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Presidential Documents

Title 3—

The President

Presidential Determination No. 2022–13 of May 18, 2022

Delegating Authority Under the Defense Production Act To Ensure an Adequate Supply of Infant Formula

Memorandum for the Secretary of Health and Human Services

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 101 of the Defense Production Act of 1950, as amended (the ''Act'') (50 U.S.C. 4511), it is hereby ordered as follows:

Section 1. *Policy and Findings.* On February 17, 2022, the largest infant formula manufacturer in the country—Abbott Nutrition—initiated a voluntary recall of several lines of powdered infant formula made at its Sturgis, Michigan facility, following concerns about bacterial contamination at the facility after four infants fell ill. This incident has combined with supply chain stress associated with effects of the coronavirus 2019 (COVID–19) pandemic to cause an acute disruption in the supply of infant formula in the United States.

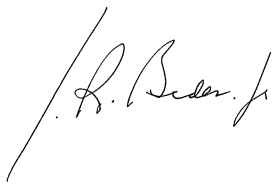
Adequate supply of infant formula is critical to the health and safety of the millions of children who depend on the formula for essential nutrition. The Federal Government has worked in the last several months to address the shortfall in infant formula, but additional measures are needed to ensure an adequate supply of infant formula in the United States and thereby protect the health and well-being of our Nation's children.

This disruption threatens the continued functioning of the national infant formula supply chain, undermining critical infrastructure that is essential to the national defense, including to national public health or safety. As the Abbott Nutrition recall shows, closure of a single formula-producing facility can severely disrupt the supply of formula nationwide. Accordingly, I hereby determine, pursuant to section 101 of the Act, that the ingredients necessary to manufacture infant formula meet the criteria specified in section 101(b) of the Act (50 U.S.C. 4511(b)).

Sec. 2. *Ensuring the Continued Supply of Formula.* (a) Notwithstanding Executive Order 13603 of March 16, 2012 (National Defense Resources Preparedness), the authority of the President conferred by section 101 of the Act to require performance of contracts or orders (other than contracts of employment) to promote the national defense over performance of any other contracts or orders, to allocate materials, services, and facilities as deemed necessary or appropriate to promote the national defense, and to implement the Act in subchapter III of chapter 55 of title 50, United States Code (50 U.S.C. 4554, 4555, 4556, 4559, 4560), is delegated to the Secretary of Health and Human Services with respect to all health resources, including the ingredients necessary to manufacture infant formula.

(b) The Secretary of Health and Human Services may use the authority under section 101 of the Act to determine, in consultation with the Secretary of Agriculture and the heads of other executive departments and agencies as appropriate, the proper nationwide priorities and allocation of all ingredients necessary to manufacture infant forumla, including controlling the distribution of such materials (including applicable services) in the civilian market, for responding to the shortage of infant formula within the United States.

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



THE WHITE HOUSE,
Washington, May 18, 2022

[FR Doc. 2022–11273
Filed 5–23–22; 8:45 am]
Billing code 4150–42–P

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DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2017–BT–STD–0021] RIN 1904–AD90

Energy Conservation Program: Energy Conservation Standards for Unfired Hot Water Storage Tanks

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

ACTION: Final determination.

SUMMARY: The Energy Policy and Conservation Act, as amended (''EPCA''), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including unfired hot water storage tanks (''UFHWSTs''). EPCA also requires the U.S. Department of Energy (''DOE'' or ''the Department'') to periodically determine whether more-stringent, amended standards would be technologically feasible and economically justified, and would result in significant additional energy savings. In this final determination, DOE determines that the energy conservation standards for UFHWSTs do not need to be amended. DOE has determined that it lacks clear and convincing evidence that more-stringent standards for UFHWSTs would save a significant additional amount of energy and would be economically justified.

DATES: The effective date of this final determination is July 25, 2022.

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.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *www.regulations.gov/docket?D=EERE-2017-BT-STD-0021.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

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

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

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

SUPPLEMENTARY INFORMATION:

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I. Synopsis of the Final Determination

Title III, Part C [1] of EPCA,[2] established the Energy Conservation Program for Certain Industrial Equipment. (42 U.S.C. 6311–6317) This equipment includes UFHWSTs, the subject of this rulemaking. (42 U.S.C. 6311(1)(K))

Pursuant to EPCA, DOE is triggered to consider amending the energy efficiency standards for certain types of commercial and industrial equipment, including the equipment at issue in this document, whenever the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (''ASHRAE'') amends the standard levels or design requirements prescribed in ASHRAE Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings,'' (''ASHRAE Standard 90.1''). Under a separate provision of EPCA, DOE is required to review the existing energy conservation standards for those types of covered equipment subject to ASHRAE Standard 90.1 every 6 years to determine whether those standards need to be amended. (42 U.S.C. 6313(a)(6)(A)–(C)) DOE is publishing this final determination regarding the energy conservation standards for UFHWSTs under EPCA's 6-year-lookback authority. (42 U.S.C. 6313(a)(6)(C))

For this final determination, DOE analyzed UFHWSTs subject to standards as specified in the Code of Federal Regulations (''CFR'') at 10 CFR 431.110. DOE first analyzed the technological feasibility of more-efficient UFHWSTs. For those UFHWSTs for which DOE determined higher standards to be technologically feasible, DOE estimated energy savings that would result from potential amended energy conservation standards. DOE also considered whether potential energy conservation standards would be economically justified. As discussed in the following sections, DOE has determined that it lacks clear and convincing evidence that amended energy conservation standards for UFHWSTs would result in significant additional conservation of energy or be economically justified.

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

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

[2] 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 reflects the last statutory amendments that impact Parts A and A–1 of EPCA.

II. Introduction

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

A. Authority

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

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

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

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of covered equipment. (42 U.S.C. 6314) Specifically, EPCA requires that if a test procedure referenced in ASHRAE Standard 90.1 is updated, DOE must update its test procedure to be consistent with the amended test procedure in ASHRAE Standard 90.1, unless DOE determines, by rule, published in the **Federal Register** and supported by clear and convincing evidence, that the amended test procedure is not reasonably designed to produce test results that reflect the energy efficiency, energy use, or estimated operating costs of the covered ASHRAE equipment during a representative average use cycle. In addition, DOE must determine that the amended test procedure is not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2) and (4)) In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures in the **Federal Register** and offer the public an opportunity (of not less than 45 days duration) to present oral and written comments on them. (42 U.S.C. 6314(b)) In contrast, if DOE determines that test procedure revisions are not appropriate, DOE must publish in the **Federal Register** its determination not to amend the test procedures. (42 U.S.C. 6314(a)(1)(A)(ii))

Manufacturers of covered equipment must use the Federal test procedures as the basis for: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making representations about the energy use or efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. It is noted that DOE does not prescribe a test procedure for UFHWSTs, as the current Federal standard is an insulation design requirement of a minimum R-value of R–12.5. 10 CFR 431.110.

EPCA contains mandatory energy conservation standards for commercial heating, air-conditioning, and water heating equipment. (42 U.S.C. 6313(a)) Specifically, the statute sets standards for small, large, and very large commercial package air conditioning and heating equipment, packaged terminal air conditioners and packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and UFHWSTs. *Id.* In doing so, EPCA established Federal energy conservation standards that generally corresponded to the levels in the ASHRAE Standard 90.1 in effect on October 24, 1992 (*i.e.,* ASHRAE Standard 90.1–1989).

If ASHRAE Standard 90.1 is amended with respect to the standard levels or design requirements applicable under that standard for certain commercial

equipment, including UFHWSTs, not later than 180 days after the amendment of the standard, DOE must publish in the **Federal Register** for public comment an analysis of the energy savings potential of amended energy efficiency standards. (42 U.S.C. 6313(a)(6)(A)(i)) DOE must adopt amended energy conservation standards at the new efficiency level in ASHRAE Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more-stringent efficiency level as a national standard would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii))

To determine whether a standard is economically justified, EPCA requires that DOE determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

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

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

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

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

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

(6) The need for national energy conservation; and

(7) Other factors the Secretary of Energy considers relevant.

(42 U.S.C. 6313(a)(6)(B)(ii)(I)–(VII) and (C)(i); 42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i))

If DOE adopts as a national standard the efficiency levels specified in the amended ASHRAE Standard 90.1, DOE must establish such a standard not later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) If DOE determines that a more-stringent standard is appropriate under the statutory criteria, DOE must establish the more-stringent standard not later than 30 months after publication of the revised ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(B)(i))

EPCA also requires that every 6 years DOE shall evaluate the energy conservation standards for each class of certain covered commercial equipment, including UFHWSTs, and publish either a notice 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). (42 U.S.C. 6313(a)(6)(C)(i)) EPCA further provides that, not later than 3 years after the issuance of a final determination not to amend standards, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6313(a)(6)(C)(iii)(II)) DOE must make the analysis on which the determination is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6313(a)(6)(C)(ii)) Further, a determination that more-stringent standards would: (1) Result in significant additional conservation of energy and (2) be both technologically feasible and economically justified must be supported by clear and convincing evidence. (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(A)) DOE is publishing this final determination in satisfaction of the 6-year-lookback review requirement in EPCA, having determined that DOE lacks clear and convincing evidence that amended standards for UFHWSTs would result in significant additional conservation of energy and be economically justified.

B. Background

1. Current Standards

The initial Federal standards for UFHWSTs, established by EPCA, corresponded to the efficiency levels contained in ASHRAE Standard 90.1–1989. On January 12, 2001, DOE amended the standards for UFHWSTs to be equivalent to the efficiency level in ASHRAE Standard 90.1 as revised in October 1999. 66 FR 3336 (''January 2001 final rule''). The January 2001 final rule established an insulation design requirement of a minimum R-value of R–12.5 for all UFHWSTs. 66 FR 3336, 3356 (Jan. 12, 2001). This remains the current Federal standard (and the standard level specified in the most recent version of ASHRAE Standard 90.1). The current standard is codified at 10 CFR 431.110.

2. History of Standards Rulemaking for UFHWSTs

As noted previously, the standards for UFHWSTs were most recently amended in the January 2001 final rule. EPCA requires DOE to evaluate the applicable energy conservation standard for UFHWSTs every 6 years to determine whether it needs to be amended. (42 U.S.C. 6313(a)(6)(C)(i)) Thus, DOE published a request for information (''RFI'') in the **Federal Register** on August 9, 2019, which identified various issues and sought to collect data and information to inform its determination, consistent with its obligations under EPCA, as to whether the UFHWST standards need to be amended (the ''August 2019 RFI''). 84 FR 39220. DOE subsequently published a notice of proposed determination (''NOPD'') in the **Federal Register** on June 10, 2021 (''June 2021 NOPD''), wherein DOE tentatively determined that the energy conservation standards for UFHWSTs do not need to be amended.

DOE received six comments in response to the June 2021 NOPD from the interested parties listed in Table II.1.

TABLE II.1—INTERESTED PARTIES PROVIDING WRITTEN COMMENTS ON THE JUNE 2021 UFHWSTS NOPD

Commenter(s)	Abbreviation	Commenter type
Aarin King	King	Individual.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Northwest Energy Efficiency Alliance.	Joint Commenters	Efficiency Organizations.
Bradford White Corporation	BWC	Manufacturer.
Rheem Manufacturing Company	Rheem	Manufacturer.
A.O. Smith Corporation	A.O. Smith	Manufacturer.
Pacific Gas and Electric Company (''PG&E''), San Diego Gas and Electric (''SDG&E''), Southern California Edison (''SCE'').	CA IOUs	Investor-Owned Utilities.

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

III. General Discussion

DOE developed this final determination after a review of the UFHWST market, including product literature and product listings in the DOE Compliance Certification Database (''CCD'').[4] DOE also considered 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. BWC, Rheem, and A.O. Smith all expressed support for DOE's proposed determination that energy conservation standards for UFHWSTs do not need to be amended. (BWC, No. 14 at p. 1; Rheem, No. 15 at p. 1; A.O. Smith, No. 16 at p. 1) However, as discussed in section III.B of this document, the CA IOUs and the Joint Commenters encouraged DOE to consider a performance-based test procedure for UFHWSTs to address standby loss before proceeding with this standards rulemaking. (CA IOUs, No. 17 at p. 2; Joint Commenters, No. 13 at p. 1)

A. Product Classes and Scope of Coverage

When evaluating and establishing energy conservation standards, DOE typically divides covered equipment into equipment classes by the type of energy used or by capacity or other performance-related features that justify differing standards. For UFHWSTs, the current standard at 10 CFR 431.110 is applicable to a single equipment class covering all UFHWSTs, which is consistent with the standard and structure in ASHRAE Standard 90.1. DOE's regulations define ''unfired hot water storage tank'' as a tank used to store water that is heated externally, and that is industrial equipment. 10 CFR 431.102. The scope of coverage is discussed in further detail in section IV.A.1 of this final determination.

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)) As a general matter, manufacturers of covered ASHRAE equipment must use these test procedures to certify to DOE that their equipment complies with energy conservation standards and to quantify the efficiency of their equipment. (42 U.S.C. 6316(b); 42 U.S.C. 6296) DOE's current energy conservation standards for UFHWSTs are expressed in terms of a minimum R-value for tank insulation. (*See* 10 CFR 431.110.)

DOE does not prescribe a test procedure for UFHWSTs; however, DOE's regulations define ''R-value'' as the thermal resistance of insulating material as determined using either ASTM International (''ASTM'') C177–13, ''Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus,'' or ASTM C518–15, ''Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus'' and expressed in degrees-square feet-hours per British thermal units (''°F ft^2 h/Btu''). 10 CFR 431.102.

In response to the June 2021 NOPD, the CA IOUs and the Joint Commenters encouraged DOE to consider a performance-based test procedure for UFHWSTs to address standby loss before proceeding with this energy conservation standards rulemaking. (CA IOUs, No. 17 at p. 2; Joint Commenters, No. 13 at p. 1) The CA IOUs stated that performance-based standards are preferable to prescriptive standards because performance-based standards present a clearer assessment of product energy performance, allow purchasers to directly compare product efficiencies, and would encourage innovation in terms of new methods to reduce heat loss. (CA IOUs, No. 17 at pp. 1–2) Additionally, the Joint Commenters stated that the current standard, in terms of thermal resistance, does not guarantee that all tank surfaces are sufficiently insulated. They suggested that performance-based standards would provide a better understanding of actual energy consumption and would likely encourage improved methods to reduce heat loss. (Joint Commenters, No. 13 at p. 1) In contrast, Rheem recommended that the current prescriptive design requirement (*i.e.,* the minimum insulation requirement of R–12.5) be retained for UFHWSTs. (Rheem, No. 15 at p. 1)

As discussed in section II.A of this document, DOE is publishing this final determination in satisfaction of the 6-year-lookback review requirement in EPCA, which requires DOE to evaluate the energy conservation standards for certain commercial equipment, including UFHWSTs. Under that provision, DOE must publish either a notice of determination that the standards do not need to be amended, or a NOPR that includes proposed amendments to the energy conservation standards (proceeding to a final rule, as appropriate) every 6 years. (42 U.S.C. 6313(a)(6)(C)(i)) Because a Federal test procedure for evaluating standby loss of UFHWSTs has not been established, DOE has only considered potential amended standards based on updating the prescriptive design requirement for insulation R-value. DOE will consider the merits and feasibility of a performance test in its next test procedure rulemaking for UFHWSTs.

Additionally, in response to the June 2021 NOPD, the CA IOUs suggested that DOE clarify the amount of tank surface area that is required to be insulated. (CA IOUs, No. 17 at p. 4) Aarin King stated that heat travels upward, and, therefore, insulation placement requirements should be at the greatest heat loss zones, such as the relief valve and fittings on the head of the tank. (King, No. 12 at p. 1) [5]

As stated, the energy conservation standard for UFHWSTs specifies a minimum insulation rating. The energy conservation standard does not further specify the manner in which insulation is applied to a UFHWST. There are a wide variety of tank configurations (including the number, shape, and location of ports and other fittings) in equipment currently on the market, and the relative amount of tank surface area that is practical to insulate to R–12.5 varies between tanks. Further, DOE is not aware of an industry standard that would allow for evaluation of insulation uniformity at this time. Therefore, DOE is not imposing an insulation placement requirement at this time but will continue to consider the issue in the future.

Additionally, in response to the June 2021 NOPD, Rheem suggested that focusing on insulation of field-installed plumbing may provide more significant energy savings than added tank insulation. The commenter stated that there are diminishing returns from increasing insulation thicknesses, and consequently, fittings and piping contribute to a significantly greater portion of the overall standby losses as tank insulation is increased. (Rheem, No. 15 at p. 2) In response to Rheem, DOE notes that it does not have authority to regulate field-installed plumbing insulation and did not

[3] The parenthetical reference provides a reference for information located in the docket (Docket No. EERE–2017–BT–STD–0021, which is maintained at *www.regulations.gov*). The references are arranged as follows: (Commenter name, comment docket ID number, page of that document).

[4] The CCD is available at *www.regulations.doe.gov/certification-data.*

[5] Commenter also provided additional comments regarding heat transfer in tanks not applicable to this rulemaking.

consider such approach for this analysis.

C. Technological Feasibility

1. General

In evaluating potential amendments to energy conservation standards, DOE conducts a screening analysis based on information gathered through a market and technology assessment of all current technology options and working 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. In general, DOE considers technologies incorporated in commercially-available products or in working prototypes to be technologically feasible. *See generally* 10 CFR 431.4; 10 CFR part 430, subpart C, appendix A, section 6(b)(3)(i) and 7(b)(1).

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 equipment utility or availability; (3) adverse impacts on health or safety and (4) unique-pathway proprietary technologies. *See generally* 10 CFR 431.4; 10 CFR part 430, subpart C, appendix A, sections 6(b)(3)(ii)–(v) and 7(b)(2)–(5). Section IV.B of this document discusses the results of the screening analysis for UFHWSTs, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered in this rulemaking.

2. Maximum Technologically Feasible Levels

As when DOE proposes to adopt an amended standard for a type or class of covered equipment, the Department determines the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such equipment. Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for UFHWSTs, using the design parameters for the most efficient equipment 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 determination.

D. Energy Savings

1. Determination of Savings

For each efficiency level (''EL'') evaluated, DOE projected energy savings from application of the efficiency level to UFHWSTs purchased in the 30-year period that begins in the assumed year of compliance with potential amended standards (2025–2054). The savings are measured over the entire lifetime of UFHWSTs purchased in the 30-year analysis period. DOE quantified the energy savings attributable to each efficiency level 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 the subject equipment would likely evolve in the absence of amended energy conservation standards.

DOE used a simplified national impact analysis (''NIA'') spreadsheet model to estimate national energy savings (''NES'') from potential amended standards for UFHWSTs. The simplified NIA for this analysis quantifies the potential energy savings from potential efficiency improvements for UFHWSTs; however, it does not estimate the net present value (''NPV'') to the Nation of these savings that is typically performed as part of the NIA. The simplified NIA spreadsheet model (described in section IV.G of this document) calculates energy savings in terms of site energy, which is the energy directly consumed by equipment at the locations where it is used. DOE also calculates NES in terms of full-fuel-cycle (''FFC'') energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy conservation standards.[6] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.G.1 of this document.

2. Significance of Savings

In determining whether amended standards are needed for covered equipment addressed by ASHRAE Standard 90.1, DOE must determine whether such action would result in significant additional conservation of energy. (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(A)(ii)(II))

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking. For example, the United States has now rejoined the Paris Agreement on February 19, 2021. As part of that agreement, the United States has committed to reducing GHG emissions in order to limit the rise in mean global temperature.[7] Additionally, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand.

Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis. DOE has estimated the potential full-fuel cycle energy savings from an amended energy conservation standard for UFHWSTs at max-tech to be 0.058 quadrillion British thermal units (''quads'') over a 30-year analysis period (2025–2054). However, as explained in section V.B.2 of this document, DOE has encountered significant uncertainties related to its assessment of the energy savings potential of more-stringent amended energy conservation standards for UFHWSTs.

E. Economic Justification

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

1. Economic Impact on Manufacturers and Consumers

In determining the impacts of potential amended standards on manufacturers, DOE typically conducts a manufacturer impact analysis (''MIA''). In conducting an MIA, DOE uses an annual cash-flow approach to determine the quantitative impacts between the no-new-standards and the potential amended standards cases. The industry-wide impacts analyzed typically include: (1) Industry net present value (''INPV''), which values the industry on the basis of expected

[6] The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51281 (August 18, 2011), as amended at 77 FR 49701 (August 17, 2012).

[7] *See* Executive Order 14008, ''Tackling the Climate Crisis at Home and Abroad,'' 86 FR 7619 (Feb. 1, 2021).

future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. DOE has determined that the energy conservation standard for UFHWSTs does not need to be amended, and, therefore, this final determination has no cash-flow impacts on manufacturers. Accordingly, DOE did not conduct an MIA for this final determination.

For individual consumers, measures of economic impact include the changes in life-cycle cost (''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. However, as discussed in more detail in section IV.E of this document, due to significant uncertainties regarding the costs of alterations to doorways and mechanical rooms (which may be required in certain replacement installations in order to get an UFHWST to its installation destination if additional insulation thickness makes the UFHWST too large for existing structures to accommodate) and the lack of data indicating the likelihood and cost of such alterations when required, any analysis conducted by DOE regarding the LCC or PBP would have a high degree of uncertainty in terms of the inputs to those analyses. Comments received regarding the potential installation cost impacts of UFHWSTs due to larger tank dimensions in pursuit of increased efficiency for replacement equipment are discussed in section IV.E.1 of this document, and the rationale for not conducting the LCC or PBP is discussed in more detail in section IV.E.2 of this document. The consumer economic impacts which are normally calculated as part of the LCC are inputs to DOE's National NPV estimates, but since the Department did not conduct an LCC analysis in the present case, DOE was unable to estimate the NPV for this final determination.

2. 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. 6313(a)(6)(B)(ii)(II))) DOE typically conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of equipment (including its installation) and the operating cost (including energy, maintenance, and repair expenditures) discounted over the lifetime of the equipment. The LCC analysis requires a variety of inputs, such as equipment prices, equipment energy consumption, energy prices, maintenance and repair costs, equipment lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as equipment 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 more-efficient equipment 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. This type of calculation is known as a ''simple'' payback period because it does not take into account changes in operating expenses over time or the time value of money (*i.e.,* the calculation is done at an effective discount rate of zero percent). Payback periods greater than the life of the equipment indicate that the increased total installed cost is not recovered by the reduced operating expenses.

For its LCC and PBP analysis, DOE assumes that consumers will purchase the equipment in the first year of compliance with new or amended standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of new or amended standards. As discussed in section IV.E of this document, DOE did not conduct an LCC and PBP analysis for this final determination because the lack of data and high degree of uncertainty of the inputs to those analyses meant that the outputs would be of little value.

3. Energy Savings

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

4. Lessening of Utility or Performance of Equipment

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. 6313(a)(6)(B)(ii)(IV)) Because DOE is not amending standards for UFHWSTs, the Department has concluded that this final determination will not reduce the utility or performance of UFHWSTs.

5. Impact of Any Lessening of Competition

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

6. Need for National Energy Conservation

DOE also considers the need for national energy conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6313(a)(6)(B)(ii)(VI)) Because DOE has concluded that it lacks clear and convincing evidence that amended standards for UFHWSTs would result in significant additional conservation of energy and be technologically feasible and economically justified, DOE did not conduct a utility impact analysis or emissions analysis for this final determination.

7. Other Factors

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

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this final

determination with regard to UFHWSTs. Separate subsections address each component of the factors for DOE's consideration, as well as corresponding analyses to the extent conducted. DOE used a spreadsheet tool to estimate the impact of potential energy conservation standards. This spreadsheet uses inputs from the energy use analysis and shipments projections and calculates a simplified NES expected to result from potential energy conservation standards.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the equipment concerned, including the purpose of the equipment, the industry structure, manufacturers, market characteristics, and technologies used in the equipment. This activity includes both quantitative and qualitative assessments, based primarily on publicly-available information. DOE also had structured, detailed interviews conducted with representative manufacturers. During these interviews, engineering, manufacturing, procurement, and financial topics were discussed to validate assumptions used in DOE's analyses, and to identify key issues or concerns. These interviews were 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.

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) shipments information; (4) market and industry trends, and (5) technologies or design options that could improve the energy efficiency of UFHWSTs. The key findings of DOE's market assessment are summarized in the following subsections.

1. Scope of Coverage and Equipment Classes

In this analysis, DOE relied on the definition of UFHWSTs in 10 CFR 431.102, which defines an UFHWST as a tank used to store water that is heated externally, and that is industrial equipment. Any equipment meeting the definition of an UFHWST is included in DOE's scope of coverage. UFHWSTs are not currently divided into equipment classes (*i.e.,* there is a single equipment class covering all UFHWSTs).

In the June 2021 NOPD, DOE did not propose to amend the definition of UFHWSTs or to divide UFHWSTs into separate equipment classes, stating that there was no indication the definition would benefit from an amendment or that further delineation of equipment classes was justified. 86 FR 30796, 30802 (June 10, 2021). In response to the June 2021 NOPD, the CA IOUs recommend that DOE explore whether separate product classes would remove technical and market barriers to the setting of more stringent standards and if it would be feasible to set different standards. Similarly, the CA IOUs requested that DOE investigate different markets and applications for these different types of equipment, stating that rated capacity, along with other performance-related features, may justify the recognition of subgroups of UFHWSTs as separate equipment classes with differing standards. (CA IOUs, No. 17 at p. 2)

In response, DOE notes that for consumer products, EPCA provides that DOE shall specify a level of energy use or efficiency higher or lower than that which applies (or would apply) for such type (or class) for any group of covered products which have the same function or intended use, if the Secretary determines that covered products within such group consume a different kind of energy or 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 from that which applies (or will apply) to other products within such type (or class). (42 U.S.C. 6295(q)(1)) However, there is no companion provision to 42 U.S.C. 6295(q)(1) for ASHRAE equipment. In addition, DOE continues to find that changes to the definition of UFHWST are unnecessary.

Therefore, in this Final Determination, DOE maintains the definition of UFWST and is not dividing UFHWSTs into separate equipment classes.

2. Technology Options

In the June 2021 NOPD, DOE identified several technology options that would be expected to improve the efficiency of UFHWSTs. 86 FR 30796, 30802 (June 10, 2021). These technology options were based on manufacturer equipment literature and publicly-available technical literature. Specifically, the technologies identified in the June 2021 NOPD included the following:

- Improved insulation R-value
  - Increased insulation thickness
  - Foam insulation
  - Advanced insulation types
    - Aerogel
    - Vacuum panels
    - Inert gas-filled panels
- Pipe and fitting insulation
- Greater coverage of tank surface area with foam insulation (*e.g.,* tank bottom)

In response to the June 2021 NOPD, Rheem commented that some foam systems can provide higher R-values but noted that there are variations with in-place foam properties such as densities within the cavity from the top to the bottom of the tank that will impact insulation performance. (Rheem, No. 15 at p. 2)

In the analysis for this final determination, DOE maintained the same set of technology options, which include foam insulation as suggested by Rheem.

B. Screening Analysis

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

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

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial equipment 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 equipment utility or equipment availability.* If it is determined that a technology would have significant adverse impact on the utility of the equipment to significant subgroups of consumers or would result in the unavailability of any covered equipment type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as equipment generally available in the United States at the time, it will not be considered further.

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

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

10 CFR 431.4; 10 CFR part 430, subpart C, appendix A, sections 6(b)(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.

1. Screened-Out Technologies

In the June 2021 NOPD, DOE did not consider any advanced insulation types as a technology option to increase the insulation R-value for UFHWSTs. Based on feedback from manufacturers, DOE tentatively determined that use of advanced insulation types (such as vacuum panels or aerogels) could necessitate an extremely difficult change to the UFHWST manufacturing process due to the rigid nature of these materials and the high degree of customization and ports on UFHWSTs. Additionally, DOE is not aware of any UFHWST equipment on the market that incorporate aerogels, vacuum panels, or inert gas-filled panels. DOE found that polyurethane foam is the most commonly used type of insulation for meeting the minimum insulation requirement, but fiberglass and/or Styrofoam are often used in specific regions (*e.g.,* tank tops or bottoms, or regions around ports) where applying polyurethane foam could limit access to ports or be impractical to manufacture. As discussed in the June 2021 NOPD, DOE included a minimum amount of insulation other than polyurethane foam around pipes and fittings in its analysis of baseline equipment, but it did not consider requiring different insulation materials in these regions. For similar reasons, DOE did not consider additional insulation coverage around pipes and fittings as a technology option for the analysis. 86 FR 30796, 30803 (June 10, 2021).

DOE did not receive any comments in response to the June 2021 NOPD suggesting any changes to the results of its screening analysis.

2. Remaining Technologies

In the June 2021 NOPD, DOE retained improved insulation R-value due to increased polyurethane foam thickness as a design option in the engineering analysis. DOE determined that this technology option is technologically feasible because it only involves an increase in thickness of the same insulation material that is currently used on UFHWSTs, and can be achieved with the same processes that are currently being used in commercially-available equipment or working prototypes (*e.g.,* fabricating jackets or foaming). 86 FR 30796, 30803 (June 10, 2021). DOE did not receive any comments opposing the use of this design option, and considered it for the engineering analysis for this final determination.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of UFHWSTs at different levels of reduced heat loss (''efficiency levels'').[8] There are typically two elements to consider in the engineering analysis; the selection of efficiency levels to analyze (*i.e.,* the ''efficiency analysis'') and the determination of equipment cost at each efficiency level (*i.e.,* the ''cost analysis''). In determining the performance of higher-efficiency equipment, DOE considers technologies and design option combinations not eliminated by the screening analysis. DOE then typically estimates the baseline cost, as well as the incremental cost for the equipment at efficiency levels above the baseline, up to the max-tech efficiency level for each equipment class. The typical 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). However, for the reasons discussed in section IV.C.3 of this document, the cost analysis was not performed for this final determination.

1. Efficiency Analysis

DOE typically uses one of two approaches to develop energy efficiency levels for the engineering analysis: (1) Relying on observed efficiency levels in the market (*i.e.,* the efficiency-level approach), or (2) determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (*i.e.,* the design-option approach). Using the efficiency-level approach, the efficiency levels established for the analysis are determined based on the market distribution of existing equipment (in other words, based on the range of efficiencies and efficiency level ''clusters'' that already exist on the market, without regard to the specific design options used to achieve those levels). 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.

In the June 2021 NOPD, DOE adopted a design-option approach. DOE identified very few models of UFHWSTs on the market that are marketed with higher insulation levels than the current baseline requirement of R–12.5. However, as discussed later in this section, in the interim since the publication of the June 2021 NOPD, UFHWSTs have been certified in DOE's CCD with R-values up to R–30. Therefore, for the current analysis, DOE is using the efficiency-level approach to determine the ''max-tech'' efficiency level as the maximum efficiency level available on the market. However, DOE is retaining the design-option approach for setting intermediate efficiency levels because of the limited range of R-values among UFHWSTs on the market between the baseline and max-tech.

In response to the June 2021 NOPD, BWC commented that it is concerned about foam consistency and quality at thicknesses approaching or exceeding 3 inches. BWC stated that it is difficult to ensure that the foam would evenly flow circumferentially, as well as vertically, on the tank given the size and many features on tanks. BWC asserted that this could ultimately compromise perceived efficiency improvements from increased foam thicknesses. (BWC, No. 14 at p. 1) Similarly, Rheem recognized that some foam systems can provide higher R-values, but the commenter pointed out that there are variations with in-place foam properties, such as densities within the cavity from the top to the bottom of the tank, that will impact insulation performance. (Rheem, No. 15 at p. 2) Rheem suggested that applying more than 3 inches of polyurethane foam insulation to a jacketed tank is challenging and can lead to larger variation with in-place density and foam, which it stated would impact insulation quality and contributes to a decrease in R-values. Rheem also stated that R-values of 6.25 per inch of insulation can be achieved with larger cavities but said that this is impractical and costly to manufacture, especially with the highly customized tanks and relatively small market production quantities for UFHWSTs. (Rheem, No. 15 at pp. 1–2)

Rheem further stated that there are diminishing returns from increasing insulation thicknesses due to the increased surface area and heat transfer rate. (Rheem, No. 15 at p. 2). Similarly,

[8] While the UFHWSTs standard addresses heat loss through establishing a minimum level of insulation, for the purpose of this analysis, the levels of improvement are referred to generally as ''efficiency levels.''

A.O. Smith stated that in its experience, polyurethane foam insulation collapses when expanding in a cavity greater than 3 inches (which in turn leads to increased heat loss). The commenter stated that it did experience greater reliability when exceeding 3 inches of thickness for polyurethane foam insulation by sequentially adding several layers of insulation but added that this process came at significant cost, including increased curing time, longer manufacturing times, as well as increased capital and labor. (A.O. Smith, No. 16 at p. 2) A.O. Smith also recommended that the Department engage with the U.S. Environmental Protection Agency (''EPA'') and industry moving forward regarding the efficacy of polyurethane foam properties, given evolving chemical regulations. (A.O. Smith, No. 16 at p. 2)

Rheem and A.O. Smith also stated that they support the insulation thickness levels (up to 3 inches) as well as the R-value per inch (6.25) used in DOE's analysis. (Rheem, No. 15 at p. 2; A.O. Smith, No. 16 at p. 2)

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.

Based on its review of publicly-available equipment information and feedback from manufacturers, DOE found that 2 inches of polyurethane foam insulation provides a level of insulation that meets the current insulation requirement, and DOE, therefore, considered this insulation thickness as the baseline. As discussed in section IV.B.2 of this document, increased polyurethane foam insulation thickness was the only technology option that was not screened-out for this analysis, and thus, DOE considered more-stringent efficiency levels (*i.e.,* increased R-value) based on varying levels of increased polyurethane foam thickness. As discussed in the June 2021 NOPD, based on feedback from manufacturers and its own review of the UFHWST market, improvement in R-value as insulation thickness increases beyond 3 inches for jacketed tanks is unclear due to the lack of models on the market with thicker insulation and manufacturers' feedback that increasing thickness beyond 3 inches is impractical. Therefore, DOE limited its analysis in the June 2021 NOPD to considering only up to 1 additional inch of insulation thickness above the baseline insulation level of 2 inches (*i.e.,* 3 inches of foam insulation was considered the max-tech efficiency level for UFHWSTs). 86 FR 30796, 30804 (June 10, 2021).

As noted, UFHWSTs are currently certified in DOE's CCD with insulation R-values up to R–30. From a review of product literature,[9] DOE found that these products are insulated with polyurethane foam and have a stated insulation thickness of 5 inches. Based on the presence of these UFHWSTs on the market and their represented R-value, DOE updated its analysis from the June 2021 NOPR to use R–30 as the max-tech level, as this level of insulation has now been demonstrated to be technologically feasible.

In response to manufacturer concerns that insulation levels beyond 3 inches would be difficult or impossible to achieve, DOE notes that such products are now on the market, demonstrating that they are feasible to manufacture. Therefore, DOE has concluded that the R–30 level is appropriate for consideration in this analysis. The conversion costs to produce higher levels of insulation would typically be accounted for in the MIA. However, as discussed in section III.E.1 of this document, DOE did not complete an MIA for this analysis because DOE is not amending standards for UFHWSTs. Similarly, in response to A.O. Smith's suggestion that DOE engage with the EPA and industry moving forward regarding the efficacy of polyurethane foam properties given ever evolving chemical regulations, DOE notes that it is not amending standards for UFHWSTs in this final determination but will consider the impact of chemical regulations of foam efficacy in future rulemakings.

For the evaluated insulation at a thickness less than the R–30 max-tech level, DOE estimated an R-value per inch of 6.25 because UFHWSTs are typically capable of achieving R–12.5 using 2 inches of insulation. For the max-tech level, DOE estimated an R-value per inch of 6.00 based on the certified R-value and the insulation thickness specified in manufacturer literature, which represents the insulation properties demonstrated in the current tanks. The reduction in R-value per inch of insulation seen in units with increased insulation thickness illustrates the uncertainty associated with improvements in R-value as jacket thickness increases. This reduction in R-value at higher thicknesses of insulation is also consistent with feedback from manufacturers that the R-value per inch of polyurethane foam insulation would be uncertain at thicknesses greater than 3 inches. (*See* discussion of comments received earlier in this section.)

DOE included this updated max-tech efficiency level in its analysis in addition to the two efficiency levels considered in the June 2021 NOPD: R–15.625 and R–18.75, which correspond to 2.5 and 3 inches of polyurethane foam insulation, respectively. DOE did not receive any comments in response to the June 2021 NOPD suggesting that the efficiency levels previously analyzed should be adjusted, and did not identify any information that would support adjusting the insulation thickness or the assumed R-value per inch at those levels. The efficiency levels used in the analysis for this final determination are shown in Table IV.1.

TABLE IV.1—EFFICIENCY LEVELS FOR REPRESENTATIVE UFHWSTS BASED ON INCREASED INSULATION

Efficiency level	Insulation thickness (polyurethane foam)	R-value per inch of insulation	R-value of insulation
Baseline—EL0	2 inches	6.25	R–12.5.
EL1	2.5 inches	6.25	R–15.625.
EL2	3 inches	6.25	R–18.75.
EL3	5 inches	6.0	R–30.

[9] See: *www.hotwater.com/water-heaters/commercial/storage-tanks/jacketed---hpwh-optimized/* (Last accessed Feb. 21, 2022).

2. Representative Equipment for Analysis

For the engineering analysis, DOE analyzed the publicly-available details, including storage volumes and other critical features, of UFHWST models available on the market to determine appropriate representative equipment to analyze. DOE also discussed the appropriate representative characteristics with UFHWST manufacturers during interviews. For the June 2021 NOPD, DOE determined the dimensions in Table IV.2 to be representative of the UFHWST market.

