million in conversion costs, causing a positive change in INPV at TSL 1 in the preservation of gross margin scenario.

Under the preservation of operating profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the 1.2 percent shipment weighted average MPC increase results in a reduction in the manufacturer margin after the compliance year. This reduction in the manufacturer margin and the \$0.2 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 1 in the preservation of operating profit scenario.

#### b. Direct Impacts on Employment

To quantitatively assess the potential impacts of new energy conservation standards on direct employment in the DPPP motors industry, DOE used the GRIM to estimate the domestic labor expenditures and number of direct employees in the no-new-standards case and in each of the standards cases during the analysis period.

Production employees are those who are directly involved in fabricating and assembling products within an original equipment manufacturer facility. Workers performing services that are

closely associated with production operations, such as materials handling tasks using forklifts, are included as production labor, as well as line supervisors.

DOE used the GRIM to calculate the number of production employees from labor expenditures. DOE used statistical data from the U.S. Census Bureau's 2021 Annual Survey of Manufacturers<sup>132</sup> ("ASM") and the results of the engineering analysis to calculate industry-wide labor expenditures. Labor expenditures related to product manufacturing depend on the labor intensity of the product, the sales volume, and an assumption that wages remain fixed in real terms over time. The total labor expenditures in the GRIM were then converted to domestic production employment levels by dividing production labor expenditures by the annual payment per production worker.

Non-production employees account for those workers that are not directly engaged in the manufacturing of the covered product. This could include sales, human resources, engineering, and management. DOE estimated non-production employment levels by multiplying the number of DPPP motor production workers by a scaling factor. The scaling factor is calculated by taking the ratio of the total number of employees, and the total number of production workers associated with the industry NAICS code 335312, which covers DPPP motor manufacturing. Using the GRIM, DOE estimates that there would be approximately 405 domestic production workers and approximately 232 non-production workers for DPPP motors in 2026 in the absence of new energy conservation standards. Table V.17 shows the range of the impacts of energy conservation standards on U.S. production of DPPP motors.

TABLE V.17—TOTAL NUMBER OF DOMESTIC DEDICATED-PURPOSE POOL PUMP MOTOR PRODUCTION WORKERS IN 2026

|                                                            | No-new-standards case | Trial standard level* |      |      |       |       |           |           |           |
|------------------------------------------------------------|-----------------------|-----------------------|------|------|-------|-------|-----------|-----------|-----------|
|                                                            |                       | 1                     | 2    | 3    | 4     | 5     | 6         | 7         | 8         |
| Domestic Production Workers in 2026 .....                  | 405                   | 410                   | 421  | 463  | 474   | 487   | 494       | 513       | 648       |
| Domestic Non-Production Workers in 2026 .....              | 232                   | 235                   | 241  | 265  | 272   | 279   | 283       | 294       | 371       |
| Total Direct Employment in 2026 ....                       | 637                   | 645                   | 662  | 728  | 746   | 766   | 777       | 807       | 1,019     |
| Potential Changes in Total Direct Employment in 2026 ..... |                       | 0–8                   | 0–25 | 0–91 | 0–109 | 0–129 | (163)–140 | (281)–170 | (281)–382 |

<sup>132</sup> [www.census.gov/programs-surveys/asm/data/tables.html](https://www.census.gov/programs-surveys/asm/data/tables.html).

The direct employment impacts shown in Table V.17 represent the potential changes in direct employment that could result following the compliance date for the DPPP motors covered in this rulemaking. Employment could increase or decrease due to the labor content of the equipment being manufactured domestically or if manufacturers decided to move production facilities abroad because of the new standards. At the less severe end of the range, DOE assumes that all manufacturers continue to manufacture the same scope of the equipment domestically after compliance with the analyzed new standards. The other end of the range assumes that some domestic manufacturing either is eliminated or moves abroad due to the analyzed new standards.

DOE assumes that for DPPP motors, manufacturing is only potentially negatively impacted at TSLs that would most likely require variable-speed DPPP motors. At these TSLs, the maximum number of employees that could be eliminated are the number of domestic employees that would be manufacturing single-speed and dual-speed DPPP motors in the absence of new energy conservation standards. DOE estimated that there would be approximately 76 domestic production employees and 43 non-production employees involved in the production and sale of single-speed and dual-speed small-size DPPP motors (for a total of 119 total employees) in 2026 in the absence of new DPPP motor standards. DOE also estimated that there would be approximately 104 domestic production employees and 59 non-production employees involved in the production and sale of single-speed and dual-speed standard-size DPPP motors (for a total of 163 total employees) in 2026 in the absence of new DPPP motor standards. However, DOE notes that motors used in DPPPs are frequently used in other non-DPPP applications and motor manufacturers may choose to continue to manufacture single-speed

and dual-speed motors (even at TSL 6, TSL 7, and TSL 8) that would be allowed to be used in other non-DPPP applications. If manufacturers choose to do this, there would likely not be a significant impact on the overall domestic motor employment.

c. Impacts on Manufacturing Capacity

DOE did not identify any significant capacity constraints for the design options being evaluated for this final rule. The design options evaluated for this final rule are available as equipment that is on the market currently. The materials used to manufacture DPPP motor models at all efficiency levels are widely available on the market. While there were a limited number of small size variable-speed DPPP motor models currently on the market, all manufacturers are capable of manufacturing standard size variable-speed DPPP motor models and would be able to manufacture small size variable-speed DPPP motor models if they choose to make the investments described in section IV.J.2.c of this document. As a result, DOE does not anticipate that the industry would likely experience any capacity constraints directly resulting from energy conservation standards at any of the TSLs considered.

d. Impacts on Subgroups of Manufacturers

As discussed in section IV.J.1 of this document, using average cost assumptions to develop an industry cash-flow estimate may not be adequate for assessing differential impacts among manufacturer subgroups. Small manufacturers, niche manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. DOE used the results of the industry characterization to group manufacturers exhibiting similar characteristics. Consequently, DOE identified small business

manufacturers as a subgroup for a separate impact analysis. For the small business subgroup analysis, DOE applied the small business size standards published by the Small Business Administration (“SBA”) to determine whether a company is considered a small business. The size standards are codified at 13 CFR part 121. To be categorized as a small business under NAICS code 335312, “Motor and Generator Manufacturing” a DPPP motor manufacturer and its affiliates may employ a maximum of 1,250 employees. The 1,250-employee threshold includes all employees in a business’s parent company and any other subsidiaries. Based on this classification, DOE identified one potential manufacturer that could qualify as domestic small businesses.

e. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the regulatory actions of other Federal agencies and States that affect the manufacturers of a covered product or equipment. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

DOE evaluates product-specific regulations that will take effect approximately 3 years before or after the 2026 compliance date of any new energy conservation standards for DPPP motors. This information is presented in Table V.18.

TABLE V.18—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING DEDICATED-PURPOSE POOL PUMP MOTOR MANUFACTURERS

| Federal energy conservation standard                   | Number of Mfrs * | Number of manufacturers affected from this rule** | Approximately standards year | Industry conversion costs (millions) | Industry conversion costs/product (%) |
|--------------------------------------------------------|------------------|---------------------------------------------------|------------------------------|--------------------------------------|---------------------------------------|
| Distribution Transformers 88 FR 1722 (Jan. 11, 2023) † | 27               | 1                                                 | 2027                         | <sup>133</sup> \$343 (2021\$)        | 2.7                                   |
| Electric Motors 88 FR 36066 (Jun. 1, 2023)             | 74               | 5                                                 | 2027                         | \$468 (2021\$)                       | 2.6                                   |

\* This column presents the total number of manufacturers identified in the energy conservation standard rule contributing to cumulative regulatory burden.

\*\* This column presents the number of manufacturers producing DPPP motors that are also listed as manufacturers in the listed energy conservation standard contributing to cumulative regulatory burden.

\*\*\* This column presents industry conversion costs as a percentage of product revenue during the conversion period. Industry conversion costs are the upfront investments manufacturers must make to sell compliant products/equipment. The revenue used for this calculation is the revenue from just the covered product/equipment associated with each row. The conversion period is the time frame over which conversion costs are made and lasts from the publication year of the final rule to the compliance year of the energy conservation standard. The conversion period typically ranges from 3 to 5 years, depending on the rulemaking.

† Indicates a NOPR publications. Values may change on publication of a final rule.

Fluidra identified the following regulations and certification standards that apply to DPPP and DPPP motors that may contribute to the cumulative regulator burden for DPPP motor manufacturers: DOE's January 2017 Final Rule (for DPPPs); DPPP UL 1081; DPPP motor UL 1004–1, 1004–4, and 1004–7; NSF–50; and CEC title 20. (Fluidra, No. 91 at p. 4) As part of the cumulative regulatory burden, DOE specifically looks to mitigate the overlapping effects on manufacturers of new or revised DOE standards and other regulatory actions affecting the same products or equipment (10 CFR part 430 appendix A to subpart C) DOE acknowledges that DPPP manufacturers use DPPP motors in their equipment and that change to energy conservation standards to DPPP motors could impact

DPPPs. The compliance date for DPPPs was on July 19, 2021. DOE considered these energy conservation standards when determining what energy conservation standards are technologically feasible and economically justified in section V.C. of this document. Specifically, DOE is setting the compliance date for small-size DPPP motors to be 4 years after the publication of this final rule to allow DPPP motor manufacturers additional time to comply with energy conservation standards for those DPPP motors.

### 3. National Impact Analysis

This section presents DOE's estimates of the national energy savings and the NPV of consumer benefits that would

result from each of the TSLs considered as potential amended standards.

#### a. Significance of Energy Savings

To estimate the energy savings attributable to potential new standards for DPPP motors, DOE compared their energy consumption under the no-new-standards case to their anticipated energy consumption under each TSL. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the first full year of anticipated compliance with amended standards (2026–2055).<sup>134</sup> Table V.15 presents DOE's projections of the national energy savings for each TSL considered for DPPP motors. The savings were calculated using the approach described in section IV.H of this document.

TABLE V.19—CUMULATIVE NATIONAL ENERGY SAVINGS FOR DPPP MOTORS; 30 YEARS OF SHIPMENTS

|                      | Trial standard levels |      |      |      |      |      |      |      |
|----------------------|-----------------------|------|------|------|------|------|------|------|
|                      | 1                     | 2    | 3    | 4    | 5    | 6    | 7    | 8    |
|                      | (quads)               |      |      |      |      |      |      |      |
| Primary energy ..... | 0.11                  | 0.20 | 0.68 | 0.88 | 0.99 | 0.93 | 1.52 | 1.56 |
| FFC energy .....     | 0.11                  | 0.20 | 0.70 | 0.90 | 1.01 | 0.96 | 1.56 | 1.60 |

**Note:** the analysis considers 30 years for shipments starting in 2026 (2026–2055) except at TSL 7 for small-size DPPP motors where DOE considers shipments in 2028–2055.

OMB Circular A–4<sup>135</sup> requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using 9 years, rather than 30 years, of product shipments. The choice of a 9-

year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.<sup>136</sup> The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to DPPP motors. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's

analytical methodology. The NES sensitivity analysis results based on a 9-year analytical period are presented in Table V.16. The impacts are counted over the lifetime of DPPP motors purchased in 2026–2034, except at TSL 7 for small-size DPPP motors where impacts are counted over the lifetime of DPPP motors purchased in 2028–2036.

<sup>133</sup> This is the sum of the total conversion costs listed in Table V.46 (TSL 4), which is \$270.6 million; Table V.48 (TSL 5), which is \$69.4 million; and Table V.50 (TSL 2), which is \$3.1 million. 88 FR 1722, 1809–1814.

<sup>134</sup> As discussed in section III.A of this document, for all TSLs DOE considered a 2-year lead time resulting in a first full year of compliance of 2026, except for small-size DPPP motors at TSL 7 where DOE uses a 4-year compliance lead time, resulting in a compliance year of 2028. In this case, DOE considered 28 years of shipments (2028–2055).

<sup>135</sup> U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis*. September 17, 2003. [obamawhitehouse.archives.gov/omb/circulars\\_a004\\_a-4](https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4) (last accessed September 1, 2021).

<sup>136</sup> EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. While adding a 6-year review

to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some products, the compliance period is 5 years rather than 3 years and for this product, DOE is setting compliance periods of 2 and 4 years.

TABLE V.20—CUMULATIVE NATIONAL ENERGY SAVINGS FOR DPPP MOTORS; 9 YEARS OF SHIPMENTS

|                      | Trial standard levels |      |      |      |      |      |      |      |
|----------------------|-----------------------|------|------|------|------|------|------|------|
|                      | 1                     | 2    | 3    | 4    | 5    | 6    | 7    | 8    |
|                      | (quads)               |      |      |      |      |      |      |      |
| Primary energy ..... | 0.03                  | 0.06 | 0.21 | 0.26 | 0.29 | 0.28 | 0.46 | 0.45 |
| FFC energy .....     | 0.03                  | 0.06 | 0.21 | 0.27 | 0.30 | 0.29 | 0.47 | 0.47 |

**Note:** the analysis considers 9 years for shipments starting in 2026 (2026–2034) except at TSL 7 for small-size DPPP motors where DOE considers shipments in 2028–2034.

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for

consumers that would result from the TSLs considered for DPPP motors. In accordance with OMB's guidelines on regulatory analysis,<sup>137</sup> DOE calculated NPV using both a 7-percent and a 3-

percent real discount rate. Table V.17 shows the consumer NPV results with impacts counted over the lifetime of products purchased in 2026–2055 or 2028–2055.