TABLE IV.2—REPRESENTATIVE TANK CHARACTERISTICS USED IN THE JUNE 2021 NOPD

Volume range	Representative volume *(gal.)*	Representative dimensions	
		Height *(in.)*	Diameter *(in.)*
0 to 100	50	47	22
101 to 250	175	65	28
251 to 500	375	72	42
501 to 1000	750	141	42
1,001 to 2,000	1,500	124	60
2,001 to 5,000	3,500	168	84
>5,000	5,000	180	96

In response to the June 2021 NOPD, A.O. Smith suggested alternative dimensions for several representative tank sizes. Specifically, it recommended a height of 34 inches and a diameter of 24 inches for a 50-gallon tank, a height of 87 inches and a diameter of 36 inches for a 375-gallon tank, a height of 100 inches and a diameter of 48 inches for a 750-gallon tank, a height of 204 inches and a diameter of 72 inches for a 3,500-gallon tank, and a height of 283 inches and a diameter of 72 inches for a 5,000-gallon tank. A.O. Smith also suggested that tanks of 3,500 and 5,000 gallons should be installed horizontally. (A.O. Smith, No. 16 at p. 3)

Rheem recommended that an 80-gallon tank be used instead of a 50-gallon tank to represent tanks in the 0 to 100 gallon volume range, because this volume would better represent commercial applications as the predominant installation size. Rheem suggested that 50 gallons is more representative of light commercial and some residential applications. (Rheem, No. 15 at p. 2) After further reviewing UFHWSTs on the market between 0 and 100 gallons, DOE agrees with this comment and changed the representative size for this volume range to 80 gallons in the analysis for this final determination.

Rheem also suggested that the diameter and height for an 80-gallon tank should be 24 inches and 58 inches, respectively, and suggested that the dimensions of the 175-gallon tank should be 67 inches in height and 32 inches in diameter. (Rheem, No. 15 at p. 2) Based on a review of manufacturer specification sheets for 80-gallon models on the market, DOE agrees that Rheem's suggested dimensions for the 80-gallon tank are appropriate and has updated its representative dimensions for this final determination accordingly. However, based on review of the manufacturer specification sheets for other sizes of UFHWSTs on the market, DOE did not conclude that the representative dimensions used for other volumes of tanks should be changed. These dimensions were determined based on DOE's review of the entire market, as well as feedback from manufacturers during manufacturer interviews.

In the June 2021 NOPD, DOE acknowledged comments regarding the customized and variable nature of the UFHWST market. 86 FR 30796, 30804 (June 10, 2021). To account for the wide range of UFHWSTs on the market, DOE chose several representative baseline units for analysis. DOE also included several ambient temperature conditions in its energy use analysis to reflect typical installation locations (*i.e.,* indoors in mechanical rooms or outdoors in ''Very Hot'' and ''Hot'' regions). DOE also noted that UFHWSTs can be installed in either a vertical or horizontal orientation. As discussed in section IV.D.1.b of this document, for the energy use analysis, DOE employed a conservative assumption that a tank would always be full of hot water and, therefore, did not consider stratification of water temperature inside the tank. Under this assumption, installation orientation would not have a significant impact on its energy use analysis results. As such, DOE included only vertically-oriented units (which are the most common) in the representative equipment analyzed. In light of these considerations, the characteristics of the representative units evaluated (including the change to an 80 gallon unit for the 0–100 gallon range) are listed in Table IV.3.

TABLE IV.3—REPRESENTATIVE TANK CHARACTERISTICS USED IN THE FINAL DETERMINATION

Volume range	Representative volume (*gal.*)	Representative dimensions	
		Height (*in.*)	Diameter (*in.*)
0 to 100	80	58	20
101 to 250	175	65	28
251 to 500	375	72	42
501 to 1,000	750	141	42
1,001 to 2,000	1,500	124	60
2,001 to 5,000	3,500	168	84
>5,000	5,000	180	96

3. Cost Analysis

The cost analysis portion of the engineering analysis is conducted using one or a combination of cost approaches. The selection of cost approach depends on a suite of factors, including the availability and reliability of public information, characteristics of the regulated equipment, 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 commercially-available equipment, component-by-component, to develop a detailed bill of materials for the equipment.
- *Catalog teardowns:* In lieu of physically deconstructing equipment, DOE identifies each component using parts diagrams (available from sources such as manufacturer websites or appliance repair websites) to develop the bill of materials for the equipment.
- *Price surveys:* If neither a physical nor catalog teardown is feasible (*e.g.,* for tightly integrated products such as fluorescent lamps, which are infeasible to disassemble and for which parts diagrams are unavailable), cost-prohibitive, or 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.

As discussed in section IV.E of this document, DOE did not conduct a cost analysis because DOE did not have the requisite inputs to develop its LCC model with a degree of certainty that would meet the statute's ''clear and convincing'' evidentiary threshold. Accordingly, DOE did not generate a cost-efficiency curve, as it would not be necessary without an LCC model to feed into.

D. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of UFHWSTs at different efficiencies in representative U.S. commercial buildings and industrial facilities, and to assess the energy savings potential of increased UFHWST efficiency. The energy use analysis estimates the range of energy use of UFHWSTs 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 assessment of the energy savings that could result from adoption of amended or new standards.

As discussed, UFHWSTs store hot water and do not directly consume fuel or electricity for the purpose of heating water, so any potential amendments to the standard would reduce standby loss of heat from the stored water. Further, DOE currently only prescribes a minimum insulation requirement (as opposed to a minimum efficiency requirement) for UFHWSTs. Accordingly, the energy use analysis determines the annual energy consumption of paired water heaters and boilers due to standby loss of the UFHWSTs and assesses the energy savings potential of increasing the stringency of the required insulation for UFHWSTs.

1. Tank Thermal Loss Model

As discussed in the June 2021 NOPD, for this determination, DOE adapted the thermal loss model described in the technical support document (''TSD'') for the commercial water heating (''CWH'') energy conservation standards (''ECS'') NOPR published in the **Federal Register** on May 31, 2016 (81 FR 34440; ''May 2016 CWH ECS NOPR''), with some modifications to how the tank surface areas are defined.[10] 86 FR 30796, 30806 (June 10, 2021). These modifications were introduced to capture equipment performance that results from differences in surface insulation thickness over different areas of the tank (*i.e.,* insulation around fittings and access ports). These differences are described in section IV.D.1.a of this document.

DOE received comment from both the CA IOUs and Rheem on its energy use analysis. The CA IOUs suggested that DOE should find alternative methods to analyze the energy consumption of UFHWSTs or solicit assistance from stakeholders because, they stated that the challenges of evaluating the impacts and feasibility of energy efficiency standards for UFHWSTs should not prompt DOE to forego updating those standards. (CA IOUs, No. 17 at p. 4) In contrast, Rheem stated that the Tank Thermal Loss Model was appropriate for this analysis. (Rheem, No. 15 at p. 3) DOE did not receive any further specific input or information from stakeholders on its Tank Thermal Loss Model. After again considering the available information, DOE did not identify alternative models appropriate for the analysis conducted for this determination. Accordingly, DOE has elected to maintain its modeling approach for this final determination.

[10] Available at: *www.regulations.gov/document?D=EERE-2014-BT-STD-0042=0016,* section 5.5.3 (Last accessed: April 8, 2020).

$$Q_{hr,j} = \sum_{i=1}^{6} \frac{A_{i,j} \times \left(T_i - T_{amb,z}\right)}{R_{i,j}}$$

Where:

$Q_{hr,\,j}$ = The hourly heat loss for the UFHWST for each efficiency level *j* (Btu/hr).

i = The surface area of the cylindrical tank is divided into different zones each indexed *i.*

$A_{i,\,j}$ = The area of each zone *i* at each efficiency level *j* (ft^2).

T_i = The constant internal water temperature for each tank zone *i* (°F).

$T_{amb,z}$ = The ambient air temperature for each climate zone *z* (°F).

$R_{i,\,j}$ = The net R-value of the insulation for each zone *i* at each efficiency level *j* (°F · ft^2 · hr/Btu).

a. Tank Surface Area (Ai, j)

DOE maintained the approach it used in the June 2021 NOPD for this final determination, where DOE used a conservative assumption in its energy use analysis that water temperature would remain uniformly at 140 °F and did not consider stratification of water temperatures inside the tank. 86 FR 30796, 30806 (June 10, 2021). Therefore, although tanks can be installed horizontally or vertically, there is no difference in thermal losses between these configurations, and DOE only used vertical tanks in its analysis. The UFHWST's total external surface area was divided into separate zones, where *i* is the index for each zone. Zones represent the different areas of an UFHWST that would have unique insulative values.

$A_{TankTop}$ = When the UFHWST is oriented vertically, this represents the tank's top surface.

$A_{Fittings}$ = Is the sum of all uninsulated areas of the tank's surface devoted to fittings.

$A_{FittingInsulation}$ = Is the sum of all insulated areas of the tank's surface surrounding the (uninsulated) fittings.

$A_{AccessPort}$ = Is the sum of all insulated areas of the tank's surface devoted to the tank's clean-out hand hole port or manhole.

$A_{TankWall}$ = When the UFHWST is oriented vertically, this represents the tank's walls.

$A_{TankBottom}$ = When the UFHWST is oriented vertically, this represents the tank's bottom surface.

In response to the June 2021 NOPD, A.O. Smith stated that it has not conducted any tests to validate DOE's Tank Thermal Loss Model but recommended that any tests conducted to validate the Tank Thermal Loss Model must include an uninsulated temperature and pressure relief valve installed in a fitting in the top 6 inches of the tank. The commenter stated that a temperature and pressure relief valve is a mandatory safety device that will be installed on each UFHWST and is not

permitted by most applicable safety codes to be covered. (A.O. Smith, No. 16 at p. 4) In response and as discussed in this section, DOE's Tank Thermal Loss Model accounts for small areas of uninsulated tank to reflect losses through adjoining pipes or fittings at each of several ports. DOE maintained the quantity of uninsulated ports that were discussed in the June 2021 NOPD, which specifically included reference to a temperature and pressure relief valve. 86 FR 30796, 30805 (June 10, 2021).

b. Tank Internal Water Temperature (Ti)

For the June 2021 NOPD analysis, DOE assumed that the water inside the UFHWSTs is at a constant uniform temperature of 140 °F, which is the average water temperature required by the current Federal test procedures for storage-type CWH equipment during standby loss testing. 86 FR 30796, 30806 (June 10, 2021). (*See generally* 10 CFR 431.106; 10 CFR part 431, subpart G, appendix A, section 6; 10 CFR part 431, subpart G, appendix B, section 5.) Because UFHWSTs serve the same function as storage-type CWH equipment in standby mode, DOE reasoned that similar conditions would be appropriate for UFHWSTs as for storage-type CWH equipment in standby mode. *Id.* DOE used a conservative assumption that internal water temperatures would remain indefinitely at 140 °F. In reality, the rate of heat loss from a UFHWST would decrease slowly as the temperature difference between the internal stored water and the ambient air decreased. However, because this effect would be minimal, DOE did not consider stratification of water temperatures inside the tank and assumed that a tank would always be full of hot water. Therefore, DOE held the temperature *T* constant across all tank zones *i. Id.*

DOE received comments from a number of stakeholders regarding the assumed constant internal water temperature of 140 °F. The CA IOUs commented that many common commercial hot water applications require temperatures higher than 140 °F and stated that the Centers for Disease Control and Prevention notes in its Environmental Infection Control Guidelines that a temperature of 160 °F is recommended for clothes washing in healthcare facilities. (CA IOUs, No. 17 at p. 2)

Rheem stated that typical storage water temperatures are between 120 °F and 180 °F for food service, laundry, and commercial building applications or between 120 °F and 130 °F for commercial buildings not requiring sanitation. Rheem stated that a constant internal tank temperature of 140 °F is an appropriate estimate for the purposes of DOE's analysis. (Rheem, No. 15 at p. 2) A.O. Smith stated that it agrees with DOE's use of 140 °F as a constant internal water temperature. (A.O. Smith, No. 16 at p. 3)

Given the wide range of temperatures provided by stakeholders above and below DOE's assumed internal temperature, DOE finds the 140 °F to be reasonably representative of UFHWST use in the field. The 140 °F is within the range of temperatures suggested by commenters. The data sources examined by DOE (*i.e.,* recent versions of the Commercial Building Energy Consumption Survey (''CBECS'')),[11] [12] while containing information on primary business activity, do not contain information from which to infer an average internal tank water temperature. Additionally, commenters did not provide data in terms of percentage of applications at which the various internal temperatures are realized. As such, DOE maintained its use of 140 °F for this final determination.

c. Tank Ambient Temperature (Tamb, z)

For the June 2021 NOPD, DOE assumed that all tanks that are installed indoors would have a constant ambient temperature of 75 °F, which is the average air temperature specified by the current Federal test procedure for storage-type CWH equipment during standby loss testing. 86 FR 30796, 30806 (June 10, 2021). *See generally* 10 CFR 431.106; 10 CFR part 431, subpart G, appendix A, section 6; 10 CFR part 431, subpart G, appendix B, section 5.

Both Rheem and A.O. Smith commented on DOE's assumed use of 75 °F as the constant average ambient temperature. Rheem supported the ambient temperature of 75 °F used as a representative value for indoor installations. (Rheem, No. 15 at p. 3) In contrast, A.O. Smith suggested that 78 °F would be more accurate for indoor ambient temperatures. (A.O. Smith, No. 16 at p. 3)

In response, DOE understands that indoor ambient temperatures seen in the field will be a distribution of values depending on the location of the UFHWST within the building and that this location may be conditioned to a temperature other than 75 °F, or not conditioned at all. As discussed, UFHWSTs serve the same function as storage-type CWH equipment in standby mode, and DOE expects that similar conditions would be appropriate for UFHWSTs as for storage-type CWH equipment in standby mode. For the purpose of this simplified energy savings estimate for this final determination, DOE finds that the use of the 75 °F applicable under the CWH test procedure is appropriately representative for UFHWSTs.

DOE notes that A.O. Smith did not provide a basis for its suggestion to test at 78 °F, which would increase the ambient air temperature as compared to the current DOE test procedure. Increasing the ambient temperature would lower the temperature differential between the UFHWST's internal and ambient temperature, thereby reducing the projected potential energy savings. Given the unsubstantiated nature of A.O. Smith's comment and for the reasons discussed, DOE maintained its use of 75 °F as the indoor constant ambient temperature for this final determination.

As stated in the June 2021 NOPD, based on feedback from manufacturers during interviews conducted under NDA, DOE assumed that 90 percent of UFHWSTs would be installed indoors and that the remaining 10 percent would be installed outdoors. 86 FR 30796, 30806 (June 10, 2021).

Rheem agreed with DOE's assumption that 10 percent of all UFHWSTs are installed outdoors. (Rheem, No. 15 at p. 3) A.O. Smith suggested that the Department's assumption that 10 percent of all UFHWSTs are installed outdoors may be overstated. (A.O. Smith, No. 16 at p. 3) However, A.O. Smith did not provide a basis for its assertion and did not provide an alternate percentage to consider. Absent additional support for a different value, for this final determination, DOE maintained its assumption that 10 percent of UFWHSTs are installed outdoors.

A.O. Smith stated that outdoor tanks tend to be taller and have larger volumes than indoor tanks, but R-values are generally consistent with indoor tanks. (A.O. Smith, No. 16 at p. 3) Rheem stated that typical capacities used for outdoor applications include 235, 335, 499, 534-gallon sizes; smaller tanks not specifically intended for outdoor installation may also be placed outside with applied weatherization; and outdoor models can have 2.5 to 3 inches of spray foam insulation and be

[11] Presently, the 2018 edition of CBECs is the most recent version. Energy Information Administration (EIA), 2018 Commercial Building Energy Consumption Survey (CBECS) (Available at: *www.eia.gov/consumption/commercial/*) (Last accessed Feb. 10, 2021).

[12] Energy Information Administration (EIA), 2012 Commercial Building Energy Consumption Survey (CBECS) (Available at: *https://www.eia.gov/consumption/commercial/*) (Last accessed April 4, 2019).

rated as high as R–16. (Rheem, No. 15 at p. 3)

Furthermore, Rheem stated that in addition to climate zones 1A, 2A, and 2B, UFHWSTs are installed in some areas of climate zones 3 and 4. Rheem also stated that given indoor space constraints and rising construction costs, installation outdoors in colder climate zones with added pipe and fittings insulation and freeze protection is becoming more viable. (Rheem, No. 15 at p. 3)

For this final determination, for the fraction of UFHWSTs modeled as installed in outdoor spaces, or in non-conditioned spaces, DOE expanded the applicable climate zones (*z*) and calculated the monthly average temperatures from Typical Meteorological Year 3 (''TMY3'') [13] data for the Building America climate regions 1A, 2A, 2B, 3A, 3B, 3C, 4A, 4B, and 4C.[14] [15] The temperatures for each region are represented by the cities in Table IV.4. The monthly regional averages were then weighted using the regional city populations based on 2018 Census data.[16] Additionally, DOE revised its capacity weighting assumptions for outdoor installed tanks to account for the larger capacities described by both A.O. Smith and Rheem; these capacity weights are shown in Table IV.5.

TABLE IV.4—CLIMATE ZONES AND REPRESENTATIVE CITIES

Climate zone	Population	Representative city	TMY location #
1A	6,208,359	Miami	722020
2A	38,418,718	Houston	722430
2B	6,869,283	Phoenix	722780
3A	43,230,951	Atlanta	722190
3B—CA	29,951,605	Los Angeles	722950
3B—Non CA	5,546,151	Las Vegas	723677
3C	8,596,694	San Francisco	724940
4A	69,154,015	Baltimore	724060
4B	2,245,023	Albuquerque	723650
4C	9,696,610	Seattle	727930
5A	70,727,419	Chicago	725300
5B	13,119,013	Boulder	724699
6A	17,705,715	Minneapolis	726580
6B	2,650,907	Helena	727720
7	2,625,239	Duluth	727450
8	170,286	Fairbanks	702610

TABLE IV.5—CAPACITY WEIGHTING OF INDOOR VERSUS OUTDOOR UFHWSTS

Capacity range (*gal*)	Indoor weighting factor	Outdoor weighting factor
60 to 100	0.05	0
101 to 250	0.2	0.21
251 to 500	0.3	0.32
501 to 1000	0.2	0.21
1001 to 2000	0.15	0.16
2001 to 5000	0.09	0.09
>5000	0.01	0.01

Table IV.6 provides the monthly average ambient temperature values, $T_{amb,\ z}$, for each of the Climate Zones considered in this final determination.

TABLE IV.6—AVERAGE MONTHLY AMBIENT TEMPERATURES

Climate zone	Location weight	Average temperature for month (° F)											
		1	2	3	4	5	6	7	8	9	10	11	12
1A	0.028	67.0	69.6	70.8	75.4	79.5	81.8	82.6	82.4	81.5	79.4	74.5	68.5
2A	0.175	50.9	55.0	61.2	68.9	75.3	80.6	82.9	82.8	79.6	68.6	62.8	54.6
2B	0.031	55.4	60.2	63.2	74.6	81.1	93.2	96.0	92.9	86.7	76.7	64.3	53.1
3A	0.197	39.1	46.3	56.8	63.0	69.5	76.6	78.9	79.8	72.5	60.8	53.5	45.9
3B—CA	0.136	56.7	57.6	58.2	60.4	62.6	64.7	67.8	68.1	67.7	64.7	61.2	57.8
3B—Non CA	0.025	37.6	37.6	40.6	53.4	58.9	65.1	68.6	66.0	63.6	50.5	40.3	34.5

[13] The TMY data sets hold hourly values of solar radiation and meteorological elements for a 1-year period. Their intended use is for computer simulations of solar energy conversion systems and building systems to facilitate performance comparisons of different system types, configurations, and locations in the United States and its territories. Because they represent typical rather than extreme conditions, they are not suited for designing systems to meet the worst-case conditions occurring at a location.

[14] Wilcox, S. and W. Marion, 2008 User's Manual for TMY3 Data Sets, NREL/TP–581–43156 (April 2008) (Available at: *www.nrel.gov/docs/fy08osti/43156.pdf*) (Last accessed November 2021).

[15] Building America Best Practices Series, Volume 7.3, Guide to determining climate regions by county 2015 (Available at: *www.energy.gov/sites/prod/files/2015/10/f27/ba_climate_region_guide_7.3.pdf*).

[16] U.S. Census Population Estimates by County, as of 2018 (Available at: *www.census.gov/data/tables/time-series/demo/popest/2010s-counties-total.html#par_textimage*) (Last accessed April 1, 2022).

TABLE IV.6—AVERAGE MONTHLY AMBIENT TEMPERATURES—Continued

Climate zone	Location weight	Average temperature for month (° F)											
		1	2	3	4	5	6	7	8	9	10	11	12
3C	0.039	49.3	52.3	54.8	56.6	59.0	59.6	60.7	61.9	62.1	59.2	55.0	51.2
4A	0.314	31.1	36.0	46.4	55.7	65.0	73.3	77.6	75.7	68.8	54.8	48.0	35.7
4B	0.010	36.7	39.7	47.8	57.0	64.1	73.8	78.1	75.3	68.9	56.7	44.5	35.7
4C	0.044	40.1	42.5	47.0	51.5	55.4	60.1	63.8	65.8	59.2	52.6	46.5	41.8
Indoor	0.90	75.0	75.0	75.0	75.0	75.0	75.0	75.0	75.0	75.0	75.0	75.0	75.0

d. R-Value of Insulation (Ri, j)

The R-value of each zone *i* of the UFHWST is defined for each efficiency level *j* in the engineering analysis in Table IV.1 and Table IV.3 of section IV.C of this document.

2. Annual Energy Use Due to UFHWST Losses

To calculate the energy used by the boiler attributable to the heat losses of the UFHWSTs, DOE maintained the approach from the June 2021 NOPD and used the following equation for each efficiency level listed in Table IV.1:

$$EBoil_j = Q_{hr,j} \times 8760 \times \frac{1}{Boiler_{\eta,yr}}$$

Where:

$eBoil_j$ = The energy by the boiler required to maintain the water temperature in the UFHWST at the temperature T_i at each efficiency level *j,* (Btu/yr),

$Q_{hr,\ j}$ = hourly heat loss for the UFHWST at each efficiency level *j* (see section IV.D.1, of this document) (Btu/hr), and

*Boiler*η = average boiler efficiency (%) in year *yr* (defined in section IV.G.4 of this document).

Table IV.7 presents the energy used by the boiler attributable to the heat losses of the UFHWST at the baseline (EL 0) and each efficiency level by tank capacity. Table IV.8 presents the resulting energy savings at each efficiency level above baseline. The representative storage volumes used in this analysis are discussed in section IV.C.2 of this document.

DOE did not receive any comment regarding annual energy use due to UFHWST losses and maintained its approach from the June 2021 NOPD for this final determination.

TABLE IV.7—BOILER ENERGY USE DUE TO UFHWST HEAT LOSSES IN 2025

[MMBtu/yr] [17]

EL	UFHWST capacity (*gal*)						
	80	175	375	750	1,500	3,500	5,000
0	2.28	3.42	5.56	9.79	12.82	22.53	27.48
1	2.00	2.94	4.70	8.35	10.80	18.67	22.68
2	1.82	2.63	4.13	7.39	9.46	16.10	19.48
3	1.48	2.03	3.01	5.49	6.81	10.99	13.10

TABLE IV—8 SAVINGS IN BOILER ENERGY USE DUE TO REDUCED UFHWST HEAT LOSSES IN 2025

[MMBtu/yr]

EL	UFHWST capacity (*gal*)						
	80	175	375	750	1,500	3,500	5,000
1	0.28	0.47	0.86	1.45	2.01	3.85	4.80
2	0.46	0.79	1.43	2.41	3.35	6.42	8.00
3	0.81	1.39	2.54	4.30	6.01	11.53	14.38

3. Additional Sources of Uncertainty

As discussed in section IV.C.2 of this document, the inputs to DOE's Tank Thermal Loss Model were primarily based on publicly-available information, DOE's previous knowledge of UFHWSTs, and feedback from manufacturers received during interviews conducted under NDAs. To validate the model, DOE compared the results produced by the model to results of testing previously conducted to evaluate the performance-based test procedure proposed for UFHWSTs in the May 2016 CWH TP NOPR, which was largely based on the standby loss test procedure for commercial storage water heaters. The proposed test procedure included a standby loss test that would be conducted as the mean tank water temperatures decay from 142 °F to 138 °F at a nominal ambient temperature of 75 °F. 81 FR 28588, 28603 (May 9, 2016). Standby loss tests were conducted on 17 UFHWSTs with an advertised insulation level of R–12.5

[17] The projected value for Boiler Efficiency ($Boiler_n$) is 0.922 in 2027. See section IV.G.4 of this document for more details.

and storage volumes of 40, 80, or 120 gallons in order to gather data on whether measured standby losses were consistent with what would be expected from tanks insulated to their rated and/or advertised insulation levels, to assess the repeatability and sensitivity of the proposed test procedure, and to gather data on the potential burden in conducting the testing.

DOE used the same analytical model described in this section to calculate the expected losses from each of these tanks, using their measured dimensions and actual number of ports. As discussed, the internal water temperature (140 °F) and ambient air temperature (75 °F) used for the analytical model were the same as the average temperatures seen during the physical testing. The same assumptions about insulation details (*e.g.,* R-values for different materials and the use of fiberglass around ports) were used as were used for the baseline (R–12.5) units in DOE's Tank Thermal Loss Model. The average predicted rate of standby losses for these tanks was 73 percent of the measured standby losses and ranged from as low as 58 percent of the measured losses up to 90 percent of the measured losses. Because the estimated standby losses are significantly lower than the measured losses, this suggests that DOE's Tank Thermal Loss Model undercounts the actual standby losses that would occur in the field. Furthermore, the wide range in calculated standby losses as compared to measured standby losses indicates that the accuracy of the thermal loss calculations in predicting the standby losses of a particular model will be somewhat unpredictable, thereby adding additional uncertainty.

Furthermore, when DOE conducted standby loss tests of UFHWSTs, it found that tanks with identical storage volumes, dimensions, number of ports, and nominal insulation levels differed by up to 8.5 percent, whereas DOE's model would predict the same level of standby losses for these tanks. This finding suggests that there may be variations in the extent of R–12.5 coverage between units, even between units from the same manufacturer. As discussed in section IV.C.2 of this document, it may not be practical to insulate all surfaces of UFHWSTs with polyurethane foam due to the nature of the insulation application process or the need to retain access to certain ports. Differences in manufacturers' tank designs, manufacturing processes, or their interpretations of the R–12.5 insulation requirement could lead to variations in the amount of tank surface area that is actually insulated with R–12.5. Therefore, tanks that appear to have the same attributes and insulation may have different levels of standby losses in the field. This source of potential variation in standby losses further supports DOE's conclusion that there may be additional sources of thermal losses that vary between tanks and that are not adequately captured in its current Tank Thermal Loss Model. This variation also makes it very difficult for DOE to characterize the representative performance of a ''baseline'' UFHWST, or the expected performance at any potential amended standard level, with a high degree of confidence since there is significant variation in thermal energy losses at a given efficiency level (R-value) that cannot be readily predicted or otherwise accounted for in the analysis. Due to these potential variations in insulation coverage and because DOE has not been able to verify its Tank Thermal Loss Model against its physical test results, there is significant uncertainty as to the validity of its energy use analysis.

E. Life-Cycle Cost and Payback Period Analysis

To determine whether a standard is economically justified, EPCA requires DOE to consider the economic impact of the standard on manufacturers and consumers, as well as the savings in operating costs throughout the estimated average life of the equipment compared to any increase in price, initial charges, or maintenance expenses of the equipment likely to result from the standard. (42 U.S.C. 6313(a)(6)(B)(ii)(I)–(II)) 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. To evaluate the economic impacts of potential energy conservation standards on consumers, in order to determine whether amended standards would be economically justified, DOE used the following two metrics to measure consumer impacts:

- The LCC is the total consumer expense of an appliance or equipment over the life of that equipment, 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 equipment.
- The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of more-efficient equipment 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 UFHWSTs in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline equipment.

1. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the equipment. In the June 2021 NOPD, DOE qualitatively examined certain factors that can impact the installation costs of UFHWST. 86 FR 80796, 80809–80810 (June 10, 2021). DOE acknowledged that that increasing installation costs can reduce, or even eliminate, the future economic consumer benefits from a potential new standard. *Id.* at 86 FR 80810. DOE tentatively agreed with the commenters that a small increase in tank dimensions, a change driven by the need to comply with a potential new standard case, could potentially disproportionately increase the installation costs for a fraction of consumers of replacement equipment. *Id.* DOE stated that while the fraction of impacted consumers is uncertain, DOE is certain that there will be some consumers who will experience these higher installation costs. *Id.* DOE further stated that these higher installation costs for replacement equipment create uncertainty regarding the positive economic benefits for a potentially significant fraction of consumers from an amended standard for UFHWSTs. *Id.*

In response to the June 2021 NOPD, DOE received comments regarding information related to costs resulting from building modifications due to increased equipment size. A.O. Smith stated that the primary consideration of the designing/specifying engineer when replacing a UFHWST is the required storage volume and frequency of hot water demand for the building/application. From there, an installation recommendation is made based upon constraints, including, but not limited to, doorways and passageways that can accommodate the installation of one or more new UFHWSTs. (A.O. Smith, No. 16 at p. 5) Rheem suggested that an increase in the overall dimensions, especially the diameter of UFHWST due

to increased insulation thickness, could require modifications to existing doorways or mechanical rooms. Rheem stated that an increase in the overall dimensions of UFHWSTs would require additional space for installation, along with higher cost for transportation and handling of the tank until it reaches its final location. (Rheem, No. 16 at p. 3) Both A.O. Smith and Rheem agreed that the costs will vary substantially depending on the tank size, building type, and whether it is going to new construction or a replacement installation. Rheem commented that for new construction, the UFHWST installation can be better planned and located during the construction process, but future replacement will still present challenges. Rheem further commented that there are several requirements to consider in determining if restructuring a building is cost-effective or appropriate for a given installation and building, including compliance with building, mechanical, plumbing, and local codes and manufacturer's instructions. Rheem stated that installing floor tie downs, modifying fire-rated doorways and interior passage doors, and changing exit routes in a building are some examples of codes-related considerations. (Rheem, No. 15 at pp. 3–4; A.O. Smith, No. 16 at p. 4) Finally, A.O. Smith suggested that buildings associated with municipal, university, school, and hospital (''MUSH'') facilities will typically have equipment/mechanical rooms, and access thereto, that can accommodate the installation of UFHWSTs of slightly different sizes, including ones with modest increases in dimensions. In the commenter's experience, the more challenging installations are ones associated with ''high-rise buildings'' and historic buildings, in both urban and rural areas; according to A.O. Smith, these buildings often have equipment/mechanical rooms in basements or on the rooftop, which present unique and challenging circumstances for replacing a UFHWST generally, let alone with one that may have slightly larger dimensions. (A.O. Smith, No 16 at p. 5)

In response, the comments from A.O. Smith and Rheem reaffirmed DOE's understanding that potential amended standards for UFHWSTs could potentially disproportionately increase the installation costs for a fraction of consumers of replacement equipment. Absent further information or data on typical installations costs for UFHWST to indicate the contrary, DOE maintains the conclusion arrived at in the June 2021 NOPD: There is considerable uncertainty regarding future consumer economic benefits from increasing the efficiency of UFHWSTs.

2. Annual Energy Consumption

DOE typically determines the annual energy consumption for equipment at different efficiency levels. DOE's approach to determining the annual energy consumption of UFHWSTs is described in section IV.D of this document.

As discussed in section V.A.1 of this document, DOE estimates that amended standards at the max-tech level would result in FFC energy savings of 0.058 quads over 30 years. However, as discussed in sections IV.D and IV.E of this document, even small adjustments to several critical inputs to the model could have a large impact on these results and could significantly alter the findings. For example, as explained previously, the inputs to the Tank Thermal Loss Model are primarily based on publicly available data and information gathered during manufacturer interviews, but as discussed earlier, the results from this model underestimate losses as compared to those observed during testing of UFHWSTs that was previously done to evaluate the test procedure proposed for UFHWSTs in the May 2016 CWH TP NOPR. As noted in the June 2021 NOPD, when DOE conducted standby loss tests of UFHWSTs, it found that tanks with identical storage volumes, dimensions, number of ports, and nominal insulation levels differed by up to 8.5 percent, whereas DOE's model would predict the same level of standby losses for tanks with the same attributes and insulation. This finding suggests that there are variations in the extent of R–12.5 coverage between units, even between units from the same manufacturer. 86 FR 30796, 30808 (June 10, 2021). The unpredictable results of DOE testing meant that DOE was unable to validate its thermal loss model to test data with a high degree of certainty. Without being able to verify expected levels of heat loss through testing, DOE is unable to conduct an LCC and PBP analysis for this final determination. DOE may continue to investigate this issue further in the future.

F. Shipments Analysis

DOE uses projections of annual equipment shipments to calculate the national impacts of potential amended or new energy conservation standards. The shipments model takes an accounting approach in tracking market shares of each equipment class and the vintage of units in the stock. Stock accounting uses equipment shipments as inputs to estimate the age distribution of in-service equipment stocks for all years.

To project shipments and equipment stocks for 2025 through the end of the 30-year analysis period (2054), DOE used a stock accounting model. Future shipments are calculated based on projections in *Annual Energy Outlook 2021* (*AEO 2021*) (see section IV.F.3 of this document for further details). The stock accounting model keeps track of shipments and calculates replacement shipments based on the expected service lifetime of UFHWSTs and a Weibull distribution that identifies a percentage of units still in existence from a prior year that will fail and need to be replaced in the current year.

DOE's approach begins with an estimate of the current stock of UFHWSTs. DOE uses an estimate of average UFHWST lifetime to derive the fraction of the stock that is replaced in each year. DOE then adds an estimate of new UFHWSTs installed in each year.

1. Stock Estimates

DOE investigated each sector that is presumed to operate UFHWSTs: Residential, commercial, and industrial. However, DOE was unable to find clear indicators of how many UFHWST are used by any of these sectors, so it developed sectoral stock estimates from publicly-available data, as discussed in the paragraphs that follow.

a. Residential Stock

As explained in detail in the June 2021 NOPD, to estimate the stock of UFHWSTs in the residential sector, DOE's search of the RECS database using these assumptions yielded a sample of zero buildings that had the potential to contain an UFHWST.[18] 86 FR 30796, 30811 (June 10, 2021). At that time, DOE assumed that UFHWST were not used in residential buildings. DOE did not receive any comments on residential installations of UFHWST. Accordingly, for this final determination, DOE concluded that the quantity of UFHWST installed in the residential sector is minimal, and consequently, it was not considered for the purpose of this final determination.

b. Commercial Stock

To estimate the stock of UFHWSTs in the commercial sector, DOE examined the CBECS databases. At the time of the publication of the June 2021 NOPD, the 2012 edition of CBECS (''CBECS 2012'') was the most recent edition. Since the

[18] U.S. Energy Information Administration, Residential Energy Consumption Survey 2015 (RECS), as published in 2018.

June 2021 NOPD was published in the **Federal Register**, the 2018 edition of CBECS (''CBECS 2018'') was made available.

CBECS 2018 introduced new building records that may contain UFHWST equipment, as they relate to technologies that are often connected to UFHWSTs which were absent from CBECS 2012. However, CBECS 2018 was also limited in its characterization of buildings that may contain an UFHWST when compared to CBECS 2012 and did not have the same fields from which to draw a customer sample. For this final determination, in addition to the sample based on CBECS 2012 which was presented in the June 2021 NOPD, DOE included the buildings from CBECS 2018 with the following characteristics in addition to the stock estimates presented in the June 2021 NOPD (*see* 86 FR 30796, 30811 (June 10, 2021)).

- Solar thermal used for water heating (SOWATR = 1), and
- Water loop heat pump for hot water distribution (WTLOOP_HW = 1).

As noted previously, for the June 2021 NOPD, DOE based its commercial stock estimates on data from CBECS 2012. Since DOE did not receive any comments suggesting alternate stock from the estimates, the Department has elected to maintain its use of these estimates for this final determination in addition to the new records from CBECS 2018. From CBEC 2012, DOE assumed that builds likely to contain an UFHWST would be characterized as follows:

- A building with water heating equipment (WTHTEQ = 1), and
- Where the main heating equipment is boilers inside (or adjacent to) the building that produce steam or hot water (MAINHT = 3).

The results of a search of the CBECS databases using these assumptions yielded a commercial sample of 325,089 buildings from CBECS 2012, plus an additional 11,134 buildings from CBECS 2018. From this sample DOE also found that 99.2 percent of these buildings use natural gas as their primary energy source for water heating, with the remaining 0.8 percent of buildings using district water heating,[19] electricity, heating oil, or other fuels. For purpose of analysis, DOE considered 100 percent of commercial buildings to use natural gas to heat water.

DOE notes that for this determination, the surveys from both CBECS 2012, and CBECS 2018 contain very course data regarding the quantity and type of water heating technologies for each record. DOE assumed one UFWHST per building—for *all* building records-regardless of building size from the CBECS results. This is likely to be an overestimation of UFHWST installed stock, as not all buildings matching the available criteria from CBECS will contain UFHWSTs, even if some of these building contain multiple units.

c. Industrial Stock

For this final determination DOE maintained its industrial stock approach and estimate of UFWHSTs that it used in the June 2021 NOPD. As described in the June 2021 NOPD, DOE examined the industrial data source listed in the August 2019 ECS RFI and was not able to determine an appropriate stock sample from the highly aggregated data available.[20] [21] 86 FR 30796, 30811 (June 10, 2021). DOE maintains that UFHWSTs are used to store potable hot water for human consumption and washing, not for industrial process water. This assumption is supported by Rheem's comment that stated that their UFHWSTs are not intended for non-potable water storage. (Rheem, No.15 at p. 5)

DOE maintained its assumption that the volume of hot water storage needed would be similar across both commercial and manufacturing sectors on a per-person basis. To estimate the stock of industrial consumers, DOE used the number of manufacturing employees from the 2017 census.[22] DOE then determined the ratio of UFHWSTs per commercial employee. DOE then used the ratio of the employee count from the commercial sample described in section IV.F.1.b of this document over the total number of commercial employees to represent the number of UFHWSTs in the commercial sector on a per-employee basis. DOE then applied this ratio to the total number of manufacturing employees from the 2017 census to produce a National stock estimate for the industrial sector.

DOE received comments from Rheem and A.O. Smith indicating that the estimates industrial stock should be a smaller fraction of the UFHWST install base when compared to commercial installations. Rheem commented that most UFHWSTs are installed in the commercial sector; and A.O. Smith stated that the percentage of UFHWSTs used for industrial process hot water storage is relatively small, and that those UFHWSTs used for industrial processes are typically customized/engineered-to-order tanks. (Rheem, No.15 at p. 4; A.O. Smith, No. 16 at p. 6) Additionally, Rheem supported DOE's ''80/20'' split between commercial and industrial applications. (Rheem, No.15 at p. 4) DOE received no other comment on the industrial stock estimates. Given the supportive nature of these comments regarding DOE's industrial stock estimation, the Department maintained the approach from the June 2021 NOPD for this final determination.