TABLE V.21—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR DPPP MOTORS; 30 YEARS OF SHIPMENTS

| Discount rate   | Trial standard levels |      |      |      |      |      |       |       |
|-----------------|-----------------------|------|------|------|------|------|-------|-------|
|                 | 1                     | 2    | 3    | 4    | 5    | 6    | 7     | 8     |
|                 | (billion 2022\$)      |      |      |      |      |      |       |       |
| 3 percent ..... | 0.85                  | 1.27 | 2.29 | 3.58 | 3.92 | 7.97 | 10.16 | 10.06 |
| 7 percent ..... | 0.48                  | 0.72 | 1.16 | 1.87 | 2.06 | 4.49 | 5.37  | 5.28  |

**Note:** the analysis considers 30 years for shipments starting in 2026 (2026–2055) except at TSL 7 for small-size DPPP motors where DOE considers shipments in 2028–2055.

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.18. The impacts are counted over the lifetime of

products purchased in 2026–2034 or 2028–2036. As mentioned previously, such results are presented for informational purposes only and are not

indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.22—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR DPPP MOTORS; 9 YEARS OF SHIPMENTS

| Discount rate   | Trial standard levels |      |      |      |      |      |      |      |
|-----------------|-----------------------|------|------|------|------|------|------|------|
|                 | 1                     | 2    | 3    | 4    | 5    | 6    | 7    | 8    |
|                 | (billion 2022\$)      |      |      |      |      |      |      |      |
| 3 percent ..... | 0.32                  | 0.50 | 0.79 | 1.25 | 1.39 | 2.91 | 3.16 | 2.96 |
| 7 percent ..... | 0.25                  | 0.38 | 0.56 | 0.91 | 1.00 | 2.25 | 2.35 | 2.19 |

**Note:** the analysis considers 9 years for shipments starting in 2026 (2026–2034) except at TSL 7 for small-size DPPP motors where DOE considers shipments in 2028–2034.

The previous results reflect the use of a default trend to estimate the change in price for DPPP motors over the analysis period (see section IV.F.1 of this document). DOE also conducted a sensitivity analysis that considered one scenario with a lower rate of price decline than the reference case and one scenario with a higher rate of price decline than the reference case. The results of these alternative cases are presented in appendix 10C of the final rule TSD. In the high-price-decline case, the NPV of consumer benefits is higher than in the default case. In the low-price-decline case, the NPV of consumer

benefits is lower than in the default case.

c. Indirect Impacts on Employment

DOE estimates that amended energy conservation standards for DPPP motors will reduce energy expenditures for consumers of those products, with the resulting net savings being redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.N of this document, DOE used an input/output model of the U.S. economy to estimate indirect

employment impacts of the TSLs that DOE considered. There are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframes (2026–2030 or 2028–2030), where these uncertainties are reduced.

The results suggest that the adopted standards are likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the final

<sup>137</sup> U.S. Office of Management and Budget. Circular A–4: Regulatory Analysis. September 17,

2003. [obamawhitehouse.archives.gov/omb/circulars\\_a004\\_a-4/](https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/) (last accessed July 1, 2021).

rule TSD presents detailed results regarding anticipated indirect employment impacts.

#### 4. Impact on Utility or Performance of Products

As discussed in section IV.C.1.b of this document, DOE has concluded that the standards adopted in this final rule will not lessen the utility or performance of the DPPP motors under consideration in this rulemaking. Manufacturers of these products currently offer units that meet or exceed the adopted standards.

#### 5. Impact of Any Lessening of Competition

DOE considered any lessening of competition that would be likely to result from new or amended standards. As discussed in section III.F.1.e, EPCA directs the Attorney General of the United States (“Attorney General”) to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to

transmit such determination in writing to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. To assist the Attorney General in making this determination, DOE provided the Department of Justice (“DOJ”) with copies of the NOPR and the TSD for review. In its assessment letter responding to DOE, DOJ ultimately stated that they do not have sufficient information to conclude that the proposed energy conservation standards for DPPP motor are likely to have a significant adverse impact on competition. DOE is publishing the Attorney General’s assessment at the end of this final rule.

#### 6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation’s energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy

production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. Chapter 15 in the final rule TSD presents the estimated impacts on electricity generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this rulemaking.

Energy conservation resulting from potential energy conservation standards for DPPP motors is expected to yield environmental benefits in the form of reduced emissions of certain air pollutants and greenhouse gases. Table V.19 provides DOE’s estimate of cumulative emissions reductions expected to result from the TSLs considered in this rulemaking. The emissions were calculated using the multipliers discussed in section IV.K of this document. DOE reports annual emissions reductions for each TSL in chapter 13 of the final rule TSD.

TABLE V.23—CUMULATIVE EMISSIONS REDUCTION FOR DPPP MOTORS; 30 YEARS OF SHIPMENTS

|                                             | Trial standard level |       |        |        |        |        |        |        |
|---------------------------------------------|----------------------|-------|--------|--------|--------|--------|--------|--------|
|                                             | 1                    | 2     | 3      | 4      | 5      | 6      | 7      | 8      |
| <b>Power Sector Emissions</b>               |                      |       |        |        |        |        |        |        |
| CO <sub>2</sub> (million metric tons) ..... | 2.02                 | 3.82  | 13.04  | 16.82  | 18.84  | 17.94  | 28.52  | 29.60  |
| CH <sub>4</sub> (thousand tons) .....       | 0.16                 | 0.30  | 1.02   | 1.31   | 1.47   | 1.40   | 2.21   | 2.31   |
| N <sub>2</sub> O (thousand tons) .....      | 0.02                 | 0.04  | 0.14   | 0.18   | 0.21   | 0.19   | 0.31   | 0.32   |
| NO <sub>x</sub> (thousand tons) .....       | 1.02                 | 1.94  | 6.63   | 8.54   | 9.56   | 9.09   | 14.41  | 15.00  |
| SO <sub>2</sub> (thousand tons) .....       | 0.68                 | 1.29  | 4.40   | 5.68   | 6.36   | 6.05   | 9.63   | 10.01  |
| Hg (tons) .....                             | 0.00                 | 0.01  | 0.03   | 0.04   | 0.04   | 0.04   | 0.07   | 0.07   |
| <b>Upstream Emissions</b>                   |                      |       |        |        |        |        |        |        |
| CO <sub>2</sub> (million metric tons) ..... | 0.19                 | 0.36  | 1.22   | 1.58   | 1.77   | 1.69   | 2.71   | 2.79   |
| CH <sub>4</sub> (thousand tons) .....       | 17.21                | 32.32 | 110.54 | 142.86 | 160.08 | 152.29 | 244.97 | 252.18 |
| N <sub>2</sub> O (thousand tons) .....      | 0.00                 | 0.00  | 0.01   | 0.01   | 0.01   | 0.01   | 0.01   | 0.01   |
| NO <sub>x</sub> (thousand tons) .....       | 2.95                 | 5.54  | 18.94  | 24.48  | 27.43  | 26.09  | 41.99  | 43.22  |
| SO <sub>2</sub> (thousand tons) .....       | 0.01                 | 0.02  | 0.08   | 0.11   | 0.12   | 0.11   | 0.18   | 0.19   |
| Hg (tons) .....                             | 0.00                 | 0.00  | 0.00   | 0.00   | 0.00   | 0.00   | 0.00   | 0.00   |
| <b>Total FFC Emissions</b>                  |                      |       |        |        |        |        |        |        |
| CO <sub>2</sub> (million metric tons) ..... | 2.21                 | 4.18  | 14.27  | 18.40  | 20.61  | 19.63  | 31.23  | 32.39  |
| CH <sub>4</sub> (thousand tons) .....       | 17.37                | 32.62 | 111.56 | 144.17 | 161.55 | 153.69 | 247.18 | 254.49 |
| N <sub>2</sub> O (thousand tons) .....      | 0.02                 | 0.04  | 0.15   | 0.19   | 0.21   | 0.20   | 0.32   | 0.34   |
| NO <sub>x</sub> (thousand tons) .....       | 3.97                 | 7.48  | 25.57  | 33.02  | 36.99  | 35.18  | 56.40  | 58.22  |
| SO <sub>2</sub> (thousand tons) .....       | 0.70                 | 1.32  | 4.49   | 5.79   | 6.48   | 6.16   | 9.81   | 10.20  |
| Hg (tons) .....                             | 0.00                 | 0.01  | 0.03   | 0.04   | 0.04   | 0.04   | 0.07   | 0.07   |

**Note:** the analysis considers 30 years for shipments starting in 2026 (2026–2055) except at TSL 7 for small-size DPPP motors where DOE considers shipments in 2028–2055.

As part of the analysis for this rule, DOE estimated monetary benefits likely to result from the reduced emissions of CO<sub>2</sub> that DOE estimated for each of the considered TSLs for DPPP motors. Section IV.L.1.a of this document

discusses the estimated SC–CO<sub>2</sub> values that DOE used. Table V.19 presents the value of CO<sub>2</sub> emissions reduction at each TSL for each of the SC–CO<sub>2</sub> cases. The time-series of annual values is

presented for the selected TSL in chapter 14 of the final rule TSD.



TABLE V.24—PRESENT VALUE OF CO<sub>2</sub> EMISSIONS REDUCTION FOR DPPP MOTORS; 30 YEARS OF SHIPMENTS

| TSL     | SC-CO <sub>2</sub> case      |               |                 |                       |
|---------|------------------------------|---------------|-----------------|-----------------------|
|         | Discount rate and statistics |               |                 |                       |
|         | 5%<br>Average                | 3%<br>Average | 2.5%<br>Average | 3%<br>95th percentile |
|         | (million 2022\$)             |               |                 |                       |
| 1 ..... | 29                           | 112           | 171             | 340                   |
| 2 ..... | 55                           | 213           | 324             | 646                   |
| 3 ..... | 187                          | 726           | 1,106           | 2,207                 |
| 4 ..... | 240                          | 934           | 1,423           | 2,840                 |
| 5 ..... | 268                          | 1,045         | 1,593           | 3,178                 |
| 6 ..... | 256                          | 997           | 1,519           | 3,030                 |
| 7 ..... | 400                          | 1,570         | 2,397           | 4,778                 |
| 8 ..... | 420                          | 1,638         | 2,499           | 4,984                 |

**Note:** the analysis considers 30 years for shipments starting in 2026 (2026–2055) except at TSL 7 for small-size DPPP motors where DOE considers shipments in 2028–2055.

As discussed in section IV.L.2, DOE estimated the climate benefits likely to result from the reduced emissions of methane and N<sub>2</sub>O that DOE estimated

for each of the considered TSLs for DPPP motors. Table V.21 presents the value of the CH<sub>4</sub> emissions reduction at each TSL, and Table V.22 presents the

value of the N<sub>2</sub>O emissions reduction at each TSL. The time-series of annual values is presented for the selected TSL in chapter 14 of the final rule TSD.

TABLE V.25—PRESENT VALUE OF METHANE EMISSIONS REDUCTION FOR DPPP MOTORS; 30 YEARS OF SHIPMENTS

| TSL     | SC-CH <sub>4</sub> case      |               |                 |                       |
|---------|------------------------------|---------------|-----------------|-----------------------|
|         | Discount rate and statistics |               |                 |                       |
|         | 5%<br>Average                | 3%<br>Average | 2.5%<br>Average | 3%<br>95th percentile |
|         | (million 2022\$)             |               |                 |                       |
| 1 ..... | 10                           | 27            | 36              | 71                    |
| 2 ..... | 19                           | 50            | 68              | 134                   |
| 3 ..... | 65                           | 172           | 234             | 457                   |
| 4 ..... | 83                           | 222           | 302             | 590                   |
| 5 ..... | 93                           | 249           | 338             | 661                   |
| 6 ..... | 89                           | 237           | 322             | 628                   |
| 7 ..... | 141                          | 379           | 517             | 1,007                 |
| 8 ..... | 146                          | 391           | 533             | 1,040                 |

**Note:** the analysis considers 30 years for shipments starting in 2026 (2026–2055) except at TSL 7 for small-size DPPP motors where DOE considers shipments in 2028–2055.

TABLE V.26—PRESENT VALUE OF NITROUS OXIDE EMISSIONS REDUCTION FOR DPPP MOTORS; 30 YEARS OF SHIPMENTS

| TSL     | SC-N <sub>2</sub> O case     |               |                 |                       |
|---------|------------------------------|---------------|-----------------|-----------------------|
|         | Discount rate and statistics |               |                 |                       |
|         | 5%<br>Average                | 3%<br>Average | 2.5%<br>Average | 3%<br>95th percentile |
|         | (million 2022\$)             |               |                 |                       |
| 1 ..... | 0.1                          | 0.4           | 0.6             | 1.1                   |
| 2 ..... | 0.2                          | 0.8           | 1.2             | 2.0                   |
| 3 ..... | 0.7                          | 2.6           | 3.9             | 6.9                   |
| 4 ..... | 0.9                          | 3.4           | 5.1             | 8.9                   |
| 5 ..... | 1.0                          | 3.8           | 5.7             | 10.0                  |
| 6 ..... | 1.0                          | 3.6           | 5.4             | 9.5                   |
| 7 ..... | 1.6                          | 5.6           | 8.5             | 14.9                  |
| 8 ..... | 1.6                          | 5.9           | 8.9             | 15.6                  |

**Note:** the analysis considers 30 years for shipments starting in 2026 (2026–2055) except at TSL 7 for small-size DPPP motors where DOE considers shipments in 2028–2055.