Table IV.9 presents the estimated stock of UFHWSTs in each sector, in 2012 and 2018. Table IV.9 shows that even with the updated commercial inputs resulting from the additional buildings from CBEC 2018 that the approximate 80/20 split in the final determination weight between commercial and industrial sectors is maintained.

TABLE IV.9—ESTIMATED UFHWST STOCK (2012)

Sector	NOPD number of units (2012)	Final determination units (2012)	Final determination weight (%) (2018)
Residential	0	0	0
Commercial	315,360	325,269	82

[19] ''District heating'' is an underground infrastructure asset where thermal energy is provided to multiple buildings from a central energy plant or plants. In this context, it would be operated by local governments.

[20] Energy Information Administration (EIA), 2014 Manufacturing Energy Consumption Survey (MECS) (Available at: *https://www.eia.gov/consumption/manufacturing/data/2014/*) (Last accessed April 4, 2019).

[21] Northwest Energy Efficiency Alliance, 2014 Industrial Facilities Site Assessment: Report & Analytic Results, 2014 (Available at: *https://neea.org/img/documents/2014-industrial-facilities-stock-assessment-final-report.pdf*) (Last accessed May 3, 2021).

[22] U.S. Census Bureau, All Sectors: Summary Statistics for the U.S., States, and Selected Geographies: 2017, Table EC1700BASIC, 2017 (Available at: *https://data.census.gov/cedsci/table?q=31-33%3A%20Manufacturing&hidePreview=false&tid=ECNBASIC2017.EC1700BASIC&vintage=2017*) (Last accessed: March 27, 2020).

TABLE IV.9—ESTIMATED UFHWST STOCK (2012)—Continued

Sector	NOPD number of units (2012)	Final determination units (2012)	Final determination weight (%) (2018)
Industrial	71,361	71,361	18

2. Shipments for Replacement

For the reasons explained in the June 2021 NOPD, DOE based the replacement rate for UFHWSTs on an average equipment lifetime of 12 years, using the equipment lifetime developed for commercial water heaters. 86 FR 30796, 30811–30812 (June 10, 2021). In response to the June 2021 NOPD, DOE did not receive any comments regarding its derived annual rate of UFHWST replacement. Accordingly, for this final determination, DOE maintained its assumption of an 8 percent per year replacement rate for UFHWSTs.

3. Shipments for New Construction

To project shipments of UFHWSTs for new construction, DOE relied on the trends available from the *AEO 2021.* DOE used the Commercial Floorspace and Macro Indicators Employment Manufacturing trends to project new construction for the commercial and industrial sectors, respectively.[23] [24] DOE estimated a saturation rate for each equipment type using building and equipment stock values. The saturation rate was applied in each year, yielding shipments to new buildings.

On this topic, Rheem stated that it expects to see growth in storage tank applications to support growth with commercial heat pump water heater systems for new a construction and replacement installations. (Rheem, No.15 at p. 5) The CA IOUs stated that they likewise expect future shipments of UFHWSTs to increase in response to the increased penetration of commercial heat pump water heaters. (Rheem, No.15 at p. 5, CA IOUs, No.17 at p. 1)

A.O. Smith commented that the *AEO* may be too broad of a ''scaler'' to use and recommended considering whether an organization like the American Institute of Architects (AIA) or ASHRAE may have a more defined data set. (A.O. Smith, No.16 at p. 6)

In response, DOE notes that there are insufficient publicly-available data to model the future shipments of UFHWSTs connected to heat pump water heaters. However, buildings with heat pump water heaters were included in CBECS 2018, and they were also included in this stock analysis (see section IV.F.1.b of this document). Additionally, DOE did search for data related to future UFHWST shipments (or an appropriate proxy) generated by either the AIA or ASHRAE, but the Department was unable to locate any such information. Therefore, for this final determination, DOE continued to use *AEO 2021* to project future UFHWST sales. The trend from *AEO* is publicly available, and DOE finds that it provides an accepted, credible projection of key performance indicators.

Rheem commented on instances of installation of a second tank that can serve to help meet the total hot water load or function as a backup. More specifically, Rheem stated that two tanks (under 500 gallons) are used in a growing number of applications, but the commenter did not provide data or information as to the extent of any such trend. (Rheem, No.15 at p. 4) A.O. Smith suggested that it is not uncommon for installations to have more than one UFHWST per building. A.O. Smith further stated that individual installations will have different/unique dimensional limitations depending on the doorways or elevators that must be used to get the tanks into place, as well as overhead clearances. A.O. Smith stated that these constraints may limit tank size and require multiple tanks to meet the intended application. A.O. Smith further stated that some installations require redundancy for critical components such as hot water supply systems and will have heaters and storage tanks connected in parallel such that one can be isolated for maintenance while the other remains in service. (A.O. Smith, No.16 at p. 6)

DOE understands that the installation of additional equipment could be driven by concerns related to limitations associated with individual installation circumstances, or the need for added redundancy of critical hot water systems, as suggested by commenters. However, DOE does not have data as to the extent to which multiple installations occur, and commenters did not provide information as to the extent of such installations in terms of either units installed or sectors where this would be most probable. Nonetheless, DOE notes that its initial stock estimate in section IV.F.1 of this document is very broad due to the categories available in CBECS 2012 and CBECS 2018, and, therefore, it likely estimates at the higher end of the potential range of installed UFHWSTs. For these reasons, DOE did not explicitly include a factor to increase shipments to account for redundant UFHWSTs.

4. Estimated Shipments

Table IV.10 presents the estimated UFHWST shipments in selected years.

TABLE IV.10—SHIPMENTS RESULTS FOR UFHWSTS (UNITS)

Year	Shipments (NOPD)	Shipments (final determination)
2025	38,119	39,407
2030	41,324	41,424
2040	45,474	45,694
2050	48,363	49,901

Table IV.11 presents the estimated distribution of UFHWST shipments by the storage volume ranges specified in section IV.C.2 of this document. DOE estimated these values through examination of capacity counts in existing trade literature and DOE's CCMS database, confidential interviews with manufactures under NDA, and stakeholder comments. DOE assumes that this distribution is static and does not change over time.

DOE received comments from A.O. Smith and Rheem regarding the distribution of shipments over equipment capacities. Both suggested that DOE's stock analysis may include too many large tanks and not enough smaller tanks. Rheem stated that the distribution of shipment estimates for the 0 to 100 and 101 to 250-gallon capacity ranges appears to be low, and the 1,001 to 2,000 and 2,001 to 5,000-gallon ranges are high. (A.O. Smith, No.16 at p. 5, Rheem, No.15 at p. 5) In

[23] U.S. Energy Information Administration, *Annual Energy Outlook (2021),* Table 22, Commercial Sector Energy Consumption, Floorspace, Equipment Efficiency, and Distributed Generation (Available at: *https://www.eia.gov/outlooks/aeo/data/browser/#/?id=32-AEO2021&cases=ref2021&sourcekey=0*) (Last accessed Feb. 21, 2022).

[24] U.S. Energy Information Administration, Annual Energy Outlook (2021), Table 23, Industrial Sector Macroeconomic Indicators (Available at: *https://www.eia.gov/outlooks/aeo/data/browser/#/?id=34-AEO2021&cases=ref2021&sourcekey=0*) (Last accessed Feb. 21, 2022).

response, for this final determination, DOE has redistributed the fraction of capacities based on the comments received. This redistribution is shown in Table IV.11.

TABLE IV.11—DISTRIBUTION OF SHIPMENTS BY UFHWST STORAGE VOLUME (GAL)

Capacity range	Market shares in NOPD (%)	Revied market shares (%)
0 to 100	3	15
101 to 250	11	20
251 to 500	23	23
501 to 1000	26	26
1001 to 2000	20	10
2001 to 5000	16	5
>5000	1	1

5. Additional Sources of Uncertainty

DOE recognizes that the market for UFHWSTs is a relatively highly customized and low-volume shipments market. DOE's review of publicly-available information indicates that annual shipments through 2030 will be below 20,000 units (see the previous section for additional details). In the June 2021 NOPD, DOE identified 48 UFHWST manufacturers, 37 of which are small domestic manufacturers. 86 FR 30796, 30812 (June 10, 2021). In response to the June 2021 NOPD, BWC stated that the number of manufacturers identified that produce UFHWSTs reinforces the point that the market is highly customized and contains a significant number of small, niche manufacturers. (BWC, No. 14 at p. 2)

Due to the niche nature of this marketplace, it is difficult to accurately predict how the market would respond to amended standards (*e.g.,* whether any manufacturers would face disproportionately high conversion costs, what changes may result to the distribution of tank sizes sold, if consumers would select different equipment to meet their water heating needs, or whether manufacturers might consolidate or exit the market). These uncertainties may substantially impact the findings if DOE were to complete a full economic impact analysis of amended standards for UFHWSTs or estimate the cost-effectiveness of a more-stringent standard.

G. National Impact Analysis

DOE conducted an NIA that assesses the NES in terms of total FFC energy savings that would be expected to result from new or amended standards at specific efficiency levels. DOE did not assess the net present value (''NPV'') of the total costs and benefits experienced by consumers as part of the NIA because of the lack of a cost analysis and LCC analysis, as previously discussed. DOE calculates the NES for the potential standard levels considered based on projections of annual equipment shipments, along with the annual energy consumption from the energy use analysis. For the present analysis, DOE projected the energy savings over the lifetime of UFHWSTs sold from 2025 through 2054.

1. National Energy Savings

The national energy savings (''NES'') analysis involves a comparison of national energy consumption of UFHWSTs between each potential standards case (for this final determination represented by efficiency level (''EL'')) and the case with no new or amended energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of equipment (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-standards case. DOE evaluates the effects of amended standards at the national level by comparing a case without such standards (referred to as the no-new-standards case) with standards-case projections that characterize the market for each UFHWST class if DOE were to adopt amended standards at the specified energy efficiency levels for that class. As discussed in the subsections that follow, this analysis requires an examination of both the efficiency of the UFHWST, as well as the efficiency of the appliance supplying heated water to that tank.

In 2011, in response to the recommendations in a report titled, ''Review of Site (Point-of-Use) and Full-Fuel-Cycle Measurement Approaches to DOE/EERE Building Appliance Energy-Efficiency Standards'' issued by a committee appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and greenhouse gas and other emissions in the NIA and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (August 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE subsequently published a statement of amended policy in the **Federal Register**, in which DOE explained its determination that EIA's National Energy Modeling System (''NEMS'') is the most appropriate tool for DOE's FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (August 17, 2012). NEMS is a public domain, multi-sectoral, partial equilibrium model of the U.S. energy sector [25] that EIA uses to prepare its *AEO.* The FFC factors incorporate losses in production, and delivery in the case of natural gas, (including fugitive emissions) and additional energy used to produce and deliver the various fuels used by power plants.

2. Product Lifetime

For this analysis, DOE maintained use of the average lifetime for commercial electric storage water heaters (*i.e.,* 12 years) as a proxy for UFHWST lifetime, as was done in the June 2021 NOPD. 86 FR 30796, 30812 (June 10, 2021).

DOE received several comments related to average UFHWST lifetimes. Both Rheem and A.O. Smith agreed with DOE's estimated 12-year tank lifetime. (Rheem, No.15 at p. 5 and A.O. Smith, No.16 at p. 6) BWC suggested that UFHWST lifetimes vary between 6 and 12 years, but the commenter opined that the actual lifetime is extremely dependent on product maintenance,

[25] For more information on NEMS, refer to *The National Energy Modeling System: An Overview 2009,* DOE/EIA–0581(2009) (October 2009) (Available at: *www.eia.gov/analysis/pdfpages/0581(2009)index.php*) (Last accessed March 25, 2022).

water quality, and product application. (BWC, No.14 at p. 1)

In response, DOE notes that in its analysis, a distribution of lifetimes is used (with an average lifetime of 12 years) to capture different factors that may contribute to lifetimes that are shorter or longer than the average. As BWC did not provide specific frequencies of UFHWST failures as would support modification of the distribution of lifetimes, DOE maintained the same assumptions used in its proposed determination for this final determination.

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

To estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE first 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 2021 NOPD, DOE based its distribution of efficiencies in the no-new-standards case on the counts and R-values of the records in its CCD database. At that time, DOE found that there were a minimal number of designs that related to the R-value efficiency levels determined in the engineering analysis. 86 FR 30796, 30813 (June 10, 2021).

In commenting on the June 2021 NOPD, DOE received input from interested parties regarding the distribution of efficiencies in the no-new-standards case. Both A.O. Smith and BWC agreed with DOE's assumption that 99 percent of all units sold are currently at baseline (R–12.5). (A.O. Smith, No.16 at p. 7, BWC, No.14 at p. 2) While Rheem agreed most shipments are at or near the baseline of R–12.5, it suggested that DOE should review the 99-percent assumption. (Rheem, No.15 at p. 5) The CA IOUs commented in the DOE compliance database, roughly 1149 out of 2428 models have an R-value above 12.5, and 660 models have an R-value at or above 15.625 (EL 1), suggesting that there is interest in equipment with insulation levels well above the current minimum levels. (CA IOUs, No.17 at p. 4)

Based on the comments received, DOE updated the baseline efficiency distribution used in the final determination based on the most recently available data from CCD. These data contain a greater number of models above baseline than there were at the time the June 2021 NOPD was published. Based on these new data, DOE revised its energy efficiency distribution in the no-new-standards case to match the data shown in Table IV.12 of this document. This update results in a revised distribution for this final determination of 68 precent at EL 0 (baseline), and 31 percent at EL 1, and less than 1 percent combined at ELs 2 and 3. The revised distribution of efficiencies weighted as a function of shipments by representative tank volume (gal) are shown in Table IV.13.

TABLE IV.12—FRACTION OF MODEL EFFICIENCY IN CCMS

(% of records)

Representative tank volume (gal.)	EL 0 (baseline)	EL 1	EL 2	EL 3
	R–12.5	R–15.62	R–18.75	R–30
80	7	0	0	0
175	19	4	0	0
375	18	6	0	0
750	19	6	0	0
1,500	10	8	0	0
3,500	0	2	0	0
5,000	0	1	0	0

Note: DOE notes that while there is some equipment currently distributed in commerce that achieves EL 3, the fraction of such equipment is very small when compared to rest of the market and is not reflected here due to rounding.

TABLE IV.13—FRACTION OF MODEL EFFICIENCIES AS A FUNCTION OF SHIPMENTS

(% of shipments)

Representative tank volume (gal.)	Shipments weight	EL 0 (baseline)	EL 1	EL 2	EL 3
		R–12.5	R–15.62	R–18.75	R–30
80		4	0	0	0
175		17	3	0	0
375		23	7	0	0
750		15	5	0	0
1,500		8	7	0	0
3,500		1	8	0	0
5,000		0	1	0	0

Note: DOE notes that while there is some equipment currently distributed in commerce that achieves EL 3, the fraction of such equipment is very small when compared to rest of the market and is not reflected here due to rounding.

4. Hot Water Supply Boiler Efficiency Trend

As stated previously, a potential standard increasing the insulation rating of UFWHST equipment would reduce thermal losses, which would in turn reduce the energy used by a building's hot water supply equipment to provide hot water.[26] Determining the impact of reduced UFHWST losses on the connected boiler(s) requires an estimate of the boiler efficiency. To estimate the efficiency of boiler systems, DOE used the No-New-Standards Case (EL 0) efficiency distribution data from the May 2016 CWH ECS NOPR [27] to calculate a single, market-weighted, average efficiency, which was 84.4 percent in 2016. For years beyond 2016 and future years through 2050, DOE used the *AEO 2022* data series ''Commercial: Stock Average Efficiency: Water Heating: Natural Gas: Reference case'' to project the efficiency trend of hot-water supply boilers.[28]

The CA IOUs suggested that the boiler efficiencies used in DOE's analysis of UFHWSTs might be too high and recommended that DOE revise its installed stock efficiency assumptions by using the NIA shipments estimates from the 2016 commercial packaged boilers (''CPB'') standards rulemaking. (CA IOUs, No.17 at pp. 3–4)

In response, DOE notes that the analysis preformed in support of the May 2016 CPB standards rulemaking has a number of outdated assumptions, and even the January 2020 CPB standards final rule,[29] while still relevant, does not include recent State and other initiatives promoting water heater efficiency that are captured in the *AEO 2022* data series ''Commercial: Stock Average Efficiency: Water Heating: Natural Gas: Reference case'' to project the efficiency trend of hot-water supply boilers.[30] For this final determination, DOE examined the efficiency distributions in the no-new-standards case for small and large commercial gas water heating boilers from the 2020 CPB standards final rule and found that that the resulting FFC savings were 0.061 quads, or 0.003 quads greater that DOE's estimation using the efficiency trend from *AEO 2022.* [31] [32] As DOE stated previously, the *AEO 2022* data on boiler efficiency is the most current data available, and despite showing slightly less cumulative energy savings than the trend from the 2020 CPB standards final rule, DOE has maintained its approach to use the most recently available information. Additionally, as in the June 2021 NOPD, DOE assumed no additional increase in boiler efficiency after 2050 (*i.e.,* the end date for the *AEO 2022* analysis). This efficiency trend for select years is shown in Table IV.13.

TABLE IV.14—AVERAGE STOCK EFFICIENCIES OF HOT-WATER SUPPLY BOILERS FROM 2025–2050

Year	Efficiency (%)
2025	89.5
2030	90.8
2035	92.3
2040	93.3
2045	93.9
2050	94.3

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for UFHWSTs. It addresses the efficiency levels examined by DOE and the projected FFC energy savings of each of these levels. As discussed previously, certain economic analyses were not conducted for this final determination because it was determined they would be of limited value due to the lack of data and high degree of uncertainty of the inputs to those analyses.

A. National Impact Analysis

This section presents DOE's estimates of the FFC NES that would result from each of the efficiency levels considered as potential amended standards.

1. Significance of Energy Savings

To estimate the energy savings attributable to potential amended standards for UFHWSTs, DOE compared their energy consumption under the no-new-standards case to their anticipated energy consumption under each efficiency level. The savings are measured over the entire lifetime of equipment purchased in the 30-year period that would begin in the year of anticipated compliance with amended standards (2025–2054). Table V.1 presents DOE's projections of the FFC National energy savings for each efficiency level considered for UFHWSTs. The savings were calculated using the approach described in section IV.D of this document.

TABLE V.1—CUMULATIVE FFC NATIONAL ENERGY SAVINGS FOR UFHWSTS; 30 YEARS OF SHIPMENTS (2025–2054)

	Efficiency level		
	1	2	3
Full-Fuel-Cycle Energy (quads)	0.015	0.029	0.058

OMB Circular A–4 [33] 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

[26] While there is a wide range of equipment that building owners can use to produce hot water, for this analysis, DOE assumed that 100 percent of all hot water is produced by a hot water supply boiler. See section IV.E.1.b of this document for details.

[27] Available at: *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0042-0016* (Last accessed: April 8, 2020).

[28] U.S. Energy Information Administration, Annual Energy Outlook (2022), Table 22, Commercial Sector Energy Consumption, Floorspace, Equipment Efficiency, and Distributed Generation (Available at: *https://www.eia.gov/outlooks/aeo/data/browser/#/?id=32-AEO2020&region=0-0&cases=ref2020&start=2018&end=2050&f=A&linechart=ref2020-d112119a.45-32-AEO2020&map=&ctype=linechart&sourcekey=0*) (Last accessed May 10, 2022).

[29] Available at: *https://www.regulations.gov/document?D=EERE–2013–BT–STD–0030*-0099 (Last accessed: April 8, 2020).

[30] U.S. Energy Information Administration, *Annual Energy Outlook (2021),* Table 22, Commercial Sector Energy Consumption, Floorspace, Equipment Efficiency, and Distributed Generation (Available at: *www.eia.gov/outlooks/aeo/data/browser/#/?id=32–AEO2021&cases=ref2021&sourcekey=0*) (Last accessed April 23, 2021).

[31] Commercial Packaged Boilers Final Rule National Impact Spreadsheet (Jan. 10, 2020) (Available at: *https://www.regulations.gov/document/EERE-2013-BT-STD-0030-0087*) See: Efficiency Distribution tables on worksheets: SGHW, and LGHW (Last accessed: April 22, 2022).

[32] The impacts of applying the no-new standards case efficiency trend from CPB can be examined as a sensitivity scenario in the accompanying energy savings estimation tool. (Available at: *https://www.regulations.gov/docket/EERE-2017-BT-STD-0021/document.*)

[33] U.S. Office of Management and Budget, *Circular A–4: Regulatory Analysis* (Sept. 17, 2003) (Available at: *www.whitehouse.gov/omb/circulars_a004_a-4/*).

to consider the variability of key elements underlying the estimates of benefits and costs. For this final determination, DOE undertook a sensitivity analysis using 9 years, rather than 30 years, of equipment 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.[34] The review timeframe established in EPCA is generally not synchronized with the equipment lifetime, equipment manufacturing cycles, or other factors specific to UFHWSTs. 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.2 of this document. The impacts are counted over the lifetime of UFHWSTs purchased in 2025–2034.

TABLE V.2—CUMULATIVE FFC NATIONAL ENERGY SAVINGS FOR UFHWSTS; 9 YEARS OF SHIPMENTS (2025–2034)

	Efficiency level		
	1	2	3
Full-Fuel-Cycle Energy (quads)	0.005	0.009	0.018

2. Net Present Value of Consumer Costs and Benefits

As discussed in section IV.E of this document, increasing the size of UFHWSTs could necessitate alterations to doorways and mechanical rooms in certain replacement installations in order to get an UFHWST to its installation destination. Further, due to significant uncertainties regarding the costs of these alterations and the lack of data indicating the likelihood of such alterations being required, at this time, DOE is unable to estimate typical installation costs of UFHWSTs. Therefore, any analysis conducted by DOE regarding the LCC or PBP would be of limited value because of the lack of data and high degree of uncertainty of the inputs to those analyses, and as a result, DOE did not estimate the NPV of consumer costs and benefits.

B. Final Determination

After carefully considering the comments on the June 2021 NOPD and the available data and information, DOE has determined that the energy conservation standards for UFHWSTs do not need to be amended, for the reasons explained in the paragraphs immediately following.

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

Because an analysis of potential economic justification and energy savings first requires an evaluation of the relevant technology, DOE first discusses the technological feasibility of amended standards. DOE then evaluates the energy savings potential and economic justification of potential amended standards.

1. Technological Feasibility

EPCA mandates that DOE consider whether amended energy conservation standards for UFHWSTs would be technologically feasible. (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(A)(ii)(II)) DOE has determined that increasing the R-value of insulation up to R–30 would improve the efficiency of UFHWSTs. As discussed in section IV.C.1 of this document, this increased R-value has been demonstrated in commercially-available jacketed UFHWSTs. These tanks have an advertised polyurethane foam thickness of 5 inches. For insulation thicknesses up to 3 inches, DOE has determined that an R-value per inch of 6.25 is appropriate. However, the R-value per inch of insulation appears to decrease to 6 beyond this foam thickness, so DOE used this slightly lower R-value-per inch in its Tank Thermal Loss Model for the max-tech level. Therefore, increasing the thickness of insulation up to a level of 5 inches has been demonstrated to be achievable in commercially-available jacketed UFHWSTs, and, thus, would be technologically feasible. (*See* section IV.C.1 of this document for further information.) Hence, DOE has determined that amended energy conservation standards for UFHWSTs would be technologically feasible.

2. Significant Conservation of Energy

EPCA also mandates that DOE consider whether amended energy conservation standards for UFHWSTs would result in result in significant additional conservation of energy. (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(A)(ii)(II)) In the present case, DOE estimates that amended standards for UFHWST would result in FFC energy savings of 0.015 quads at EL 1, 0.029 quads at EL 2, and 0.058 quads at

[34] Under 42 U.S.C. 6313(a)(6)(C)(i) and (iv), EPCA requires DOE to review its standards for covered ASHRAE equipment every 6 years, and it requires a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. If DOE makes a determination that amended standards are not needed, it must conduct a subsequent review within three years following such a determination. (42 U.S.C. 6313(a)(6)(C)(iii)(II)) Furthermore, if ASHRAE acts to amend ASHRAE Standard 90.1 for any of the enumerated equipment covered by EPCA, DOE is triggered to consider and adopt the amended ASHRAE levels, unless the Department has clear and convincing evidence to support more-stringent standard levels, which would result in significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) If DOE adopts the amended ASHRAE levels, compliance with amended Federal energy conservation standards would be required either two or three years after the effective date of the ASHRAE Standard 90.1 amendments (depending upon the equipment type in question). However, if DOE adopts more-stringent standards pursuant to the ASHRAE trigger, compliance with such standards would be required four years after publication of a final rule. (42 U.S.C. 6313(a)(6)(D)) As DOE is evaluating the need to amend the standards, the sensitivity analysis is based on the review timeframe associated with amended standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some equipment, the compliance period may be something other than 3 years.

EL 3 (the max-tech level) over a 30-year analysis period (2025–2054), as realized by the connected hot-water supply boiler. However, as discussed throughout this document, there are significant uncertainties related to these results.

First, as discussed in section IV.C.1 of this document, there appears to be a reduction in R-value per inch of insulation in units with insulation thickness greater than 3 inches, generating uncertainty with regard to the performance of models above EL 2.

Second, as discussed in section IV.D.3 of this document, when comparing the results of the Tank Thermal Loss model to measured standby losses, the predicted rate of standby losses ranged from as low as 58 percent of the measured losses up to 90 percent of the measured losses. Furthermore, DOE's model would predict the same level of standby losses for tanks with identical storage volumes, dimensions, number of ports, and nominal insulation levels, whereas measured standby losses for such comparable tanks differed by up to 8.5 percent. These findings suggest that there may be variations in the extent of R–12.5 coverage between units, even between units from the same manufacturer. As discussed in section IV.C.2 of this document, it may not be practical to insulate all surfaces of UFHWSTs with polyurethane foam due to the nature of the insulation application process or the need to retain access to certain ports. Differences in manufacturers' tank designs, manufacturing processes, or their interpretations of the R–12.5 insulation requirement could lead to variations in the amount of tank surface area that is actually insulated with R–12.5. Therefore, tanks that appear to have the same attributes and insulation may have different levels of standby losses in the field. This variation makes it very difficult for DOE to characterize the representative performance of a ''baseline'' UFHWST, or the expected performance at any potential amended standard level, with a high degree of confidence since there is significant variation in thermal energy losses at a given efficiency level (R-value) that cannot be readily predicted or otherwise accounted for in the analysis.

Third, as discussed in section IV.F.5 of this document, due to the niche nature of this marketplace, it is difficult to accurately predict how the market would respond to amended standards (*e.g.,* whether any manufacturers would face disproportionately high conversion costs, what changes may result to the distribution of tank sizes sold, if consumers would select different equipment to meet their water heating needs, or whether manufacturers might consolidate or exit the market). This uncertainty in standards-case shipments projections propagates uncertainty into the estimates of national energy savings.

Due to the uncertainties in characterizing the efficiency performance of models above EL 2, the uncertainties in characterizing the representative field energy use of both baseline models and models at all ELs, and the uncertainty in projecting standards-case shipments, DOE has determined that it lacks clear and convincing evidence that amended energy conservation standards for UFHWSTs would result in significant additional conservation of energy.

3. Economic Justification

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

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

As discussed in section IV.E.1 and V.A.2 of this document, there are significant uncertainties with regard to installation costs of models with increased insulation thickness. Specifically, increasing the size of UFHWSTs could necessitate alterations to doorways and mechanical rooms in certain replacement installations in order to get an UFHWST to its installation destination. Further, due to significant uncertainties regarding the costs of these alterations and the lack of data indicating the likelihood of such alterations being required, at this time, DOE is unable to estimate typical installation costs of UFHWSTs.

In addition, as discussed in section IV.D.1 of this document, even small adjustments to several critical inputs to the Thermal Tank Loss Model could have a large impact on any energy use and LCC results and could significantly alter the findings.

For these reasons, DOE did not conduct an economic analysis for this rulemaking. EPCA requires that DOE determine, supported by clear and convincing evidence, that adoption of a uniform national standard more stringent than that in ASHRAE Standard 90.1 would result in significant additional conservation of energy *and* be technologically feasible *and* economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(II); emphasis added) The inability to make a determination, supported by clear and convincing evidence, with regard to any one of the statutory criteria prohibits DOE from adopting more-stringent standards regardless of its determinations as to the other criteria. Due to the significant uncertainties related to installation costs and energy use, DOE could not reasonably conduct an analysis of economic justification, because those uncertainties would propagate into the results of any such analysis. Therefore, the result of such economic analysis would fail to produce the clear and convincing evidence required under the statute to demonstrate that amended standards for UFHWSTs would be economically justified, thereby providing an additional basis for DOE's decision to move forward with a final determination.

4. Summary

Based on the reasons stated in the foregoing discussion, DOE has determined that the energy conservation standards for unfired hot water storage tanks do not need to be amended, because it lacks ''clear and convincing'' evidence that amended standards would result in significant additional conservation of energy or be economically justified.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory

approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this regulatory action is consistent with these principles.

OMB has determined that this final determination does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not subject to review under E.O. 12866 by OIRA at OMB.

B. Review Under the Regulatory Flexibility Act

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

The Small Business Administration (''SBA'') considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. The size standards and codes are established by the 2017 North American Industry Classification System (''NAICS''). Unfired hot water storage tank manufacturers are classified under NAICS code 333318, ''Other Commercial and Service Industry Machinery Manufacturing.'' The SBA sets a threshold of 1,000 employees or fewer for an entity to be considered as a small business in this category. DOE conducted a focused inquiry into small business manufacturers of the equipment covered by this final determination. The Department used available public information to identify potential small manufacturers. DOE accessed the Compliance Certification Database to create a list of companies that import or otherwise manufacture the unfired hot water storage tanks covered by this final determination. Using these sources, DOE identified a total of 48 distinct manufacturers of unfired hot water storage tanks. Of these manufacturers, DOE identified 37 manufacturers that are potential small businesses.

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

C. Review Under the Paperwork Reduction Act of 1995

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

D. Review Under the National Environmental Policy Act of 1969

DOE has analyzed this final determination in accordance with the National Environmental Policy Act (''NEPA'') and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for actions including interpretations and ruling with respect to existing regulation. 10 CFR part 1021, subpart D, appendix A4. DOE has completed the necessary review under NEPA and has determined that this final determination would not have a significant individual or cumulative impact to human health and/or environment, and is consistent with actions contained in DOE categorical exclusion A4. See 10 CFR 1021.410. Therefore, DOE has determined that promulgation of this final determination is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an environmental assessment or an environmental impact statement.

E. Review Under Executive Order 13132

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

action is required by Executive Order 13132.

F. Review Under Executive Order 12988

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

G. Review Under the Unfunded Mandates Reform Act of 1995

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

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

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

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

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), DOE has determined that this final determination will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

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

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

K. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to 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 Executive Order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

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

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (''OSTP''), issued its Final Information Quality Bulletin for Peer Review (''the Bulletin''). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the

Bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' 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.[35] 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 (''NAS'') to review DOE's analytical methodologies to ascertain whether modifications are needed to improve the Department's analyses. DOE is in the process of evaluating the resulting December 2021 NAS report.[36]

M. Congressional Notification

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

VII. Approval of the Office of the Secretary

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

Signing Authority

This document of the Department of Energy was signed on May 18, 2022, by Kelly J. Speakes-Backman, 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 May 18, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–11128 Filed 5–23–22; 8:45 am]

BILLING CODE 6450–01–P

[35] The 2007 ''Energy Conservation Standards Rulemaking Peer Review Report'' is available at the following website: *www.energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0.* (Last accessed Feb. 21, 2022.)

[36] The December 2021 NAS report is available at *www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards.* (Last accessed Feb. 21, 2022.)

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1071; Project Identifier AD–2021–01055–E; Amendment 39–22044; AD 2022–10–06]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2017–18–14, which applied to certain Rolls-Royce Corporation (RRC) 250 model turboshaft engines. AD 2017–18–14 required repetitive visual inspections and fluorescent penetrant inspections (FPIs) of the 3rd-stage turbine wheel and removal from service of the 4th-stage turbine wheel. This AD was prompted by in-service turbine blade failures that resulted in the loss of power and engine in-flight shutdowns. This AD requires replacement of the 3rd-stage and 4th-stage turbine wheels. This AD also revises the applicability to include an additional turboshaft engine model. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 28, 2022.

ADDRESSES: For service information identified in this final rule, contact Rolls-Royce Corporation, 450 South Meridian Street, Mail Code NB–01–06, Indianapolis, IN 46225; phone: (317) 230–2720; email: *HelicoptCustSupp@Rolls-Royce.com*; website: *www.rolls-royce.com.* You may view this service information at the Airworthiness Products Section, Operational Safety Branch, FAA, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1071; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: John Tallarovic, Aviation Safety Engineer, Chicago ACO, FAA, 2300 E Devon Avenue, Des Plaines, IL 60018; phone: (847) 294–8180; email: *john.m.tallarovic@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2017–18–14, Amendment 39–19023 (82 FR 42443, September 8, 2017), (AD 2017–18–14). AD 2017–18–14 applied to certain RRC 250–C20, –C20B, –C20F, –C20J, –C20R, –C20R/1, –C20R/2, –C20R/4, –C20W, –C300/A1, and –C300/B1 turboshaft engines with either a 3rd-stage turbine wheel, part number (P/N) 23065818, or a 4th-stage turbine wheel, P/N 23055944 or RR30000240, installed. The NPRM published in the **Federal Register** on January 14, 2022 (87 FR 2365). The NPRM was prompted by in-service turbine blade failures that resulted in the loss of power and engine in-flight shutdowns. Since the FAA issued AD 2017–18–14, the manufacturer redesigned the 3rd-stage turbine wheel. The manufacturer published Rolls-Royce Alert Commercial Engine Bulletin (CEB) CEB A–1428/CEB A–72–4111 (single document), which describes procedures for replacement of the 3rd-stage turbine wheel, P/N 23065818, with the new increased blade fillet 3rd-stage turbine wheel, P/N M250–10473. Additionally, the FAA determined that the RRC 250–C20C (T63–A–720) model turboshaft engine is also susceptible to the unsafe condition. In the NPRM, the FAA proposed to require replacement of the 3rd-stage and 4th-stage turbine

wheels. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from two commenters. The commenters were an anonymous commenter and RRC. The following presents the comments received on the NPRM and the FAA's response to each comment.

Comments on Part Availability and Costs

The anonymous commenter stated that RRC does not have the inventory to supply engine shops with the 3rd-stage and 4th-stage turbine wheels proposed for replacement in the NPRM. The commenter requested that RRC provide credit to its customers for unused time on 3rd-stage and 4th-stage turbine wheels and reasoned that customers paid for the full life of the 3rd-stage and 4th-stage turbine wheels, not a partial life, which now requires replacement at full price. The commenter also stated that the part cost estimates in the NPRM for the 3rd-stage and 4th-stage turbine wheels are inaccurate and should indicate an estimated cost of $22,929.15 and $18,926.59 to reflect Aviall and Boeing's prices, respectively. The commenter noted that they have found performing FPIs on the 3rd-stage and 4th-stage turbine wheels result in serviceable conditions compared to the previous configurations that were beyond serviceable. The commenter expressed that the proposed requirements in the NPRM would be a financial burden on RRC's customers, considering the current market instability.

The FAA disagrees that the manufacturer will not have sufficient inventory, which would prevent compliance with this AD. Prior to publishing the NPRM, the FAA confirmed with RRC that there would be adequate inventory for operators to replace the 3rd-stage and 4th-stage turbine wheels. In response to this comment, the FAA confirmed with RRC that the 3rd-stage and 4th-stage turbine wheels are available at a 50% discounted price. Additionally, RRC indicated that suppliers will also provide the discounted price. The FPI of 3rd-stage turbine wheels was an interim action until redesigned parts became available. While FPI reduces the risk of a blade failure, the unsafe condition is addressed by replacing the 3rd-stage turbine wheel with the revised design. The FAA did not change this AD as a result of the comments.

Request To Update Service Information

RRC requested that the FAA revise the Related Service Information paragraph of this AD to reference Rolls-Royce Alert CEB CEB A–1428/CEB A–72–4111 (single document), Revision 2, dated December 8, 2021. RRC reasoned that since the three Rolls-Royce bulletins were submitted to the FAA in support of the NPRM, Rolls-Royce has published Revision 2 of Rolls-Royce Alert CEB CEB A–1428/CEB A–72–4111 (single document).

The FAA agrees. The FAA has updated the Related Service Information paragraph of this AD to reference Rolls-Royce Alert CEB CEB A–1428/CEB A–72–4111 (single document), Revision 2, dated December 8, 2021.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting the AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information

The FAA reviewed Rolls-Royce Alert CEB CEB A–1428/CEB A–72–4111 (single document), Revision 2, dated December 8, 2021. This Alert CEB describes procedures for replacing the 3rd-stage turbine wheel, P/N 23065818, with the new increased blade fillet 3rd-stage turbine wheel, P/N M250–10473.

The FAA reviewed Rolls-Royce Alert CEB CEB–A–1422/CEB–A–72–4108 (single document), Original Issue, dated September 13, 2017. This Alert CEB describes procedures for replacing 4th-stage turbine wheel, P/N 23055944, with the new increased blade fillet 4th-stage turbine wheel, P/N M250–10445.

The FAA also reviewed Rolls-Royce Alert Service Bulletin (SB) RR300–A–72–024, Original Issue, dated September 13, 2017. This Alert SB describes procedures for replacing the 4th-stage turbine wheel, P/N RR30000240, with the new increased blade fillet 4th-stage turbine wheel, P/N RR30000494.

Costs of Compliance

The FAA estimates that this AD affects 3,769 engines installed on helicopters of U.S. registry. The FAA estimates that 3,041 3rd-stage turbine wheels and 3,769 4th-stage turbine wheels will require replacement.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace 3rd-stage turbine wheel, P/N 23065818.	3 work-hours × $85 per hour = $255.	$11,170	$11,425	$34,743,425 (3,041 engines).
Replace 4th-stage turbine wheel, P/N 23055944 or RR30000240.	3 work-hours × $85 per hour = $255.	8,928	9,183	$34,610,727 (3,769 engines).