DOE is aware that scientific and economic knowledge about the contribution of CO<sub>2</sub> and other GHG emissions to changes in the future global climate and the potential resulting damages to the global and U.S. economy continues to evolve rapidly. DOE, together with other Federal agencies, will continue to review methodologies for estimating the monetary value of reductions in CO<sub>2</sub> and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public

record for this and other rulemakings, as well as other methodological assumptions and issues. DOE notes, however, that the adopted standards would be economically justified even without inclusion of monetized benefits of reduced GHG emissions.

DOE also estimated the monetary value of the economic benefits associated with NO<sub>x</sub> and SO<sub>2</sub> emissions reductions anticipated to result from the considered TSLs for DPPP motors. The dollar-per-ton values that DOE used are discussed in section IV.L of this

document. Table V.23 presents the present value for NO<sub>x</sub> emissions reduction for each TSL calculated using 7-percent and 3-percent discount rates, and Table V.24 presents similar results for SO<sub>2</sub> emissions reductions. The results in these tables reflect application of EPA's low dollar-per-ton values, which DOE used to be conservative. The time-series of annual values is presented for the selected TSL in chapter 14 of the final rule TSD.

TABLE V.27—PRESENT VALUE OF NO<sub>x</sub> EMISSIONS REDUCTION FOR DPPP MOTORS; 30 YEARS OF SHIPMENTS

| TSL     | 7% Discount rate | 3% Discount rate |
|---------|------------------|------------------|
|         | (million 2022\$) |                  |
| 1 ..... | 116              | 221              |
| 2 ..... | 222              | 420              |
| 3 ..... | 759              | 1,433            |
| 4 ..... | 972              | 1,847            |
| 5 ..... | 1,086            | 2,068            |
| 6 ..... | 1,040            | 1,967            |
| 7 ..... | 1,613            | 3,139            |
| 8 ..... | 1,698            | 3,250            |

**Note:** the analysis considers 30 years for shipments starting in 2026 (2026–2055) except at TSL 7 for small-size DPPP motors where DOE considers shipments in 2028–2055.

TABLE V.28—PRESENT VALUE OF SO<sub>2</sub> EMISSIONS REDUCTION FOR DPPP MOTORS; 30 YEARS OF SHIPMENTS

| TSL     | 3% Discount rate | 7% Discount rate |
|---------|------------------|------------------|
|         | (million 2022\$) |                  |
| 1 ..... | 29               | 54               |
| 2 ..... | 56               | 102              |
| 3 ..... | 190              | 348              |
| 4 ..... | 243              | 449              |
| 5 ..... | 272              | 502              |
| 6 ..... | 260              | 477              |
| 7 ..... | 399              | 756              |
| 8 ..... | 424              | 789              |

**Note:** the analysis considers 30 years for shipments starting in 2026 (2026–2055) except at TSL 7 for small-size DPPP motors where DOE considers shipments in 2028–2055.

Not all the public health and environmental benefits from the reduction of greenhouse gases, NO<sub>x</sub>, and SO<sub>2</sub> are captured in the values above, and additional unquantified benefits from the reductions of those pollutants as well as from the reduction of direct PM and other co-pollutants may be significant. DOE has not included monetary benefits of the reduction of Hg emissions because the amount of reduction is very small.

#### 7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider

any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) No other factors were considered in this analysis.

#### 8. Summary of Economic Impacts

Table V.25 presents the NPV values that result from adding the estimates of the economic benefits resulting from reduced GHG and NO<sub>x</sub> and SO<sub>2</sub> emissions to the NPV of consumer benefits calculated for each TSL considered in this rulemaking. The consumer benefits are domestic U.S. monetary savings that occur as a result of purchasing the covered equipment, and are measured for the lifetime of

products shipped in 2026–2055, except at TSL 7 for small-size DPPP motors where impacts are counted over the lifetime of DPPP motors purchased in 2028–2055.

The climate benefits associated with reduced GHG emissions resulting from the adopted standards are global benefits, and are also calculated based on the lifetime of DPPP motors shipped in 2026–2055, except at TSL 7 for small-size DPPP motors where impacts are counted over the lifetime of DPPP motors purchased in 2028–2055.

TABLE V.29—CONSUMER NPV COMBINED WITH PRESENT VALUE OF CLIMATE BENEFITS AND HEALTH BENEFITS

| Category                                                                      | TSL 1 | TSL 2 | TSL 3 | TSL 4 | TSL 5 | TSL 6 | TSL 7 | TSL 8 |
|-------------------------------------------------------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|
| <b>3% discount rate for Consumer NPV and Health Benefits (billion 2022\$)</b> |       |       |       |       |       |       |       |       |
| 5% Average SC–GHG case .....                                                  | 1.2   | 1.9   | 4.3   | 6.2   | 6.9   | 10.8  | 14.6  | 14.7  |
| 3% Average SC–GHG case .....                                                  | 1.3   | 2.1   | 5.0   | 7.0   | 7.8   | 11.6  | 16.0  | 16.1  |
| 2.5% Average SC–GHG case .....                                                | 1.3   | 2.2   | 5.4   | 7.6   | 8.4   | 12.3  | 17.0  | 17.1  |
| 3% 95th percentile SC–GHG case .....                                          | 1.5   | 2.6   | 6.7   | 9.3   | 10.3  | 14.1  | 19.9  | 20.1  |
| <b>7% discount rate for Consumer NPV and Health Benefits (billion 2022\$)</b> |       |       |       |       |       |       |       |       |
| 5% Average SC–GHG case .....                                                  | 0.7   | 1.1   | 2.4   | 3.4   | 3.8   | 6.1   | 7.9   | 8.0   |
| 3% Average SC–GHG case .....                                                  | 0.8   | 1.3   | 3.0   | 4.2   | 4.7   | 7.0   | 9.3   | 9.4   |
| 2.5% Average SC–GHG case .....                                                | 0.8   | 1.4   | 3.5   | 4.8   | 5.4   | 7.6   | 10.3  | 10.4  |
| 3% 95th percentile SC–GHG case .....                                          | 1.0   | 1.8   | 4.8   | 6.5   | 7.3   | 9.5   | 13.2  | 13.4  |

### C. Conclusion

When considering new or amended energy conservation standards, the standards that DOE adopts for any type (or class) of covered equipment must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(3)(B))

For this final rule, DOE considered the impacts of standards for DPPP

motors at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, tables in this section present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national standard and impacts on employment.

### 1. Benefits and Burdens of TSLs Considered for DPPP Motor Standards

Table V.26 and Table V.27 summarize the quantitative impacts estimated for each TSL for DPPP motors. The national impacts are measured over the lifetime of DPPP motors purchased in the 30-year period that begins in the anticipated year of compliance with amended standards (2026–2055).<sup>138</sup> The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results. DOE is presenting monetized benefits of GHG emissions reductions in accordance with the applicable Executive orders and DOE would reach the same conclusion presented in this notice in the absence of the social cost of greenhouse gases, including the interim estimates presented by the Interagency Working Group. The efficiency levels contained in each TSL are described in section V.A of this document.

TABLE V.30—SUMMARY OF ANALYTICAL RESULTS FOR DPPP MOTORS TSLs—NATIONAL IMPACTS

| Category                                                                      | TSL 1 | TSL 2 | TSL 3 | TSL 4 | TSL 5 | TSL 6 | TSL 7 | TSL 8 |
|-------------------------------------------------------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|
| <b>Cumulative FFC National Energy Savings</b>                                 |       |       |       |       |       |       |       |       |
| Quads .....                                                                   | 0.11  | 0.20  | 0.70  | 0.90  | 1.01  | 0.96  | 1.56  | 1.60  |
| <b>Cumulative FFC Emissions Reduction</b>                                     |       |       |       |       |       |       |       |       |
| CO <sub>2</sub> (million metric tons) .....                                   | 2.2   | 4.2   | 14.3  | 18.4  | 20.6  | 19.6  | 31.2  | 32.4  |
| CH <sub>4</sub> (thousand tons) .....                                         | 17.4  | 32.6  | 111.6 | 144.2 | 161.6 | 153.7 | 247.2 | 254.5 |
| N <sub>2</sub> O (thousand tons) .....                                        | 0.02  | 0.04  | 0.15  | 0.19  | 0.21  | 0.20  | 0.32  | 0.34  |
| SO <sub>2</sub> (thousand tons) .....                                         | 0.7   | 1.3   | 4.5   | 5.8   | 6.5   | 6.2   | 9.8   | 10.2  |
| NO <sub>x</sub> (thousand tons) .....                                         | 4.0   | 7.5   | 25.6  | 33.0  | 37.0  | 35.2  | 56.4  | 58.2  |
| Hg (tons) .....                                                               | 0.00  | 0.01  | 0.03  | 0.04  | 0.04  | 0.04  | 0.07  | 0.07  |
| <b>Present Value of Benefits and Costs (3% discount rate, billion 2022\$)</b> |       |       |       |       |       |       |       |       |
| Consumer Operating Cost Savings .....                                         | 1.0   | 1.9   | 6.4   | 8.2   | 9.2   | 8.8   | 14.0  | 14.5  |
| Climate Benefits * .....                                                      | 0.1   | 0.3   | 0.9   | 1.2   | 1.3   | 1.2   | 2.0   | 2.0   |
| Health Benefits ** .....                                                      | 0.3   | 0.5   | 1.8   | 2.3   | 2.6   | 2.4   | 3.9   | 4.0   |
| Total Benefits † .....                                                        | 1.4   | 2.7   | 9.1   | 11.7  | 13.1  | 12.4  | 19.9  | 20.6  |

<sup>138</sup> As discussed in section III.A of this document, for all TSLs DOE considered a 2-year lead time resulting in a first full year of compliance of 2026,

except for small-size DPPP motors at TSL 7 where DOE uses a 4-year compliance lead time, resulting

in a compliance year of 2028. In this case, DOE considered 28 years of shipments (2028–2055).

TABLE V.30—SUMMARY OF ANALYTICAL RESULTS FOR DPPP MOTORS TSLs—NATIONAL IMPACTS—Continued

| Category                                                                      | TSL 1 | TSL 2 | TSL 3 | TSL 4 | TSL 5 | TSL 6 | TSL 7 | TSL 8 |
|-------------------------------------------------------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|
| Consumer Incremental Product Costs .....                                      | 0.1   | 0.6   | 4.1   | 4.7   | 5.3   | 0.8   | 3.9   | 4.4   |
| Consumer Net Benefits .....                                                   | 0.8   | 1.3   | 2.3   | 3.6   | 3.9   | 8.0   | 10.2  | 10.1  |
| Total Net Benefits .....                                                      | 1.3   | 2.1   | 5.0   | 7.0   | 7.8   | 11.6  | 16.0  | 16.1  |
| <b>Present Value of Benefits and Costs (7% discount rate, billion 2022\$)</b> |       |       |       |       |       |       |       |       |
| Consumer Operating Cost Savings .....                                         | 0.6   | 1.1   | 3.7   | 4.8   | 5.3   | 5.1   | 7.9   | 8.3   |
| Climate Benefits * .....                                                      | 0.1   | 0.3   | 0.9   | 1.2   | 1.3   | 1.2   | 2.0   | 2.0   |
| Health Benefits ** .....                                                      | 0.1   | 0.3   | 0.9   | 1.2   | 1.4   | 1.3   | 2.0   | 2.1   |
| Total Benefits † .....                                                        | 0.8   | 1.6   | 5.6   | 7.1   | 8.0   | 7.6   | 11.9  | 12.5  |
| Consumer Incremental Product Costs .....                                      | 0.1   | 0.4   | 2.5   | 2.9   | 3.3   | 0.6   | 2.6   | 3.0   |
| Consumer Net Benefits .....                                                   | 0.5   | 0.7   | 1.2   | 1.9   | 2.1   | 4.5   | 5.4   | 5.3   |
| Total Net Benefits .....                                                      | 0.8   | 1.3   | 3.0   | 4.2   | 4.7   | 7.0   | 9.3   | 9.4   |

**Note:** This table presents the costs and benefits associated with DPPP motors shipped in 2026–2055, except at TSL 7 for small-size DPPP motors where shipments in 2028–2055 are considered. These results include benefits to consumers which accrue after 2055 from the products shipped in 2026–2055 (or 2028–2055).

\* Climate benefits are calculated using four different estimates of the SC–CO<sub>2</sub>, SC–CH<sub>4</sub> and SC–N<sub>2</sub>O. Together, these represent the global SC–GHG. For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate. To monetize the benefits of reducing GHG emissions this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG).

\*\* Health benefits are calculated using benefit-per-ton values for NO<sub>x</sub> and SO<sub>2</sub>. DOE is currently only monetizing (for NO<sub>x</sub> and SO<sub>2</sub>) PM<sub>2.5</sub> precursor health benefits and (for NO<sub>x</sub>) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct PM<sub>2.5</sub> emissions. The health benefits are presented at real discount rates of 3 and 7 percent. See section IV.L of this document for more details.

† Total and net benefits include consumer, climate, and health benefits. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but DOE does not have a single central SC–GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates.

‡ Costs include incremental equipment costs as well as installation costs.