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

develop on products identified in this rulemaking action.

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2017–18–14, Amendment 39–19023 (82 FR 42443, September 8, 2017); and

■ b. Adding the following new airworthiness directive:

2022–10–06 Rolls-Royce Corporation: Amendment 39–22044; Docket No. FAA–2021–1071; Project Identifier AD–2021–01055–E.

(a) Effective Date

This airworthiness directive (AD) is effective June 28, 2022.

(b) Affected ADs

This AD replaces AD 2017–18–14, Amendment 39–19023 (82 FR 42443, September 8, 2017).

(c) Applicability

This AD applies to Rolls-Royce Corporation (RRC) 250–C20, 250–C20B, 250–C20C (T63–A–720), 250–C20F, 250–C20J, 250–C20R, 250–C20R/1, 250–C20R/2, 250–C20R/4, 250–C20W, 250–C300/A1, and 250–C300/B1 model turboshaft engines with either a 3rd-stage turbine wheel, part number (P/N) 23065818, or a 4th-stage turbine wheel, P/N 23055944 or RR30000240, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by in-service turbine blade failures that resulted in the loss of power and engine in-flight shutdowns. The FAA is issuing this AD to prevent failure of the 3rd-stage and 4th-stage turbine blades. The unsafe condition, if not addressed, could result in damage to the engine and damage to the aircraft.

(f) Compliance

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

(g) Required Actions

(1) Within 1,775 hours since last visual inspection and fluorescent penetrant inspection (FPI), or at the next engine shop visit, whichever occurs first after the effective date of this AD, remove:

(i) 3rd-stage turbine wheel, P/N 23065818, and replace with a part eligible for installation.

(ii) 4th-stage turbine wheel, P/N 23055944, and replace with a part eligible for installation.

(2) Within 2,025 hours since last visual inspection and FPI, or at the next engine shop visit, whichever occurs first after the effective date of this AD, remove 4th-stage turbine wheel, P/N RR30000240, and replace with a part eligible for installation.

(h) Definitions

(1) For this purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance in which the turbine module is separated from the exhaust collector, the gas-producer-support is separated from the power-turbine-support, or there is separation of pairs of major mating engine flanges, except that the separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance does not constitute an engine shop visit.

(2) For the purpose of this AD, a ''part eligible for installation'' is a 3rd-stage turbine wheel or 4th-stage turbine wheel that does not have a P/N listed in the Applicability, paragraph (c), of this AD.

(i) Special Flight Permit

A special flight permit may be issued in accordance with 14 CFR 21.197 and 21.199 to permit a one-time non-revenue ferry flight to operate the airplane to a maintenance facility where the engine can be removed from service. This ferry flight must be performed with only essential flight crew.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

For more information about this AD, contact John Tallarovic, Aviation Safety Engineer, Chicago ACO, FAA, 2300 E Devon Avenue, Des Plaines, IL 60018; phone: (847) 294–8180; email: *john.m.tallarovic@faa.gov*.

(l) Material Incorporated by Reference

None.

Issued on May 3, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–11084 Filed 5–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1185; Project Identifier AD–2021–00339–E; Amendment 39–22040; AD 2022–10–02]

RIN 2120–AA64

Airworthiness Directives; Honeywell International, Inc. (Type Certificate Previously Held by AlliedSignal, Inc. and Textron Lycoming) Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2002–03–01, which applied to certain Honeywell International, Inc. (Honeywell) T53 model turboshaft engines. AD 2002–03–01 required initial and repetitive special vibration tests of the engine and, if necessary, replacement with a serviceable reduction gearbox assembly, or a serviceable engine before further flight. This AD was prompted by reports of tachometer drive spur gear failure, resulting in potential engine overspeed, loss of power turbine speed (N2) instrument panel indication, and hard landings. This AD requires initial and repetitive special vibration tests of the engine and, depending on the results, replacement of either the reduction gearbox assembly or the engine. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 28, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 28, 2022.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of March 21, 2002 (67 FR 6857, February 14, 2002).

ADDRESSES: For service information identified in this final rule, contact Honeywell International, Inc., 111 South 34th Street, Phoenix, AZ 85034; phone: (800) 601–3099; fax: (602) 365–5577; website: *https://myaerospace.honeywell.com/wps/portal.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1185.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1185; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jeffrey Chang, Aviation Safety Engineer, Los Angeles ACO Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (562) 627–5263; fax: (562) 627–5210; email: *jeffrey.chang@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2002–03–01, Amendment 39–12642 (67 FR 6857, February 14, 2002), (AD 2002–03–01). AD 2002–03–01 applied to Honeywell (formerly AlliedSignal, Inc. and Textron Lycoming) T5311A, T5311B, T5313B, T5317A, T5317B, and former military T53–L–11, T53–L–11A, T53–L–11B, T53–L–11C, T53–L–11D, T53–L–11A S/SA, T53–L–13B, T53–L–13B S/SA, T53–L–13B S/SB, and T53–L–703 model turboshaft engines. The NPRM published in the **Federal Register** on January 24, 2022 (87 FR 3470). The NPRM was prompted by reports indicating that Honeywell T5317A–1 and T5317BCV model turboshaft engines are subject to the same unsafe condition identified in AD 2002–03–01, tachometer drive spur gear failures due to vibration loads. These model turboshaft engines were not included in the applicability of AD 2002–03–01. The FAA and Honeywell determined that the Honeywell T5317A–1 engine model was inadvertently left out of the applicability of AD 2002–03–01 and the Honeywell T5317BCV engine model was introduced into production after the publication of AD 2002–03–01. In the NPRM, the FAA proposed to continue to require initial and repetitive special vibration tests of the engine and, depending on the results, replacement of either the reduction gearbox assembly or the engine. In the NPRM, the FAA also proposed to expand the applicability to include Honeywell T5317A–1 and T5317BCV model turboshaft engines.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from an individual commenter. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Withdraw the NPRM

An individual commenter commented that both the NPRM and the AD being superseded [AD 2002–03–01] are redundant based on the service bulletins Honeywell published addressing the unsafe condition. The commenter suggested that if a new AD is published, the AD should include language allowing operators already in compliance to remain in compliance until the next due time. The commenter added that the changes in the NPRM seem more appropriate for an AD revision than that of publishing a new AD since the reference material and unsafe condition remain unchanged. Additionally, the commenter suggested that the justification for the NPRM, based on the introduction of Honeywell T5317A–1 and T5317BCV model turboshaft engines, is inaccurate as both series are already included in the Honeywell service bulletins.

The FAA disagrees with withdrawing the NPRM. Issuance of this AD is necessary in order to mandate the required actions on the affected engines to address the unsafe condition. Service information incorporated by reference under 1 CFR part 51 in AD 2002–03–01 is also incorporated by reference in this AD. The required actions for certain engine models continue to be required by this AD. As a result, operators who accomplished the required actions in AD 2002–03–01 before the effective date of this AD, are in compliance with paragraph (g)(1) of this AD based on paragraph (f) Compliance, which requires operators to comply with this AD within the compliance times specified, unless already done. Therefore, for operators that already complied with paragraph (g)(1) of this AD prior to the effective date, the next repetitive special vibration test of the engine must be accomplished before exceeding the specified flight hours in paragraph (g)(2) of this AD. Since the effective date of AD 2002–03–01, Honeywell published Honeywell Service Bulletin (SB) T53–0147, dated May 29, 2007, and Honeywell Maintenance Manual Temporary Revision (TR) No. 165, dated July 29, 2020, which specify procedures for performing the initial and repetitive special vibration tests on Honeywell T5317A–1 and T5317BCV model turboshaft engines. Regarding the request to revise AD 2002–03–01 instead of issuing this superseding AD, the method to revise AD 2002–03–01 is through superseding it, which this AD does.

Revision to the Required Actions

Since the NPRM published, the FAA determined the need to remove the Definitions paragraph from this AD and instead, revise the required actions in paragraph (g)(1) of this AD. In the NPRM, the FAA proposed to define a ''reduction gearbox assembly eligible for installation'' as a new, zero hour reduction gearbox assembly or an overhauled reduction gearbox assembly with tachometer drive spur gear P/N 1–070–062–04 or P/N 1–070–062–06 that does not exceed the 0.2 IPS limit for any peak within the RPM/frequency bands during the administered special vibration test. In the NPRM, the FAA also proposed to define an ''engine eligible for installation'' as an engine with tachometer drive spur gear P/N 1–070–062–04 or P/N 1–070–062–06 that does not exceed the 0.2 IPS limit for any peak within the RPM/frequency bands during the administered special vibration test. Both of these proposed definitions would have required operators to first perform a special vibration test on the engine or reduction gearbox assembly before further flight after installation. In lieu of these definitions, the FAA revised paragraph (g)(1) of this AD to require a special vibration test before further flight for a

newly installed engine or newly installed reduction gearbox assembly. The FAA also revised the proposed action in paragraph (g)(3) by removing reference to those previously defined terms in the proposal and removing the proposed actions in paragraphs (g)(4) and (5) of the NPRM.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting the AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed AlliedSignal, Inc. SB T5311A/B–0100, dated January 20, 2000. This SB specifies procedures for performing a special vibration check on Honeywell T5311A and T5311B model turboshaft engines.

The FAA reviewed AlliedSignal, Inc. SB T5313B/17–0100, dated November 19, 1999. This SB specifies procedures for performing a special vibration check on Honeywell T5313B, T5317A, and T5317B model turboshaft engines.

The FAA reviewed Honeywell SB T53–0147, dated May 29, 2007. This SB specifies procedures for performing a special vibration check on Honeywell T5317A–1 model turboshaft engines.

The FAA reviewed Honeywell Maintenance Manual TR No. 165, dated July 29, 2020. This TR specifies procedures for performing a special vibration check on Honeywell T5313B, T5317A, T5317A–1, T5317B, and T5317BCV model turboshaft engines.

The FAA reviewed AlliedSignal, Inc. SB T53–L–11–0100, Revision 2, dated January 20, 2000. This SB specifies procedures for performing a special vibration check on Honeywell T53–L–11, –11A, –11B, –11C, –11D, and –11A S/SA model turboshaft engines.

The FAA reviewed AlliedSignal, Inc. SB T53–L–13B–0100, Revision 2, dated May 11, 1999. This SB specifies procedures for performing a special vibration check on Honeywell T53–L–13B, –13B S/SA, and –13B S/SB model turboshaft engines.

The FAA reviewed AlliedSignal, Inc. SB T53–L–703–0100, Revision 2, dated May 11, 1999. This SB specifies procedures for performing a special vibration check on Honeywell T53–L–703 model turboshaft engines.

The Director of the Federal Register approved AlliedSignal, Inc. SB T5313B/17–0100, dated November 19, 1999; AlliedSignal, Inc. SB T53–L–13B–0100, Revision 2, dated May 11, 1999; AlliedSignal, Inc. SB T53–L–703–0100, Revision 2, dated May 11, 1999; AlliedSignal, Inc. SB T5311A/B–0100, dated January 20, 2000; and AlliedSignal, Inc. SB T53–L–11–0100, Revision 2, dated January 20, 2000, for incorporation by reference as of March 21, 2002 (67 FR 6857, February 14, 2002). This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Other Related Service Information

The FAA reviewed AlliedSignal, Inc. SB T5311/T53–L–11–0103, dated January 20, 2000. This SB specifies procedures for replacing the reduction gearbox assembly on Honeywell T5311A and T5311B model turboshaft engines and Honeywell T53–L–11, –11A, –11B, –11C, –11D, and –11A S/SA model turboshaft engines.

The FAA reviewed AlliedSignal, Inc. SB T5313B/17–0103, dated November 19, 1999. This SB specifies procedures for replacing the reduction gearbox assembly on Honeywell T5313B, T5317A, and T5317B model turboshaft engines.

The FAA reviewed AlliedSignal, Inc. SB T53–L–13B–0103, Revision 4, dated November 2, 1999. This SB specifies procedures for replacing the reduction gearbox assembly on Honeywell T53–L–13B, –13B S/SA, and –13B S/SB model turboshaft engines.

The FAA reviewed AlliedSignal, Inc. SB T53–L–703–0103, Revision 4, dated November 2, 1999. This SB specifies procedures for replacing the reduction gearbox assembly on Honeywell T53–L–703 model turboshaft engines.

Costs of Compliance

The FAA estimates that this AD affects 150 engines installed on helicopters of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Special vibration test of the engine	4 work-hours × $85 per hour = $340	$0	$340	$51,000

The FAA estimates the following costs to do any necessary replacement that would be required based on the results of the special vibration test. The agency has no way of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace the reduction gearbox assembly	40 work-hours × $85 per hour = $3,400	$48,000	$51,400
Replace the engine	24 work-hours × $85 per hour = $2,040	250,577	252,617

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, General requirements. Under that section, Congress charges the FAA

with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:
■ a. Removing Airworthiness Directive 2002–03–01, Amendment 39–12642 (67 FR 6857, February 14, 2002); and
■ b. Adding the following new airworthiness directive:

2022–10–02 Honeywell International Inc. (Type Certificate previously held by AlliedSignal, Inc. and Textron Lycoming): Amendment 39–22040; Docket No. FAA–2021–1185; Project Identifier AD–2021–00339–E.

(a) Effective Date

This airworthiness directive (AD) is effective June 28, 2022.

(b) Affected ADs

This AD replaces AD 2002–03–01, Amendment 39–12642 (67 FR 6857, February 14, 2002).

(c) Applicability

This AD applies to Honeywell International, Inc. (Type Certificate previously held by AlliedSignal, Inc. and Textron Lycoming) T5311A, T5311B, T5313B, T5317A, T5317A–1, T5317B, T5317BCV, and former military T53–L–11, T53–L–11A, T53–L–11B, T53–L–11C, T53–L–11D, T53–L–11A S/SA, T53–L–13B, T53–L–13B S/SA, T53–L–13B S/SB, and T53–L–703 model turboshaft engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7600, Engine Controls.

(e) Unsafe Condition

This AD was prompted by reports of tachometer drive spur gear failure, resulting in potential engine overspeed, loss of power turbine speed (N2) instrument panel indication, and hard landings. The FAA is issuing this AD to prevent excessive vibrations produced by the reduction gearbox assembly that could cause failure of the tachometer drive spur gear. The unsafe condition, if not addressed, could result in failure of the engine, loss of thrust control, and damage to the aircraft.

(f) Compliance

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

(g) Required Actions

(1) Within 100 flight hours (FHs) after the effective date of this AD, or before further flight for a newly installed engine or newly installed reduction gearbox assembly, perform an initial special vibration test of the engine using the service information, as applicable to the engine model, listed in Table 1 to paragraph (g)(1) of this AD.

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Table 1 to paragraph (g)(1) –Applicable Service Information

Engine Model	Service Information
Honeywell T5311A and T5311B	Accomplishment Instructions, paragraph 3.A. of AlliedSignal, Inc. Service Bulletin (SB) T5311A/B-0100, dated January 20, 2000.
Honeywell T5313B, T5317A, and T5317B	Accomplishment Instructions, paragraph 3.A. AlliedSignal, Inc. SB T5313B/17-0100, dated November 19, 1999, or paragraph 11.F of Honeywell Maintenance Manual Temporary Revision (TR) No. 165, dated July 29, 2020.
Honeywell T5317A-1	Accomplishment Instructions, paragraph 3.A. of Honeywell SB T53-0147, dated May 29, 2007, or paragraph 11.F of Honeywell Maintenance Manual TR No. 165, dated July 29, 2020.
Honeywell T5317BCV	Paragraph 11.F of Honeywell Maintenance Manual TR No. 165, dated July 29, 2020.
Honeywell T53-L-11, -11A, -11B, -11C, -11D, and -11A S/SA	Accomplishment Instructions, paragraph 3.A. of AlliedSignal, Inc. SB T53-L-11-0100, Revision 2, dated January 20, 2000.
Honeywell T53-L-13B, -13B S/SA, and -13B S/SB	Accomplishment Instructions, paragraph 3.A. of AlliedSignal, Inc. SB T53-L-13B-0100, Revision 2, dated May 11, 1999.
Honeywell T53-L-703	Accomplishment Instructions, paragraph 3.A. of AlliedSignal, Inc. SB T53-L-703-0100, Revision 2, dated May 11, 1999.

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(2) Thereafter, within the following compliance times, perform repetitive special vibration tests of the engine:

(i) For engines that have tachometer drive spur gear part number (P/N) 1–070–062–04 installed, perform a repetitive special vibration test before exceeding 500 FHs since the last special vibration test.

(ii) For engines that have tachometer drive spur gear P/N 1–070–062–06 installed, perform a repetitive special vibration test before exceeding 1,000 FHs since the last special vibration test.

(3) If, during any special vibration test required by paragraph (g)(1) or (2) of this AD, an engine exceeds the 0.2 inches per second (IPS) limit for any peak RPM/frequency bands, before further flight, remove the reduction gearbox assembly or the engine from service.

(h) No Reporting Requirement

The reporting requirements in the Accomplishment Instructions, paragraph 3.A. or paragraph 11.F, of the service information, as applicable to the engine model, listed in Table 1 to paragraph (g)(1) of this AD, are not required by this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

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

(3) AMOCs approved for AD 2002–03–01 (67 FR 6857, February 14, 2002) are approved as AMOCs for the corresponding provisions of this AD.

(j) Related Information

For more information about this AD, contact Jeffrey Chang, Aviation Safety Engineer, Los Angeles ACO Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (562) 627–5263; fax: (562) 627–5210; email: *jeffrey.chang@faa.gov.*

(k) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on June 28, 2022.

(i) Honeywell Service Bulletin (SB) T53–0147, dated May 29, 2007.

(ii) Honeywell Maintenance Manual Temporary Revision No. 165, dated July 29, 2020.

(4) The following service information was approved for IBR on March 21, 2002 (67 FR 6857, February 14, 2002).

(i) AlliedSignal, Inc. SB T5311A/B–0100, dated January 20, 2000.

(ii) AlliedSignal, Inc. SB T5313B/17–0100, dated November 19, 1999.

(iii) AlliedSignal, Inc. SB T53–L–11–0100, Revision 2, dated January 20, 2000.

(iv) AlliedSignal, Inc. SB T53–L–13B–0100, Revision 2, dated May 11, 1999.

(v) AlliedSignal, Inc. SB T53–L–703–0100, Revision 2, dated May 11, 1999.

(5) For service information identified in this AD, contact Honeywell International, Inc., 111 South 34th Street, Phoenix, AZ 85034; phone: (800) 601–3099; fax: (602) 365 5577; website: *https://myaerospace.honeywell.com/wps/portal.*

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

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on May 5, 2022.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–11059 Filed 5–23–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43, 65, and 147

[Docket No.: FAA–2021–0237; Amdt. Nos. 43–52, 65–63, 147–9]

RIN 2120–AL67

Aviation Maintenance Technician Schools

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Interim final rule; request for comments.

SUMMARY: This final rule establishes regulations that conform with the Aircraft Certification, Safety, and Accountability Act, which sets forth statutory requirements to implement regulations for maintenance technician training. Consistent with the statute, this final rule adopts new requirements for issuing aviation maintenance technician school (AMTS) certificates and associated ratings and the general operating rules for the holders of those certificates and ratings.

DATES: This rule is effective September 21, 2022, except for amendatory instructions 6 and 9, which are effective August 1, 2023. Comments must be received on or before June 23, 2022. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of September 21, 2022.

ADDRESSES: You may send comments identified by docket number FAA–2021–0237 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or visit Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Tanya Glines, Aircraft Maintenance Division, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 380–5896; email *Tanya.Glines@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Title 49, Subtitle VII, Part A, Subpart I, Chapter 401, Section 40113 (prescribing general authority of the Administrator of the FAA, with respect to aviation safety duties and powers, to prescribe regulations); and Subpart III, Chapter 447, Sections 44701 (general authority of the Administrator to prescribe regulations and minimum standards in the interest of safety for inspecting, servicing, and overhauling aircraft, engines, propellers, and appliances, including for other practices, methods, and procedures necessary for safety in air commerce); 44702 (authority of the Administrator to issue air agency certificates); 44703 (authority of the Administrator to issue airman certificates); 44707 (authority of the Administrator to examine and rate air agencies, including civilian schools giving instruction in repairing, altering, and maintaining aircraft, aircraft engines, propellers, and appliances, on the adequacy of instruction, the suitability and airworthiness of equipment, and the competency of instructors); and 44709 (authority of the Administrator to amend, modify, suspend, and revoke air agency and other FAA-issued certificates).

This rule is further promulgated under Section 135 of the Aircraft Certification, Safety, and Accountability Act in Public Law 116–260, the Consolidated Appropriations Act of 2021. Section 135, titled ''Promoting Aviation Regulations for Technical Training,'' provides the requirements and terms of this rule.

Good Cause for Immediate Adoption

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C.) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking.

The FAA finds good cause under 5 U.S.C. 553(b)(3)(B) to waive prior notice and the opportunity for public comment because such procedures would be unnecessary and contrary to the public interest. On December 27, 2020, Congress passed the Consolidated Appropriations Act (Pub. L. 116–260), which includes the Aircraft Certification, Safety, and Accountability Act (the ''Act''). In Section 135 of the Act, titled ''Promoting Aviation Regulations for Technical Training,''

Congress directed the FAA to issue interim final regulations to establish requirements for issuing aviation maintenance technician school (AMTS) certificates and associated ratings and the general operating rules for the holders of those certificates and ratings. Section 135(a)(1) of the Act expressly requires the FAA to issue the interim final regulations in accordance with the requirements set forth in Section 135. In this interim final rule, the FAA is simply adopting the statutory language and implementing that language directly into the regulations.[1] Accordingly, the FAA finds it unnecessary to provide notice and an opportunity to comment prior to issuing this final rule.

The FAA further finds that delaying implementation of this rule to allow for notice and comment would be contrary to the public interest. Because the interim final rule must implement the statutory requirements of Section 135 of the Act, the FAA does not have discretion to propose requirements that are contrary to, or that exceed the bounds of, the statute. Similarly, the FAA does not have the discretion to change the statutory requirements based on public comments received. Therefore, delaying issuance of this final rule would merely delay the new requirements that Congress sought to provide the AMTS industry.

Paperwork Reduction Act

Affected parties are not required to comply with the information collection requirements in §§ 147.5, 147.15, 147.17, 147.21, 147.23, and 147.31, until the Office of Management and Budget (OMB) approves the revised collection 2120–0040 under the Paperwork Reduction Act of 1995. The FAA will publish in the **Federal Register** a notice of approval by the Office of Management and Budget (OMB) for these information collection requirements.

Comments Invited

Consistent with the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 11034; February 26, 1979), which provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice, the FAA requests comment on this interim final rule. The FAA encourages persons to participate in this rulemaking by submitting written comments containing relevant information, data, or views. The FAA also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting this final rule. The FAA will consider comments received on or before the closing date for comments. The FAA will also consider late filed comments to the extent practicable. This interim final rule may be amended based on comments received.

See section VI., titled ''How to Obtain Additional Information,'' for information on how to comment on this interim final rule and how the FAA will handle comments received. This section also contains related information about the docket, privacy, and the handling of proprietary or confidential business information. In addition, there is information on obtaining copies of related rulemaking documents.

List of Abbreviations and Acronyms Frequently Used in This Document

AMTS—Aviation maintenance technician school(s)
OpSpecs—Operations Specifications
The Act—the Aircraft Certification, Safety, and Accountability Act

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I. Overview of Interim Final Rule

The Consolidated Appropriations Act (Pub. L. 116–260), which includes the Act, was enacted on December 27, 2020. Section 135 of the Act, titled ''Promoting Aviation Regulations for Technician Training,'' directed the FAA to ''issue interim final regulations to establish requirements for issuing [AMTS] certificates and associated ratings and the general operating rules for the holders of those certificates and ratings in accordance with the requirements of [Section 135].'' Additionally, Section 135 of the Act states that current part 147 shall have no force or effect on or after the effective date of the interim final regulations.

This interim final rule replaces the current regulations in part 147 with new regulations that conform to the legislation. In the preamble to this interim final rule, the FAA reiterates the provisions of Section 135 of the Act and explains how it is implementing those provisions in the regulations. Additionally, the FAA is making conforming amendments to parts 43 and 65 to effectuate the legislation.

II. Background

a. History of Part 147

Part 147 prescribes the requirements for the certification and operation of FAA-certificated AMTS, including the curriculum requirements. Part 147 originated as Civil Air Regulations (CAR) part 53 in 1940.[2] As a result of the recodification of the CARs in 1962, CAR part 53 became 14 CFR part 147.[3] In 1970, the FAA issued a final rule that changed the name of ''mechanic schools'' to ''aviation maintenance technician schools,'' provided more specific guidelines for the certification

[1] As explained herein, in order to achieve the statutory objectives promulgated by the Act and ensure consistency between the regulations and the statutory terminology, the FAA has made certain revisions that are not expressly stated in the legislation.

[2] *Providing for the Rating and Certification of Civilian Schools giving Instruction in Aircraft and Aircraft Engine Mechanics;* 5 FR 673 (Feb. 15, 1940) (amending the Civil Air Regulations by adding new Part 53, effective May 1, 1940).

[3] *Schools and Other Certificated Agencies;* 27 FR 6655 (Jul. 13, 1962).

and operation of schools, increased the required core curriculum hours from 1,500 to 1,900, and further defined teaching guidelines and subject content to reflect technological advancements in the aviation industry.[4] In 1992, the FAA revised part 147 by adding a definition in Appendix A for ''teaching materials and equipment'' to include the use of computers in the training environment. The FAA also revised the headings of several subjects in Appendices B, C, and D to better reflect course content, added course content items within several subject areas, and added two new subject headings with related course content items for ''Unducted Fans'' and ''Auxiliary Power Units''.[5] Subsequently, in 1992, the FAA made a minor amendment to § 147.21 as part of another rulemaking.[6] Specifically, the FAA added a provision to § 147.21 that allowed AMTSs to apply for and receive approval of special courses in the performance of inspection and maintenance on primary category aircraft, and authorized the school to issue certificates of competency to persons successfully completing such courses.[7] There have been no further revisions to part 147.

b. Notice of Proposed Rulemaking (NPRM) and Supplemental Notice of Proposed Rulemaking (SNPRM)

On October 2, 2015, the FAA published an NPRM titled ''Aviation Maintenance Technician Schools.'' [8] In the NPRM, the FAA proposed to amend the regulations governing the curriculum and operation of FAA-certificated AMTSs. The FAA proposed to modernize and reorganize the required curriculum subjects found in the appendices of the current regulation, remove the course content items from the appendices and relocate them to each school's OpSpecs, and revise the curriculum requirements to include an option for schools to use a credit hour curriculum. The comment period for the NPRM closed on December 31, 2015, which was subsequently extended to February 1, 2016, based on a joint request for extension from several industry groups.[9]

After considering the comments to the NPRM, and the potential benefits to industry, the FAA decided to expand the scope of the rulemaking by issuing an SNPRM, published on April 16, 2019.[10] The SNPRM proposed (1) to allow curriculum based training (CBT) programs as a curriculum delivery, (2) to allow the establishment of satellite training locations, and (3) to remove the national passing norm requirements in § 147.37 and replace them with a standard pass rate. The comment period closed on June 17, 2019.

c. Section 135, Promoting Aviation Regulations for Technical Training

While the FAA was in the process of completing the final rule, which would have responded to all significant comments received on the NPRM and SNPRM, Congress passed the Act which required the FAA to replace part 147, as in effect on the date of enactment of Section 135, with new regulations that conform to the statutory requirements. Congress directed the FAA to issue interim final regulations, not later than 90 days after the date of enactment of the Act, to establish requirements for issuing aviation maintenance technician school certificates and associated ratings and the general operating rules for the holders of those certificates and ratings.

Pursuant to Section 135(a)(1) of the Act, the FAA must issue the interim final regulations in accordance with the requirements set forth in Section 135, including requirements addressing:

- When an AMTS certificate is required;
- Applications for AMTS certificates and associated ratings, additional ratings, and changes to certificates;
- Operations specifications and the contents thereof;
- The duration of a certificate or rating issued under part 147;
- The ratings that an AMTS may obtain under part 147;
- AMTS facilities, equipment, and material;
- Training provided at another location;
- AMTS training and curricula;
- Instructors;
- Certificates of completion;
- Quality control systems;
- The minimum passage rate each school must maintain;
- FAA inspections;
- The display of part 147 certificates; and
- A student's ability to take the FAA's general written test prior to satisfying the experience requirements of § 65.77, provided certain conditions are met.

Additionally, the statute states that the current part 147 regulations and any regulations issued under § 624 of the FAA Reauthorization Act of 2018, shall have no force or effect on or after the effective date of the interim final rule. As a result, this interim final rule repeals and replaces current part 147.

Upon review of Section 135, the FAA determined that the proposed requirements in the NPRM and SNPRM were inconsistent with the statutory mandate. Therefore, to comply with Section 135, the FAA is publishing a **Federal Register** Notice withdrawing the NPRM (Notice No. 15–10) and SNPRM (Notice No. 19–02) concurrent with this interim final rule. Instead of finalizing those proposals, the FAA is issuing this interim final rule to establish requirements for certificated AMTSs in accordance with Section 135 of the Act.

III. Discussion of the Interim Final Rule

Section 135(b) through (f) of the Act contain several requirements that govern the certification and operation of AMTSs. The following sections reiterate the provisions of Section 135 and describe how the FAA is implementing each provision into new part 147. Additionally, section III.g. of this preamble, titled ''Part 147 Rule Organization and Numbering,'' provides tables to show which sections of current part 147 will be repealed and not replaced, which sections will be replaced and renumbered, and the organization and numbering of new part 147.

a. Applicability of New Part 147 (§ 147.1)

Section 135(a)(1) requires the FAA to establish requirements for issuing AMTS certificates and associated ratings and the general operating rules for the holders of those certificates and ratings in accordance with the legislation. Based on this statutory provision, the applicability outlined in Section 135 is consistent with the current applicability provision in § 147.1.[11] Current part 147, including the applicability provision, will be repealed in its entirety on the effective date of this interim final rule, pursuant to Section 135(a)(2). However, consistent with Section 135(a)(1), new part 147 will continue to prescribe the requirements for issuing AMTS certificates and associated ratings and the general operating rules for the holders of those certificates and ratings.[12] The FAA is implementing the

[4] *Name, Operations, and Curriculum;* 35 FR 5531 (Apr. 3, 1970).

[5] *Revision of Aviation Maintenance Technician Schools Regulations;* 57 FR 28952 (Jun. 29, 1992).

[6] *Primary Category;* 57 FR 41360 (Sept. 9, 1992).

[7] 57 FR at 41366, 41370.

[8] 80 FR 59674.

[9] *Aviation Maintenance Technician Schools;* 80 FR 72404 (Nov. 19, 2015).

[10] 83 FR 15533.

[11] Current § 147.1 states that ''[part 147] prescribes the requirements for issuing aviation maintenance technician school certificates and associated ratings and the general operating rules for the holders of those certificates and ratings.''

[12] While the applicability of part 147 remains the same under this interim final rule, the requirements

Continued

applicability language of Section 135(a)(1) in new § 147.1 to specify the applicability of new part 147.

Upon the effective date of this interim final rule, a currently certificated AMTS may not continue to operate unless it meets all of the applicable requirements of new part 147. A certificated AMTS will not be able to use previous part 147 regulations because current part 147 shall have no force or effect on or after the effective date of the interim final regulations. As such, it is essential for certificated AMTSs to take the necessary steps to comply with new part 147 by the effective date of the regulation.[13]

Further, many certificated AMTSs hold exemptions to existing part 147 and related part 65 regulations. Because current part 147 is wholly repealed and replaced upon the effective date of the interim final rule, these exemptions, which are specified and discussed herein, as relevant, will terminate upon the effective date of this interim final rule. However, the FAA notes that the vast majority of the grounds for requested relief will be cured upon the effective date of this interim final rule by new part 147.

b. AMTS Certification Required (§ 147.3)

Section 135(b) states that no person may operate an AMTS without, or in violation of, an AMTS certificate and the OpSpecs issued under the interim final regulations required under Section 135(a)(1), the requirements of Section 135, or in a manner that is inconsistent with information in the school's OpSpecs under Section 135(c)(5). This statutory requirement is similar to current § 147.3, but extends the requirement to OpSpecs in addition to AMTS certificates.

The FAA is implementing the requirements of Section 135(b) in new § 147.3, which will state that no person may operate an AMTS without, or in violation of, an AMTS certificate and the OpSpecs ''issued under [part 147].'' The FAA determined that it is unnecessary for § 147.3 to expressly state that a person may not operate in violation of the requirements of Section 135, which will be implemented in part 147, because a certificated AMTS must comply with applicable statutory and regulatory requirements irrespective of whether the FAA expressly prohibits non-compliance in § 147.3. Furthermore, the FAA is not codifying the portion of Section 135(b) that prohibits a school from acting in a manner inconsistent with its OpSpecs because this prohibition is redundant to the statement that prohibits schools from operating in violation of their OpSpecs.

Section 135(b) states, in pertinent part, that no person may operate an AMTS in violation of the requirements of Section 135. This would appear to indicate that the Administrator does not have the authority to grant exemptions[14] from new part 147 because the inherent nature of an exemption would act as a departure from the requirements of Section 135. However, within the legislation, Section 135(c) states that a certificated AMTS shall operate in accordance with operations specifications that include, among other information, any regulatory exemption granted to the school by the Administrator. Additionally, the language in Section 135(b) echoes this sentiment of compliance with regulatory exemptions, stating that no person may operate an AMTS in a manner that is inconsistent with information in the school's operations specifications under Section 135(c)(5), which, as stated, includes regulatory exemptions. Therefore, the contemplation of and requirements of compliance with regulatory exemptions in the legislation demonstrates that Congress intended that the FAA retain the authority to issue exemptions from part 147, as warranted under the Administrator's authority and 14 CFR part 11.

c. Certificate and Operations Specifications Requirements

Section 135(c)(1) through (5) of the Act contain several requirements that govern applications for certificates and ratings under part 147, the duration of those certificates and ratings, the types of ratings that may be issued on a certificate, and the content of OpSpecs. The FAA is implementing the application, duration, and rating requirements in subpart A of part 147, which is titled ''General.'' For the reasons discussed herein, the FAA is not codifying the content requirements of OpSpecs in the regulations. The following sections discuss the statutory requirements and the FAA's implementation of those requirements in more detail.

1. Application Requirements (§ 147.5)

Section 135(c)(1)(A) requires an application for a certificate or rating to operate an AMTS to include three descriptions. First, the application must describe the facilities, including the physical address of the certificate holder's primary location for operation of the school, any additional fixed locations where training will be provided, and the equipment and materials to be used at each location.[15] Second, the application must describe the manner in which the school's curriculum will ensure the student has the knowledge and skills necessary for attaining a mechanic certificate and associated ratings under subpart D of part 65.[16] Third, the application must describe the manner in which the school will ensure it provides the necessary qualified instructors to meet the requirements of Section 135(d)(4).[17] Upon issuance of the school's certificate or rating, Section 135(c)(1)(B) requires these descriptions to be documented in the school's OpSpecs.

Section 135 also contains requirements for a school seeking to add a rating or amend a certificate. Specifically, Section 135(c)(2)(A) requires an application for an additional rating or amended certificate to include only the information necessary to substantiate the reason for the requested additional rating or change. Section 135(c)(2)(B) requires any approved changes to be documented in the school's OpSpecs.

The FAA is implementing the application requirements of Section 135(c)(1) and (2) in new § 147.5. Section 147.5(b) will contain the requirements for an application for an initial certificate and rating. Section 147.5(c) will contain the requirements for an application for an additional rating or amended certificate. The language in § 147.5(b) and (c) mirrors the statute except for one editorial change and two minor terminology changes. First, in § 147.5(b), the FAA is making clear that the application requirements for initial certification apply to an application for ''a certificate *and* rating'' rather than ''a certificate *or* rating.'' When a person applies for an air agency certificate under part 147, that person must also apply for at least one rating. Section 147.11 prescribes the ratings that a school may obtain under part 147. The FAA may not issue a certificate independent of a rating. Nor may the FAA issue a rating without an

in new part 147 differ because the statute requires the FAA to establish requirements in accordance with the statutory requirements set forth in Section 135.

[13] As discussed in greater detail herein, these steps include curriculum revision to align with the Mechanic Airman Certification Standards (ACS) and necessary updates to OpSpecs.

[14] The Administrator's authority to grant exemptions is pursuant to 49 U.S.C. 40109(b).

[15] Section 135(c)(1)(A)(i).

[16] Section 135(c)(1)(A)(ii).

[17] Section 135(c)(1)(A)(iii). As discussed in section III.d.4. of this preamble, titled ''Instructor Requirements,'' the instructor requirements of Section 135(d)(4) are being implemented in new § 147.19. Accordingly, new § 147.5(b)(3) includes a cross-reference to § 147.19.

underlying certificate. It is therefore accurate to state ''certificate *and* rating'' in § 147.5(b).[18] Second, in § 147.5(b)(1), the FAA finds that the term ''applicant'' is appropriate rather than ''certificate holder'' because an applicant under § 147.5(b)(1) is applying for its initial AMTS certificate and rating. As such, the applicant does not yet hold an air agency certificate under part 147. Lastly, in § 147.5(c), which applies to current certificate holders seeking to add a rating or amend their certificate, the FAA is adding a cross-reference to the information listed in § 147.5(b) for clarity and is using the word ''sought'' rather than ''requested.'' These minor modifications from the statutory language do not alter the meaning or affect the implementation of the statutory requirements.

In codifying the statutory requirements of Section 135(c) in new § 147.5, the FAA discovered that Section 135 lacks an eligibility standard for the issuance of an AMTS certificate. Under Section 44702 of Title 49 of the United States Code, the FAA has statutory authority to issue air agency certificates. A certificate issued under part 147 is one of the air agency certificates issued by the FAA under 49 U.S.C. 44707. Section 135(c) prescribes only the content that must be included in an application for a certificate and rating, or for an additional rating or amended certificate. Section 135(c) is silent, however, with respect to the eligibility standard an applicant must meet to be issued a part 147 certificate. For example, merely providing descriptions of the applicant's facilities, equipment, and materials on the application for a certificate is not sufficient basis for the FAA to issue a certificate. Those facilities, equipment, and materials must meet the substantive requirements in Section 135 that require a school's facilities, equipment, and materials to be ''appropriate'' to the ratings held and the number of students taught. The FAA's decision to issue a certificate should not be based solely on the fact that descriptions were provided but rather on whether the descriptions in the application demonstrate that the applicant is eligible to operate as a certificated AMTS.

The FAA reviewed Section 135 in its entirety to determine whether another statutory provision contains the eligibility standard for issuing a part 147 certificate. While the statute does not expressly state what makes an applicant eligible for a certificate and rating, Section 135(b) provides context for making the determination. Section 135(b) prohibits a person from operating as an AMTS in violation of the requirements of Section 135. As discussed throughout this preamble, the FAA is implementing the requirements of Section 135 in part 147. Therefore, consistent with Section 135(b), a person may not operate as an AMTS in violation of the requirements of part 147.

Because an applicant seeking an AMTS certificate may not operate as a certificated AMTS in violation of the requirements of part 147, the FAA finds it reasonable to require the applicant to demonstrate compliance with the requirements of part 147 to be issued a certificate or rating under part 147. If the FAA does not assess whether an applicant complies with the appropriate requirements of part 147 at the application stage, the FAA could exercise its inspection authority to determine compliance with the requirements of part 147 immediately upon issuing the certificate or rating to the school.[19] The FAA has determined, however, that it is reasonable to require the applicant to demonstrate compliance with the applicable requirements as a means of determining eligibility for the issuance of a part 147 air agency certificate.[20] The FAA is codifying this standard in new § 147.5(a) by expressly stating that, to be issued a certificate, an applicant must demonstrate compliance with the requirements of part 147.

To demonstrate compliance with certain requirements of part 147 pursuant to new § 147.5(a), the applicant may be required to present certain information to the FAA. To effectuate this, the FAA is adding new § 147.5(b)(4) to the application requirements. New § 147.5(b)(4) requires the application to include any additional information necessary to demonstrate compliance with the requirements of part 147. This additional requirement is supported by the plain language of the statute, which states that an application for a certificate or rating to operate an AMTS shall ''include'' the information listed in Section 135(c)(1)(A)(i) through (iii). In the statutory context, the term ''include'' has been construed to provide an illustration of the general concept, not an all-inclusive and exhaustive list.[21] As such, the application for a certificate or rating must include the items prescribed by the statute; however, the FAA is not limited to prescribing only those items.

As previously stated, the FAA is codifying the requirements of Section 135(c)(2), which apply to applications for an additional rating or amended certificate, in new § 147.5(c). Consistent with the statute, new § 147.5(c) will require an application for an additional rating or amended certificate to include only the information required by § 147.5(b) that is necessary to substantiate the reason for the additional rating or change sought. An amended certificate would be required if any of the information on the air agency certificate had changed, such as the name of the certificate holder, the principal address of the certificate holder, or the removal of a rating. The FAA notes that adding a rating would also require an amendment to the air agency certificate, however, the statute expressly states ''additional rating or amended certificate.'' The implementing regulation reflects the statutory terminology.

Section 135(c)(1)(B) and (2)(B) require certain content to be included in OpSpecs: The descriptions required for an application and any approved changes for an additional rating or amended certificate, respectively. However, the FAA finds that these requirements do not belong in the regulations because they govern the conduct of the FAA rather than the regulated community. As a result, the FAA will not codify these requirements in part 147. Instead, the FAA will include guidance to its inspectors in FAA Order 8900.1 to ensure FAA's compliance with these statutory requirements that govern the content of OpSpecs.

[18] The FAA notes that a school may apply for an additional rating, which would be placed on the school's part 147 certificate. Section 147.5(c) contains the application requirements for an additional rating.

[19] The FAA's inspection authority, which is prescribed by Section 135(f)(2) and codified in § 147.27, requires a certificated AMTS to allow the FAA such access as the FAA determines necessary to inspect the school for purposes of determining the school's compliance with part 147. Thus, the FAA may conduct an inspection at a certificated AMTS at any time after issuance of the part 147 certificate and rating.

[20] *See* § 141.5(c) (stating the FAA may issue a pilot school certificate with the appropriate ratings if, within the 24 calendar months before the date application is made, the applicant meets the applicable requirements under subparts A through C of part 141 for the school certificate and associated ratings sought); § 142.11(d) (stating that an applicant who meets the requirements of part 142 and is approved by the Administrator is entitled to a training center certificate and training specifications); § 145.53 (stating that, except as provided in § 145.51(e) or § 145.53(b), (c), or (d), a person who meets the requirements of subparts A through E of part 145 is entitled to a repair station certificate with appropriate ratings).

[21] *See Federal Land Bank of St. Paul* v. *Bismarck Lumber Co.,* 314 U.S. 95, 100 (1941) (stating that ''the term ''including'' is not one of all-embracing definition, but connotes simply an illustrative application of the general principle.'').

2. Duration (§ 147.7)

Section 135(c)(3) states that an AMTS certificate or rating issued under the interim final regulations shall be effective from the date of issue until the certificate or rating is surrendered, suspended, or revoked. This statutory requirement is largely consistent with the FAA's current duration requirement in § 147.7(a). However, unlike current § 147.7(b), the statute does not require the holder of a certificate that is surrendered, suspended, or revoked to return it to the Administrator.

The FAA is implementing the requirements of Section 135(c)(3) in new § 147.7. Thus, § 147.7 states that an AMTS certificate or rating issued under part 147 is effective from the date of issue until the certificate or rating is surrendered, suspended, or revoked. Because the statute requires the FAA to establish interim final regulations in accordance with the requirements of Section 135, § 147.7 will no longer include a requirement for the return of an AMTS certificate that has been surrendered, suspended or revoked. However, the FAA notes that a school that does not return its certificate may not continue to operate simply because it has the physical paper certificate. A school whose certificate has been surrendered, suspended, or revoked may not advertise, hold out, or otherwise act as an AMTS.

3. Certificate Ratings (§ 147.11)

Section 135(c)(4) states that an AMTS certificate shall specify which of following ratings are held by the AMTS: (A) Airframe, (B) Powerplant, and/or (C) Airframe and Powerplant.

An AMTS certificate has always identified which rating or ratings the AMTS holds. Because the FAA is responsible for issuing the certificate, it follows that the FAA is responsible for specifying on the certificate which rating or ratings the AMTS is issued under part 147. By mandating what the AMTS certificate must specify, Section 135(c)(4) governs the conduct of the FAA rather than the regulated community. The FAA finds it necessary to codify the ratings that may be placed on a certificate in accordance with Section 135(c)(4); however, the FAA's regulations in part 147 apply to persons seeking AMTS certificates and to AMTS certificate holders. Therefore, in implementing Section 135(c)(4) in new § 147.11, the FAA is slightly revising the statutory language to allocate applicability to the regulated community instead of the FAA itself. Accordingly, new § 147.11 states which ratings may be issued under part 147, and that the FAA issues AMTS certificates that specify the rating or ratings held in compliance with the statute.

4. Operations Specifications (OpSpecs)

Section 135(c)(5) requires a certificated AMTS to operate in accordance with OpSpecs that include: (A) The certificate holder's name; (B) the certificate holder's air agency certificate number; (C) the name and contact information of the certificate holder's primary point of contact; (D) the physical address of the certificate holder's primary location; [22] (E) the physical address of any additional location of the certificate holder; [23] (F) the ratings held; [24] and (G) any regulatory exemption granted to the school by the Administrator.

To the extent Section 135(c)(5) requires a certificated AMTS to operate in accordance with OpSpecs, the FAA finds that this requirement is already covered by Section 135(b), which prohibits a person from operating an AMTS in violation of their OpSpecs. The requirements of Section 135(b) are implemented in new § 147.3.

To the extent Section 135(c)(5) contains a list of content that must be included in OpSpecs, the FAA finds that these requirements do not belong in the regulations because they govern the conduct of the FAA rather than the regulated community.[25] As a result, the FAA is not codifying these requirements in part 147.[26] To ensure FAA's compliance with these statutory requirements, the FAA will include guidance to its inspectors in FAA Order 8900.1.

As a result of this interim final rule, the FAA has drafted new operations specification paragraph templates for AMTS, which reflect the new and/or changed requirements of part 147. Accordingly, all OpSpecs paragraphs issued to AMTS prior to this interim final rule, with the exception of A003, Ratings, will cease to be effective upon the effective date of the interim final rule. Because an AMTS may not operate without, or in violation of, AMTS OpSpecs, as stated in new § 147.3, each AMTS must ensure it has demonstrated compliance with the provisions required by this interim final rule by providing the applicable information to the AMTS's responsible Flight Standards office. For additional information on submitting this information, refer to Advisory Circular (AC) 147–3, Certification and Operation of Aviation Maintenance Technician Schools. After the FAA receives and reviews the requisite information, the FAA will issue the corresponding OpSpecs in order to allow the AMTS to operate under part 147.

d. Certification and Operating Requirements (Subpart B)

Section 135(d)(1) through (5) of the Act contain requirements that govern the operations of certificated AMTSs, including requirements for the facilities, equipment, and material provided by schools; training locations; curricula; instructors; and certificates of completion. The FAA is implementing those requirements in subpart B of part 147, which is titled ''Certification and Operating Requirements.'' The following sections reiterate the statutory requirements and explain how the FAA is implementing the requirements in new part 147.

1. Facilities, Equipment, and Material Requirements (§ 147.13)

Section 135(d)(1) states that each certificated AMTS shall provide and maintain the facilities, equipment, and materials that are appropriate to the one or more ratings held by the school and the number of students taught. This statutory requirement is similar to current § 147.13, which requires that schools provide facilities, equipment, and materials appropriate to their ratings. The statute, however, does not include the same specificity regarding facilities, equipment, and materials specified in current §§ 147.15 through

[22] Section 135(c)(5)(D) states ''[t]he physical address of the certificate holder's primary location, as provided under paragraph (1)(A).'' The reference to paragraph (1)(A) refers to the application requirements contained in Section 135(c)(1)(A)(i), which require the application to include a description of the facilities, including the physical address of the certificate holder's primary location for operation of the school. The FAA is implementing the requirements of Section 135(c)(1)(A)(i) in new § 147.5(b)(1).

[23] Section 135(c)(5)(E) states ''[t]he physical address of any additional location of the certificate holder, as provided under subsection (d)(2).'' The reference to subsection (d)(2) refers to Section 135(d)(2), which allows a certificated AMTS to provide training at any additional location that meets the requirements of the interim final rule and is listed in the school's OpSpecs. The FAA is implementing the requirements of Section 135(d)(2) in new § 147.15.

[24] Section 135(c)(5)(F) states ''[t]he ratings held, as provided under paragraph (4).'' The reference to paragraph (4) refers to Section 135(c)(4), which prescribes the ratings that may be held by an AMTS. The FAA is implementing the requirements of Section 135(c)(4) in new § 147.11.

[25] These requirements govern the conduct of the FAA by requiring the FAA to include certain content in the OpSpecs issued under part 147.

[26] The FAA notes that its decision not to codify the OpSpecs content requirements of Section 135(c)(5) is consistent with its decision not to codify the OpSpecs content requirements of Section 135(c)(1)(B) and (2)(B). *See* Section III.c.1. of this preamble, titled ''Application Requirements.''

147.19.[27] Section 135(d)(1) retains the requirement from these sections that such facilities, equipment, and materials be appropriate to the number of students taught. The FAA is implementing the requirements of Section 135(d)(1) in new § 147.13(a). Thus, § 147.13(a) will state that each certificated AMTS must provide and maintain the facilities, equipment, and materials that are appropriate to the rating or ratings held by the school and the number of students taught.

In developing the interim final rule, the FAA identified a potential unintended burden on an AMTS in the implementation of Section 135(d)(1) in new § 147.13(a) as it applies to additional training locations. As discussed in the next section, Section 135(d)(2) requires additional training locations to independently meet the requirements of part 147. The FAA recognizes that an AMTS may utilize additional training locations to teach all or part of its part 147 curriculum. If an AMTS utilizes additional fixed locations other than its primary location to provide part 147 training, the facilities, equipment, and materials used at that additional location need only be appropriate to the curriculum and number of students to be taught at that location.

To alleviate an unintended burden that would have resulted from additional locations independently meeting part 147, the FAA is adding § 147.13(b) to require that additional locations be appropriate only to the curriculum or portion of the curriculum, and the number of students being taught, at that location. By adopting this language in new § 147.13(b), the FAA alleviates an overly prescriptive burden on a school to outfit all additional training locations with facilities, equipment, and materials appropriate to the number of students to be taught and the ratings held, which would include the entirety of the school's curriculum. As a result, a school using additional training locations must identify the portion of its curriculum and number of students to be taught at each such location. Because the provision in new § 147.13(b) is merely a subset of the overarching requirement of § 147.13(a), the FAA finds that the requirement is consistent with the statute.

Pursuant to § 147.5, an AMTS must submit information demonstrating compliance with § 147.13 in its application. Section 147.5(b)(1) requires applicants to describe the facilities, including the physical address of the school's primary location for operation and any additional fixed training locations, and the equipment and materials to be used at each location. Section 147.5(b)(4) further requires that applicants submit information needed to determine compliance with each of the requirements of part 147, which includes § 147.13. As such, in addition to describing the facilities, equipment, and materials to be used at each location, an AMTS must demonstrate to the FAA that those facilities, equipment, and materials are appropriate to both the school's rating or ratings, and the number of students to be taught. If the AMTS uses additional training locations, the school must demonstrate that the facilities, equipment, and materials used at that location are appropriate to the curriculum, or portion of the curriculum, and number of students to be taught there. The FAA's process for determining the appropriateness of facilities, equipment, and materials to the ratings held and number of students to be taught will not change from the current regulation, in that the FAA will continue to assess appropriateness to ratings through the lens of the school's training program. That is, in determining the appropriateness of facilities, equipment, and materials for a given rating, the FAA will look to the curriculum that the school intends to use.[28]

2. Training Provided at Another Location (§ 147.15)

Section 135(d)(2) allows a certificated AMTS to provide training at any additional location that meets the requirements of the interim final regulations and is listed in the certificate holder's OpSpecs.

The FAA is implementing the requirements of Section 135(d)(2) in new § 147.15. This new regulation states that a certificated AMTS may provide training at any fixed location other than its primary location, provided the additional training location meets the requirements of part 147 and is listed in the certificate holder's OpSpecs. For clarity, the FAA is adopting rule language that slightly differs from the statutory language. Specifically, rather than stating that training may be provided at ''any additional location,'' new § 147.15 states that training may be provided at ''any fixed location other than its primary location.'' This change in terminology is intended to clarify what is meant by the term ''additional location'' in Section 135(d)(2). To ascertain the meaning of ''additional location,'' the FAA read Section 135(d)(2) in the context of Section 135(c)(1)(A)(i), which refers to the certificate holder's primary location for operation of the school and any additional fixed locations where training will be provided. Based on Section 135(c)(1)(A)(i), the FAA determined that ''additional location'' in Section 135(d)(2) refers to any fixed locations other than the primary location of the school.[29]

Additionally, the legislation states that an AMTS may provide training at any additional location that meets the requirements of the interim final regulations, required under Section 135(a)(1). The interim final regulations required under Section 135(a)(1) are implemented as part 147. Therefore, the FAA is implementing the legislation to require that the additional training location must meet the requirements in part 147. Consequently, schools should expect the FAA to verify that each location meets the requirements of part 147 prior to the FAA listing the location on the AMTS OpSpecs.

There is nothing in the statute that prohibits foreign training locations nor is the FAA aware of any other prohibition concerning the foreign location of part 147 schools.[30] Therefore, based on the broad statutory provision in Section 135(d)(2), the FAA finds additional training locations may be located outside the United States, provided the additional location meets the requirements of part 147 and is listed in the certificate holder's OpSpecs.[31] For the same reasons, the

[27] Current § 147.15 (Space requirements) specifies that facilities must be ''appropriate for the maximum number of students expected to be taught at any time.'' Current § 147.17 (Instructional equipment requirements) specifies schools must provide instructional equipment needed for students to complete practical projects, and maintain enough units to allow no more than eight students to work on a unit at once. Current § 147.19 (Materials, special tools, and shop equipment requirements) specifies that schools must maintain an adequate supply of materials, special tools, and shop equipment as appropriate to the school's curriculum, and ''to assure that each student will be properly instructed.''

[28] To illustrate, if the curriculum includes a skill requirement that an applicant must perform on a specific piece of equipment, the school must have that piece of equipment (*e.g.,* where a school's curriculum requires a student to be able to perform a skill requirement to service a battery, the school must have an aircraft battery in a condition that will allow a student to demonstrate the appropriate servicing requirements in order to be considered to have equipment appropriate to the rating).

[29] A distance learning system is considered an instructional delivery method intended to allow for flexible scheduling and varied location settings and, therefore, is not considered a fixed location other than the primary location of the school.

[30] The FAA notes that it also allows foreign satellites in parts 141 and part 142. Additionally, the FAA allows foreign training centers under part 142.

[31] There are fees for certification services performed outside the United States. 14 CFR part 187. Appendix A to part 187 contains the

Continued

FAA finds that certificated AMTSs may be located outside of the United States. The FAA is updating its guidance to reflect the allowance of foreign locations under part 147.[32]

3. Training Requirements (§ 147.17 and 1 CFR Part 51)

Section 135(d)(3) requires each certificated AMTS to establish, maintain, and utilize a curriculum designed to continually align with mechanic airman certification standards as appropriate for the ratings held, provide training of a quality that meets the requirements of subsection (f)(1),[33] and ensure students have the knowledge and skills necessary to be eligible to test for a mechanic certificate and associated ratings under subpart D of part 65.

The FAA is implementing Section 135(d)(3) in new § 147.17. Additionally, to effectuate the legislation, the FAA is making conforming amendments to part 65. The following sections discuss the training requirements set forth in the statute and the FAA's implementation of those requirements in more detail.

A. Incorporation by Reference (1 CFR Part 51)

Incorporation by reference is a mechanism that allows Federal agencies to comply with the requirements of the Administrative Procedure Act (APA) [34] to publish rules in the **Federal Register** and the Code of Federal Regulations by referring to material published elsewhere.[35] Material that is incorporated by reference has the same legal status as if it were published in full in the **Federal Register**. Because 5 U.S.C. 552(a) requires the Director of the Federal Register to approve material to be incorporated by reference, incorporation by reference is governed by the Office of the Federal Register and as promulgated in its regulations: 1 CFR part 51. Specifically, 1 CFR part 51 provides certain requirements that a regulatory incorporation by reference must contain.

To receive a mechanic certificate or rating under subpart D of part 65, an applicant must pass a written, oral, and practical test.[36] Currently, the standards for the oral and practical tests are contained in the Mechanic Practical Test Standards (PTS).[37] The Mechanic PTS contains knowledge and skill subject areas that an applicant must demonstrate to pass the oral and practical test for a certificate or rating. Additionally, the questions on the written test align with the subject areas presented in the Mechanic PTS. Specifically, the Mechanic PTS contains subject areas, under which objectives define the general performance expectations of the elements within the subject areas. Currently, FAA inspectors and designated mechanic examiners (DMEs) conduct tests in accordance with the Mechanic PTS; however, the Mechanic PTS is not a regulatory standard for the written, oral, or practical tests.[38]

The FAA has initiated a process to transition from using the Mechanic PTS as the testing standard to obtain a mechanic certificate.[39] As a part of this process, the FAA developed the Mechanic Airman Certification Standards (ACS), which adds task-specific knowledge and risk management elements to the standards, resulting in a comprehensive presentation that integrates the standards for what an applicant must demonstrate to pass the written, oral, and practical tests for a certificate or rating, respectively. Specifically, the Mechanic ACS contains several high-level subjects that will be assessed on the FAA tests as appropriate to the rating sought.[40] For each subject, the ACS specifies the aeronautical knowledge, risk management, and skill standards that an FAA inspector or a DME may evaluate for mechanic certification.

In accordance with 5 U.S.C. 552(a) and 1 CFR part 51,[41] the FAA makes the Mechanic PTS and ACS reasonably available to interested parties by providing free online public access to view on the FAA Airman Certification Standards website at: *www.faa.gov/training_testing/testing/acs.* Additionally, the Mechanic PTS and Mechanic ACS are available for download, free of charge, at the provided web address. In addition to the free online material available on the FAA's website, hard copies and printable versions are available from the FAA.

B. Curriculum Requirements (§ 147.17(a)(1) and (b))

Consistent with Section 135(d)(3)(A), § 147.17(a)(1) will require each certificated AMTS to establish, maintain, and utilize a curriculum designed to continually align with the mechanic airmen certification standards as appropriate to the ratings held. The phrase ''mechanic airman certification standards'' in Section 135(d)(3)(A) refers to the standards that an applicant for a mechanic certificate or rating must demonstrate for certification.

Prior to this interim final rule, as previously stated, the FAA had not taken the necessary steps to make the testing standards regulatory. Because the legislation requires an AMTS curriculum to align with the testing standards, an AMTS is incapable of complying with the implementing regulation in § 147.17(a)(1) without referring to the testing standards contained in the Mechanic ACS. Because the implementing regulation requires an AMTS to use the Mechanic ACS, which is not already published in the Code of Federal Regulations or another location that carries the full force and effect of the law, the FAA is incorporating the Mechanic ACS by

methodology for computation of such fees. Advisory Circular 187–1 contains an updated schedule of charges for services of FAA Flight Standards Service aviation safety inspectors outside the United States.

[32] It is noted that, under § 65.3, a person who is neither a U.S. citizen nor a resident alien may be issued a certificate under part 65, outside the U.S., only when the Administrator finds that the certificate is needed for the continued operation or continued airworthiness of a U.S.-registered aircraft. As such, graduation from a certificated AMTS alone will not guarantee eligibility for a part 65 mechanic certificate for a non-U.S. citizen or non-resident alien; the applicant must still meet § 65.3.

[33] Section 135(f)(1) establishes the minimum passage rate for a certificated AMTS, and is implemented in § 147.25.

[34] The APA includes requirements for publishing notices and providing opportunities for public comment of proposed and final rules in the **Federal Register**. *See* 5 U.S.C. 553(b).

[35] 5 U.S.C. 552(A), which states, ''except to the extent that a person has actual or timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the **Federal Register** and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the **Federal Register** when incorporated by reference therein with the approval of the Director of the Federal Register.''

[36] 14 CFR 65.71(a)(3), 65.75 and 65.79.

[37] As of the effective date of this interim final rule, the version of the PTS utilized is: Aviation Mechanic General, Airframe, and Powerplant Practical Test Standards; FAA–S–8081–26B; Nov. 1, 2021.

[38] *See* ''Foreword,'' Aviation Mechanic General, Airframe, and Powerplant Practical Test Standards; FAA–S–8081–26B; Nov. 1, 2021.

[39] The FAA began to establish the ACS in 2011, in cooperation with an industry working group established under the Aviation Rulemaking Advisory Committee (ARAC). The goal in creating the ACS was to drive a systematic approach to the airmen certification process, including knowledge test question development and conduct of the practical test.

[40] As discussed herein, the FAA will continue to use the PTS as the testing standard under part 65 for a period of time after the effective date of this rule.

[41] Section 552(a) of title 5, United States Code, requires that matter incorporated by reference be ''reasonably available'' as a condition of its eligibility. Further, 1 CFR 51.5(b)(2) requires that agencies seeking to incorporate material by reference discuss in the preamble of the final rule, the ways that the material it incorporates by reference are reasonably available to interested parties, and how interested parties can obtain the material.

reference. Therefore, consistent with the statute, § 147.17(a)(1) requires each certificated AMTS to establish, maintain, and utilize a curriculum [42] designed to continually align with the mechanic airmen certification standards as appropriate to the ratings held. The mechanic airman certification standards are contained in the Mechanic ACS, which is a document that exists outside the regulations; therefore, to effectuate the requirement, the FAA is incorporating it by reference as previously discussed. Section 147.17(b) contains the proper language of incorporation set forth by the Office of the Federal Register [43] and includes document identification and location information, thereby enabling AMTS to comply with § 147.17(a)(1).

As previously discussed, the Mechanic ACS includes high-level subjects (*e.g.,* Fundamentals of Electricity and Electronics, Aircraft Drawings), which are broken down into components that include knowledge, risk management, and skill elements relevant to that subject. The knowledge, risk management, and skill elements set forth the standards for certification. Because the statute requires a curriculum to align with the Mechanic ACS, the curriculum must align with the standards set forth under the high-level subjects. For example, a curriculum would not meet the statutory requirement in Section 135(d)(3)(A) if it aligned only with the subjects in the Mechanic ACS because the high-level subjects are not the certification standards.[44] Nor would a curriculum suffice if it did not align with the knowledge and skill elements contained in the Mechanic ACS, because those are the knowledge and skill standards that the FAA will evaluate in testing applicants for a mechanic certificate under part 65.

While a curriculum must align with the high-level subjects and the standards set forth under those subjects, an AMTS need not duplicate the entire Mechanic ACS verbatim into its curriculum. Rather, the intent is to provide a more flexible, performance-based standard that enables an AMTS to develop a curriculum suited to the particular AMTS and that aligns with the Mechanic ACS. The FAA finds that an AMTS will be in compliance with § 147.17(a)(1) [45] if the school designs its curriculum to include: (1) The high-level subjects that are listed in the Mechanic ACS; and (2) broader course content items, concepts, and practical projects under each high-level subject, which may encompass several of the more detailed knowledge, risk management, and skill elements listed in the Mechanic ACS. For example, one broad course content item in the curriculum may encompass several knowledge elements listed in the Mechanic ACS, while still aligning with the Mechanic ACS. The FAA notes that the requirement to align the curriculum with the Mechanic ACS will not preclude an AMTS from including additional course content beyond that provided in the Mechanic ACS.

New § 147.17 replaces the curriculum requirements set forth in current § 147.21 (General curriculum requirements). New § 147.17 omits certain requirements in current § 147.21, including prescriptive requirements for curriculum hours and inclusion of subjects currently found in the appendices of part 147. Additionally, while the FAA will review curriculum as part of its oversight responsibilities, the FAA will no longer approve AMTS curriculum. For this reason, exemptions previously issued to provide relief from current § 147.21 will no longer be needed and will terminate upon the effective date of this interim final rule.[46]

C. Conforming Amendments To Incorporate the Mechanic ACS by Reference (§§ 65.23, 65.75, and 65.79)

The FAA's implementation of new § 147.17 and incorporation by reference of the Mechanic ACS into part 147 necessitates conforming revisions to part 65. While part 147 addresses the training of mechanics through a certificated AMTS, subpart D of part 65 contains the eligibility requirements for all applicants seeking a mechanic certificate or rating, including the requirements to pass a written, oral, and practical test, respectively, within a period of 24 months.[47] That is, mechanic applicants who do not graduate from a certificated AMTS may test for a mechanic certificate by obtaining certain thresholds of practical experience rather than by graduating from a certificated AMTS.[48] The eligibility requirements and testing standards in subpart D of part 65 are applicable to students trained by an AMTS, as well as those who meet the practical experience requirements found in § 65.77(b).

The training of mechanics at an AMTS must therefore correspond to the testing standards required for certification under part 65, as evidenced by Section 135(d)(3)(C) of the Act, which requires an AMTS to ensure students have the knowledge and skills necessary to test for a mechanic certificate and associated ratings under part 65 and to align its curriculum with the Mechanic ACS. If the FAA did not require compliance with the Mechanic ACS in part 65, it would result in a disconnect between the training provided to AMTS students and the testing standards that an applicant must demonstrate on an FAA test for mechanic certification. This disconnect would adversely affect AMTS students if tested on knowledge and skill that the students were not trained on and would be inconsistent with Section 135(d)(3)(C). As evidenced from this statutory requirement, as well as the requirement for a curriculum to align with the mechanic airman certification standards (*i.e.,* the testing standards), the FAA has concluded that Congress did not intend to create a discrepancy between the training a student receives from an AMTS and the testing standard that a student is evaluated on for mechanic certification. Accordingly, to effectuate the legislation, the FAA finds it necessary to incorporate the Mechanic ACS by reference into part 65.

However, as previously discussed, the FAA has not yet transitioned to the Mechanic ACS as the testing standard and currently uses the Mechanic PTS to test applicants for a mechanic certificate or rating in accordance with subpart D of part 65. Because the Mechanic ACS added knowledge and skill standards, the FAA recognizes that applicants who have been trained by an AMTS prior to this interim final rule may not have received training on certain aspects of aircraft maintenance included in the Mechanic ACS.[49] Should the FAA implement the Mechanic ACS as the testing standard upon the effective date

[42] The FAA notes that Section 135(d)(3)(a), and the implementing regulation, states each certificated AMTS must establish, maintain, and utilize a curriculum; both ''AMTS'' and ''curriculum'' are stated in the singular. While an AMTS may have only one curriculum, it may have separate curriculum components (*i.e.,* General, Airframe, Powerplant) for the ratings that the AMTS holds.

[43] *See* 1 CFR 51.9.

[44] If an AMTS only adopted the high-level subjects as their curriculum, the AMTS could have underlying course content items or projects that do not align with the Mechanic ACS, thereby resulting in violation of the statute.

[45] Section 147.17(a)(1) implements the statutory requirement in Section 135(d)(3)(A).

[46] *E.g.,* Exemption No. 18892 (Docket No. FAA–2002–11395); Exemption No. 18766 (Docket No. FAA–2019–0165).

[47] *See* §§ 65.71(a)(3), 65.75, and 65.79.

[48] *See* § 65.77.

[49] For example, the Mechanic ACS adds the subject areas ''Water and Waste'' and ''Rotorcraft Fundamentals,'' which were not previously included in the PTS. Additionally, the subject area elements of the Mechanic ACS provide more specific aeronautical knowledge elements that include detailed knowledge, risk management, and skill elements within existing subject areas.

of this interim final rule, students who have been trained by an AMTS under the contents of the current part 147, appendices B, C, and D, would be placed at an immediate disadvantage when testing. Therefore, in order to allow for each AMTS to train its students under the curriculum aligned with the Mechanic ACS, as required by new § 147.17(a)(1), the FAA is delaying the implementation of the Mechanic ACS as the testing standard in part 65. Further, the FAA finds that one year is a sufficient time frame for current AMTS students to gain the knowledge required to take a knowledge, practical, and oral test based on the Mechanic ACS standards.[50] Therefore, the FAA will use the Mechanic PTS as the testing standard until July 31, 2023. After July 31, 2023, the FAA will use the Mechanic ACS to conduct mechanic tests.

To enforce both the Mechanic PTS and Mechanic ACS in part 65, the FAA must incorporate these standards by reference, as done for part 147, to ensure the testing standards are legally enforceable and consistent with the standards required by part 147. To require compliance with the testing standards set forth in the Mechanic PTS and Mechanic ACS, the FAA adds a new regulation to subpart A of part 65, designated as § 65.23, and amends the requirements in §§ 65.75 and 65.79, which require an applicant for a mechanic certificate or rating to pass a knowledge, oral and practical test, respectively. Rather than restate the language required by 5 U.S.C. 552(a) and 1 CFR 51.9(b) to incorporate a document by reference in multiple part 65 sections, the FAA has created a new centralized incorporation by reference section as § 65.23 that incorporates the Mechanic PTS and Mechanic ACS. Centralizing the incorporation of the Mechanic ACS and Mechanic PTS under one section will streamline the regulatory text and avoid repetitive information in the regulations. Subsequent part 65 sections that require compliance with these respective standards (*i.e.,* §§ 65.75 and 65.79) refer to § 65.23 for identification information and the incorporation by reference language required by 1 CFR part 51.

Prior to this interim final rule, § 65.75 required the applicant to pass a written test that covered certain knowledge areas.[51] However, the FAA and an industry working group developed the Mechanic ACS to contain knowledge elements that an applicant must know to pass the written test. Thus, the Mechanic ACS contains the intended testing standards for the written test. To make these knowledge testing standards mandatory, the FAA is revising § 65.75 by incorporating by reference the Mechanic ACS in the section. However, as previously discussed, an immediate effectivity of the Mechanic ACS as the testing standard would put students who have trained at an AMTS whose curriculum has not incorporated some Mechanic ACS subject areas at a disadvantage. Therefore, the FAA will test mechanic applicants using the Mechanic PTS. The FAA will not test part 65 applicants on the subject areas contained in the Mechanic ACS until AMTSs have had an opportunity to deliver their revised curriculum in accordance with new § 147.17 (*i.e.,* aligned with the Mechanic ACS as appropriate for the ratings held).

As such, the FAA is revising § 65.75(a) to require that each applicant for a mechanic certificate or rating must, after meeting the applicable experience requirements of § 65.77, pass a written test, appropriate to the rating sought, which includes the subject areas contained in the applicable Mechanic PTS, appropriate to the rating sought, until July 31, 2023. After July 31, 2023, new § 65.75(a) requires part 65 applicants, after meeting the applicable experience requirements of § 65.77, to pass a written test, appropriate to the rating sought, which includes the aeronautical knowledge subject areas contained in the Mechanic ACS, appropriate to the rating sought.

The FAA is retaining the requirement in § 65.75(b) that the applicant must pass each section of the test before applying for the oral and practical tests prescribed by § 65.79,[52] and that a report of the written test is sent to the applicant. The FAA notes that consistent with Section 135(f)(4) of the statute, the FAA is adding a provision to § 65.75 to allow AMTS students to take the general written test prior to meeting the experience requirements of § 65.77 if they can provide an authenticated document from a certificated AMTS demonstrating satisfactory completion of the general portion of the school's curriculum. Section III.e.4. of this preamble, titled ''Early Testing,'' discusses § 65.75(c) in detail.

Similarly, the FAA is revising § 65.79, which contains the oral and practical test requirements for applicants seeking a mechanic certificate or rating, by incorporating by reference both the Mechanic PTS and the Mechanic ACS, respectively, in the section with the same effectivity dates as promulgated by § 65.75. Prior to this final rule, § 65.79 required each applicant to pass an oral test and a practical test appropriate to the rating sought. Section 65.79 required the tests to cover the applicant's basic skill in performing practical projects on the subjects covered by the written test for the rating sought. Additionally, § 65.79 required an applicant for a powerplant rating to show their ability to make satisfactory minor repairs to, and minor alternations of, propellers. To make the testing standards mandatory, the FAA is requiring in new § 65.79(a) that each applicant for a mechanic certificate or rating must pass an oral test and a practical test, as appropriate to the rating sought, by demonstrating the prescribed proficiency[53] in the assigned objectives for the subject areas contained in the applicable Mechanic PTS until July 31, 2023. After July 31, 2023, new § 65.79(b) requires each applicant for a mechanic certificate or rating to pass an oral test and practical test, as appropriate to the rating sought, by demonstrating satisfactory understanding of the knowledge, risk management, and skill element for each subject contained in the Mechanic ACS.[54]

D. Remaining Training Requirements (§ 147.17(a)(2) and (3))

The FAA is implementing the remaining training requirements of Section 135(d)(3)(B) and (C) in new § 147.17(a)(2) and (3). Section 147.17(a)(2) requires each AMTS to

[50] Although there are variances in AMTS curriculum delivery timeframes, most AMTS structure their curriculum to provide students with the knowledge and skills needed to apply for a mechanic certificate, with at least a single rating, within one year.

[51] Pursuant to § 65.75, an applicant for a mechanic certificate or rating must pass a written test appropriate to the rating sought after meeting the experience requirements of § 65.77. However, as explained in section III.e.4 of this preamble, titled ''Early Testing,'' the FAA is adding a new provision to § 65.75 to allow for early testing in accordance with the statutory requirement in Section 135(f)(4).

[52] Section 65.80 provides an exception that permits a student to take the oral and practical tests prescribed by § 65.79 during the final subjects of the applicant's training in the curriculum before the student meets the applicable experience requirements of § 65.77 and before the student passes each section of the written test prescribed by § 65.75 when a certificated AMTS shows to an FAA inspector that the student has made satisfactory progress at the school and is prepared to take the oral and practical tests.

[53] The Mechanic PTS prescribes performance levels for which an applicant must demonstrate proficiency in the assigned elements in each subject area for the oral and practical tests.

[54] The FAA notes that the oral and practical tests are administered using a representative sample of subject areas and their requisite elements; a single test may not include all of the subject areas and elements listed in the Mechanic PTS or Mechanic ACS.

provide training of a quality that meets the requirements of § 147.25,[55] which contains the minimum passage rate requirements that a school must maintain. Section 147.17(a)(2) implements the statutory requirement of Section 135(d)(3)(B) without change. Section 147.17(a)(3) requires each AMTS to ensure that its students have the knowledge and skills necessary to be prepared to test for a mechanic certificate and associated ratings under subpart D of part 65.[56] Section 147.17(a)(3) implements the statutory requirement of Section 135(d)(3)(C) with one minor change in terminology for accuracy. As previously discussed, subpart D of part 65 contains the eligibility and certification requirements for persons seeking a mechanic certificate or rating. Part 65 does not require a student to have knowledge and skill ''to be eligible'' to test for a mechanic certificate or rating. Rather, §§ 65.75 and 65.79 require an applicant to pass a written, oral, and practical test by demonstrating certain knowledge and skills. It is, therefore, accurate to state that a student must have the knowledge and skills necessary ''to be prepared'' to test for a mechanic certificate and associated ratings under subpart D of part 65. Section 147.17(a)(3) contains this change in terminology for purposes of alignment with the requirements of part 65.

4. Instructor Requirements (§ 147.19)

Section 135(d)(4) states that each certificated AMTS shall (A) provide qualified instructors to teach in a manner that ensures positive educational outcomes are achieved; (B) ensure instructors hold a mechanic certificate with one or more appropriate ratings (or, with respect to instructors who are not certificated mechanics, ensure instructors are otherwise specifically qualified to teach their assigned content); and (C) ensure the student-to-instructor ratio does not exceed 25:1 for any shop class.

The statutory requirement preserves the requirement in current § 147.23 that instructors either hold a mechanic certificate or be otherwise specially qualified to teach certain curriculum content. The requirement also retains the student-to-instructor ratio prescribed for shop classes in current § 147.23 but removes the requirement that the one instructor in that ratio be FAA certificated. ''Mechanic certificate'' will continue to refer to an FAA mechanic certificate issued under part 65. The FAA interprets ''specifically qualified'' to mean an instructor is demonstrably qualified by reason other than an FAA mechanic certificate (*e.g.,* education or relevant experience) to teach a certain portion of the school's curriculum.