TABLE V.31—SUMMARY OF ANALYTICAL RESULTS FOR DPPP MOTORS TSLs—MANUFACTURER AND CONSUMER IMPACTS

| Category                                                               | TSL 1       | TSL 2       | TSL 3       | TSL 4       | TSL 5       | TSL 6        | TSL 7         | TSL 8         |
|------------------------------------------------------------------------|-------------|-------------|-------------|-------------|-------------|--------------|---------------|---------------|
| <b>Manufacturer Impacts</b>                                            |             |             |             |             |             |              |               |               |
| Industry NPV (million 2022\$) (No-new-standards case INPV = 661) ..... | 660–663     | 655–672     | 622–684     | 617–695     | 612–708     | 559–675      | 447–740       | 436–755       |
| Industry NPV (% change) .....                                          | (0.1) – 0.4 | (0.9) – 1.7 | (5.9) – 3.5 | (6.6) – 5.2 | (7.3) – 7.1 | (15.3) – 2.1 | (32.4) – 12.0 | (34.0) – 14.2 |
| <b>Consumer Average LCC Savings (2022\$)</b>                           |             |             |             |             |             |              |               |               |
| Extra-Small-Size .....                                                 | \$3         | (\$12)      | (\$12)      | (\$12)      | (\$12)      | \$3          | \$3           | (\$12)        |
| Small-Size .....                                                       | 10          | 14          | (\$54)      | (\$12)      | (\$16)      | 10           | 4             | 4             |
| Standard-Size .....                                                    | 26          | 44          | 109         | 141         | 151         | 236          | 236           | 236           |
| Shipment-Weighted Average * .....                                      | 19          | 31          | 44          | 79          | 83          | 144          | 141           | 141           |
| <b>Consumer Simple PBP (years)</b>                                     |             |             |             |             |             |              |               |               |
| Extra-Small-Size .....                                                 | 0.9         | 2.8         | 2.8         | 2.8         | 2.8         | 0.9          | 0.9           | 2.8           |
| Small-Size .....                                                       | 0.5         | 1.0         | 4.5         | 3.4         | 3.4         | 0.5          | 3.4           | 3.4           |
| Standard-Size .....                                                    | 0.7         | 0.8         | 0.8         | 0.8         | 0.9         | 1.3          | 1.3           | 1.3           |
| Shipment-Weighted Average * .....                                      | 0.6         | 0.9         | 2.2         | 1.9         | 1.9         | 1.0          | 2.1           | 2.1           |
| <b>Percent of Consumers that Experience a Net Cost</b>                 |             |             |             |             |             |              |               |               |
| Extra-Small-Size .....                                                 | 0.5%        | 59%         | 59%         | 59%         | 59%         | 0.5%         | 0.5%          | 59%           |
| Small-Size .....                                                       | 0.0         | 24          | 52          | 46          | 50          | 0            | 44            | 44            |
| Standard-Size .....                                                    | 0.1         | 2           | 18          | 17          | 19          | 2            | 2             | 2             |
| Shipment-Weighted Average * .....                                      | 0.1         | 12          | 32          | 29          | 32          | 1            | 18            | 19            |

Parentheses indicate negative (-) values.

\* Weighted by shares of each equipment class in total projected shipments in 2026.

DOE first considered TSL 8, which represents the max-tech efficiency levels for all equipment classes and freeze protection control requirements for DPPP motors greater than and equal to 0.5 THP. TSL 8 would save an estimated 1.60 quads of energy, an amount DOE considers significant. Under TSL 8, the NPV of consumer benefit would be \$5.3

billion using a discount rate of 7 percent, and \$10.1 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 8 are 32.4 Mt of CO<sub>2</sub>, 10.2 thousand tons of SO<sub>2</sub>, 58.2 thousand tons of NO<sub>x</sub>, 0.07 tons of Hg, 254.5 thousand tons of CH<sub>4</sub>, and 0.34 thousand tons of N<sub>2</sub>O. The estimated monetary value of the climate benefits

from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 8 is \$2.0 billion. The estimated monetary value of the health benefits from reduced SO<sub>2</sub> and NO<sub>x</sub> emissions at TSL 8 is \$2.1 billion using a 7-percent discount rate and \$4.0 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO<sub>2</sub> and NO<sub>x</sub> emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 8 is \$9.4 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 8 is \$16.1 billion. The estimated total NPV is provided for additional information, however DOE primarily relies upon the NPV of consumer benefits when determining whether a standard level is economically justified.

At TSL 8, the average LCC impact is a loss of \$12 for extra-small-size DPPP motors, a saving of \$4 for small-size DPPP motors, and \$236 for standard-size DPPP motors. The simple payback period is 2.8 years for extra-small-size DPPP motors, 3.4 years for small-size DPPP motors, and 1.3 years for standard-size DPPP motors. The fraction of consumers experiencing a net LCC cost is 59 percent for extra-small-size DPPP motors, 44 percent for small-size DPPP motors, and 2 percent for standard-size DPPP motors.

At TSL 8, the projected change in INPV ranges from a decrease of \$224.4 million to an increase of \$94.1 million, which corresponds to a decrease of 34.0 percent and an increase of 14.2 percent, respectively. DOE estimates that industry must invest \$56.4 million to comply with standards set at TSL 8. DOE estimates that approximately 33 percent of extra-small size DPPP motor shipments, 22 percent of small size DPPP motor shipments, and 62 percent of standard size DPPP motor shipments would meet the efficiency levels analyzed at TSL 8, in the no-new-standards case. At TSL 8, most DPPP motor manufacturers would be required to redesign all of their small size DPPP motor models to be variable-speed motors covered by this rulemaking. It is unclear if most manufacturers would have the engineering capacity to complete the necessary redesigns within a 2-year compliance period (between the publication of this final rule and the analyzed compliance date of 2028 for this TSL). If manufacturers require more than 2 years to redesign all of their covered DPPP motor models, they will likely prioritize redesigns based on sales volume. There is a risk that some small size DPPP motor models will become either temporarily or permanently unavailable after the analyzed compliance date for this TSL, given a 2-year compliance period.

The Secretary concludes that at TSL 8 for DPPP motors, the benefits of energy savings, positive NPV of consumer benefits, emission reductions,

and the estimated monetary value of the emissions reductions are outweighed by the economic burden on many consumers and the impacts on manufacturers, including the lack of manufacturers currently offering small size DPPP motor models meeting the efficiency levels required at this TSL and the potential for most DPPP motor manufacturers to redesign their entire small size DPPP motors models in the analyzed 2 year compliance period for this TSL. A majority of extra-small-size DPPP motor consumers (59 percent) would experience a net cost and the average LCC savings would be negative. The potential reduction in INPV could be as high as 34.0 percent. Consequently, the Secretary has concluded that TSL 8 is not economically justified.

DOE then considered TSL 7, which represents the California CEC standards<sup>139</sup> and includes a variable-speed requirement for DPPP motors at or above 0.5 THP, an EL 1 efficiency requirement below 0.5 THP, and freeze-protection control requirements for DPPP motors greater than and equal to 0.5 THP. In addition, as discussed in section III.A of this document, this TSL uses a 4-year compliance lead time for small-size DPPP motors, resulting in a first full year of compliance year of 2028 (for all other equipment classes, a compliance lead time of 2 years is applied). TSL 7 would save an estimated 1.56 quads of energy, an amount DOE considers significant. Under TSL 7, the NPV of consumer benefit would be \$5.4 billion using a discount rate of 7 percent, and \$10.2 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 7 are 31.2 Mt of CO<sub>2</sub>, 9.8 thousand tons of SO<sub>2</sub>, 56.4 thousand tons of NO<sub>x</sub>, 0.07 tons of Hg, 247.2 thousand tons of CH<sub>4</sub>, and 0.32 thousand tons of N<sub>2</sub>O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC-GHG at a 3-percent discount rate) at TSL 7 is \$2.0 billion. The estimated monetary value of the health benefits from reduced SO<sub>2</sub> and NO<sub>x</sub> emissions at TSL 7 is \$2.0 billion using a 7-percent discount rate and \$3.9 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO<sub>2</sub> and NO<sub>x</sub> emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated

total NPV at TSL 7 is \$9.3 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 7 is \$16.0 billion. The estimated total NPV is provided for additional information, however DOE primarily relies upon the NPV of consumer benefits when determining whether a standard level is economically justified.

At TSL 7, the average LCC impact is a savings of \$3 for extra-small-size DPPP motors, \$4 for small-size DPPP motors, and \$236 for standard-size DPPP motors. The simple payback period is 0.9 years for extra-small-size DPPP motors, 3.4 years for small-size DPPP motors, and 1.3 years for standard-size DPPP motors. The fraction of consumers experiencing a net LCC cost is 0.5 percent for extra-small-size DPPP motors, 4 percent for small-size DPPP motors, and 2 percent for standard-size DPPP motors.

At TSL 7, the projected change in INPV ranges from a decrease of \$214.2 million to an increase of \$79.0 million, which correspond to a decrease of 32.4 percent and an increase of 12.0 percent, respectively. DOE estimates that industry must invest \$56.2 million to comply with standards set at TSL 7. DOE estimates that approximately 93 percent of extra-small size DPPP motor shipments, 24 percent of small size DPPP motor shipments, and 62 percent of standard size DPPP motor shipments would meet the efficiency levels analyzed at TSL 7, in the no-new-standards case. At TSL 7, most DPPP motor manufacturers would be required to redesign almost all of their small size DPPP motor models to be variable-speed motors covered by this rulemaking. However, as previously stated DPPP motor manufacturers would have 4 years to complete this redesign process for the small size DPPP motor models.

After considering the analysis and weighing the benefits and burdens, the Secretary has concluded that a standard set at TSL 7 for DPPP motors is economically justified. At this TSL, the average LCC savings are positive for each equipment classes for which a new standard is considered. An estimated 18 percent of all DPPP motor consumers experience a net cost. The FFC national energy savings are significant and the NPV of consumer benefits is positive at TSL 7 using both a 3-percent and 7-percent discount rate. Notably, the benefits to consumers vastly outweigh the cost to manufacturers. At TSL 7, the NPV of consumer benefits, even measured at the more conservative discount rate of 7 percent, is over 25 times higher than the maximum estimated manufacturers' loss in INPV. The standard levels at TSL 7 are

<sup>139</sup> Best approximation based on the efficiency level analyzed.

economically justified even without weighing the estimated monetary value of emissions reductions. When those emissions reductions are included—representing \$2.0 billion in climate benefits (associated with the average SC–GHG at a 3-percent discount rate), and \$3.9 billion (using a 3-percent discount rate) or \$2.0 billion (using a 7-percent discount rate) in health benefits—the rationale becomes stronger still.

As stated, DOE conducts the walk-down analysis to determine the TSL that represents the maximum improvement in energy efficiency that is technologically feasible and economically justified as required under EPCA. The walk-down is not a comparative analysis, as a comparative analysis would result in the maximization of net benefits instead of energy savings that are technologically feasible and economically justified, which would be contrary to the statute. 86 FR 70892, 70908. Although DOE has not conducted a comparative analysis to select the new energy conservation standards, DOE notes while the average LCC savings for extra-small-size DPPP

motors are negative at TSL 8, they are positive at TSL 7 and the average LCC savings for standard-size and small size DPPP motors are the same at TSL 7 and TSL 8. In addition, as compared to TSL 8, TSL 7 has smaller percentages of electric motor consumers experiencing a net cost, a lower maximum decrease in INPV, lower manufacturer conversion costs and allow manufacturers 4 years to redesign their small size DPPP motor models to meet the efficiency levels required at TSL 7, compared to 2 years at TSL 8. Across all consumers, TSL 7 represents the largest average LCC savings for each equipment class of any TSL.

Although DOE considered new standard levels for DPPP motors by grouping the efficiency levels for each equipment class into TSLs, DOE evaluates all analyzed efficiency levels in its analysis. For standard-size and small-size DPPP motors, TSL 7 (*i.e.*, the adopted TSL) includes the max-tech efficiency levels, which is the maximum level determined to be technologically feasible. For extra-small-size DPPP motors, TSL 7 represents the efficiency level that is one level below the max-

tech efficiency level. As discussed previously, the max-tech efficiency levels for extra-small-size DPPP motor would result in negative LCC savings and a majority of consumers experiencing a net LCC cost. The benefits of max-tech efficiency levels for extra-small-size DPPP motors do not outweigh the negative impacts to consumers and manufacturers. Therefore, DOE has concluded that the max-tech efficiency levels are not justified. The ELs at the adopted TSL result in average positive LCC savings for each equipment class, reduce the number of consumers experiencing a net cost, and reduce the decrease in INPV and conversion costs to the point where DOE has concluded they are economically justified, as discussed for TSL 7 in the preceding paragraphs.

Therefore, based on the previous considerations, DOE adopts the energy conservation standards for DPPP motors at TSL 7. The new energy conservation standards for DPPP motors, which are expressed in full-load efficiency and design requirements, are shown in Table V.28.

TABLE V.28—ENERGY CONSERVATION STANDARDS FOR DPPP MOTORS (TSL 7)

| Motor total horsepower (THP) | Performance standard: full-load efficiency (%) | Design requirement: speed capability | Design requirement: freeze protection                    | Compliance date     |
|------------------------------|------------------------------------------------|--------------------------------------|----------------------------------------------------------|---------------------|
| THP < 0.5 .....              | 69                                             | None .....                           | None .....                                               | September 29, 2025. |
| 0.5 ≤ THP < 1.15 .....       | .....                                          | Variable speed control * .....       | Only for DPPP motors with freeze protection controls **. | September 28, 2027. |
| 1.15 ≤ THP ≤ 5 .....         | .....                                          | Variable speed control * .....       | Only for DPPP motors with freeze protection controls **. | September 29, 2025. |

\* A variable speed motor is a DPPP motor that meets the definition of “variable-speed control dedicated-purpose pool pump motor” as defined by UL 1004–10:2022.