The statute adds the requirement that qualified instructors teach in a manner that ensures achievement of positive educational outcomes. The FAA interprets positive educational outcomes to refer to the training standards set forth in Section 135(d)(3) (implemented in new § 147.17), which are geared toward ensuring the AMTS provides training of a quality that satisfies the pass rate requirement specified in § 147.25 and equips students with the knowledge and skills needed to be prepared to test for a mechanic certificate and associated ratings under part 65. This means that instructors qualified in accordance with Section 135(d)(4)(B) must teach in a manner that ensures achievement of the training requirements in new § 147.17(a)(2) and (3). That is, instructors must teach in a manner that ensures the AMTS provides training of a quality that meets the minimum pass rate requirement specified in § 147.25.[57] Additionally, instructors must teach in a manner that ensures students have the knowledge and skills necessary to be prepared to test for a mechanic certificate and associated ratings under subpart D of part 65.[58]

The FAA is implementing the requirement of Section 135(d)(4) in new § 147.19 with one minor change. The FAA is dividing Section 135(d)(4)(B), which is implemented in new § 147.19(b), into two subsections that distinguish the requirements for instructors who hold a mechanic certificate versus instructors who are otherwise specifically qualified.

An AMTS must submit information demonstrating compliance with § 147.19 in its application. Section 147.5(b)(3) requires applicants to describe the manner in which the school will ensure it provides the necessary qualified instructors to meet the requirements of § 147.19. Section 147.5(b)(4) further requires that applicants submit information needed to determine compliance with each of the requirements of part 147, which includes § 147.19. As such, in addition to describing the manner in which the school will ensure it provides the instructors required by § 147.19, the school must submit information demonstrating compliance with the requirements to (a) provide qualified instructors to teach in a manner that ensures positive educational outcomes; (b) ensure instructors are either certificated mechanics or otherwise specifically qualified; and (c) ensure the student-to-instructor ratio does not exceed 25:1 for any shop class.

To demonstrate compliance with § 147.19(a), an AMTS must submit evidence that it is able to provide qualified instructors (as defined in § 147.19(b)) to ensure the achievement of the training requirements in § 147.17(a)(2) and (a)(3). An AMTS should be prepared to describe the manner by which the school will ensure that its instructors can provide training of a quality that meets the requirements of § 147.25 and equip students with the knowledge and skills necessary to be prepared to test for a mechanic certificate and associated ratings under subpart D of part 65.

To demonstrate compliance with § 147.19(b), an AMTS must submit information demonstrating that any certificated instructors hold FAA mechanic certificates and appropriate ratings. For any non-certificated instructors, the school must identify the portion of its curriculum to which the instructor will be assigned and submit information demonstrating that the instructor is specifically qualified to teach their assigned content.

5. Certificate of Completion (§ 147.21)

Section 135(d)(5), titled ''Certificate of completion,'' states that each certificated AMTS shall provide authenticated documentation to each graduating student, indicating the student's date of graduation and curriculum completed, as described in Section 135(d)(3)(A), which contains the training requirements for AMTSs.

The FAA is implementing the requirements of Section 135(d)(5) in new § 147.21 by stating that each certificated AMTS must provide an authenticated document to each graduating student, indicating the student's date of graduation and curriculum completed. Because the statute requires the FAA to establish interim final regulations in accordance with Section 135, new § 147.21 will not require an AMTS to provide an authenticated transcript of a student's grades to each student who is graduated

[55] Section 135(f)(3)(B) requires the training to meet the requirements of subsection (f)(1), which the FAA has implemented as § 147.25.

[56] The FAA notes that new § 147.5(b) requires an AMTS to provide a description of the manner in which the school's curriculum will ensure the student has the knowledge and skills required by new § 147.17(a)(3). In providing such description, the AMTS should include information such as the basis of the curriculum (*e.g.,* credit hours, hours-based, competency based training), as well as the curriculum delivery methods (*e.g.,* distance learning, in-person learning, virtual labs).

[57] *See* § 147.17(a)(2).

[58] *See* § 147.17(a)(3).

from the school or who leaves it before graduating as current § 147.35 (Transcripts and graduation certificates) requires. The language in new § 147.21 mirrors the statute except for two minor changes.

First, the FAA finds it unnecessary to codify the statutory provision that states ''the curriculum as described in Section 135(d)(3)(A).'' As previously discussed, Section 135(d)(3)(A), which contains the curriculum requirements, is implemented in new § 147.17(a). It is apparent that the curriculum referenced in new § 147.21 refers to the curriculum required by § 147.17(a), as that is the only curriculum referenced in, and required by, new part 147. As such, the FAA is not adopting language that states ''the curriculum as described in § 147.17(a).''

Second, the FAA is using the term ''authenticated document'' instead of ''authenticated documentation.'' Under the FAA's regulations, the purpose of issuing an authenticated document to a student who graduates from a certificated AMTS is to enable that student to demonstrate compliance with the experience requirements of § 65.77. The FAA finds that the term ''authenticated document'', rather than ''authenticated documentation,'' accurately captures the documents intended to be presented under § 65.77. The FAA is concerned that the term ''authenticated documentation'' is vague and may be broadly interpreted to include numerous pages of extensive documentation. When a student presents a document to demonstrate compliance with § 65.77, that student presents the document to a knowledge testing center to show that the student is eligible to take the written test or tests. A knowledge testing center is a private company designated by the FAA to administer written airman knowledge tests, with FAA oversight to ensure compliance with FAA requirements. As a private company, a knowledge testing center is not the appropriate entity to review extensive documentation and make a determination about the student's eligibility under the regulations. Instead, the student must present a single document to the knowledge testing center that unambiguously demonstrates the student's eligibility to take the written tests. The term ''authenticated document'' is, therefore, more appropriate for an AMTS to provide to its graduates.

Furthermore, if the authenticated document is issued under § 147.21 for the purpose of demonstrating compliance with § 65.77, the FAA finds it necessary for the authenticated document to include the school's name and air agency certificate number to enable the knowledge testing center to identify the school as a certificated AMTS. Because schools may share the same name, an air agency certificate number is the only means for the FAA and knowledge testing centers to distinguish between AMTSs and to ensure the student graduated from a certificated AMTS.[59]

In order to ensure consistency in the regulations, the FAA finds the need to make two conforming amendments to § 65.77. For purposes of effectuating the legislation in harmony with part 65, the FAA is replacing the reference in § 65.77 of ''a graduation certificate or certificate of completion'' with ''authenticated document.'' Additionally, § 65.77 presents two alternatives in lieu of graduating from a certificated AMTS in order to meet the experience required in § 65.75 to take the written test, provided the applicant provides documentary evidence satisfactory to the Administrator of such. The FAA finds that it is necessary to reformat § 65.77 in order to communicate that an applicant for a mechanic certificate or rating may present either an authenticated document from an AMTS or documentary evidence of one of the two practical experience alternatives.

e. Quality Control System Requirements (§ 147.23)

Section 135(e) establishes new requirements for certificated AMTSs based on whether the AMTS is accredited by the Department of Education. The following sections reiterate the statutory requirements and explain how the FAA is implementing them in new part 147.

1. Quality Control System: Accreditation (§ 147.23(a))

Section 135(e)(1) states that an AMTS must be accredited as meeting the definition of an institution of higher education provided for in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001) or establish and maintain a quality control system that meets the requirements specified in Section 135(e)(2), FAA-approved quality control system, and is approved by the Administrator.

The FAA is implementing the requirements of Section 135(e)(1) in new § 147.23(a), with two minor revisions. First, the FAA adds the word ''certificated'' before ''aviation maintenance technician school'' to clarify the applicability of the requirements of § 147.23(a).

Second, the FAA revises the requirement to state that a school must ''be accredited within the meaning of 20 U.S.C. 1001(a)(5).'' Although the statute specified a school would need to be ''accredited as meeting the definition of an institution of higher education,'' this language incorrectly suggests that a school is accredited if it meets the Department of Education's definition of ''institution of higher education.'' To the contrary, accreditation is one of five criteria that a school must meet in order to be deemed an ''institution of higher education'' under 20 U.S.C. 1001(a). Schools become accredited by seeking recognition from one of the accrediting agencies governed by the Department of Education. Section 1001(a) requires that schools be ''accredited by a nationally recognized accrediting agency or association.'' Pursuant to Section 1001(c), the Secretary of Education publishes a list of all nationally recognized accrediting agencies or associations determined to be reliable authority as to the quality of the education or training offered. Given that the subsequent section, Section 135(e)(2), refers only to accreditation, and not the definition of ''institution of higher education,'' the FAA believes the statute intends to require that schools be ''accredited,'' as that term is used in 20 U.S.C. 1001(a)(5), rather than requiring schools to meet all five criteria of the Department of Education's definition, which would appear to well exceed the scope of part 147 certification.

For this reason, the FAA requires in § 147.23(a) that each certificated AMTS either (1) be accredited within the meaning of 20 U.S.C. 1001(a)(5)—meaning they are accredited by an accrediting agency or association recognized by the Department of Education pursuant to 20 U.S.C. 1001(c); or (2) establish and maintain a quality control system that meets the requirements in § 147.23(b).

The requirement to ''maintain'' the quality control system under § 147.23(a)(2) means that a school must continue to implement the procedures described in its quality control system after it is approved by the FAA. If the school makes changes to its FAA-approved quality control system, then

[59] The FAA notes that an applicant must demonstrate that the applicant meets the experience requirements of § 65.77 in order to be eligible to take the written test. The experience requirements provide two avenues to demonstrate such have been met: (1) Graduation from a certificated AMTS, or (2) practical experience. It follows that if an applicant graduated from a non-certificated AMTS, the applicant must demonstrate the requisite practical experience in order to be eligible to take the written test. Therefore, the designation of whether an AMTS is certificated is vital for testing centers to determine how the applicant meets the experience requirements of § 65.77 prior to testing.

the school must notify the FAA since the basis for the FAA's approval would have changed. The FAA will provide a means of compliance for a quality control system and outline procedures that have proven successful for AMTSs in the past in AC 147–3 (as revised). The means of compliance set forth in the AC are not the only means of satisfying § 147.23; schools may use alternative means of compliance.

The FAA notes that the Department of Education's recognition of accrediting agencies is limited by statute to accreditation activities within the United States.[60] To be accredited within the meaning of 20 U.S.C. 1001(a)(5), an AMTS must have its primary location within the United States. The FAA would consider an AMTS's accreditation to extend to any additional training locations, whether located within or outside the United States. An AMTS whose primary location is outside of the United States cannot satisfy § 147.23(a)(1) and must instead establish and maintain a quality control system pursuant to § 147.23(b).

An AMTS must submit information demonstrating compliance with § 147.23(a) in its application. Section 147.5(b)(4) requires that applicants submit information needed to determine compliance with each of the requirements of part 147, which includes § 147.23. As such, an AMTS must either demonstrate that it is accredited within the meaning of 20 U.S.C. 1001(a)(5) or submit for FAA approval a quality control system that satisfies § 147.23(b). To demonstrate accreditation under § 147.23(a), a school should provide documentation that shows the school's current accreditation status and its accrediting agency.

2. Quality Control System: FAA-Approved System (§ 147.23(b))

As previously discussed, Section 135(e)(1)(B) requires a non-accredited AMTS to establish and maintain a quality control system that meets the requirements of Section 135(e)(2) and is approved by the Administrator. In the case of a non-accredited AMTS, Section 135(e)(2) requires the Administrator to approve a quality control system that provides procedures for record-keeping, assessment, issuing credit, issuing of final course grades, attendance, ensuring sufficient number of instructors, granting of graduation documentation, and corrective action for addressing deficiencies.

The FAA is implementing the requirements of Section 135(e)(2) in new § 147.23(b) with two minor changes. First, the statutory language in Section 135(e)(2) states that the FAA-approved system requirements apply in the case of an AMTS that is not accredited as set forth in paragraph (1), which is implemented as § 147.23(a). Because § 147.23(a) states that an AMTS must either be accredited within the meaning of 20 U.S.C. 1001(a)(5) or establish and maintain a quality control system, the FAA finds it repetitive to state that § 147.23(b) specifically applies to those AMTSs that are not accredited as set forth in § 147.23(a). Rather, the regulatory language has been simplified to state that the required procedures apply to the quality control system in § 147.23(a)(2).

Pertaining to the second minor change, the statutory provision requires the FAA to approve a quality control system that meets the requirements of the provision. Because the FAA's regulations apply to the regulated community rather than the FAA itself, the FAA is slightly revising the wording of Section 135(e)(2) to make it applicable to certificated AMTSs. Accordingly, new § 147.23(b) requires the quality control system specified in § 147.23(a)(2) to provide procedures for recordkeeping, assessment, issuing credit, issuing of final course grades, attendance, ensuring sufficient number of instructors, granting of graduation documentation, and corrective action for addressing deficiencies. As such, unless an AMTS is accredited within the meaning of 20 U.S.C. 1001(a)(5), the school will need to establish and maintain a quality control system that includes procedures for each of the items in § 147.23(b). Pursuant to § 147.23(a)(2), this quality control system must be approved by the Administrator.

In order to satisfy § 147.23(b), the quality control system submitted to the FAA for approval must clearly describe the school's procedures for each of the items listed in § 147.23(b). The FAA interprets ''recordkeeping'' to refer to procedures for producing and retaining records related to the AMTS's operation and students' completion of the school's curriculum. Similarly, the FAA interprets ''assessment'' to refer to procedures for evaluation of students' completion of the school's curriculum requirements. The FAA interprets procedures for ''issuing credit'' to refer to procedures describing how and when the school will credit a student with completion of the school's curriculum (or portions thereof), including if, when, and how the school will credit prior instruction or experience. Similarly, ''attendance'' procedures should describe how the AMTS will keep track of student attendance related to any school requirements for curriculum completion. Procedures for granting graduation documentation should describe the basis upon which the school will issue graduation documentation and the format of the documentation to be issued. These procedures should include documentation issued under § 147.31, early testing. Lastly, the FAA interprets ''deficiencies'' within the context of the statute to refer to deficiencies or defects within the school's quality control system, which may arise following FAA approval.

As previously stated, an AMTS must submit information demonstrating compliance with § 147.23 in its application pursuant to § 147.5(b)(4). As such, unless an AMTS submits information demonstrating that it is accredited in accordance with § 147.23(a)(1), the school must submit for FAA approval a quality control system that meets the requirements of § 147.23(b). Additionally, for those currently certificated AMTSs, Section 135 of the Act repeals and replaces current part 147 upon the effective date of the interim final rule; therefore, schools must ensure they are either accredited or have an FAA-approved quality control system in place and demonstrated to the FAA in order to comply with new part 147 and continue operations as a certificated AMTS. For additional information on submission of this information, refer to AC 147–3.

f. Additional Requirements (Subpart B)

Section 135(f)(1) through (4) contain additional requirements for certificated AMTSs, including a pass rate requirement to ensure schools provide quality training, an FAA inspection requirement, a requirement for schools to display their AMTS certificates, and a requirement allowing students to take the general written test required under part 65 early, provided certain conditions are met. Because those requirements pertain to the operations of certificated ATMSs, the FAA is implementing them in subpart B of part 147, ''Certification and Operating Requirements.'' The following sections specify the statutory requirements and discuss the FAA's implementation of those requirements in more detail.

1. Minimum Passage Rate (§ 147.25)

Section 135(f)(1) states that a certificated AMTS ''shall maintain a pass rate of at least 70 percent of students who took a written, oral, or practical (or any combination thereof) FAA mechanic tests within 60 days of graduation for the most recent 3-year

[60] *See* 20 U.S.C. 1099b.

period.'' Section 135(d)(3)(B), which contains the training requirements for AMTSs, requires each school to provide training of a quality that satisfies the minimum passage rate required by Section 135(f)(1). The training requirements are implemented in § 147.17 and discussed in section III.d.3. of this preamble, titled ''Training Requirements.'' This section discusses the implementation of the pass rate requirement in § 147.25.

In implementing Section 135(f)(1), the FAA encountered two ambiguous phrases in the statute that would have caused confusion in industry.[61] The first ambiguous phrase is ''within 60 days of graduation.'' The FAA finds that a person could interpret this phrase several ways. It could mean that a school must determine its pass rate by using students who take a test (or combination of tests) within 60 days before graduation. Alternatively, it could mean that a school must determine its pass rate by using students who take a test (or combination of tests) within 60 days after graduation. Furthermore, a person could interpret ''within 60 days of graduation'' to mean that a school must determine its pass rate by using students who take a test (or combination of tests) within the 60 days before or the 60 days after graduation, thereby creating a 120-day window as opposed to a 60-day window.

Currently, the FAA does not have a minimum passage rate requirement. However, in the FAA's supplemental notice of proposed rulemaking (SNPRM) for part 147, which was published on April 16, 2019,[62] the FAA proposed to revise the quality of instruction requirements by replacing the national passing norms with a minimum passage rate requirement.[63] The FAA's proposed rule would have required each certificated AMTS to provide instruction of sufficient quality such that, in the prior 24 calendar months,[64] at least 70 percent of its graduates passed on the first attempt within 60 days of graduation each written test leading to a certificate or rating. Commenters asked the FAA to add oral and practical tests to the provision as well as a lookback period of 3 years rather than 24-calendar months.[65] Section 135(f)(1) includes the commenters' desired changes. Because Section 135(f)(1) appears to have stemmed from the FAA's proposed rule change in the SNPRM, the FAA is interpreting ''within 60 days of graduation'' consistent with the FAA's proposal. Accordingly, ''within 60 days of graduation'' means ''60 days after graduation.'' [66] The FAA notes that the 60-day window excludes students who test beyond 60 days after graduation from the pass rate calculation. The FAA proposed the 60-day window in the SNPRM because knowledge acquired through an AMTS's curriculum may be perishable if not applied within a reasonable time after graduation.

The second ambiguous phrase includes the list of tests that are used to determine the pass rate specified in the statute. Specifically, Section 135(f)(1) requires a pass rate of at least 70 percent of students who take ''a written, oral, or practical (or any combination thereof) FAA mechanic tests'' within 60 days of graduation. Part 65 contains the eligibility requirements for persons seeking an FAA mechanic certificate.[67] To be eligible for an FAA mechanic certificate issued under part 65, a person must pass all of the prescribed tests within a period of 24 months.[68] The prescribed tests for an FAA mechanic certificate include written tests,[69] oral tests, and practical tests.[70] Under the statute, for students who take one of these tests or any combination thereof within 60 days after graduation, the school must maintain a pass rate of at least 70 percent of students. The statute is unambiguous with respect to when a student takes only one test within 60 days after graduation and passes that test; the school may count that student towards the 70 percent pass rate. Furthermore, because the statute does not require the student to pass the test on the first attempt,[71] the FAA finds that the statute is also unambiguous with respect to a student who passes a test on a subsequent attempt within the 60 days following graduation; the school may also count that student towards the 70 percent pass rate. It is unclear from the statute, however, how Congress intended the ''any combination thereof'' language to apply.

The phrase ''any combination thereof'' refers to a combination of the tests prescribed by part 65 (*e.g.,* any combination of the written, oral, and practical tests). When a student takes a combination of tests, however, the FAA finds that the number of tests the student must pass to be counted towards the school's pass rate is subject to interpretation under Section 135(f)(1). A person could interpret Section 135(f)(1) to mean that a person who takes a combination of tests must pass all tests taken to be considered a passing student for purposes of determining the school's pass rate. Alternatively, a person could interpret Section 135(f)(1) to mean that a person who takes a combination of tests must pass only one test to be counted towards the school's pass rate.

To ascertain the meaning of the phrase ''any combination thereof'' in Section 135(f)(1), the FAA finds it necessary to read the phrase in the context of Section 135(f)(1) in its entirety. In addition, the FAA should construe statutory text so that no word or clause is rendered superfluous, void, or insignificant.[72] Section 135(f)(1) expressly requires schools to maintain a

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[61] ''With regard to judicial review of an agency's construction of the statute which it administers, if Congress has not directly spoken to the precise question at issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.'' *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984). The primary holding of the Chevron doctrine is that a government agency must conform to any clear legislative statements when interpreting and applying a law, but courts will give the agency deference in ambiguous situations as long as its interpretation is reasonable.

[62] SNPRM, *Aviation Maintenance Technician Schools,* 84 FR 15533, 15549 (Apr. 16, 2019).

[63] *See* proposed § 147.37 in the SNPRM, 84 FR at 15549.

[64] The proposed rule would have required schools to assess compliance on a quarterly basis.

[65] *See* FAA Rulemaking Docket No. FAA–2015–3901.

[66] As evidenced by the term ''graduates'' in the FAA's proposed rule, ''within 60 days of graduation'' meant ''60 days after graduation.''

[67] *See* 14 CFR part 65, subpart D.

[68] 14 CFR 65.71(a)(3).

[69] Section 65.75 contains the knowledge requirements for a person seeking a mechanic certificate, including the requirement to pass the written test. The FAA notes that there are multiple FAA mechanic written tests. The FAA has a general written test, an airframe written test, and a power plant written test. The tests that an applicant must pass depend on the mechanic rating or ratings sought.

[70] Section 65.79 contains the skill requirements for a person seeking a mechanic certificate, including the requirement to pass an oral and practical test on the rating the person seeks.

[71] *See* proposed § 147.37 in the SNPRM, 84 FR 15533 (proposing to require the student to pass on the first attempt in order to be counted towards the school's pass rate); *see also* § 141.5(d) (requiring a pass rate of 80 percent or higher ''on the first attempt''); § 141.55(e)(2)(ii) (requiring at least 80 percent of students to pass the practical or knowledge test, as appropriate, ''on the first attempt''); § 141.63(a)(5)(ii) (requiring at least 90 percent of students to pass the required practical or knowledge test, or any combination thereof, for the pilot, flight instructor, or ground instructor certificate or rating ''on the first attempt'').

[72] ''It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'' *Davis* v. *Michigan Dept. of Treasury,* 489 U.S. 803, 809 (1989). ''A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant. . . .'' *Hibbs* v. *Winn,* 542 U.S. 88, 101 (2004) (quoting 2A N. Singer, Statutes and Statutory Construction section 46.06, pp. 181–186 (rev. 6th ed. 2000)). Likewise, all parts, provisions, and sections of title 14 of the CFR must be read together in order to best ascertain and give effect to their meaning.

pass rate of at least 70 percent of students [73] who take one of the tests specified in paragraph (f)(1) or any combination of those tests. In other words, 70 percent of students who take one of the tests or any combination thereof must pass. Therefore, if a student takes a combination of tests within the 60 days following graduation, the FAA interprets the statute to mean the student must pass all tests taken to be counted as a passing student towards the school's pass rate. The FAA finds that this is the most reasonable interpretation when read in the context of the 70 percent pass rate because a student who passes one test but fails another would not be a ''passing'' student based on the totality of the student's test results. Additionally, the FAA's interpretation of Section 135(f)(1) gives meaning to the phrase ''any combination thereof.''

If the FAA were to interpret Section 135(f)(1) to the contrary—to mean that a student who takes a combination of tests is required to pass only one test to be considered a passing student—the phrase ''any combination thereof'' would be rendered superfluous. For example, before a student may take an oral or practical test, the student must pass the written test (except if testing under § 65.80, as previously discussed).[74] If a student passes the written test but subsequently fails the oral and practical tests within the 60 days following graduation, the school would count the student as a passing student under this interpretation. Additionally, if a student passes the written test and subsequently passes the oral and practical tests within the 60-day window, the school would count the student as a passing student. As these examples illustrate, the only test that would matter under this interpretation would be the first test taken (*e.g.,* the written test under the examples).[75] Therefore, interpreting Section 135(f)(1) to mean that a student who takes any combination of tests is required to pass only one of the tests (*e.g.,* the written test) to be counted towards the school's pass rate would render the phrase ''any combination thereof'' meaningless.

Accordingly, the FAA is adopting rule language in § 147.25 that implements Section 135(f)(1) consistent with the FAA's aforementioned interpretation of the statutory provision. To facilitate readability and minimize confusion, the FAA is implementing Section 135(f)(1) by adopting three paragraphs in § 147.25.[76] Section 147.25(a) requires each certificated AMTS to maintain the pass rate specified in § 147.25(b) for the most recent 3-year period.

Section 147.25(b) contains the pass rate required by the statute. For students who take an FAA mechanic test under part 65 within 60 days after graduation, at least 70 percent of students must pass the test (or any combination thereof). These tests are listed in § 147.25(b)(1) through (3).

Lastly, to minimize confusion, the FAA is adopting § 147.25(c) to make clear that a student who takes a combination of tests within the 60 days following graduation must pass each test taken within the 60-day window to be considered a passing student for purposes of determining the school's pass rate. For example, if the student passes the written test(s) and oral test but subsequently fails the practical test within the 60 days following graduation, the school must count the failure on the practical test as a student failure for purposes of determining the pass rate.[77] Table 1 contains a hypothetical in an effort to provide clarity with respect to applying new § 147.25.

TABLE 1—HYPOTHETICAL TO DETERMINE SCHOOL'S PASS RATE IN ACCORDANCE WITH § 147.25

	Written test*	Oral test	Practical test
Student 1	Failed first attempt. Passed second attempt.	Passed first attempt	Passed first attempt.
Student 2	Passed first attempt	Failed first and only attempt	Failed first and only attempt.
Student 3	Passed first attempt	Passed first attempt	Passed first attempt.
Student 4	Failed first attempt. Passed second attempt.	Failed first and only attempt	Failed first and only attempt.
Student 5	Passed first attempt	Passed first attempt	Passed first attempt.
Student 6	Passed first attempt	Passed first attempt	Passed first attempt.
Student 7	Passed first attempt	Passed first attempt	Passed first attempt.
Student 8	Passed first attempt	Passed first attempt	N/A.**
Student 9	Passed first attempt	N/A**	N/A.**
Student 10	Failed first attempt. Failed second attempt.	N/A**	N/A.**

* For simplicity the table refers to a single written test. However the number of written tests that a mechanic applicant must take depend on the rating sought and whether it is an initial mechanic applicant or an application for an additional rating.

** For purposes of Table 1, N/A means the student did not take the test within the 60 days following graduation.[78]

In Table 1, the AMTS has 10 students who took one or more FAA mechanic tests within the 60 days following graduation. For the school to meet the pass rate, 70 percent of these students must have passed. The AMTS would

[73] The FAA notes that the legislation specifically ties the ''pass rate of at least 70 percent'' to ''of students'' in Section 135(f)(1). The FAA construes this to be an intentional link to students; if the intent was to base the 70 percent pass rate on individual tests, the legislation would have expressly stated ''of tests,'' instead of ''of students,''.

[74] *See* § 65.75(b).

[75] The FAA recognizes that a student may take the general written test prior to graduation. In this case, the student would typically take the oral and practical tests within the 60 days following graduation. A student may not proceed to oral or practical testing until the student passes the required written test(s) (except when testing under § 65.80). If a student passes the oral test but subsequently fails the practical test, that student would be considered a passing student under the alternative interpretation. Additionally, if a student passes the oral test and subsequently passes the practical test, the student would be considered a passing student. These examples further illustrate how the phrase ''any combination thereof'' would be rendered meaningless under the alternate interpretation.

[76] The organization and wording of § 147.25 is intended to minimize confusion and preclude the need for legal interpretations following the publication of this interim final rule. The FAA notes that part 141 contains similar requirements pertaining to pass rates. These requirements have resulted in numerous requests for legal interpretation.

[77] As previously explained, however, a student is not required to pass the test on the first attempt. Therefore, if the student passed the practical test on a subsequent attempt within the 60-day window specified in § 147.25(b), that student would be considered a passing student for purposes of determining the pass rate.

[78] Pursuant to Section 135(f)(1) of the Act, students who take tests after the 60-day window specified in § 147.25(b) may not be counted towards the school's pass rate.

count the following students as passing students for purposes of determining the pass rate: Students 1, 3, 5, 6, 7, 8 and 9. The school must count Students 2 and 4 as student failures because the students took a combination of tests and failed two of the three tests (*e.g.,* the oral and practical tests). The school must also count Student 10 as a student failure because the student failed both attempts at the written test. Despite the student failures, the school had 7 out of 10 students pass the tests taken within the 60-day window. As such, the school met the 70 percent pass rate.[79]

The FAA will collect pass/fail data on written, oral, and practical tests taken by graduates of an AMTS. The FAA's data will control for purposes of determining whether a certificated AMTS meets the minimum pass rate requirement in new § 147.25. The FAA notes that it currently does not collect pass/fail data on the oral and practical tests taken by AMTS graduates. The FAA will begin collecting this data when new part 147 goes into effect. However, because of the 3-year lookback period in the statute and the absence of current data, the FAA will not be able to determine compliance with § 147.25 for at least 3 years. Similarly, the 3-year lookback period will affect any newly certificated AMTSs on and after the effective date of the final rule because a new school will not have pass rate data for the most recent 3-year period. The FAA's inability to determine compliance with § 147.25 for a period of time does not mean that quality of instruction will be ignored. Rather, the FAA will issue reports containing the pass/fail data, which will allow the FAA and certificated AMTSs to monitor their pass rates and assess their quality of instruction. However, current schools (for the first three years following the effective date of the interim final rule) and newly certificated schools will not be in violation of § 147.25, even with a pass rate lower than 70 percent, because the pass rate would not be based on the 3-year period of data.

Table 2 shows which FAA written tests an AMTS student may take based on the curriculum the student completed. Table 3 illustrates the different components of the oral and practical tests that are administered to an applicant seeking a mechanic certificate and/or rating under part 65. The FAA notes that, for students graduating from a certificated AMTS, the results of these tests, within the 60-day timeframe, will be used to determine whether the school meets the minimum pass rate.

TABLE 2—WRITTEN TESTS

If the written test applicant is an AMTS student with an appropriate document,	
Evidencing completion of the following curriculum:	Then the applicant is eligible to attempt the following FAA written test(s):
Airframe	*general, airframe.*
Powerplant	*general, powerplant.*
Airframe, Powerplant	*general, airframe, powerplant.*
General curriculum content	*general.*

TABLE 3—ORAL AND PRACTICAL TESTS

The mechanic oral and practical test will consist of the following elements:		
If the rating(s) being requested is(are):	An original mechanic certificate and rating is being requested:	An added rating to an existing mechanic certificate is requested:
Airframe	Oral—*general, airframe*	Oral—*airframe.*
	Practical—*general, airframe*	Practical—*airframe.*
Powerplant	Oral—*general, powerplant*	Oral—*powerplant.*
	Practical—*general, powerplant*	Practical—*powerplant.*
Airframe, Powerplant	Oral—*general, airframe, powerplant*	N/A.
	Practical—*general, airframe, powerplant*	

2. FAA Inspection (§ 147.27)

Section 135(f)(2) states that a certificated AMTS shall allow the Administrator such access as the Administrator determines necessary to inspect the 1 or more locations of the school for purposes of determining: (1) The school's compliance with the interim final regulations required under Section 135(a)(1); (2) the procedures and information outlined in the school's OpSpecs according to Section 135(c)(5); and (3) the AMTS certificate issued for the school. The FAA believes that the latter two areas of compliance are inherently incorporated into the first enumerated area of compliance, which assesses compliance with the requirements of part 147. An AMTS's OpSpecs and the school's certificate are issued under the requirements of part 147. Therefore, the ability to inspect an AMTS to determine its compliance with part 147 includes inspecting its compliance with its OpSpecs and its certificate.

The statutory requirement is largely consistent with current § 147.43, which allows the Administrator to inspect an AMTS at any time to determine its compliance with part 147. The FAA is implementing this requirement in new § 147.27. As a result of Section 135(a)(2), which repeals the current regulations in part 147, the FAA notes that current § 147.43 is repealed upon the effective date of this interim final rule. Therefore, the language found in current § 147.43 that a school will be notified, in writing, of any deficiencies found during the inspection is repealed. However, AMTSs will continue to receive written notifications of negative findings after inspections pursuant to

[79] The FAA notes that while an AMTS is required to meet the pass rate in § 147.25, an AMTS is also generally required to ensure students have the knowledge and skills necessary to be prepared to test for a mechanic certificate and associated ratings, pursuant to § 147.17(a)(3). As part of the FAA's general inspection authority in § 147.27, the FAA may review an AMTS's pass rate data as a whole, not only as it pertains to those students who test 60 days after graduation, to ensure that students are prepared with the knowledge and skill to test for the applicable certificate and/or rating.

the FAA's guidance to inspectors found in FAA Order 8900.1.

3. Display of Certificate (§ 147.29)

Section 135(f)(3) requires a certificated AMTS to display its AMTS certificate at a location in the school that is visible by and normally accessible to the public. The FAA finds that the term ''school'' in Section 135(f)(3) is ambiguous in light of the statutory provision that allows a certificated AMTS to provide training at additional fixed locations.[80] For example, Section 135(f)(3) could be interpreted to mean that the part 147 certificate must be displayed only at the primary location of the school. Alternatively, Section 135(f)(3) could be interpreted to mean that the part 147 certificate must be displayed at the primary location and any additional fixed locations of the school. To ascertain the meaning of the term ''school'' in Section 135(f)(3), the FAA finds it necessary to read Section 135(f)(3) in the context of the statute in its entirety.[81] Section 135(d)(2) states that a certificated AMTS may provide training at any additional location that meets the interim final regulations, which are required under Section 135(a)(1), and is listed in the certificate holder's OpSpecs. Additionally, Section 135(c)(1)(A)(i) contains an application requirement that applies to any additional fixed locations where training will be provided. As a result, a ''school'' may have a primary location and additional fixed locations. When read in the context of Section 135 in its entirety, the FAA finds it reasonable to interpret the broad term ''school'' in Section 135(f)(3) as including each location of the school (*i.e.,* primary location and additional fixed locations). Furthermore, the statute uses the term ''primary location'' throughout the legislation,[82] but does not use the term in Section 135(f)(3). Instead, Section 135(f)(3) states that the certificate must be displayed ''at a location in the school.'' This meaningful variation in terminology further supports the FAA's interpretation that the term ''school'' in Section 135(f)(3) means primary location and any additional fixed locations of the school.[83]

For these reasons, the FAA interprets Section 135(f)(3) to mean that a certificated AMTS must display its certificate at a place in each location of the school, including the primary location and any additional fixed locations, that is visible by and normally accessible to the public. The FAA is implementing this requirement in new § 147.29. The AMTS may display a copy of the Air Agency certificate at any location. The FAA notes that it is using the term ''place'' in the regulation rather than ''location'' to avoid confusion because the statute (and thus, the implementing regulations) already use the term ''location'' with respect to ''primary location'' and ''additional fixed locations.'' [84]

4. Early Testing (§ 147.31)

Section 135(f)(4) states that a certificated AMTS ''may issue authenticated documentation demonstrating a student's satisfactory progress, completion of corresponding portions of the curriculum, and preparedness to take the aviation mechanic written general knowledge test, even if the student has not met the experience requirements of [§] 65.77 of [14 CFR].'' Section 135(f)(4) requires any such documentation to specify the curriculum the student completed and the completion date.

The FAA is implementing Section 135(f)(4) in part 147 by adding new § 147.31, which allows a school to issue an authenticated document to a student when that student satisfactorily completes the general portion of a school's curriculum. The authenticated document will demonstrate the student's preparedness to take the aviation mechanic general written test prior to meeting the experience requirements specified in § 65.77. To facilitate readability and ensure effective implementation of Section 135(f)(4), the FAA is codifying rule language in § 147.31 that slightly differs from the statutory language of Section 135(f)(4). Despite the different phrasing and terminology, however, the FAA emphasizes that the provisions share the same meaning and achieve the same objective. The differences are discussed in detail herein.

Section 135(f)(4) uses the term ''aviation mechanic written general knowledge test.'' The FAA finds, however, that using the terms ''written'' and ''knowledge'' when referring to the aviation mechanic general written test would be unnecessary and inconsistent with FAA regulations.[85] Subpart D of part 65, which contains the eligibility requirements for an applicant seeking a mechanic certificate, uses the term ''written test.'' Because subpart D of part 65 applies to AMTS students seeking to obtain a mechanic certificate, the FAA has decided to use the term ''written test'' in § 147.31 to ensure consistency between the parts.

Section 135(f)(4) allows an AMTS to issue authenticated documentation demonstrating ''a student's satisfactory progress, completion of corresponding portions of the curriculum, and preparedness to take the aviation mechanic written general knowledge test.'' The student's satisfactory progress and preparedness to take the aviation mechanic general written test is based wholly on whether the student satisfactorily completed the corresponding portion of the curriculum. The portion of the curriculum that directly corresponds to the student's preparedness to take the aviation mechanic general written test is the portion of the curriculum that contains the general curriculum subjects. After reviewing the statutory provision, the FAA determined that Section 135(f)(4) appears to contain unnecessary and redundant phraseology. To reduce confusion and facilitate comprehension, the FAA is codifying the statutory requirement in a more concise and simplistic manner.

New § 147.31 will allow a certificated AMTS to issue an authenticated document to a student when that student satisfactorily completes the general portion of a school's curriculum. The authenticated document will demonstrate the student's preparedness to take the aviation mechanic general written test prior to meeting the experience requirements of § 65.77. Specifically, the authenticated document will demonstrate that the student is prepared to take the aviation mechanic general written test by showing that the student satisfactorily completed the general portion of the curriculum.

For the reasons discussed herein, the FAA is making a conforming amendment to § 65.75 to effectuate the

[80] *See* Section 135(d)(2).

[81] *K Mart Corp.* v. *Cartier, Inc.,* 486 U.S. 281, 291 (1988) (''In determining whether a challenged regulation is consistent with the statute it implements, courts must ascertain the statute's plain meaning by looking to the particular language at issue and the language and design of the statute as a whole.'').

[82] *See* Section 135(c)(1)(A)(i) and Section 135(c)(5)(D).

[83] *Russello* v. *United States,* 464 U.S. 16, 23 (1983) (''[Where] Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'') (quoting *United States* v. *Wong Kim Bo,* 472 F. 2d 720, 722 (5th Cir. 1972)).

[84] For example, it would be confusing to require the certificated AMTS to display its part 147 certificate at a ''location in each location'' of the school (*e.g.* the primary location and additional fixed location).

[85] The FAA's regulations in title 14 CFR use ''written test'' and ''knowledge test'' but do not combine the terms to state ''written knowledge test.'' *See* 14 CFR parts 61, 63, and 65.

statutory requirement. Because of the conforming amendment, the FAA is adopting a cross-reference to § 65.75 to simplify the rule language in § 147.31 and avoid redundancy in the regulations. Additionally, the FAA explains why the regulatory text uses ''authenticated document'' rather than ''authenticated documentation'' in this section.

Section 135(f)(4) also requires the authenticated documentation to specify the curriculum the student completed and the completion date. As evident by the first sentence in Section 135(f)(4), a student is not required to complete an entire curriculum—*i.e.,* either an airframe curriculum, a powerplant curriculum, or an airframe and powerplant curriculum—in order to demonstrate eligibility to take the aviation mechanic general written test early. Rather, the student must satisfactorily complete the general portion of that curriculum. Therefore, requiring the authenticated documentation to specify the curriculum completed is inconsistent with the first sentence in Section 135(f)(4). Requiring the student to complete an entire curriculum would also frustrate the implementation of Section 135(f)(4) in the AMTS industry because not all schools administer a general curriculum independent from the airframe or powerplant curriculum.[86] In some cases, a school may administer the general curriculum subjects as part of the airframe or powerplant curriculum.

To achieve the intent of Section 135(f)(4), the FAA finds it necessary to adopt rule language that is consistent with the first sentence of Section 135(f)(4). Accordingly, the regulations will require an authenticated document to show that the student has satisfactorily completed the general portion of the curriculum and the completion date. The FAA is codifying this requirement in new § 65.75(c), which is subsequently discussed, rather than § 147.31, because subpart D of part 65 contains the eligibility requirements for a person seeking a mechanic certificate and the FAA considers the authenticated document necessary to take the written test early to be an eligibility requirement for taking that written test.

Furthermore, upon review of Section 135(f)(4), the FAA determined that an amendment to § 65.75(a) is necessary to achieve the intent of the legislation. Part 147 prescribes the requirements for issuing AMTS certificates and associated ratings, and the operating rules for those certificate holders.[87] The students of an AMTS, however, must comply with subpart D of part 65, which prescribes the requirements for issuing mechanic certificates and associated ratings. Currently, § 65.75(a) requires each applicant for a mechanic certificate or rating to meet the applicable experience requirements of § 65.77 prior to passing a written test. Students of an AMTS are, therefore, required to satisfy the experience requirements of § 65.77 before they may take the aviation mechanic general written test. Numerous schools have obtained exemptions from § 65.75(a) to enable their students to take the aviation mechanic general written test immediately following the students' successful completion of the general curriculum subjects.[88] Section 135(f)(4) is intended to allow students who have successfully completed the general portion of the curriculum to take the aviation mechanic general written test even if the student has not met the applicable experience requirements of § 65.77. Thus, the legislation is intended to eliminate the need for schools to obtain exemptions from § 65.75(a) to enable early testing.

Upon review of the exemptions from § 65.75(a), however, the FAA recognizes that it cannot achieve the intent of the legislation by amending only part 147. If not amended, students would continue to be required by § 65.75(a) to meet the applicable experience requirements of § 65.77 prior to taking the aviation mechanic general written test. Thus, the new requirement in § 147.31 would create an inconsistency with § 65.75(a) rather than eliminating the need for exemptions from § 65.75(a).

Accordingly, to achieve the intent of the legislation, the FAA finds it necessary to make a conforming amendment to § 65.75. The FAA is adding an exception to the requirement in § 65.75(a) that will allow an applicant for a mechanic certificate or rating to take the general written test prior to meeting the experience requirements of § 65.77, provided the applicant presents an authenticated document from a certificated AMTS that demonstrates satisfactory completion of the general portion of the curriculum. This exception is contained in new § 65.75(c). As a result, the new § 65.75(c) will eliminate the need for exemptions from § 65.75(a), and exemptions from this regulation will terminate upon the effective date of this interim final rule.

The FAA creates the mechanic written tests that are required under part 65. These written tests, however, are administered to applicants by knowledge testing centers. A knowledge testing center is a private company designated by the FAA to administer written airman knowledge tests, with FAA oversight to ensure compliance with FAA requirements.

The FAA recognizes that Section 135(f)(4) allows a school to issue ''authenticated documentation'' that demonstrates a student's eligibility to take a general written test prior to meeting the experience requirements of § 65.77. For the same reasons discussed in section III.d.5., the FAA finds it necessary to use the term ''authenticated document'' rather than ''authenticated documentation.'' By using the term ''authenticated document,'' the FAA emphasizes the need for schools to issue a single document that effectively demonstrates the student's eligibility to take the written test early, without additional FAA involvement.[89] The term ''authenticated document'' will achieve the intent of the legislation by allowing schools to determine what type of document they wish to issue rather than mandating a particular document, such as ''certificate of completion.''

The purpose of an authenticated document under new § 147.31 is to provide proof that the student has, in fact, satisfactorily completed the general portion of the certificated AMTS's curriculum and is prepared to take the general written test early in accordance with new § 65.75(c). As a result, the FAA finds it necessary for the authenticated document to include the school's name and air agency certificate number to enable the knowledge testing center to identify the school as a certificated AMTS. A school's name is insufficient alone because schools may share the same name. Thus, the air

[86] For example, a school with an Airframe and Powerplant rating may have a single curriculum that teaches general, airframe, and powerplant content. A student who only completes the general curriculum content of that curriculum could be issued an authenticated document by the AMTS indicating the student is eligible to test for the aviation mechanic general written test, prior to meeting the experience requirements of § 65.77 (*i.e.,* graduating from a curriculum consistent with the AMTS ratings).

[87] *See* § 147.1.

[88] Approximately 35 percent of AMTSs currently hold an exemption from § 65.75(a) (*e.g.,* Exemption No. 17174B, Docket No. FAA–2016–8933; Exemption No. 18647, Docket No. FAA–2020–0932; Exemption No. 18701, Docket No. FAA–2016–9045; Exemption No. 18055A, Docket No. FAA–2018–0937; Exemption No. 18664, Docket No. FAA–2016–0136).

[89] If a school issued numerous pages of extensive documentation in an effort to demonstrate a student's eligibility to take a written test, the FAA would have to review that documentation and determine whether the student was in fact eligible in accordance with the FAA's regulations.

agency certificate number is the only means for the FAA and the knowledge testing center to clearly distinguish between AMTSs and to ensure the student completed the general portion of the curriculum at a certificated AMTS.

g. Conforming Amendments

Upon implementing the statutory requirements of Section 135 into new part 147, the FAA recognized that the new requirements would have created inconsistencies in two provisions that exist outside part 147, namely appendix A to part 43 and § 65.80. As a result, the FAA finds it necessary to make conforming amendments to those provisions. The following sections explain the conforming amendments in detail.

1. Appendix A to Part 43

Current § 147.21(e) contains the requirements governing the approval of special inspection and preventive maintenance courses for primary category aircraft type certificated under § 21.24.[90] Section 135(a)(1) requires the FAA to issue interim final regulations in accordance with the requirements of Section 135. Additionally, Section 135(a)(2) repeals all current regulations upon the effective date of the interim final rule. Because Section 135 of the statute does not contain a provision governing the approval of special inspection and preventive maintenance courses for primary category aircraft type certificated under § 21.24, the FAA is not issuing an interim final regulation governing such courses. Additionally, current § 147.21(e) is repealed on the effective date of this interim final rule.

Appendix A to part 43, which describes the circumstances under which an owner of a primary category aircraft may complete the preventive maintenance tasks specified in appendix A, contains a cross-reference to § 147.21(e). Because § 147.21(e) is repealed upon the effective date of this interim final rule, the FAA is making a conforming amendment to appendix A of part 43, paragraph (c)(30)(i), by removing the reference to certificates of competency for the affected aircraft ''issued by a school approved under § 147.21(e) of this chapter.'' Therefore, appendix A of part 43, paragraph (c)(30)(i) will refer only to certificates of competency that are issued by (1) the holder of the production certificate for that primary category aircraft that has a special training program approved under § 21.24 or (2) another entity that has a course approved by the Administrator. As a result, an AMTS that requests an approval, or an AMTS that currently holds an approval originally issued under § 147.21(e), of special courses in the performance of special inspection and preventive maintenance programs for a primary category aircraft, may issue a certificate of competency as ''another entity that has a course approved by the Administrator'' in accordance with new paragraph (c)(30)(i)(2).

2. Section 65.80

Section 65.80 allows AMTS students to take the oral and practical tests prescribed by § 65.79 before meeting the applicable experience requirements of § 65.77, and before the student passes each section of the written test prescribed by § 65.75. The school must show an FAA inspector the student has made satisfactory progress at the school and is prepared to take the oral and practical tests. Additionally, § 65.75 states the student may take the tests prescribed by § 65.79 during the final subjects of the student's training in the approved curriculum. The reference to ''approved curriculum'' in § 65.80 refers to a certificated AMTS's approved curriculum, which was required under § 147.21 as it existed prior to this interim final rule.[91]

In accordance with Section 135 of the statute, AMTS curriculums under part 147 will no longer require FAA approval, as reflected in new § 147.17. As a result, the FAA is making a conforming amendment to § 65.80 by removing reference to an AMTS's ''approved'' curriculum. This amendment will allow AMTS students to continue testing under § 65.80.

Further, § 65.80 permits students to take the oral and practical test prescribed by § 65.79 during the final subjects of the student's training in the part 147 curriculum before the applicable experience requirements of § 65.77 are met and before the student passes each section of the written test required by § 65.75 when the AMTS shows the student's satisfactory progress to an FAA inspector. In the interest of regulatory standardization, the FAA is revising the language from ''an FAA inspector'' to ''the Administrator.'' Additionally, the FAA is removing gender references within the regulatory text.

h. Part 147 Rule Organization and Numbering

Section 135(a)(1) requires the FAA to issue interim final regulations in accordance with the requirements of Section 135. Additionally, Section 135(a)(2) repeals all current regulations upon the effective date of the interim final rule. As a result, some sections of part 147 will retain their section number and heading but contain new requirements in accordance with the statute. Several sections will be repealed and not replaced. Other sections will be renumbered and replaced with new requirements in accordance with the statute. The following table shows the current regulatory sections of part 147 and how they are affected under this interim final rule.

Former section	Former title	New section	New title
§ 147.1	Applicability	§ 147.1	Applicability.
§ 147.3	Certificate required	§ 147.3	Certificate required.
§ 147.5	Application and issue	§ 147.5	Application requirements.
§ 147.7	Duration of certificates	§ 147.7	Duration of certificates.
§ 147.8	Employment of former FAA employees	Repealed and not replaced.	N/A.
§ 147.11	Ratings	§ 147.11	Ratings.
§ 147.13	Facilities, equipment, and material requirements.	§ 147.13	Facilities, equipment, and material requirements.

[90] Section 147.21(e) was added in the 1992 final rule that adopted regulations for primary category aircraft. *See Primary Category;* 57 FR 41360 (Sept. 9, 1992).

[91] On the effective date of this interim final rule, part 147 (as in effect on the date of enactment of Section 135) shall have no force or effect. *See* Section 135(a)(2).

Former section	Former title	New section	New title
§ 147.15	Space requirements	Repealed and not replaced.	N/A.
§ 147.17	Instructional equipment requirements	Repealed and not replaced.	N/A.
§ 147.19	Materials, special tools, and shop equipment requirements.	Repealed and not replaced.	N/A.
§ 147.21	General curriculum requirements	§ 147.17	Training requirements.
§ 147.23	Instructor requirements	§ 147.19	Instructor requirements.
§ 147.31	Attendance and enrollment, tests, and credit for prior instruction or experience.	Repealed and not replaced [92].	N/A.
§ 147.33	Records	Repealed and not replaced.	N/A.
§ 147.35	Transcripts and graduation certificates	§ 147.21	Certificate of completion.
§ 147.36	Maintenance of instructor requirements	Repealed and not replaced.	N/A.
§ 147.37	Maintenance of facilities, equipment, and materials.	Repealed and not replaced.	N/A.
§ 147.38	Maintenance of curriculum requirements	Repealed and not replaced.	N/A.
§ 147.38a	Quality of instruction	§ 147.25	Minimum passage pate.
§ 147.39	Display of certificate	§ 147.29	Display of certificate.
§ 147.41	Change of location	Repealed and not replaced.	N/A.
§ 147.43	Inspection	§ 147.27	FAA inspection.
§ 147.45	Advertising	Repealed and not replaced.	N/A.

Section 135 also requires the FAA to issue new requirements, which have not previously existed in part 147. The following table shows which sections contain these new requirements.

New section	New title
§ 147.15	Training provided at another location.
§ 147.23	Quality control system.
§ 147.31	Early testing.

IV. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is $158,000,000, using the most current (2020) Implicit Price Deflator for the Gross Domestic Product. The FAA has provided a detailed Regulatory Impact Analysis (RIA) in the docket for this rulemaking. This portion of the preamble summarizes the FAA's analysis of the economic impacts of this rule.

In conducting these analyses, the FAA has determined that this rule: Will result in benefits that justify costs; is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866; will not have a significant economic impact on a substantial number of small entities; will not create unnecessary obstacles to the foreign commerce of the United States; and will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

A. Regulatory Impact Analysis

This interim final rule establishes regulations that conform to the Act, which sets forth statutory requirements to promote aviation regulations for technician training. Consistent with the statute, this interim final rule adopts new requirements for issuing AMTS certificates and associated ratings and the general operating rules for the holders of those certificates and ratings.

Among other changes that reduce administrative burden and streamline the process to apply for and maintain an AMTS certification, under the interim final rule, an AMTS would need to align their curriculum to the Mechanic ACS rather than the appendices to part 147, which aligned with the Mechanic PTS. The FAA will no longer approve curriculums, but rather will ensure that AMTS curriculums align with the Mechanic ACS through routine surveillance. The interim final rule also requires that an AMTS either be accredited within the meaning of 20 U.S.C. 1001(a)(5) or establish and maintain an FAA-approved quality control system. As the majority of AMTSs are accredited, this change will result in alleviating such AMTSs from the current requirement of FAA approval of grading and attendance policies. Further, the interim final rule (IFR) repeals the prohibition on an AMTS operating at a satellite facility, which potentially expands access to additional training locations. Lastly, another key change in this IFR includes the replacement of the national passing norms with a minimum passage rate requirement; this will create a standard that does not vary over time and does not depend on the performance of other AMTSs.

[92] The repeal of current § 147.31 eliminates the need for schools to obtain exemptions from requirements in that section. As such, exemptions from current § 147.31 will terminate upon the effective date of this interim final rule.

While the effects of this IFR on overall AMTS training quality and accessibility are unquantified, the FAA expects that this rule will be less burdensome to AMTSs as a whole and will allow for greater flexibility for an AMTS to keep current with industry standards and technological changes in aviation maintenance. Also, although the Mechanic ACS is less prescriptive, it is a more comprehensive set of standards than those previously provided in the part 147 appendices. Therefore, there would be incremental costs to FAA in implementing this interim final rule as the initial development to ensure alignment is expected to take additional time when compared to current curriculum development. Table 4 shows the summary of estimated present value and annualized costs, cost savings, and the net savings using both 3 percent and 7 percent discount rates.

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Table 4. Summary of Cost and Cost Savings of the Interim Final Rule

Category	10-Year Total			10-Year Present Value at 7 Percent			10-Year Present Value at 3 Percent		
	AMTS	FAA	Total	AMTS	FAA	Total	AMTS	FAA	Total
Cost Savings	$1,191,025	$796,115	$1,987,140	$895,083	$598,299	$1,493,382	$1,046,447	$699,476	$1,745,923
Costs	$595,831	$853,290	$1,449,122	$447,781	$645,460	$1,093,241	$523,504	$751,771	$1,275,274
Net Savings	595,193	-57,175	538,018	$447,302	-$47,161	$400,141	$522,943	-$52,295	$470,648
				Annualized (7%)			Annualized (3%)		
				AMTS	FAA	Total	AMTS	FAA	Total
Annualized Cost Savings				$127,440	$85,184	$212,624	$122,676	$82,000	$204,675
Annualized Costs				$63,754	$91,899	$155,653	$61,371	$88,130	$149,501
Annualized Net Savings				$63,686	-$6,715	$56,971	$61,305	-$6,131	$55,174

Details may not add to row or column totals due to rounding

Category	10-Year Total			10-Year Present Value at 7 Percent			10-Year Present Value at 3 Percent		
	AMTS	FAA	Total	AMTS	FAA	Total	AMTS	FAA	Total
Cost Savings	$1,191,025	$796,115	$1,987,140	$895,083	$598,299	$1,493,382	$1,046,447	$699,476	$1,745,923
Costs	$595,831	$853,290	$1,449,122	$447,781	$645,460	$1,093,241	$523,504	$751,771	$1,275,274
Net Savings	595,193	-57,175	538,018	$447,302	-$47,161	$400,141	$522,943	-$52,295	$470,648
				Annualized (7%)			Annualized (3%)		
				AMTS	FAA	Total	AMTS	FAA	Total
Annualized Cost Savings				$127,440	$85,184	$212,624	$122,676	$82,000	$204,675
Annualized Costs				$63,754	$91,899	$155,653	$61,371	$88,130	$149,501
Annualized Net Savings				$63,686	-$6,715	$56,971	$61,305	-$6,131	$55,174

Details may not add to row or column totals due to rounding

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Please see the Regulatory Impact Analysis (RIA) available in the docket for more details.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), in 5 U.S.C. 603, requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever an agency is required by 5 U.S.C. 553, or any other law, to publish a general notice of proposed rulemaking for any proposed rule. Similarly, 5 U.S.C. 604 requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553, after that section or any other law requires publication of a general notice of proposed rulemaking. The FAA found good cause to forgo notice and comment for this rule. As notice and comment under 5 U.S.C. 553 are not required in this situation, the regulatory flexibility analyses described in 5 U.S.C. 603 and 604 are not required.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this interim final rule and determined that it has legitimate domestic safety objectives and does not operate in a manner that excludes imports to meet such objectives. Therefore, this interim final rule complies with the Trade Agreements Act.

D. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those costs. The FAA determined that the interim final rule will not result in the expenditure of $158,000,000 or more by State, local, or tribal governments, in the aggregate, or the private sector, in any one year.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (PRA) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This action contains the following amendments to the existing information collection requirements previously approved under OMB Control Number 2120–0040, Aviation Maintenance Technician Schools. As required by the PRA, the FAA has submitted these information collection amendments to OMB for review.

Summary: The collection involves AMTS applicants and certificate holders under 14 CFR part 147. The part 147 interim final rule results in new, changed, and removed burden, with an overall decrease in burden to the public when compared to the previous information collection approval. Additionally, FAA Form 8310–6, *Aviation Maintenance Technician School Certificate and Ratings Application,* is revised to reflect the new and changed requirements of this interim final rule.

Public Comments: Because this is an interim final rule, there are no existing public comments on the information collection to discuss. *Comments are requested, as discussed in the Comments Invited section of this preamble.*

Use: The collection of information includes both reporting and recordkeeping. The information collected is provided to the certificate holder/applicant's appropriate FAA Flight Standards office in order to allow the FAA to determine compliance with the part 147 requirements for obtaining and/or retaining an FAA air agency certificate. For part 147 applicants, when all part 147 requirements have been met, an FAA air agency certificate, with the appropriate ratings, is issued. For certificated part 147 AMTS, the FAA uses the information collected to determine if the AMTS provides appropriate training, as required by part 147, and to ensure that AMTS graduates receive an appropriate document showing the graduate is eligible to take the FAA tests required to obtain a mechanic certificate. Specifically, part 147 imposes information collection burden on the public in the following sections.

For applicants requesting an air agency certificate issued under part 147, *§ 147.5, Application requirements,* requires applicants to complete an application form and provide the FAA with evidence of meeting the requirements of part 147. Application is made using FAA Form 8310–6, *Aviation Maintenance Technician School Certificate and Ratings Application.* Application requirements include:

- Section 147.5(b)(1) through (3) requires a description of the facilities, equipment and materials used at each location, a description of how the curriculum trains students to meet part 65 requirements, and a description of how the school meets instructor requirements. The FAA includes these descriptions in an AMTS's OpSpecs.
- Section 147.5(b)(4) requires the applicant to submit any additional information necessary to demonstrate compliance with the requirements of part 147, which include: § 147.17, Training requirements—for the school to establish and maintain a curriculum; § 147.19, Instructor requirements—for the school to have instructors who are either FAA-certificated mechanics, or are otherwise specially qualified; and § 147.23, Quality control system—for the school to either be accredited within the meaning of 20 U.S.C. 1001(a)(5) or have a quality control system approved by the FAA.

Following FAA certification, an AMTS must comply with the following regulations, which impose a paperwork burden:

- *Section 147.15, Training provided at another location.* The AMTS must notify the FAA of the additional locations at which the school will conduct training, in addition to the school's primary location. The FAA includes these additional locations in the AMTS's OpSpecs.
- *Section 147.17, Training requirements.* The AMTS must establish, maintain, and utilize a curriculum designed to continually align with mechanic airman certification standards as appropriate for the ratings held. When the Mechanic ACS is revised, the AMTS must revise its curriculum to align accordingly.
- *Section 147.21, Certificate of completion.* The AMTS must issue a

document that indicates when a student graduated and the part 147 curriculum that the student completed.

• *Section 147.23, Quality control system.* An AMTS either be accredited within the meaning of 20 U.S.C. 1001(a)(5) or have a quality control system approved by the FAA that provides for certain procedures listed in § 147.23(b). Therefore, the AMTS must either submit proof of accreditation or submit a quality control system for FAA-approval.

• *Section 147.31, Early testing.* An AMTS may issue an authenticated document when a student satisfactorily completes only the General course content of an AMTS curriculum.

Respondents: The respondents to this collection are AMTSs issued an FAA air agency certificate under 14 CFR part 147 and AMTS applicants for a part 147 air agency certificate. There are currently 182 FAA-certificated AMTSs.

Frequency: AMTSs must submit information initially prior to certification, and occasionally after certification to comply with ongoing recordkeeping requirements. Applicants must report certain information to the FAA during the application process for the purpose of allowing the FAA to determine compliance with part 147 requirements and, ultimately, issue an air agency certificate, if appropriate. Schools issued a part 147 air agency certificate must report certain information occasionally after certification (*e.g.,* when the certificate holder's operations change). AMTSs that implement a quality control system because they are not accredited by an accrediting agency recognized by the Department of Education must maintain records, as described in the school's FAA-approved quality control system.

Annual Burden Estimate: The part 147 interim final regulations result in a total annual burden to respondents of 11,438 hours and $709,124. This includes recordkeeping burden and reporting burden. This results in an overall reduction in burden to the public from the previous part 147 regulations. Details of burden related to each regulatory requirement are shown in the supporting statement for information collection 2120–0044, submitted to OMB.

The FAA notes that the costs/cost savings calculated in the regulatory impact analysis differ from the AMTS paperwork burden calculated under the PRA. The regulatory impact analysis compares the state of AMTS under current regulations to the expected state of AMTS under the interim final rule. The calculations under PRA estimate the paperwork burden to AMTS under the new interim final rule. The primary areas where these calculations differ are where the regulatory impact analysis assumed a zero cost difference to AMTS in the following areas:

• Recordkeeping costs—Under PRA, the FAA estimates only a single AMTS will have an FAA approved quality control (QC)-system, and thus have FAA-mandated recordkeeping costs. However, for the regulatory impact analysis the FAA assumes that all AMTS will continue to keep student records under the interim final rule, with no substantial change from current costs.

• Graduation documentation—Under PRA, the FAA estimates reflect a cost savings since the interim final regulations remove the requirement for AMTS to provide a transcript to students upon request as mandated in the current regulation. However, for the regulatory impact analysis, the FAA assumes that transcripts are a routine function of schools and that transcripts will be provided to graduating students after implementation of the interim final rule with no substantial change from current costs.

• Completion documentation for early testing—Under the PRA, the FAA estimates that there is a paperwork cost when an AMTS provides completion documentation for students who have completed the General course content of a school's curriculum (for the purpose of early testing eligibility). However, for the regulatory impact analysis the FAA assumes that AMTS are currently tracking student course completion, and will continue to do the same under the interim final rule, therefore there is no change from current costs. Additionally, because it is an option for the AMTS to issue a completion document, schools can choose not to incur this cost.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARP) to the maximum extent practicable. The FAA has reviewed the corresponding ICAO SARPs and has determined that there are no ICAO SARPs that correspond to this interim final rule.

However, the FAA identified a filing is required for an ICAO Annex 1 SARP found in Chapter 4 pertaining to certification of maintenance technicians that is unrelated to this rulemaking. Therefore, the FAA has modified an existing difference to reflect that mechanic applicants are not required to have two years of experience in the inspection, servicing, and maintenance of aircraft following the completion of an approved training course to qualify to take the written examination for a mechanic airframe or powerplant license.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6 and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a ''significant energy action'' under the Executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

VI. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the internet—

1. Search the Federal eRulemaking Portal at *www.regulations.gov*;

2. Visit the FAA's Regulations and Policies web page at *www.faa.gov/regulations_policies/*; or

3. Access the Government Printing Office's web page at *GovInfo.gov*.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit *www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects

14 CFR Part 43

Aircraft, Aviation safety, Life-limited parts, Reporting and recordkeeping requirements.

14 CFR Part 65

Air traffic controllers, Aircraft, Airmen, Airports, Alcohol abuse, Aviation safety, Drug abuse, Incorporation by reference, Reporting and recordkeeping requirements, Security measures.

14 CFR Part 147

Aircraft, Airmen, Education facilities, Incorporation by reference, Reporting and recordkeeping requirements, Schools.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, as follows:

PART 43—MAINTENANCE, PREVENTATIVE MAINTENANCE, REBUILDING, AND ALTERATION

■ 1. The authority citation for part 43 continues to read as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(f), 106(g), 40105, 40113, 44701–44702, 44704, 44707, 44709, 44711, 44713, 44715, 45303.

■ 2. Amend appendix A to part 43 by revising paragraph (c)(30)(i) to read as follows:

Appendix A to Part 43—Major Alterations, Major Repairs, and Preventive Maintenance

* * * * *

(c) * * *

(30) * * *

(i) They are performed by the holder of at least a private pilot certificate issued under part 61 of this chapter who is the registered owner (including co-owners) of the affected aircraft and who holds a certificate of competency for the affected aircraft (1) issued by the holder of the production certificate for that primary category aircraft that has a special training program approved under § 21.24 of this subchapter; or (2) issued by another entity that has a course approved by the Administrator; and * * * * *

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

■ 3. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 4. Add § 65.23 to read as follows:

§ 65.23 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the Federal Aviation Administration (FAA) and at the National Archives and Records Administration (NARA). Contact FAA, Airman Testing Standards Branch/Regulatory Support Division, 405–954–4151, *AFS630Comments@faa.gov.* For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the source in the following paragraph of this section.

(a) Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, 866–835–5322, *www.faa.gov/training_testing.*

(1) FAA–S–8081–26B, Aviation Mechanic General, Airframe, and Powerplant Practical Test Standards, November 1, 2021; IBR approved for §§ 65.75 and 65.79.

(2) FAA–S–ACS–1, Aviation Mechanic General, Airframe, and Powerplant Airman Certification Standards, November 1, 2021; IBR approved for §§ 65.75 and 65.79.

(b) [Reserved]

■ 5. Amend § 65.75 by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 65.75 Knowledge requirements.

(a) Except as specified in paragraph (c) of this section, each applicant for a mechanic certificate or rating must, after meeting the applicable experience requirements of § 65.77, pass a written test, appropriate to the rating sought, which includes:

(1) Until July 31, 2023, the subject areas contained in the Aviation Mechanic General, Airframe, and Powerplant Practical Test Standards (incorporated by reference, see § 65.23), as appropriate to the rating sought.

(2) After July 31, 2023, the aeronautical knowledge subject areas contained in the Aviation Mechanic General, Airframe, and Powerplant Airman Certification Standards (incorporated by reference, see § 65.23), as appropriate to the rating sought.

* * * * *

(c) An applicant for a mechanic certificate or rating may take the mechanic general written test prior to meeting the applicable experience requirements of § 65.77, provided the applicant presents an authenticated document from a certificated aviation maintenance technician school that demonstrates satisfactory completion of the general portion of the school's curriculum and specifies the completion date.

■ 6. Effective August 1, 2023, amend § 65.75 by revising paragraph (a) to read as follows:

§ 65.75 Knowledge requirements.

(a) Except as specified in paragraph (c) of this section, each applicant for a mechanic certificate or rating must, after meeting the applicable experience

requirements of § 65.77, pass a written test, appropriate to the rating sought, which includes the aeronautical knowledge subject areas contained in the Aviation Mechanic General, Airframe, and Powerplant Airman Certification Standards (incorporated by reference, see § 65.23), as appropriate to the rating sought.

* * * * *

■ 7. Revise § 65.77 to read as follows:

§ 65.77 Experience requirements

Each applicant for a mechanic certificate or rating must present either—

(a) An authenticated document from a certificated aviation maintenance technician school in accordance with § 147.21 of this chapter; or

(b) Documentary evidence, satisfactory to the Administrator, of—

(1) At least 18 months of practical experience with the procedures, practices, materials, tools, machine tools, and equipment generally used in constructing, maintaining, or altering airframes or powerplants, appropriate to the rating sought; or

(2) At least 30 months of practical experience concurrently performing the duties appropriate to both the airframe and powerplant ratings.

■ 8. Revise § 65.79 to read as follows:

§ 65.79 Skill requirements.

Each applicant for a mechanic certificate or rating must pass an oral test and a practical test, as appropriate to the rating sought, by demonstrating:

(a) Until July 31, 2023, the prescribed proficiency in the assigned objectives for the subject areas contained in the Aviation Mechanic General, Airframe, and Powerplant Practical Test Standard (incorporated by reference, see § 65.23), as appropriate to the rating sought.

(b) After July 31, 2023, satisfactory understanding of the knowledge, risk management, and skill elements for each subject contained in the Aviation Mechanic General, Airframe, and Powerplant Airmen Certification Standards (incorporated by reference, see § 65.23), as appropriate to the rating sought.

■ 9. Effective August 1, 2023, revise § 65.79 to read as follows:

§ 65.79 Skill requirements.

Each applicant for a mechanic certificate or rating must pass an oral test and a practical test, as appropriate to the rating sought, by demonstrating satisfactory understanding of the knowledge, risk management, and skill elements for each subject contained in the Aviation Mechanic General, Airframe, and Powerplant Airmen Certification Standards (incorporated by reference, see § 65.23), as appropriate to the rating sought.

■ 10. Revise § 65.80 to read as follows:

§ 65.80 Certificated aviation maintenance technician school students.

Whenever an aviation maintenance technician school certificated under part 147 of this chapter shows to the Administrator that any of its students has made satisfactory progress at the school and is prepared to take the oral and practical tests prescribed by § 65.79, that student may take those tests during the final subjects of the student's training in the curriculum required under part 147, before the student meets the applicable experience requirements of § 65.77 and before the student passes each section of the written test prescribed by § 65.75.

■ 11. Revise part 147 to read as follows:

PART 147—AVIATION MAINTENANCE TECHNICIAN SCHOOLS

Subpart A—General

Subpart B—Certification and Operating Requirements

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44707–44709; Sec. 135, Public Law 116–260, 134 Stat. 1182.

Subpart A—General

§ 147.1 Applicability.

This part prescribes the requirements for issuing aviation maintenance technician school certificates and associated ratings and the general operating rules for the holders of those certificates and ratings.

§ 147.3 Certificate required.

No person may operate an aviation maintenance technician school without, or in violation of, an aviation maintenance technician school certificate and the operations specifications issued under this part.

§ 147.5 Application requirements.

(a) To be issued a certificate or rating under this part, an applicant must demonstrate compliance with the requirements of this part.

(b) An application for a certificate and rating to operate an aviation maintenance technician school must include the following:

(1) A description of the facilities, including the physical address of the applicant's primary location for operation of the school, and any additional fixed locations where training will be provided, and the equipment and materials to be used at each location;

(2) A description of the manner in which the school's curriculum will ensure the student has the knowledge and skills necessary for attaining a mechanic certificate and associated ratings under subpart D of part 65 of this chapter;

(3) A description of the manner in which the school will ensure it provides the necessary qualified instructors to meet the requirements of § 147.19; and

(4) Any additional information necessary to demonstrate compliance with the requirements of this part.

(c) An application for an additional rating or amended certificate must include only the information required by paragraph (b) of this section that is necessary to substantiate the reason for the additional rating or change sought.

§ 147.7 Duration of certificates.

An aviation maintenance technician school certificate or rating issued under this part is effective from the date of issue until the certificate or rating is surrendered, suspended, or revoked.

§ 147.11 Ratings.

The following ratings may be issued under this part:

(a) Airframe.

(b) Powerplant.

(c) Airframe and powerplant.

Subpart B—Certification and Operating Requirements

§ 147.13 Facilities, equipment, and material requirements.

(a) Each certificated aviation maintenance technician school must provide and maintain the facilities, equipment, and materials that are appropriate to the rating or ratings held by the school and the number of students taught.

(b) For certificated aviation maintenance technician schools that provide training at more than one location in accordance with § 147.15, the facilities, equipment, and materials

used at each location must be appropriate to the curriculum or portion of the curriculum, and the number of students being taught, at that location.

§ 147.15 Training provided at another location.

A certificated aviation maintenance technician school may provide training at any fixed location other than its primary location, provided the additional training location meets the requirements of this part and is listed in the certificate holder's operations specifications.

§ 147.17 Training requirements.

(a) Each certificated aviation maintenance technician school must:

(1) Establish, maintain, and utilize a curriculum that is designed to continually align with the mechanic airman certification standards referenced in paragraph (b) of this section, as appropriate for the ratings held;

(2) Provide training of a quality that meets the requirements of § 147.25; and

(3) Ensure students have the knowledge and skills necessary to be prepared to test for a mechanic certificate and associated ratings under subpart D of part 65 of this chapter.

(b) FAA–S–ACS–1, Aviation Mechanic General, Airframe, and Powerplant Airman Certification Standards, November 1, 2021, is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the Federal Aviation Administration (FAA) and the National Archives and Records Administration (NARA). Contact FAA, Airman Testing Standards Branch/Regulatory Support Division, 405–954–4151, *AFS630Comments@faa.gov.* For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from FAA, 800 Independence Avenue SW, Washington, DC 20591, 866–835–5322, *www.faa.gov/training_testing.*

§ 147.19 Instructor requirements.

Each certificated aviation maintenance technician school must:

(a) Provide qualified instructors to teach in a manner that ensures positive educational outcomes are achieved;

(b) Ensure instructors either—

(1) Hold a mechanic certificate with one or more appropriate ratings; or

(2) If they do not hold a mechanic certificate, are otherwise specifically qualified to teach their assigned content; and

(c) Ensure the student-to-instructor ratio does not exceed 25:1 for any shop class.

§ 147.21 Certificate of completion.

Each certificated aviation maintenance technician school must provide an authenticated document to each graduating student, indicating the student's date of graduation and curriculum completed.

§ 147.23 Quality control system.

(a) Each certificated aviation maintenance technician school must—

(1) Be accredited within the meaning of 20 U.S.C. 1001(a)(5); or

(2) Establish and maintain a quality control system that meets the requirements specified in paragraph (b) of this section, and is approved by the Administrator.

(b) The quality control system specified in paragraph (a)(2) of this section must provide procedures for recordkeeping, assessment, issuing credit, issuing of final course grades, attendance, ensuring sufficient number of instructors, granting of graduation documentation, and corrective action for addressing deficiencies.

§ 147.25 Minimum passage rate.

(a) Each certificated aviation maintenance technician school must maintain the pass rate specified in paragraph (b) of this section for the most recent 3-year period.

(b) For students who take an FAA mechanic test under part 65 of this chapter within 60 days after graduation, at least 70 percent of students must pass one of the following tests or any combination thereof:

(1) Written test;

(2) Oral test; or

(3) Practical test.

(c) For students who take a combination of tests within the 60-day window specified in paragraph (b) of this section, an aviation maintenance technician school must count a failure on any one test as a student failure for purposes of determining the pass rate, unless that failed test is subsequently passed within the 60-day window.

§ 147.27 FAA inspection.

A certificated aviation maintenance technician school must allow the Administrator such access as the Administrator determines necessary to inspect the one or more locations of the school for purposes of determining the school's compliance with the requirements of this part.

§ 147.29 Display of certificate.

A certificated aviation maintenance technician school must display its aviation maintenance technician school certificate at a place in each location of the school, including the primary location and any additional fixed locations, that is visible by and normally accessible to the public.

§ 147.31 Early testing.

When a student satisfactorily completes the general portion of a certificated aviation maintenance technician school's curriculum, the school may issue an authenticated document that demonstrates the student's preparedness to take the mechanic general written test in accordance with § 65.75(c) of this chapter.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703, and Sec. 135 of the Aircraft Certification, Safety, and Accountability Act within Public Law 116–260, in Washington, DC, on May 6, 2022.

Billy Nolen,

Acting Administrator.

[FR Doc. 2022–10367 Filed 5–23–22; 8:45 am]

BILLING CODE 4910–13–P

DELAWARE RIVER BASIN COMMISSION

18 CFR Parts 401 and 420

Regulatory Program Fees and Water Charges Rates

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: Notice is provided of the Delaware River Basin Commission's regulatory program fees and schedule of water charges for the fiscal year beginning July 1, 2022.

DATES: This final rule is effective July 1, 2022.

FOR FURTHER INFORMATION CONTACT: Elba L. Deck, CPA, Director of Finance and Administration, 609–883–9500, ext. 201.

SUPPLEMENTARY INFORMATION: The Delaware River Basin Commission (''DRBC'' or ''Commission'') is a Federal-interstate compact agency charged with managing the water resources of the Delaware River Basin on a regional basis without regard to political boundaries. Its members are the governors of the four basin states—Delaware, New Jersey, New York and Pennsylvania—and on behalf of the federal government, the North Atlantic Division Commander of the U.S. Army Corps of Engineers.