\*\* DPPP motors with freeze protection controls are to be shipped with the freeze protection feature disabled, or with the following user-adjustable default settings: (a) the dry-bulb air temperature setting shall be no greater than 40 °F; (b) the run time setting shall be no greater than 1 hour (before the temperature is rechecked); and (c) the motor speed in freeze protection mode shall not be more than half of the maximum operating speed.

## 2. Annualized Benefits and Costs of the Adopted Standards

The benefits and costs of the adopted standards can also be expressed in terms of annualized values. The annualized net benefit is (1) the annualized national economic value (expressed in 2022\$) of the benefits from operating products that meet the adopted standards (consisting primarily of operating cost savings from using less energy), minus increases in product purchase costs and (2) the annualized monetary value of the climate and health benefits.

Table V.29 shows the annualized values for DPPP motors under TSL 7,

expressed in 2022\$. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and NO<sub>x</sub> and SO<sub>2</sub> reductions, and the 3-percent discount rate case for GHG social costs, the estimated cost of the adopted standards for DPPP motors is \$221 million per year in increased equipment installed costs, while the estimated annual benefits are \$684 million from reduced equipment operating costs, \$103 million in GHG reductions, and \$173 million from reduced NO<sub>x</sub> and SO<sub>2</sub> emissions. In this case, the net benefit amounts to \$739 million per year.

Using a 3-percent discount rate for consumer benefits and costs and NO<sub>x</sub> and SO<sub>2</sub> reductions, and the 3-percent discount rate case for GHG social costs, the estimated cost of the adopted standards for DPPP motors is \$204 million per year in increased equipment installed costs, while the estimated annual benefits are \$738 million from reduced equipment operating costs, \$103 million in GHG reductions, and \$205 million from reduced NO<sub>x</sub> and SO<sub>2</sub> emissions. In this case, the net benefit amounts to \$841 million per year.

TABLE V.29—ANNUALIZED MONETIZED BENEFITS AND COSTS OF ADOPTED STANDARDS (TSL 7) FOR DPPP MOTORS

|                                             | Million 2022\$/year |                           |                            |
|---------------------------------------------|---------------------|---------------------------|----------------------------|
|                                             | Primary estimate    | Low-net-benefits estimate | High-net-benefits estimate |
| <b>3% discount rate</b>                     |                     |                           |                            |
| Consumer Operating Cost Savings .....       | 738                 | 721                       | 760                        |
| Climate Benefits * .....                    | 103                 | 103                       | 103                        |
| Health Benefits ** .....                    | 205                 | 205                       | 205                        |
| Total Monetized Benefits † .....            | 1,046               | 1,029                     | 1,068                      |
| Consumer Incremental Equipment Costs .....  | 204                 | 235                       | 173                        |
| Monetized Net Benefits .....                | 841                 | 793                       | 895                        |
| Change in Producer Cashflow (INPV ††) ..... | (17)–6              | (17)–6                    | (17)–6                     |
| <b>7% discount rate</b>                     |                     |                           |                            |
| Consumer Operating Cost Savings .....       | 684                 | 671                       | 703                        |
| Climate Benefits * (3% discount rate) ..... | 103                 | 103                       | 103                        |
| Health Benefits ** .....                    | 173                 | 173                       | 173                        |
| Total Monetized Benefits † .....            | 960                 | 947                       | 979                        |
| Consumer Incremental Equipment Costs .....  | 221                 | 250                       | 190                        |
| Monetized Net Benefits .....                | 739                 | 696                       | 790                        |
| Change in Producer Cashflow (INPV ††) ..... | (17)–6              | (17)–6                    | (17)–6                     |

**Note:** This table presents the costs and benefits associated with DPPP motors shipped in 2026–2055, except for small-size DPPP motors where shipments in 2028–2055 are considered. These results include benefits to consumers which accrue after 2055 from the products shipped in 2026–2055 (or 2028–2055). The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the AEO2023 Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect a medium decline rate in the Primary Estimate, an increasing rate in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in sections IV.F.1 and IV.H.3 of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

\* Climate benefits are calculated using four different estimates of the global SC–GHG (see section IV.L of this document). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate, and it emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates. To monetize the benefits of reducing GHG emissions this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG).

\*\* Health benefits are calculated using benefit-per-ton values for NO<sub>x</sub> and SO<sub>2</sub>. DOE is currently only monetizing (for SO<sub>2</sub> and NO<sub>x</sub>) PM<sub>2.5</sub> precursor health benefits and (for NO<sub>x</sub>) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct PM<sub>2.5</sub> emissions. See section IV.L of this document for more details.

† Total benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but the Department does not have a single central SC–GHG point estimate.

‡ Costs include incremental equipment costs as well as installation costs.

†† Operating Cost Savings are calculated based on the life cycle costs analysis and national impact analysis as discussed in detail below. See sections IV.F and IV.H of this document. DOE's NIA includes all impacts (both costs and benefits) along the distribution chain beginning with the increased costs to the manufacturer to manufacture the equipment and ending with the increase in price experienced by the consumer. DOE also separately conducts a detailed analysis on the impacts on manufacturers (the MIA). See section IV.J of this document. In the detailed MIA, DOE models manufacturers' pricing decisions based on assumptions regarding investments, conversion costs, cashflow, and margins. The MIA produces a range of impacts, which is the rule's expected impact on the INPV. The change in INPV is the present value of all changes in industry cash flow, including changes in production costs, capital expenditures, and manufacturer profit margins. Annualized change in INPV is calculated using the industry weighted average cost of capital value of 7.2% that is estimated in the manufacturer impact analysis (see chapter 12 of the Final Rule TSD for a complete description of the industry weighted average cost of capital). For DPPP motors, those values are –\$17 million and \$6 million. DOE accounts for that range of likely impacts in analyzing whether a TSL is economically justified. See section V.C of this document. DOE is presenting the range of impacts to the INPV under two markup scenarios: the Preservation of Gross Margin scenario, which is the manufacturer markup scenario used in the calculation of Consumer Operating Cost Savings in this table, and the Preservation of Operating Profit Markup scenario, where DOE assumed manufacturers would not be able to increase per-unit operating profit in proportion to increases in manufacturer production costs. DOE includes the range of estimated annualized change in INPV in the above table, drawing on the MIA explained further in section IV.J of this document, to provide additional context for assessing the estimated impacts of this rule to society, including potential changes in production and consumption, which is consistent with OMB's Circular A–4 and E.O. 12866. If DOE were to include the INPV into the annualized net benefit calculation for this final rule, the annualized net benefits would range from \$824 million to \$847 million at 3-percent discount rate and range from \$722 million to \$745 million at 7-percent discount rate.

## VI. Procedural Issues and Regulatory Review

### A. Review Under Executive Orders 12866, 13563, and 14904

Executive Order (“E.O.”) 12866, “Regulatory Planning and Review,” as supplemented and reaffirmed by E.O. 13563, “Improving Regulation and Regulatory Review,” 76 FR 3821 (Jan. 21, 2011), and 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 constitutes a “significant regulatory action” within the scope of section 3(f)(1) of E.O. 12866, as amended by E.O. 14094. Accordingly, pursuant to section 6(a)(3)(C) of E.O. 12866, DOE has provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the final regulatory action, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives. These assessments are summarized in this preamble and further detail can be found in the technical support document for this final rule.

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

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation 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 final rule.

For manufacturers of DPPP motors, the SBA has set a size threshold, which defines those entities classified as “small businesses” for the purposes of the statute. DOE used the SBA’s small business size standards to determine whether any small entities would be subject to the requirements of the rule. (See 13 CFR part 121.) The size standards are listed by North American Industry Classification System (“NAICS”) code and industry description and are available at [www.sba.gov/document/support-table-size-standards](http://www.sba.gov/document/support-table-size-standards). Manufacturing of DPPP motors is classified under NAICS 335312, “Motor and Generating Manufacturing.” The SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category.

#### 1. Need for, Objectives of, and Legal Basis for, Rule

The need for, and objective of this final rule are stated elsewhere in the preamble and not repeated here.

#### 2. Significant Comments in Response to the IRFA

DOE received one comment with respect to the initial regulatory flexibility analysis. PHTA and NEMA commented that are not aware of any domestic DPPP motor manufacturer that qualifies as a small business. (PHTA and NEMA, No. 92 at p.13) However, based on information gathered from DPPP motor manufacturer websites, DOE identified one DPPP motor manufacturer that sells DPPP motors covered by this rulemaking and has fewer than 1,250 employees. Additionally, PHTA and NEMA commented that they are aware of one domestic DPPP manufacturer that is a small business and encouraged DOE to verify any impacts of the DPPP motors energy conservation standards on that DPPP small business. (PHTA and NEMA, No. 92 at p.13) DOE conducted an MIA on the manufacturers of the equipment that are being regulated by this rulemaking, which is DPPP motors. DOE did not conduct a MIA on manufacturers of products or equipment that use DPPP motors in the products or equipment they manufacture.

#### 3. Comments Filed by the Chief Counsel for Advocacy

The SBA’s Chief Counsel for Advocacy did not submit comments on this rulemaking.

#### 4. Description on Estimated Number of Small Entities Regulated

DOE reviewed the standard levels considered in this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. During its market survey, DOE used publicly available information to identify potential small manufacturers. DOE’s research involved industry trade association membership directories (e.g., AHRI), information from previous rulemakings, individual company websites, and market research tools (e.g., D&B Hoover’s reports) to create a list of companies that manufacture DPPP motors.

As previously stated, manufacturing of DPPP motors is classified under NAICS 335312, “Motor and Generator Manufacturing,” for which the SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business. DOE screened out companies that do not offer products impacted by this rulemaking, do not meet the definition of a “small business,” or are foreign owned and operated.

DOE identified five companies that manufacture DPPP motors for the domestic market, of those DOE determined that one company met the SBA definition of a small business. DOE contacted this small business regarding a discussion of potential DPPP motor standards, but the small business was not interested in discussing potential impacts of energy conservation standards on DPPP motors.

#### 5. Description and Estimate of Compliance Requirements Including Differences in Cost, if Any, for Different Groups of Small Entities

DOE reviewed the website and catalog offerings of the identified small business and determined that the manufacturer offers extra-small size DPPP motors and standard size DPPP motors that would meet requirements under the adopted standards. However, the small business does not manufacture any small size DPPP motors that would meet the requirements under the adopted standard for small size DPPP motors. Therefore, if the manufacturer chooses to continue to sell small size DPPP motors, this small business is expected to need to introduce at least one variable-speed, small size DPPP motor model in order to comply with the energy conservation standards adopted in this final rule.

There are two types of costs the small business could incur due to the adopted standards for DPPP motors: product conversion costs and capital conversion



costs. Product conversion costs are investments in R&D, testing, marketing, and other non-capitalized costs necessary to make equipment designs comply with new energy conservation standards. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new compliant equipment designs can be fabricated and assembled.

DOE anticipates that the small business will incur approximately \$1.1 million in product conversion costs—accounting for the compensation of four full-time engineers for 24 months of product design and testing work—and approximately \$2.5 million in capital conversion costs to build a suitable production line to manufacture one small size DPPP motor model that would comply with the energy conservation standards for the small size DPPP motors adopted in this final rule. Therefore, this small business would incur a total of approximately \$3.6 million in conversion costs. DOE was able to identify an annual revenue estimate of approximately \$28.2 million for the small business. The \$3.6 million in conversion cost represents approximately 12.8 percent of the estimated annual revenue of the small business.

DOE assumes that this small DPPP motor manufacturer would spread these costs over the four-year compliance timeframe, as standards require compliance for the small size DPPP motors four years after the publication of this final rule. Therefore, DOE assumes that this small business would incur on average about \$900,000 or approximately 3.2 percent of its annual revenue in each of the four years leading up to the compliance date for small size DPPP motors.

#### 6. Significant Alternatives to the Rule

The discussion in the previous section analyzes impacts on small businesses that would result from the adopted standards, represented by TSL 7. In reviewing alternatives to the adopted standards, DOE examined energy conservation standards set at lower efficiency levels. While TSL 1 through TSL 6 would reduce the impacts on small business manufacturers, it would come at the expense of a reduction in energy savings and consumer NPV. TSL 1 achieves 93 percent lower energy savings and 91 percent lower consumer net benefits compared to the energy savings and consumer net benefits at TSL 7. TSL 2 achieves 87 percent lower energy savings and 87 percent lower consumer net benefits compared to the energy

savings and consumer net benefits at TSL 7. TSL 3 achieves 55 percent lower energy savings and 78 percent lower consumer net benefits compared to the energy savings and consumer net benefits at TSL 7. TSL 4 achieves 42 percent lower energy savings and 65 percent lower consumer net benefits compared to the energy savings and consumer net benefits at TSL 7. TSL 5 achieves 35 percent lower energy savings and 62 percent lower consumer net benefits compared to the energy savings and consumer net benefits at TSL 7. TSL 6 achieves 39 percent lower energy savings and 16 percent lower consumer net benefits compared to the energy savings and consumer net benefits at TSL 7.

DOE believes that establishing standards at TSL 7 balances the benefits of the energy savings at TSL 7 with the potential burdens placed on DPPP motors manufacturers, including the one small business manufacturer. Accordingly, DOE is not adopting one of the other TSLs considered in the analysis, or the other policy alternatives examined as part of the regulatory impact analysis and included in chapter 17 of the final rule TSD.

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

Manufacturers of DPPP motors 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 DPPP motors, 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 DPPP motors. (*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.

Certification data will be required for DPPP motors; however, DOE is not adopting certification or reporting requirements for DPPP motors in this final rule. Instead, DOE will consider proposals to establish certification

requirements and reporting for DPPP motors 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 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 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. For the reasons described below, DOE has examined this final rule and

has determined that this rule meets the relevant standards of E.O. 13132.

E.O. 13132 includes special requirements for preemption, including that Federal agencies must only construe a Federal statute to preempt State law where the statute includes express preemption or some other clear evidence that Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute. EPCA governs and prescribes express Federal preemption of State regulations as to energy conservation for the equipment that are the subject of this final rule. As such, any State regulation regarding the energy efficiency or use of DPPP motors will be preempted on the compliance dates listed in the **DATES** section. 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)

#### 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 has concluded that this final rule may require expenditures of \$100 million or more in any one year by the private sector. Such expenditures may include (1) investment in research and development and in capital expenditures by DPPP motors manufacturers in the years between the final rule and the compliance date for the new standards and (2) incremental additional expenditures by consumers to purchase higher-efficiency DPPP motors, starting at the compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the final rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of this document and the TSD for this final rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and

consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law.

As required by 42 U.S.C. 6295(o)(A) through 42 U.S.C. 6316(a), this final rule establishes new energy conservation standards for DPPP motors that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in chapter 17 of the TSD for this final rule.

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

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

#### I. Review Under Executive Order 12630

Pursuant to E.O. 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights,” 53 FR 8859 (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%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 at 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 new energy conservation standards for DPPP motors, 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>140</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>141</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 determined that the rule is 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 UL 1004–10:2022. UL 1004–10:2022 establishes scope and definition requirements for certain DPPP motors and describes methods to verify the product-specific enforcement requirements. UL 1004–10:2022 is readily available at UL’s website at [https://www.shopulstandards.com/ProductDetail.aspx?productId=UL1004-10\\_1\\_S\\_20200228](https://www.shopulstandards.com/ProductDetail.aspx?productId=UL1004-10_1_S_20200228).

### VII. Approval of the Office of the Secretary

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

<sup>140</sup> The 2007 “Energy Conservation Standards Rulemaking Peer Review Report” is available at the following website: [energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0](http://energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0) (last accessed 2/6/2023).

<sup>141</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).

### List of Subjects

#### 10 CFR Part 429

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

#### 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 July 27, 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 September 15, 2023.

**Treena V. Garrett,**

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

For the reasons set forth in the preamble, DOE amends parts 429 and 431 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

### PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

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

■ 2. Amend § 429.4 by adding paragraph (h) to read as follows:

#### § 429.4 Materials incorporated by reference.

\* \* \* \* \*

(h) *UL*. Underwriters Laboratories, 333 Pfingsten Road, Northbrook, IL 60062; (841) 272–8800; [www.ul.com](http://www.ul.com).

(1) UL 1004–10 (“UL 1004–10:2022”), *Standard for Safety for Pool Pump Motors*, Revised First Edition, Dated March 24, 2022; IBR approved for § 429.134.

(2) [Reserved]

■ 3. Amend § 429.134 by adding paragraph (ee) to read as follows:

**§ 429.134 Product-specific enforcement provisions.**

\* \* \* \* \*

(ee) *Dedicated-purpose pool pump motors.* (1) To verify the dedicated-purpose pool pump motor variable speed capability, a test in accordance with section 5 of UL 1004–10:2022 (incorporated by reference, see § 429.4) will be conducted.

(2) To verify that dedicated-purpose pool pump motor comply with the applicable freeze protection design requirements, a test in accordance with section 6 of UL 1004–10:2022 will be conducted.

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

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

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

■ 5. Amend § 431.481 by revising paragraph (b) to read as follows:

**§ 431.481 Purpose and scope.**

\* \* \* \* \*

(b) *Scope.* The requirements of this subpart apply to dedicated-purpose pool pump motors, as specified in paragraphs 1.2, 1.3 and 1.4 of UL 1004–10:2022 (incorporated by reference, see § 431.482).

\* \* \* \* \*

■ 6. Amend § 431.482 by revising paragraphs (a) and (c)(1) to read as follows:

**§ 431.482 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, the Department of Energy (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), <https://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:

\* \* \* \* \*

(c) \* \* \*

(1) UL 1004–10 (“UL 1004–10:2022”), *Standard for Safety for Pool Pump Motors*, Revised First Edition, Dated March 24, 2022; IBR approved for §§ 431.481 and 431.483.

\* \* \* \* \*

■ 7. Revise § 431.483 to read as follows:

**§ 431.483 Definitions.**

The definitions applicable to this subpart are defined in section 2 “Glossary” of UL 1004–10:2022 (incorporated by reference, see § 431.482). In addition, the following definition applies:

*Basic model* means all units of dedicated purpose pool pump motors manufactured by a single manufacturer, that are within the same equipment class, have electrical characteristics that are essentially identical, and do not have any differing physical or functional characteristics that affect energy consumption or efficiency.

■ 8. Add § 431.485 to subpart Z to read as follows:

**§ 431.485 Energy conservation standards.**

(a) For the purpose of paragraphs (b), (c) and (d) of this section, “THP” means dedicated-purpose-pool pump motor total horsepower.

(b) Each dedicated-purpose pool pump motor manufactured starting on September 29, 2025, with a THP less than 0.5 THP, must have a full-load efficiency that is not less than 69 percent.

(c) Each dedicated-purpose pool pump motor manufactured starting on the dates provided in table 1 to this paragraph (c) with a THP greater than or equal to 0.5 THP must be a variable speed control dedicated-purpose pool pump motor, and must follow the requirements in paragraph (d) of this section.

TABLE 1 TO PARAGRAPH (c)

| Equipment class                 | Compliance date     |
|---------------------------------|---------------------|
| Small-size (0.5 ≤ THP < 1.15).  | September 28, 2027. |
| Standard-size (1.15 ≤ THP ≤ 5). | September 29, 2025. |

(d) All dedicated-purpose pool pump motors with a THP greater than or equal to 0.5 THP and distributed in commerce with freeze protection controls, must be shipped with freeze protection disabled or with the following user-adjustable settings:

(1) The default dry-bulb air temperature setting is no greater than 40 °F;

(2) The default run time setting shall be no greater than 1 hour (before the temperature is rechecked); and

(3) The default motor speed (in revolutions per minute, or rpm) in freeze protection mode shall not be more than half of the maximum operating speed.

[FR Doc. 2023–20343 Filed 9–27–23; 8:45 am]

**BILLING CODE 6450–01–P**



# FEDERAL REGISTER

---

Vol. 88  
No. 187

Thursday,  
September 28, 2023

---

## Part III

### The President

---

Proclamation 10628—National Historically Black Colleges and Universities Week, 2023

Proclamation 10629—Asian American and Native American Pacific Islander-Serving Institutions Week, 2023

Proclamation 10630—National Hunting and Fishing Day, 2023

Proclamation 10631—National Public Lands Day, 2023



# Presidential Documents

Title 3—

Proclamation 10628 of September 22, 2023

The President

**National Historically Black Colleges and Universities Week, 2023**

**By the President of the United States of America**

## A Proclamation

Our Nation's Historically Black Colleges and Universities (HBCUs) are rooted in a fundamental tenet of our democracy: A quality education is a right that belongs to all people, and every single American should be free to pursue the limits of their talent and ambition. During National Historically Black Colleges and Universities Week, we recommit to supporting and investing in HBCUs so they can continue the essential work of educating and empowering students who enrich the soul of our Nation.

Throughout their history, HBCUs have instilled in their students a sense of culture and purpose and a commitment to making a difference in the lives of all Americans. They are centers of academic excellence, producing 40 percent of all Black engineers in America, 50 percent of all Black lawyers in America, 70 percent of all Black doctors and dentists in America, and 80 percent of all Black judges in America. They are incubators of scholars and educators; advocates and athletes; and leaders in every sector of our society, including industry, public interest firms, faith, medicine, and the arts and sciences. They have molded trailblazers, visionaries, and public servants, who have helped make our democracy more inclusive and equitable. I see the excellence of HBCUs manifested every day in my Administration by HBCU alumni who are gifted members of my cabinet—like Vice President Kamala Harris and Administrator of the Environmental Protection Agency Michael Regan—and in staff serving at all levels of my Administration.

Despite the wealth of their contributions to our society, HBCUs often do not have the same endowments and financial resources as other colleges and universities. That is not only unfair—it undermines the full potential of our Nation. It means leading institutions are often unable to build and fund research labs, which can lead to the new technologies and innovations that define American excellence. That is why, with the help of Vice President Harris, my Administration has delivered more than \$7 billion to HBCUs—including to prepare students to contribute to the future in high-demand and high-income fields, like cybersecurity, engineering, biochemistry, and health care. I have also re-established the White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for HBCUs to increase their participation in Federal programs that offer greater access to funding, ensuring HBCUs can continue to be engines of opportunity in the future.

While talent, creativity, and the willingness to work hard are everywhere in this country, equal opportunity is not. To make sure every American has the opportunity to pursue higher education, my Administration has increased the maximum Pell Grant by \$900—the largest increase in the last decade—and my new budget will put us on a path to double the maximum award by 2029. Further, in response to my budget, the Congress established a program to provide direct support to academic institutions by creating and sustaining evidence-based strategies that support students through college re-enrollment, retention, and completion.

There is still so much to do to make higher education more accessible and affordable. Last year, I announced a student debt relief plan, and we were on the verge of providing thousands of dollars in relief to more than 40 million Americans. Then the Supreme Court ruled against it, derailing an opportunity that would have changed so many lives for the better. Though that decision closed one door, I responded immediately by announcing that my Administration is pursuing an alternative path for debt relief, and that we finalized the Saving on a Valuable Education Program (SAVE)—the most affordable student loan repayment program ever created.

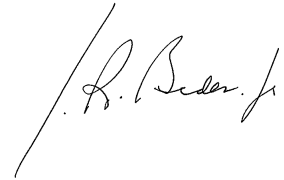
This program calculates loan payments based on a student's income and family size, not on the size of the loan. Under this plan, some students' monthly payments will drop to zero, and others will save around \$1,000 a year. Borrowers who pay what they owe on this plan will no longer see their loans grow due to unpaid interest, and the program will get some borrowers to forgiveness faster. I will never stop fighting to create the student debt relief Americans need to help restore their faith in the American Dream. With the Supreme Court's decision to effectively end affirmative action, my Administration will continue fighting to put quality education within reach of everyone and fulfill the promise of America for all Americans. Lastly, my Administration is aware that there have been threats by domestic extremists who may seek to spread fear on HBCU campuses. We are committed to protecting any and all Americans who find themselves on the frontline of domestic extremist threats or violence.

More than five decades ago, in response to an act of racist terror, a young Morehouse student named Martin Luther King, Jr. wrote a letter to the Atlanta Constitution saying, "We want and are entitled to the basic rights and opportunities of American citizens." In those words, we see just one example of the sacred and proud tradition of HBCUs: opening the doors of opportunity wider for students, helping them find the power in their voice, and giving them the tools to make true change in our world. Today, we recommit to supporting HBCUs that, in raising the next generation of dreamers and doers, bring more equity, prosperity, and opportunity for our Nation.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 24 through September 30, 2023, as National Historically Black Colleges and Universities Week. I call upon educators, students, public officials, professional organizations, corporations, and all Americans to observe this week with appropriate programs, ceremonies, and activities that acknowledge the countless contributions these institutions and their alumni have made to our country.



IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of September, in the year of our Lord two thousand twenty-three, and of the Independence of the United States of America the two hundred and forty-eighth.

A handwritten signature in black ink, appearing to read "Joe Biden", with a long, sweeping horizontal line extending to the left.

## Presidential Documents

**Proclamation 10629 of September 22, 2023**

### **Asian American and Native American Pacific Islander-Serving Institutions Week, 2023**

**By the President of the United States of America**

#### **A Proclamation**

During National Asian American and Native American Pacific Islander-Serving Institutions (AANAPISIs) Week, we celebrate all the possibilities that these institutions unlock for Asian American, Native Hawaiian, and Pacific Islander (AA and NHPI) students, particularly those from low-income, first-generation, and underrepresented backgrounds. Every generation of Americans has benefited by opening the doors of opportunity to include those who have been left behind. By putting higher education within reach of AA and NHPI students, our Nation's nearly 200 AANAPISIs embody my belief that diversity is our strength as a Nation.

For so many, higher education is a ticket to a better life. But while talent, creativity, and determination are found in people all across this country, not everyone has an equal shot at higher education. AA and NHPI communities encompass more than 50 ethnicities with a variety of identities, cultures, histories, and backgrounds—many come from lower-income backgrounds, or are the first in their family to graduate college, indigenous, or recent immigrants, or have faced a legacy of discrimination in our Nation. That is why the work of our AANAPISIs is so critical for broadening the opportunity of higher education to more Americans and realizing the full potential of AA and NHPI communities.

AANAPISIs enroll nearly half of all AA and NHPI undergraduates, and they confer almost 50 percent of associate degrees and nearly 30 percent of baccalaureate degrees of all AA and NHPI students. These vital institutions empower students to earn degrees and reach their full potential while providing culturally responsive services and culturally sustaining programs that include tutoring, advising, career development and counseling, and more. With the Supreme Court's recent decision to effectively end affirmative action in college admissions, the work to make higher education accessible to all is as essential as ever. We need to keep open the doors of opportunities and ensure that the promise of America is big enough for everyone to succeed.

My Administration is committed to strengthening these critical institutions and supporting our Nation's AA and NHPI communities. Through the American Rescue Plan, we have invested \$5 billion in AANAPISIs. Further, I re-established the White House Initiative on Asian Americans, Native Hawaiians, and Pacific Islanders, and I released a National Strategy to Advance Equity, Justice, and Opportunity for AA and NHPI Communities—addressing everything from combating anti-Asian hate to making Government services more accessible.

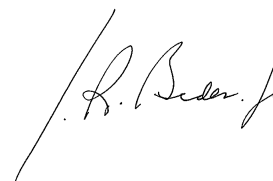
We are also fighting to make higher education more affordable for students across the country. My Administration has increased Pell Grants for low-income families by the largest amount in over a decade and fixed the Public Service Loan Forgiveness program so borrowers who become teachers, police officers, social workers, service members, and other public servants get the debt relief they are entitled to under the law. When the Supreme Court wrongly struck down our most ambitious student debt relief plan

ever, we moved immediately to open an alternative path to debt relief that could further reduce costs for many AA and NHPI borrowers. My Saving on a Valuable Education (SAVE) plan will cut payments on undergraduate loans in half, bring many low-income borrowers' loan payments to \$0 per month, and provide early forgiveness for borrowers with low balances.

This generation of students is the most gifted, talented, and tolerant in American history—and it is up to all of us to give them the resources and opportunity they need to reach their full potential. During Asian American and Native American Pacific Islander-Serving Institutions Week, may we recommit to supporting these institutions as they raise the next generation of AA and NHPI dreamers and doers.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 25 through October 1, 2023, as Asian American and Native American Pacific Islander-Serving Institutions Week. I call on public officials, educators, and all the people of the United States to observe this week with appropriate programs, ceremonies, and activities that acknowledge the many ways these institutions and their graduates contribute to our country.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of September, in the year of our Lord two thousand twenty-three, and of the Independence of the United States of America the two hundred and forty-eighth.

A handwritten signature in black ink, appearing to read "Joe Biden", with a long, sweeping horizontal line extending to the left.

## Presidential Documents

**Proclamation 10630 of September 22, 2023**

### **National Hunting and Fishing Day, 2023**

**By the President of the United States of America**

#### **A Proclamation**

America's natural wonders are the heart and soul of our Nation, and the tens of millions of Americans who hunt and fish have often led the fight to conserve them. On National Hunting and Fishing Day, we recommit to the work of conservation and celebrate the place that hunting and fishing hold in our national story, embodying the American spirit of adventure and resourcefulness.

Hunting and fishing have long been a way of life and a cherished pastime in our Nation, and central to the cultures and livelihoods of Tribal Nations. From day one, I have taken historic steps to conserve the lands and waters that these activities rely on and to ensure our public lands are available to every American.

In my first week as President, I signed an Executive Order establishing our country's most ambitious conservation goal ever: to conserve or restore at least 30 percent of our Nation's lands and waters by 2030. In just my first year in office, we protected more territory than any President since John F. Kennedy. We have protected iconic and sacred places from Alaska's Tongass Forest to Avi Kwa Ame National Monument and the Bears Ears and Grand Staircase-Escalante National Monuments—all as part of our "America the Beautiful" initiative to support locally led conservation and restoration work. In addition, we have expanded access for hunting and fishing on over two million acres of land within our national wildlife refuge system, the largest such expansion in recent history. Working together with the Hunting and Wildlife Conservation Council, the Departments of Agriculture and the Interior are pursuing further improvements to hunters' and anglers' access to public lands and waters.

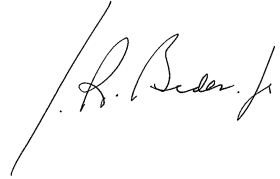
At the same time, climate change poses an existential threat to wildlife and their habitats. Longer heatwaves and droughts, more unpredictable storms, and more devastating wildfires make hunting and fishing tougher and far riskier. We have fought to change that. Through the landmark Inflation Reduction Act, my Administration is making the biggest investment in combating the climate crisis in the history of the world by strengthening clean energy, advancing environmental justice, and shoring up communities' resilience to extreme weather, ensuring that hunting and fishing can sustainably continue as they have for generations.

It is simple: Hunting and fishing are part of who we are as Americans—central to our history, heritage, and prosperity and ingrained in the soul of our Nation. Protecting the natural resources that allow hunting and fishing are also an important part of upholding our sacred trust, treaty, and subsistence responsibilities to Tribal Nations and Indigenous communities. On National Hunting and Fishing Day, we honor these profound contributions and recommit to working together with sportsmen and sportswomen, land owners, State officials, local leaders, and Tribal Nations to safeguard our great outdoors for the ages.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 23, 2023,

as National Hunting and Fishing Day. I call upon all Americans to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of September, in the year of our Lord two thousand twenty-three, and of the Independence of the United States of America the two hundred and forty-eighth.

A handwritten signature in black ink, appearing to read "Joe Biden", with a long, sweeping horizontal line extending to the left.

## Presidential Documents

**Proclamation 10631 of September 22, 2023**

### **National Public Lands Day, 2023**

**By the President of the United States of America**

#### **A Proclamation**

Our public lands—including our national parks, monuments, forests, and wildlife preserves—are irreplaceable and home to so many of the natural wonders that represent the heart and soul of our Nation. They unite and inspire us, and from generation to generation, they have sustained us. On National Public Lands Day, we welcome every American to celebrate our Nation's lands and waters in all their splendor.

As we honor the power and promise of our Nation's natural majesty, we also recommit to conserving our lands and waters for generations to come. When we conserve our public lands, we are doing more than protecting their beauty. We protect the places where history was made. We safeguard the air we breathe and the water we drink. We defend the livelihoods of people who depend on these lands and waters as a way of life, like our ranchers, outfitters, guides, and rural and Indigenous communities. We honor the sacred lands that Tribal Nations have stewarded since time immemorial. We make our Nation more resilient to the impacts of climate change.

That is why my Administration has developed the most ambitious land and water conservation agenda in American history. During my first week in office, I issued an Executive Order establishing the country's first-ever National Conservation Goal to protect at least 30 percent of our lands and waters by 2030. That means supporting locally led, voluntary conservation and restoration efforts across the country—the very cornerstone of my “America the Beautiful” initiative. I also signed an Executive Order to protect America's forests, harness the power of nature in the fight against climate change, and initiate the first National Nature Assessment to evaluate the state of our lands, waters, and wildlife.

Together, we have made strong progress toward those goals. My Inflation Reduction Act represents the largest investment in our history dedicated to confronting the climate crisis. Along with investments from the Bipartisan Infrastructure Law, these investments will also help fuel environmental justice and conservation efforts, including more than \$50 billion dedicated to strengthening the resilience of our communities and ecosystems to the impacts of climate change. To address the wildfire crisis, many Americans who care for our Nation's forests are using these investments to implement critical conservation and stewardship practices, working toward our goal of reducing the wildfire risk on up to 50 million acres of public and private land through science-based fuels and forest health treatments—a land size equal to that of South Dakota.

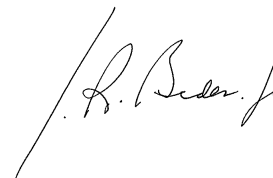
I have designated five new national monuments and restored protections for lands and waters across the country. In Alaska, we protected the Tongass National Forest and the salmon of Bristol Bay and took significant steps to protect the fragile coastal plain of the Arctic National Wildlife Refuge and special areas in the Western Arctic. We restored the protections and status that the previous administration rolled back in the Bears Ears National Monument, the Grand Staircase-Escalante National Monument, and the North East Canyons and Seamounts Marine National Monument. I had the honor of visiting Camp Hale Continental Divide in Colorado last year and adding

it to the list of national monuments, for the first time in our history. I established the Avi Kwa Ame National Monument in Nevada, considered one of the most sacred places on Earth by several Tribal Nations. Most recently, I protected almost one million acres of public land around the Grand Canyon National Park as the new Baaj Nwaavjo I'tah Kukveni National Monument. I declared the entire United States Arctic Ocean off-limits to new oil and gas development, and my budget for next year requests new funding to ensure that public lands are accessible to every American.

In celebration of our public lands, several Federal agencies have announced that all of our country's national parks, forests, refuges, and grasslands will have a "Fee-Free Day" on September 23rd so everyone can access some of our Nation's most iconic places and all their wonder, free of charge. There are also several fee-free days throughout the year, and the last for 2023 will occur on Veterans Day, November 11th. Whether it is visiting the rolling hills of the Appalachians, the majestic Grand Canyon, or the towering peaks of Mt. Rainier in Washington State, I encourage all Americans to take some time to explore the beauty our country has to offer.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 23, 2023, as National Public Lands Day. I invite all Americans to join me in a day of service for our public lands. I also encourage volunteers from across the Nation to celebrate and care for our lands and waters by reforesting the land, maintaining trails, building bridges, nurturing native ecosystems, removing invasive species, and doing other conservation work to serve the lands and waters that support and sustain us.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of September, in the year of our Lord two thousand twenty-three, and of the Independence of the United States of America the two hundred and forty-eighth.

A handwritten signature in black ink, appearing to read "Joe Biden", with a long, sweeping horizontal line extending to the left.

# Reader Aids

## Federal Register

Vol. 88, No. 187

Thursday, September 28, 2023

### CUSTOMER SERVICE AND INFORMATION

|                                                     |                     |
|-----------------------------------------------------|---------------------|
| <b>Federal Register/Code of Federal Regulations</b> |                     |
| General Information, indexes and other finding aids | <b>202-741-6000</b> |
| <b>Laws</b>                                         | <b>741-6000</b>     |
| <b>Presidential Documents</b>                       |                     |
| Executive orders and proclamations                  | <b>741-6000</b>     |
| <b>The United States Government Manual</b>          | <b>741-6000</b>     |
| <b>Other Services</b>                               |                     |
| Electronic and on-line services (voice)             | <b>741-6020</b>     |
| Privacy Act Compilation                             | <b>741-6050</b>     |

### ELECTRONIC RESEARCH

#### World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: [www.govinfo.gov](http://www.govinfo.gov).

Federal Register information and research tools, including Public Inspection List and electronic text are located at: [www.federalregister.gov](http://www.federalregister.gov).

#### E-mail

**FEDREGTOC** (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to <https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new>, enter your email address, then follow the instructions to join, leave, or manage your subscription.

**PENS** (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html> and select *Join or leave the list (or change settings)*; then follow the instructions.

**FEDREGTOC** and **PENS** are mailing lists only. We cannot respond to specific inquiries.

**Reference questions.** Send questions and comments about the Federal Register system to: [fedreg.info@nara.gov](mailto:fedreg.info@nara.gov)

The Federal Register staff cannot interpret specific documents or regulations.

### FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

|             |    |
|-------------|----|
| 60317-60564 | 1  |
| 60565-60866 | 5  |
| 60867-61462 | 6  |
| 61463-61950 | 7  |
| 61951-62284 | 8  |
| 62285-62440 | 11 |
| 62441-62686 | 12 |
| 62687-62992 | 13 |
| 62993-63512 | 14 |
| 63513-63832 | 15 |
| 63833-64348 | 18 |
| 64349-64790 | 19 |
| 64791-65108 | 20 |
| 65109-65304 | 21 |
| 65305-65580 | 22 |
| 65581-65776 | 25 |
| 65777-66268 | 26 |
| 66269-66676 | 27 |
| 66677-67054 | 28 |

### CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

#### 3 CFR

|                       |       |
|-----------------------|-------|
| <b>Proclamations:</b> |       |
| 10610                 | 60817 |
| 10611                 | 60869 |
| 10612                 | 60871 |
| 10613                 | 60873 |
| 10614                 | 60875 |
| 10615                 | 60877 |
| 10616                 | 60879 |
| 10617                 | 61463 |
| 10618                 | 62443 |
| 10619                 | 62687 |
| 10620                 | 62689 |
| 10621                 | 62691 |
| 10622                 | 62693 |
| 10623                 | 64349 |
| 10624                 | 64791 |
| 10625                 | 65109 |
| 10626                 | 65111 |
| 10627                 | 65579 |
| 10628                 | 67045 |
| 10629                 | 67049 |
| 10630                 | 67051 |
| 10631                 | 67053 |

#### Executive Orders:

|       |       |
|-------|-------|
| 14107 | 62441 |
| 14108 | 66265 |

#### Administrative Orders:

|                                     |       |
|-------------------------------------|-------|
| <b>Memorandums:</b>                 |       |
| September 15,                       |       |
| 2023                                | 66669 |
| <b>Notices:</b>                     |       |
| Notice of September 7,              |       |
| 2023                                | 62433 |
| Notice of September 7,              |       |
| 2023                                | 62435 |
| Notice of September 7,              |       |
| 2023                                | 62437 |
| Notice of September 7,              |       |
| 2023                                | 62439 |
| <b>Presidential Determinations:</b> |       |
| No. 2023-10 of                      |       |
| September 13,                       |       |
| 2023                                | 64347 |
| No. 2023-11 of                      |       |
| September 15,                       |       |
| 2023                                | 66671 |
| No. 2023-12 of                      |       |
| September 15,                       |       |
| 2023                                | 66673 |

#### 5 CFR

|     |       |
|-----|-------|
| 302 | 60317 |
| 315 | 66677 |
| 317 | 60317 |
| 319 | 60317 |
| 330 | 60317 |
| 731 | 60317 |
| 754 | 60317 |
| 843 | 66679 |

|                        |       |
|------------------------|-------|
| 920                    | 60317 |
| 2424                   | 62445 |
| 2429                   | 65777 |
| <b>Proposed Rules:</b> |       |
| 210                    | 63862 |
| 212                    | 63862 |
| 213                    | 63862 |
| 302                    | 63862 |
| 432                    | 63862 |
| 451                    | 63862 |
| 532                    | 66300 |
| 752                    | 63862 |
| 843                    | 66304 |

#### 7 CFR

|                        |       |
|------------------------|-------|
| 210                    | 63833 |
| 215                    | 63833 |
| 220                    | 63833 |
| 225                    | 63833 |
| 226                    | 63833 |
| 235                    | 63833 |
| 245                    | 65778 |
| 760                    | 62285 |
| 3550                   | 60883 |
| <b>Proposed Rules:</b> |       |
| 271                    | 64756 |
| 275                    | 64756 |
| 1207                   | 60599 |
| 3560                   | 62475 |

#### 8 CFR

|                        |       |
|------------------------|-------|
| <b>Proposed Rules:</b> |       |
| 214                    | 65040 |
| 274a                   | 65040 |
| 1001                   | 62242 |
| 1003                   | 62242 |
| 1239                   | 62242 |
| 1240                   | 62242 |

#### 9 CFR

|                        |       |
|------------------------|-------|
| 93                     | 62993 |
| 201                    | 62695 |
| 202                    | 62695 |
| 206                    | 62695 |
| <b>Proposed Rules:</b> |       |
| 93                     | 66304 |

#### 10 CFR

|                        |                     |
|------------------------|---------------------|
| 72                     | 63833, 64351        |
| 50                     | 62292               |
| 52                     | 62292               |
| 140                    | 60565               |
| 429                    | 66152, 66966        |
| 431                    | 64351, 66152, 66966 |
| 1709                   | 64353               |
| 1710                   | 64353               |
| <b>Proposed Rules:</b> |                     |
| 50                     | 61986, 61989        |
| 51                     | 61986               |
| 52                     | 61989               |
| 71                     | 61986               |
| 431                    | 60746, 65628, 66710 |



|                             |                        |                               |                             |
|-----------------------------|------------------------|-------------------------------|-----------------------------|
| <b>12 CFR</b>               | 1263.....65274, 65296  | 1406.....60409                | 63529, 65327, 65620, 65816, |
| 24.....64358                | <b>Proposed Rules:</b> | 2590.....65888, 66728         | 66687, 66690, 66692         |
| 1026.....65113              | 1.....65865            |                               | 62.....66278                |
| <b>Proposed Rules:</b>      | 1025.....66722         | <b>30 CFR</b>                 | 63.....60344                |
| 3.....64028, 64524          | 1112.....65865         | 917.....65125                 | 82.....61977                |
| 6.....64028                 | 1130.....65865         | 925.....64803                 | 120.....61964               |
| 32.....64028                | 1242.....65865         | 935.....64807                 | 121.....66558               |
| 54.....64524                |                        | 943.....64810                 | 122.....66558               |
| 208.....64028               | <b>17 CFR</b>          | <b>Proposed Rules:</b>        | 124.....66558               |
| 216.....64524               | 200.....65807          | 926.....64853, 64855          | 180.....60594, 62464, 64819 |
| 217.....60385, 64524        | 240.....61850          |                               | 271.....65621               |
| 225.....64028               | 275.....63205          | <b>31 CFR</b>                 | 272.....65621               |
| 238.....64028, 64524        | <b>Proposed Rules:</b> | 35.....64986                  | 300.....61470               |
| 252.....64028, 64524        | 37.....61432           | 525.....65620                 | 1054.....66694              |
| 324.....64028, 64524        | 38.....61432           | 548.....63017                 | <b>Proposed Rules:</b>      |
| 360.....64524               | 40.....61432           | 550.....64379                 | 2.....63046                 |
| 374.....64524               | 232.....65524          | 583.....64380                 | 51.....63046                |
| 1228.....65827              | 239.....65524          | 586.....60889                 | 52.....60424, 62303, 65336, |
|                             | 249.....65524          | 587.....61963                 | 65647, 66733                |
| <b>13 CFR</b>               | 269.....65524          | 591.....65816                 | 63.....62711, 63047, 66336  |
| <b>Proposed Rules:</b>      | 274.....65524          | <b>Proposed Rules:</b>        | 180.....62492, 62499, 64398 |
| 109.....63534               | <b>18 CFR</b>          | 1.....63039                   | 260.....60609               |
| 115.....63534               | 35.....61014           | 1010.....66730                | 261.....60609, 66742        |
| 120.....63534               | <b>Proposed Rules:</b> |                               | 262.....60609               |
| 123.....63534               | 401.....66722          | <b>32 CFR</b>                 | 263.....60609               |
| <b>14 CFR</b>               |                        | 310.....65129                 | 264.....60609               |
| 39.....60566, 60570, 60883, | <b>19 CFR</b>          | <b>Proposed Rules:</b>        | 265.....60609               |
| 61467, 63004, 63007, 63009, | 12.....62696, 64372    | 310.....60411                 | 266.....60609               |
| 63011, 63014, 63513, 63834, | <b>20 CFR</b>          | <b>33 CFR</b>                 | 267.....60609               |
| 64365, 64368, 65118, 65120, | 220.....61958          | 100.....60336, 60586, 63018,  | 268.....60609               |
| 65122, 65305, 65308, 65581, | <b>Proposed Rules:</b> | 64381, 65131, 65320           | 270.....60609               |
| 65583, 65585, 66269, 66681, | 651.....63750          | 165.....60586, 60890, 61963,  | 271.....65649               |
| 66683                       | 653.....63750          | 62461, 62707, 63018, 63525,   | 272.....65649               |
| 71.....60886, 62460, 63515, | 655.....63750          | 63527, 63841, 64817, 65132,   | 300.....61492               |
| 63516, 63836, 65311, 65313, | 658.....63750          | 65321, 65323, 65325, 66686    | 1900.....65350              |
| 65314, 65315, 65317, 65588, | 702.....62480          | 328.....61964                 |                             |
| 65589, 65590, 65592, 65594, | <b>21 CFR</b>          | <b>Proposed Rules:</b>        | <b>41 CFR</b>               |
| 65794, 65795, 65797         | Ch. I.....60333        | 140.....62491                 | Ch. 302.....63532           |
| 73.....65595                | 1.....65815            | 146.....62491                 | <b>42 CFR</b>               |
| 89.....63518                | 14.....64379           | 165.....63042                 | 405.....60346               |
| 91.....63519, 65319         | <b>Proposed Rules:</b> |                               | 406.....65230               |
| 93.....64793                | 161.....61492          | <b>34 CFR</b>                 | 410.....60346               |
| 95.....61951, 64795         | 1308.....65330         | <b>Proposed Rules:</b>        | 411.....60346               |
| 97.....63837, 63839, 65597, |                        | Ch. II.....63543              | 412.....60346               |
| 65598                       | <b>22 CFR</b>          | <b>36 CFR</b>                 | 413.....60346               |
| <b>Proposed Rules:</b>      | 40.....60574           | 1190.....61470                | 416.....60346               |
| 39.....60402, 60406, 60603, | 126.....63016          | <b>37 CFR</b>                 | 419.....60346               |
| 60606, 60896, 60899, 60901, | <b>23 CFR</b>          | 2.....62463                   | 424.....60346               |
| 60904, 60908, 61480, 61482, | <b>Proposed Rules:</b> | 7.....62463                   | 435.....65230               |
| 61485, 61488, 61990, 62709, | 624.....64388          | 210.....60587                 | 485.....60346               |
| 63034, 63036, 63539, 63885, | 630.....64836          | <b>Proposed Rules:</b>        | 489.....60346               |
| 63888, 65328, 65635, 65637, | <b>26 CFR</b>          | 210.....65908                 | <b>Proposed Rules:</b>      |
| 65831, 66307, 66310, 66314, | <b>Proposed Rules:</b> |                               | 419.....60610               |
| 66316                       | 624.....64388          | <b>38 CFR</b>                 | 438.....61352               |
| 71.....60910, 62477, 62479, | 630.....64836          | 3.....60336                   | 442.....61352               |
| 63542, 65834                | <b>27 CFR</b>          | <b>Proposed Rules:</b>        | 483.....61352               |
| 158.....66319               | 9.....64846            | 3.....65641                   | <b>43 CFR</b>               |
| 401.....65835               | 478.....61993          | 17.....60417                  | 3000.....66695              |
| 404.....65835               | <b>28 CFR</b>          | 51.....60417                  | <b>Proposed Rules:</b>      |
| 415.....65835               | 16.....60583           | <b>39 CFR</b>                 | 2360.....62025              |
| 417.....65835               | <b>29 CFR</b>          | 3040.....63843                | 8360.....62500              |
| 431.....65835               | 4044.....62706         | <b>Proposed Rules:</b>        | <b>45 CFR</b>               |
| 435.....65835               | <b>Proposed Rules:</b> | 3050.....62023, 62024, 63045, | 1355.....66700              |
| 437.....65835               | 501.....63750          | 65927                         | 1356.....66700              |
| 450.....65835               | 541.....62152          | <b>40 CFR</b>                 | <b>Proposed Rules:</b>      |
| 453.....65835               |                        | 2.....63020                   | 84.....63392                |
| <b>15 CFR</b>               |                        | 52.....60342, 60591, 60893,   | 146.....66728               |
| 231.....65600               |                        | 61969, 61971, 62293, 63031,   | 147.....66728               |
| 734.....63840               |                        |                               | 149.....65888               |
| 744.....66271               |                        |                               | 301.....65928               |
| 922.....60887               |                        |                               | 302.....65928               |
| <b>16 CFR</b>               |                        |                               | 303.....65928               |
| 1112.....65274              |                        |                               | 304.....65928               |

|                        |                            |                        |                                                                     |
|------------------------|----------------------------|------------------------|---------------------------------------------------------------------|
| 305.....65928          | 101.....63850              | <b>Proposed Rules:</b> | 1145.....63897, 63917                                               |
| 307.....65928          | <b>Proposed Rules:</b>     | 538.....63892          |                                                                     |
| 308.....65928          | Ch. I.....65937, 66232     | 552.....63892          | <b>50 CFR</b>                                                       |
| 309.....65928          | 1.....63890                | Ch. 29.....60612       | 17.....64824, 66280                                                 |
| 310.....65928          | 2.....63890                | 3015.....61498         | 20.....60375                                                        |
| 1324.....62503         | 15.....63890               | 3016.....61498, 64399  | 217.....62898                                                       |
| 1355.....66752         | 25.....63890               | 3052.....61498, 64399  | 622.....61475, 61984, 62301,<br>65135, 65626, 65627, 65819          |
| 1356.....66769         | 27.....63890               | <b>49 CFR</b>          | 635.....64385, 64831                                                |
| <b>46 CFR</b>          | 54.....66781               | 171.....65148          | 648.....60597, 61477, 63861,<br>65823                               |
| 175.....62295          | 73.....60611, 60612, 63048 | 172.....60356, 65148   | 660.....65824                                                       |
| <b>Proposed Rules:</b> | 74.....63890               | 173.....65148          | 679.....60383, 60598, 61477,<br>64834, 66296, 66297, 66298          |
| 4.....62491            | 78.....63890               | 174.....65148          | <b>Proposed Rules:</b>                                              |
| 109.....62491          | 101.....63890              | 175.....65148          | Ch. I.....63547                                                     |
| <b>47 CFR</b>          | <b>48 CFR</b>              | 176.....65148          | 17.....62043, 62725, 64399,<br>64856, 64870, 65356, 65939,<br>66351 |
| 1.....63694, 63850     | 515.....62472              | 177.....65148          | 217.....65430                                                       |
| 2.....63850            | 538.....62472              | 178.....65148          | 224.....62522                                                       |
| 8.....63853            | 552.....62472              | 179.....65148          | 226.....62522, 65940                                                |
| 15.....63850           | 1812.....64384             | 180.....65148          | 229.....62748, 63917                                                |
| 25.....63850           | 1813.....64384             | 571.....65149          | 622.....62309                                                       |
| 27.....63850           | 1816.....64384             | <b>Proposed Rules:</b> | 635.....62044                                                       |
| 54.....60347           | 1819.....64384             | 191.....61746          | 648.....65944                                                       |
| 64.....65134           | 1823.....64384             | 192.....61746          | 665.....65356                                                       |
| 73.....63533           | 1832.....64384             | 198.....61746          |                                                                     |
| 74.....63850, 64382    | 1852.....64384             | 571.....61674          |                                                                     |
| 76.....62471           | Ch. 34.....60540           | 572.....61896          |                                                                     |
| 78.....63850           |                            | 675.....66795          |                                                                     |
|                        |                            | 1144.....63917         |                                                                     |

|                                                                                                                                                                          |                                                                                                     |                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                       |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <div><div>LIST OF PUBLIC LAWS</div><div><b>Note:</b> No public bills which have become law were received by the Office of the Federal Register for inclusion</div></div> | <div><div>in today's <b>List of Public Laws.</b></div><div>Last List September 26, 2023</div></div> | <div><div>Public Laws Electronic Notification Service (PENS)</div><div>PENS is a free email notification service of newly</div></div> | <div><div>enacted public laws. To subscribe, go to <a href="https://portalguard.gsa.gov/—layouts/PG/register.aspx">https://portalguard.gsa.gov/—layouts/PG/register.aspx</a>.</div><div><b>Note:</b> This service is strictly for email notification of new laws. The text of laws is not available through this service. PENS cannot respond to specific inquiries sent to this address.</div></div> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|