In accordance with 18 CFR 401.43(c), on July 1 of every year, the

Commission's regulatory program fees as set forth in Tables 1, 2, and 3 of that section are subject to an annual adjustment, commensurate with any increase in the annual April 12-month Consumer Price Index (CPI) for Philadelphia published by the U.S. Bureau of Labor Statistics during that year. Pursuant to 18 CFR 420.41(c), the same indexed adjustment applies to the Commission's schedule of water charges for consumptive and non-consumptive withdrawals of surface water within the basin. The referenced April 12-month CPI for 2022 showed an increase of 8.38%. Commensurate adjustments are thus required.

This notification is made in accordance with 18 CFR 401.43(c) and 18 CFR 420.41(c), which provide that a revised fee schedule will be published in the **Federal Register** by July 1. The revised fees also may be obtained by contacting the Commission during business hours or by checking the Commission's website.

List of Subjects

18 CFR Part 401

Administrative practice and procedure, Project review, Water pollution control, Water resources.

18 CFR Part 420

Water supply.

For the reasons set forth in the preamble, the Delaware River Basin Commission amends parts 401 and 420 of title 18 of the Code of Federal Regulations as set forth below:

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 C—Project Review Under Section 3.8 of the Compact

■ 2. In § 401.43, revise Tables 1, 2, and 3 to read as follows:

§ 401.43 Regulatory program fees.

* * * * *

TABLE 1 TO § 401.43—DOCKET APPLICATION FILING FEE

Project type	Docket application fee	Fee maximum
Water Allocation	$469 per million gallons/month of allocation,[1] not to exceed $17,587.[1] Fee is doubled for any portion to be exported from the basin..	Greater of: $17,587[1] or Alternative Review Fee.
Wastewater Discharge	Private projects: $1,172[1] Public projects: $586[1]	Alternative Review Fee.
Other	0.4% of project cost up to $10,000,000 plus ... 0.12% of project cost above $10,000,000 (if applicable), not to exceed $87,934[1].	Greater of: $87,934[1] or Alternative Review Fee.

[1] Subject to annual adjustment in accordance with paragraph (c) of this section.

TABLE 2 TO § 401.43—ANNUAL MONITORING AND COORDINATION FEE

	Annual fee	Allocation
Water Allocation	[1] $352	<4.99 mgm.
	[1] $528	5.00 to 49.99 mgm.
	[1] $762	50.00 to 499.99 mgm.
	[1] $967	500.00 to 9,999.99 mgm.
	[1] $1,172	> or = to 10,000 mgm.
	Annual fee	**Discharge design capacity**
Wastewater Discharge	[1] $352	<0.05 mgd.
	[1] $715	0.05 to 1 mgd.
	[1] $961	1 to 10 mgd.
	[1] $1,172	>10 mgd.

[1] Subject to annual adjustment in accordance with paragraph (c) of this section.

TABLE 3 TO § 401.43—ADDITIONAL FEES

Proposed action	Fee	Fee maximum
Emergency Approval Under 18 CFR 401.40	$5,000	Alternative Review Fee.
Late Filed Renewal Surcharge	$2,000	
Modification of a DRBC Approval	At Executive Director's discretion, Docket Application Fee for the appropriate project type.	Alternative Review Fee.
Name change	[1] $1,172	
Change of Ownership	[1] $1,759	

[1] Subject to annual adjustment in accordance with paragraph (c) of this section.

PART 420—BASIN REGULATIONS—WATER SUPPLY CHARGES

■ 3. The authority citation for part 420 continues to read as follows:

Authority: Delaware River Basin Compact, 75 Stat. 688.

■ 4. In § 420.41, revise paragraphs (a) and (b) to read as follows:

§ 420.41 Schedule of water charges.

* * * * *

(a) $94 per million gallons for consumptive use, subject to paragraph (c) of this section; and

(b) $0.94 per million gallons for non-consumptive use, subject to paragraph (c) of this section.

* * * * *

Dated: May 18, 2022.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 2022–11138 Filed 5–23–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket Number USCG–2021–0184]

2020 Quarterly Listings; Safety Zones, Security Zones, and Special Local Regulations

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

ACTION: Notification of expired temporary rules issued.

SUMMARY: This document provides notification of substantive rules issued by the Coast Guard that were made temporarily effective but expired before they could be published in the **Federal Register**. This document lists temporary safety zones, security zones, and special local regulations, all of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This document lists temporary Coast Guard rules that became effective, primarily between April 2020 and June 2020, unless otherwise indicated, and were terminated before they could be published in the **Federal Register**.

ADDRESSES: Temporary rules listed in this document may be viewed online, under their respective docket numbers, using the Federal eRulemaking Portal at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this document contact Yeoman First Class Glenn Grayer, Office of Regulations and Administrative Law, telephone (202) 372–3862.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. *Safety zones* may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. *Security zones* limit access to prevent injury or damage to vessels, ports, or waterfront facilities. *Special local regulations* are issued to enhance the safety of participants and spectators at regattas and other marine events.

Timely publication of these rules in the **Federal Register** may be precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, often informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the end of the effective period, mariners were personally notified of the contents of these safety zones, security zones, special local regulations, regulated navigation areas, or drawbridge operation regulations by Coast Guard officials on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary safety zones, security zones, special local regulations, regulated navigation areas, and drawbridge operation regulations. Permanent rules are not included in this list because they are published in their entirety in the **Federal Register**. Temporary rules are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated.

The following unpublished rules were placed in effect temporarily during the period between April 2020 and June 2020 unless otherwise indicated. To view copies of these rules, visit *www.regulations.gov* and search by the docket number indicated in the following table.

Docket No.	Type	Location	Effective date
USCG–2020–0393	Safety Zones (Parts 147 and 165)	Oak Island, NC	7/1/2020
USCG–2020–0177	Safety Zones (Parts 147 and 165)	Port Maryland, MD	7/1/2020
USCG–2020–0352	Safety Zones (Parts 147 and 165)	Mulfordtown, KY	7/1/2020
USCG–2020–0401	Safety Zones (Parts 147 and 165)	Sandusky, OH	7/2/2020
USCG–2020–0362	Safety Zones (Parts 147 and 165)	Roach, MO	7/3/2020
USCG–2020–0229	Safety Zones (Parts 147 and 165)	Madisonville, LA	7/4/2020
USCG–2020–0396	Safety Zones (Parts 147 and 165)	Leland, MI	7/4/2020
USCG–2020–0387	Safety Zones (Parts 147 and 165)	Sector Columbia River	7/4/2020
USCG–2020–0286	Safety Zones (Parts 147 and 165)	Rockport, TX	7/4/2020
USCG–2020–0390	Safety Zones (Parts 147 and 165)	Seattle, WA	7/4/2020
USCG–2020–0375	Safety Zones (Parts 147 and 165)	St. Clair River, MI	7/5/2020
USCG–2020–0419	Safety Zones (Parts 147 and 165)	Hillsboro Beach, FL	7/10/2020
USCG–2020–0411	Special Local Regulation	Port Huran	7/11/2020
USCG–2020–0254	Safety Zones (Parts 147 and 165)	Pensacola Beach, FL	7/19/2020
USCG–2020–0024	Safety Zones (Parts 147 and 165)	Melboune, KY	7/27/2020
USCG–2020–0409	Safety Zones (Parts 147 and 165)	Boyce, LA	7/28/2020
USCG–2020–0343	Special Local Regulations (Part 100)	Leonardtown, MD	8/1/2020
USCG–2020–0448	Safety Zones (Parts 147 and 165)	Bossier City, LA	8/1/2020
USCG–2020–0480	Safety Zones (Parts 147 and 165)	Newport, RI	8/12/2020
USCG–2020–0449	Safety Zones (Parts 147 and 165)	Bossier City, LA	8/15/2020
USCG–2020–0481	Safety Zones (Parts 147 and 165)	Lake Ozark, MO	8/22/2020
USCG–2020–0512	Safety Zones (Parts 147 and 165)	Chattanooga, TN	8/22/2020
USCG–2020–0532	Safety Zones (Parts 147 and 165)	Bratenahl, OH	8/22/2020
USCG–2020–0541	Safety Zones (Parts 147 and 165)	Captain of the Port Zone	8/22/2020
USCG–2020–0382	Safety Zones (Parts 147 and 165)	Jacksonville, FL	8/23/2020
USCG–2020–0533	Security Zones (Part 165)	Ocean City, MD	8/23/2020
USCG–2020–0553	Security Zones (Part 165)	Duluth, MN	8/28/2020

Docket No.	Type	Location	Effective date
USCG–2020–0089	Safety Zones (Parts 147 and 165)	Port Arthur Captain of the Port Zone.	8/28/2020
USCG–2020–0548	Safety Zones (Parts 147 and 165)	Essexville, MI	8/29/2020
USCG–2020–0551	Safety Zones (Parts 147 and 165)	Caddo Parish, LA	8/31/2020
USCG–2020–0471	Safety Zones (Parts 147 and 165)	Detroit, MI	8/31/2020
USCG–2020–0418	Safety Zones (Parts 147 and 165)	Avoyelles Parish, LA	8/31/2020
USCG–2020–0505	Safety Zones (Parts 147 and 165)	Natchez, MS	9/2/2020
USCG–2020–0538	Safety Zones (Parts 147 and 165)	Cleveland, OH	9/5/2020
USCG–2020–0539	Safety Zones (Parts 147 and 165)	Fairport, OH	9/5/2020
USCG–2020–0364	Safety Zones (Parts 147 and 165)	Jupiter, FL	9/8/2020
USCG–2020–0555	Safety Zones (Parts 147 and 165)	Helena, AR	9/15/2020
USCG–2020–0589	Safety Zones (Parts 147 and 165)	Ingleside, TX	9/17/2020
USCG–2020–0576	Safety Zones (Parts 147 and 165)	Chester, PA	9/19/2020
USCG–2020–0592	Safety Zones (Parts 147 and 165)	Victoria, TX	9/22/2020
USCG–2020–0593	Safety Zones (Parts 147 and 165)	Detroit, MI	9/26/2020
USCG–2020–0598	Safety Zones (Parts 147 and 165)	Cleveland, OH	9/29/2020
USCG–2020–0599	Safety Zones (Parts 147 and 165)	San Francisco, CA	9/29/2020
USCG–2020–0352	Safety Zones (Parts 147 and 165)	Mulfordtown, KY	7/1/2021

Dated: May 19, 2022.

M.T. Cunningham,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. 2022–11111 Filed 5–23–22; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0831]

2020 Quarterly Listings; Safety Zones, Security Zones, and Special Local Regulations

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

ACTION: Notification of expired temporary rules issued.

SUMMARY: This document provides notification of substantive rules issued by the Coast Guard that were made temporarily effective but expired before they could be published in the **Federal Register**. This document lists temporary safety zones, security zones, and special local regulations, all of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This document lists temporary Coast Guard rules that became effective, primarily between October 2020 and December 2020, unless otherwise indicated, and were terminated before they could be published in the **Federal Register**.

ADDRESSES: Temporary rules listed in this document may be viewed online, under their respective docket numbers, using the Federal eRulemaking Portal at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this document contact Yeoman First Class Glenn Grayer, Office of Regulations and Administrative Law, telephone (202) 372–3862.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. *Safety zones* may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. *Security zones* limit access to prevent injury or damage to vessels, ports, or waterfront facilities. *Special local regulations* are issued to enhance the safety of participants and spectators at regattas and other marine events.

Timely publication of these rules in the **Federal Register** may be precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, often informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the end of the effective period, mariners were personally notified of the contents of these safety zones, security zones, special local regulations, regulated navigation areas, or drawbridge operation regulations by Coast Guard officials on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary safety zones, security zones, special local regulations, regulated navigation areas, and drawbridge operation regulations. Permanent rules are not included in this list because they are published in their entirety in the **Federal Register**. Temporary rules are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated.

The following unpublished rules were placed in effect temporarily during the period between October 2020 and December 2020 unless otherwise indicated. To view copies of these rules, visit *www.regulations.gov* and search by the docket number indicated in the following table.

Docket No.	Type	Location	Effective start date
USCG–2020–0010	Safety Zones (Parts 147 and 165)	Santa Barbara, CA	10/1/2020
USCG–2020–0507	Safety Zones (Parts 147 and 165)	Vicksburg, MS	10/3/2020
USCG–2020–0501	Safety Zones (Parts 147 and 165)	Catalina Island, CA	10/10/2020

Docket No.	Type	Location	Effective start date
USCG–2020–0635	Safety Zones (Parts 147 and 165)	Port Arthur Captain of the Port Zone.	10/14/2020
USCG–2020–0609	Safety Zones (Parts 147 and 165)	Bridgeport, AL ST	10/15/2020
USCG–2020–0365	Security Zones (Part 165)	Miami, FL	10/15/2020
USCG–2020–0557	Security Zones (Part 165)	Newport Beach, CA	10/18/2020
USCG–2020–0090	Safety Zones (Parts 147 and 165)	Gulf of Mexico, TX	10/18/2020
USCG–2020–0178	Safety Zones (Parts 147 and 165)	Cleveland, OH	10/31/2020
USCG–2020–0661	Safety Zones (Parts 147 and 165)	Ohio River, Lawrenceburg	11/9/2020
USCG–2020–0633	Safety Zones (Parts 147 and 165)	Letart, WV	11/7/2020
USCG–2020–0564	Safety Zones (Parts 147 and 165)	Memphis, TN	11/11/2020
USCG–2020–0689	Security Zones (Part 165)	Ponce, PR	11/21/2020
USCG–2020–0272	Safety Zones (Parts 147 and 165)	Pittsburgh, PA	11/24/2020
USCG–2020–0705	Safety Zones (Parts 147 and 165)	Pittsburgh, PA	11/25/2020
USCG–2020–0702	Safety Zones (Parts 147 and 165)	Horry County, SC	11/25/2020
USCG–2020–0709	Safety Zones (Parts 147 and 165)	Pittsburgh, PA	12/2/2020
USCG–2021–0706	Safety Zones (Parts 147 and 165)	Clarksville, TN	12/10/2020
USCG–2020–0721	Safety Zones (Parts 147 and 165)	Seattle, WA	12/21/2020
USCG–2020–0729	Safety Zones (Parts 147 and 165)	Ingleside, TX	12/23/2020
USCG–2020–0724	Safety Zones (Parts 147 and 165)	Corpus Christi, TX	12/24/2020
USCG–2021–0725	Safety Zones (Parts 147 and 165)	Natchez, MS	12/28/2020

Dated: May 19, 2022.

M.T. Cunningham,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. 2022–11112 Filed 5–23–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0384]

RIN 1625–AA00

Safety Zone; Cumberland River; Nashville, TN

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Cumberland River from mile marker (MM) 189.7 to 191.1. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by CMA Festival Fireworks. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

DATES: This rule is effective from 11 p.m. on June 9, 2022, through 12:15 a.m. on June 10, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0384 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 Petty Officer Third Class Benjamin Gardner, Marine Safety Detatchment Nashville, U.S. Coast Guard; telephone 615–736–5421, email, *Benjamin.T.Gardner@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone on June 9, 2022, and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the CMA Festival Fireworks starting June 9, 2022, will be a safety concern for anyone within mile marker 189.7 to 191.1 on the Cumberland River. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the firework display.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 11:00 p.m. until 12:15 a.m. from June 9, 2022, through June 10, 2022. The safety zone will cover all navigable waters between Mile Marker (MM) 189.7 to 191.1 on the Cumberland River, extending the entire width of the river. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the fireworks display is occuring. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of USCG Sector Ohio Valley.

Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. To seek entry into the safety zone, contact the COTP or the COTP's representative by telephone at 502–779–5422 or on VHF–FM channel 16.

Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and Marine Safety Information Bulletins (MSIBs) about this safety zone, enforcement period, as well as any changes in the dates and times of enforcement.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the fireworks show being held for 1.25 hours during the evening hours and only impacting .4 Miles of the Cumberland River.

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 only 1.25 hours that will prohibit entry between MM 189.7.0 to 191.1 on the Cumberland River for the fireworks display. 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. Due to the emergency nature of this rulemaking, a Record of Environmental Consideration is not required.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T08–801 to read as follows:

§ 165.T08–801 Safety Zone; Cumberland River, Nashville, TN.

(a) *Location.* The following area is a safety zone: All navigable waters of the Cumberland River, Mile Markers 189.7 to 191.1, extending the entire width of the river.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(c) *Enforcement period.* This section will be enforced from 11 p.m. to 12:15 a.m. on June 9, 2022, through June 10, 2022.

Dated: May 19, 2022.

A.M. Beach,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2022–11163 Filed 5–23–22; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 210

[Docket No. 2020–5]

Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Supplemental interim rule; request for comments.

SUMMARY: The U.S. Copyright Office is amending its regulations governing certain reporting requirements of digital music providers pursuant to title I of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act. This amendment modifies provisions concerning reports of adjustment and annual reports of usage in light of a recent request prompted by operational and compliance challenges with existing regulations. Based on the request and the imminence of related reporting deadlines, the Copyright Office has determined that there is a legitimate need to make this amendment effective immediately, while soliciting public comments on whether it should further modify these particular reporting requirements going forward.

DATES:

Effective date: The supplemental interim rule is effective May 24, 2022.

Comments due date: Written comments must be received no later than 11:59 p.m. Eastern Time on July 8, 2022.

ADDRESSES: For reasons of Government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office's website at *https://www.copyright.gov/rulemaking/mma-notices-reports/.* If electronic submission of comments is not feasible due to lack of access to a computer or the internet, please contact the Copyright Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Megan Efthimiadis, Assistant to the General Counsel, by email at *meft@copyright.gov* or telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

The Orrin G. Hatch-Bob Goodlatte Music Modernization Act (''MMA'') substantially modified the compulsory ''mechanical'' license for making and distributing phonorecords of nondramatic musical works under 17 U.S.C. 115.[1] It did so by switching from a song-by-song licensing system to a blanket licensing regime that became available on January 1, 2021 (the ''license availability date''), administered by a mechanical licensing collective (''MLC'') designated by the Copyright Office (the ''Office'').[2] Digital music providers (''DMPs'') are able to obtain the new compulsory blanket license to make digital phonorecord deliveries of nondramatic musical works, including in the form of permanent downloads, limited downloads, or interactive streams (referred to in the statute as ''covered activity'' where such activity qualifies for a compulsory license), subject to compliance with various requirements, including reporting obligations. DMPs may also continue to engage in those activities solely through voluntary licensing with copyright owners, in which case the DMP may be considered a significant nonblanket licensee (''SNBL'') under the statute,[3] subject to separate reporting obligations.

On September 17, 2020, the Office issued an interim rule adopting regulations concerning certain types of reporting required under the statute after the license availability date: Notices of license and reports of usage by DMPs and notices of nonblanket activity and reports of usage by SNBLs (the ''September 2020 rule'').[4] As relevant here, those interim regulations provide requirements governing annual reporting and the ability to make adjustments to monthly and annual reports and related royalty payments, including to correct errors and replace estimated inputs with finally determined figures.[5]

Under the September 2020 rule, DMPs must deliver annual reports of usage (''AROUs'') and any related royalty payment to the MLC no later than the twentieth day of the sixth month following the end of the DMP's fiscal year covered by the AROU.[6] AROUs must contain cumulative information for the applicable fiscal year, broken down by month and by activity or offering, including the total royalty payable, the total sum paid, the total adjustments made, the total number of payable units, and to the extent applicable to calculating the royalties owed, total service provider revenue, total costs of content, total performance royalty deductions, and total subscribers.[7] In describing these requirements, the Office said that ''[r]eceiving these totals and having them broken down this way seems beneficial to the MLC in confirming proper royalties, while not unreasonably burdening DMPs, who would not have to re-provide all of the information contained in the monthly reports covered by the annual reporting period.'' [8]

Under the September 2020 rule, DMPs have the ability to make adjustments to previously delivered monthly reports of usage (''MROUs'') and AROUs,

[1] Public Law 115–264, 132 Stat. 3676 (2018).

[2] 17 U.S.C. 115(d)(3)(B), (d)(3)(C); 84 FR 32274 (July 8, 2019). As permitted under the MMA, the Office also designated a digital licensee coordinator (''DLC'') to represent licensees in proceedings before the Copyright Royalty Judges (''CRJs'') and the Office, to serve as a non-voting member of the MLC, and to carry out other functions. 17 U.S.C. 115(d)(3)(D)(i)(IV), (d)(5)(B), (d)(5)(C); 84 FR 32274.

[3] 17 U.S.C. 115(e)(31).

[4] 85 FR 58114 (Sept. 17, 2020).

[5] 37 CFR 210.27(f), (g)(3)–(4), (k).

[6] *Id.* at 210.27(g)(3).

[7] *Id.* at 210.27(f); *see also* 37 CFR pt. 385 (defining terms, including ''service provider revenue'' ''total cost of content,'' and ''subscription,'' and permitting certain deductions).

[8] 85 FR 22518, 22533 (Apr. 22, 2020).

including related royalty payments, by delivering reports of adjustment (''ROAs'') to the MLC.[9] An ROA adjusting one or more MROUs may, but need not, be combined with the AROU for the annual period covering the MROUs and related payments.[10] When an ROA and AROU are combined, the AROU is also considered an ROA, and the AROU must comply with the regulatory requirements applicable to both types of reports.[11] The deadlines to deliver ROAs and any related royalty payment to the MLC differ depending on whether the ROA is adjusting an MROU or AROU and whether the ROA is combined with an AROU. An ROA adjusting an MROU that is not combined with an AROU must be delivered after the date that the MROU being adjusted is delivered and before the date that the AROU covering that MROU is delivered.[12] If the ROA is combined with the AROU, then the due date for the AROU applies.[13]

An ROA adjusting an AROU is only permitted in response to certain enumerated triggering events (*e.g.,* in exceptional circumstances, when making an adjustment to a previously estimated input, or in response to a change in applicable rates or terms set by the CRJs under the section 115 license).[14] Such an ROA is due no later than six months after the occurrence of such an event.[15]

All ROAs must include detailed information, including about the specific changes being made and the reason(s) for the adjustment.[16] In response to comments from the DLC, the Office significantly modified these requirements between the Office's April 2020 notice of proposed rulemaking [17] and the September 2020 rule. As the Office explained in the September 2020 rule, the DLC proposed deleting two portions of the proposed rule addressing reports of adjustments. The first was the requirement for DMPs to include in the description of adjustment ''the monetary amount of the adjustment'' and second, the requirement to include ''a detailed and step-by-step accounting of the calculation of the adjustment sufficient to allow the mechanical licensing collective to assess the manner in which the blanket licensee determined the adjustment and the accuracy of the adjustment.'' As the DLC explained, ''[a]lthough DMPs must provide *inputs* to the MLC, it is typically the MLC, not the providers, that will use those inputs to perform a 'step-by-step accounting' and determine the 'monetary amount[s]' due to be paid.'' In response, the MLC confirmed its shared understanding it would verify this math and did not oppose the DLC's proposal. The MLC proposed additional language, modeled off language in the monthly usage reporting provisions found in § 210.27(d)(1)(ii) of the proposed rule to confirm ''DMPs must always provide all necessary royalty pool calculation information.'' As it found these changes reasonable, the Office adopted the DLC's proposal with the addition of the language proposed by the MLC.[18]

In adopting these proposals, the Office also modified the due date for delivering any underpayment of royalties to the MLC. Instead of always being due contemporaneously with the ROA's delivery, as was originally proposed, the September 2020 rule provides that it may either be due then ''or promptly after being notified by the mechanical licensing collective of the amount due.'' [19]

Separate from the requirements for ROAs and AROUs, the September 2020 rule contains processes through which DMPs may receive royalty invoices and response files from the MLC in connection with MROUs, including after delivering MROUs but before making royalty payments.[20] The Office explained that ''[a]lthough the MMA does not explicitly address invoices and response files, the DLC has consistently articulated the importance of addressing requirements for each in Copyright Office regulations,'' [21] and that accommodating invoices and response files ''is intended to further the Office's longstanding policy objective that the compulsory license should be a realistic and practical alternative to voluntary licensing.'' [22] Notably, the DLC did not request an invoice or response file process in connection with AROUs or ROAs.

After the adoption of these rules, which involved multiple rounds of public comments through a notification of inquiry,[23] notice of proposed rulemaking,[24] and an *ex parte* communications process,[25] the DLC raised a new concern regarding the applicability of certain reporting provisions to pass-through licenses for permanent downloads which the Office addressed through supplemental interim rules.[26] The DLC now raises another new concern, this time arising from ''several operational and compliance challenges with the existing AROU and adjustment regulations.'' [27]

As the DLC describes it, ''[t]he identified challenges stem principally from differences between the regulations governing AROUs and adjustments on the one hand, and the regulations governing monthly reporting under the blanket license that licensees and the MLC have now been successfully operating under for over a year.'' [28] These ''differences'' appear to largely refer to the lack of an express back-and-forth process through which DMPs can obtain invoices and response files from the MLC in connection with AROUs and ROAs.[29] To address its concerns, the DLC essentially proposes to amend the content requirements and royalty payment timing for AROUs and create a response file process for ROAs.[30] The DLC further states that ''[g]iven the time pressure for those services that are currently in the AROU process, we urge the Office to consider adopting an immediately effective interim rule.'' [31] The DLC also suggests that an alternative solution could be for the Office to ''postpon[e] the deadline for the 2021 annual reports of usage entirely until some period after the [CRJs] decide[] the *Phonorecords III* rate proceeding.'' [32]

The MLC opposes the DLC's proposal for reasons discussed below, which mostly concern the disruptive impact it would have on the MLC's core operations, *e.g.,* processing monthly royalty distributions and historical

[9] 37 CFR 210.27(k).

[10] *Id.* at 210.27(k)(1); *see* 85 FR 22518, 22527.

[11] 37 CFR 210.27(k)(1).

[12] *Id.* at 210.27(g)(4)(i).

[13] *See id.* at 210.27(g)(3), (k)(1).

[14] *Id.* at 210.27(k)(6).

[15] *Id.* at 210.27(g)(4)(ii).

[16] *Id.* at 210.27(k)(3).

[17] 85 FR 22518.

[18] 85 FR 58114, 58138 (internal citations omitted).

[19] 37 CFR 210.27(k)(4); 85 FR 58114, 58139 n.341.

[20] 37 CFR 210.27(d)(1), (g)(1)–(2); *see* 85 FR 58114, 58137–38; 85 FR 22518, 22528.

[21] 85 FR 58114, 58138.

[22] 85 FR 22518, 22528.

[23] 84 FR 49966 (Sept. 24, 2019).

[24] 85 FR 22518.

[25] Guidelines for *ex parte* communications, along with records of such communications, including those referenced herein, are available at *https://www.copyright.gov/rulemaking/mma-implementation/ex-parte-communications.html.* All rulemaking activity, including public comments, as well as educational material regarding the Music Modernization Act, can currently be accessed via navigation from *https://www.copyright.gov/music-modernization/.*

[26] *See* 85 FR 84243 (Dec. 28, 2020), 86 FR 12822 (Mar. 5, 2021).

[27] DLC *Ex Parte* Letter at 1 (Mar. 14, 2022).

[28] *Id.*

[29] *Id.* at 2.

[30] *Id.* at 3, add. at i–iv.

[31] *Id.* at 3.

[32] *Id.* at 4. The D.C. Circuit partially vacated and remanded the CRJs' *Phonorecords III* determination, which was intended to set rates and terms for the section 115 license for the period from January 1, 2018 through December 31, 2022. *Johnson* v. *Copyright Royalty Bd.,* 969 F.3d 363 (D.C. Cir. 2020). Remand proceedings before the CRJs are ongoing and it is unknown at this time when the CRJs will issue their new determination.

unmatched royalties.[33] The MLC explains that its understanding is ''that the interim status of the rule is not intended to enable new and onerous substantive requirements to be added without meaningful notice, comment and transition, as the DLC Letter now seems to propose.'' [34] Nevertheless, the MLC states that ''it intends to provide response files to DSPs in connection with ARoUs'' and ''can provide invoices in connection with ARoUs,'' noting that it ''will continue to work with DSPs on timing and coordination, as it has done since its inception.'' [35]

Having reviewed and considered all relevant comments, the Office concludes, based on the current record, that it is necessary and appropriate under its authority pursuant to 17 U.S.C. 115 and 702 to amend the regulations governing AROUs and ROAs to address the DLC's concerns.[36] Because of the short amount of time remaining before the June 20, 2022 deadline for many DMPs to deliver their AROUs, and the even shorter period of time that may remain for DMPs whose AROUs are due sooner, the Office finds there is good cause to adopt the supplemental interim rule without public notice and comment, and to make it effective immediately upon publication.[37] In doing so, the Office notes that, as discussed below, the aspects of the rule that impose new obligations on the MLC come with a nine-month transition period, which means that the Office can make modifications in response to public comments before the transition period expires. The Office solicits public comments on any aspect of the supplemental interim rule that stakeholders wish to address.

II. Supplemental Interim Rule and Request for Comments

Based on the current record, the Office agrees with the DLC that it should amend the regulations governing AROUs and ROAs, but disagrees with much of the DLC's proposed regulatory approach. Each aspect is discussed in turn below.

Content of AROUs. The DLC proposes to strike § 210.27(f)(4)(i) and (iii), which respectively require DMPs to report the total royalty payable and total adjustments for the annual reporting period, calling them ''unnecessary'' and ''redundant of each other.'' [38] The DLC also proposes to amend § 210.27(f)(4)(ii), which requires DMPs to report the total sum paid for the annual reporting period including the amount of any adjustments, to instead ''require reporting of the sum paid . . . prior to any adjustments being made.'' [39] In the alternative, the DLC proposes adding language allowing DMPs to use estimates in calculating the amounts required to be reported under § 210.27(f)(4)(i)–(iii).[40] The DLC calls these provisions ''a vestige of the old [pre-blanket license] annual statement of account regulations,'' where ''licensees were responsible for matching and calculating royalties owed to individual publishers and delivering annual statements directly to those publishers.'' [41] The DLC explains that because ''under the blanket license, the MLC is, on a month-to-month basis, responsible for matching usage, calculating the amount of royalties owed, and ultimately for confirming proper payment,'' the lack of ''a mechanism by which a service can request and obtain an invoice and/or response file'' for AROUs ''has created operational issues for services that depend on the MLC to engage in the calculations necessary to ensure the proper amounts are reported and paid.'' [42] The DLC states that this issue ''is not limited to services that have voluntary licenses for which MLC matching is required,'' and says that while ''[t]his issue might be of limited import if the AROU process were merely an exercise in adding together figures reported and paid as part of monthly reporting,'' ''the reality is that nearly every service engages in a process of adjustment as part of the year end process,'' meaning that ''most, if not all, DMPs will need to adjust previously reported information to the MLC as part of the AROU process and will need the MLC to calculate the amount of royalties owed.'' [43]

The MLC disagrees with the DLC's proposed changes, including its alternative proposal, stating that ''DSPs are able to calculate their own royalty pools, and indeed many DSPs choose to calculate their royalty pools each month and pay that amount, which the MLC then verifies as part of processing.'' [44] The MLC also notes that § 210.27(k)(3)(ii) already permits using estimates under certain circumstances.[45]

The Office declines to adopt the specific amendments proposed by the DLC, but agrees that certain changes are warranted. With respect to AROUs that are not combined with ROAs, the Office continues to believe that the existing reporting requirements are reasonable and beneficial to the MLC without unduly burdening DMPs. The DLC has not presented evidence to the contrary. The Office disagrees that § 210.27(f)(4)(i) and (iii) are unnecessary and redundant (one is a subset of the other). In any event, the Office declines the DLC's apparent ''invitation to revisit settled provisions or rehash arguments.'' [46] As the Office emphasized when it decided to adopt the September 2020 rule on an interim basis, the intent was ''to maintain flexibility to make necessary modifications in response to new evidence, unforeseen issues, or where something is otherwise not functioning as intended.'' [47]

In contrast, the Office agrees with the DLC that changes should be made with respect to the reporting requirements for AROUs that are combined with ROAs. In that context, the regulations do not appear to be functioning as intended. As discussed above, in response to a DLC proposal that the MLC did not oppose, the Office significantly modified some of the requirements for ROAs between the notice of proposed rulemaking and the September 2020 rule to provide that, rather than reporting information such as the monetary amount of the adjustment and a detailed accounting of the calculation of the adjustment, as was originally proposed, the reporting would instead include the information necessary for the MLC to compute the adjusted royalties payable by the DMP.[48] In making those changes, the Office recognized that DMPs may not

[33] MLC *Ex Parte* Letter at 2–4 (Apr. 4, 2022) (discussing the MLC's ''inability to shift resources without delaying critical path royalty distribution work'').

[34] *Id.* at 4.

[35] *Id.* at 3 & n.2.

[36] *See* 17 U.S.C. 702, 115(c)(2)(I), 115(d)(4)(A)(iv)(II), 115(d)(12)(A); *see also* H.R. Rep. No. 115–651, at 5–6, 14 (2018); S. Rep. No. 115–339, at 5, 15 (2018); Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees, at 4, 12 (2018), *https://www.copyright.gov/legislation/_conference_report.pdf; Nat'l Cable & Telecomms. Ass'n* v. *Brand X internet Servs.*, 545 U.S. 967, 980 (2005) (discussing an agency's congressionally delegated authority and stating that ''ambiguities in statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in reasonable fashion'').

[37] *See* 5 U.S.C. 553(b)(B), (d)(3); *see also* DLC *Ex Parte* Letter at 3 (Mar. 14, 2022) (''urg[ing] the Office to consider adopting an immediately effective interim rule'' because of ''the time pressure for those services that are currently in the AROU process'').

[38] DLC *Ex Parte* Letter at 3, add. at i (Mar. 14, 2022).

[39] *Id.*

[40] *Id.* at 3.

[41] *Id.* at 1–2.

[42] *Id.* at 2.

[43] *Id.*

[44] MLC *Ex Parte* Letter at 3 & n.2 (Apr. 4, 2022).

[45] *Id.* at 3 n.2.

[46] 85 FR 58114, 58115.

[47] *Id.* at 58115–16.

[48] *Id.* at 58138.

necessarily be making the ultimate royalty calculations in connection with their ROAs; they may instead be dependent on the MLC to make such computations and then provide notice to them of the amount due (if there is an underpayment).[49]

The current requirements in § 210.27(f)(4)(i) and (iii) to report certain royalty totals seem at odds with the Office's prior decision, at least where such totals are required in connection with an AROU that is combined with an ROA. Consequently, to resolve this tension, the Office is amending these provisions so that where an ROA is combined with an AROU, and the DMP is relying on the MLC to provide notice of the amount due with respect to the adjustment (which, as discussed below, will take the form of an invoice), the totals required to be reported in the AROU may exclude non-invoiced amounts related to the adjustment.[50] The Office believes this approach is more appropriate than the DLC's proposal to eliminate the reporting entirely. The Office declines to amend § 210.27(f)(4)(ii) because doing so seems unnecessary. To the extent the total sum paid must include the amount of any adjustment made in connection with the AROU, the provision is already limited to where the adjustment is delivered contemporaneously with the AROU.[51]

Because the Office has decided to address this issue in the manner discussed, the Office declines to adopt the DLC's alternative proposal to broadly allow the use of estimates in reporting the AROU totals. The Office is, however, taking this opportunity to add language to clarify that information reported pursuant to § 210.27(f)(4) may be calculated using estimates as permitted by § 210.27(d)(2)(i). This is intended as a non-substantive clarification to merely recognize that certain relevant royalty inputs may be unable to be finally determined at the time the AROU is due.[52]

Timing of royalty payments related to AROUs and ROAs. Under the September 2020 rule, the deadlines to deliver an AROU and any related royalty payment are the same.[53] The DLC proposes to change this by ''[a]mend[ing] § 210.27(g)(3) to allow the delivery of any royalty payment either contemporaneously with the AROU or promptly after being notified by the MLC about the amount owed.'' [54] The DLC is seeking this change for the same reasons as detailed above.[55] The MLC similarly opposes this aspect of the DLC's proposal for the same reasons as noted above, adding that it ''does not see a reason to change DSP royalty payment deadlines.'' [56]

The Office agrees with the DLC that the timing provision should be changed. Similar to the content provisions discussed above, the timing provision in the September 2020 rule for royalty payments related to AROUs seems at odds with the Office's previous recognition that DMPs may be dependent on the MLC to make ultimate royalty calculations in connection with ROAs and then provide notice of the amount due (if there is an underpayment). Indeed, where an ROA is combined with an AROU, there appears to be a direct conflict between the AROU royalty payment deadline in § 210.27(g)(3) and the ROA royalty payment deadline in § 210.27(k)(4). The former provides that an AROU and related royalty payment have the same deadline which is fixed based on the end of the DMP's fiscal year, while the latter provides that they do not necessarily have the same deadline and that the royalty payment deadline may be connected to whenever the MLC provides notice of the amount due.[57]

To resolve this issue, the Office is amending § 210.27(g)(3) to strike the language about related royalty payments, as the DLC proposes. The Office declines to adopt the DLC's proposed additional language because it appears to be unnecessary. Where an AROU is not combined with an ROA, there should not be any related royalty payment to deliver. Where an AROU is combined with an ROA, then the royalty payment timing provision for ROAs in § 210.27(k)(4) should govern because ''such an annual report of usage shall also be considered a report of adjustment, and must satisfy the requirements of both paragraphs (f) and (k).'' [58]

Though not raised by the DLC, the same problem exists with § 210.27(g)(4), which provides that the deadlines to deliver an ROA and any related royalty payment are the same.[59] This provision appears to directly conflict with the royalty payment deadline for ROAs specified in § 210.27(k)(4). Therefore, the Office is making the same change to § 210.27(g)(4), to clarify that § 210.27(k)(4) should govern when royalty payments related to ROAs are due.

Invoices and response files for ROAs. The DLC proposes to add a new provision creating a response file process for ROAs. Specifically, the proposed provision would require the MLC to deliver a response file to a DMP, if requested, ''within a reasonable period of time'' after receiving the ROA, except that ''if the digital music provider states that a response file is necessary to the digital music provider's ability to timely submit an annual report of usage, the MLC shall deliver an invoice and/or a response file to the digital music provider within 45 days.'' [60] As the DLC explains:

> The adjustment provision (unlike the annual report of usage provision) does appear to contemplate some process by which the MLC can inform a service of the amount of money owed after submission of the report of adjustment . . . . But that provision—unlike the provision for regular monthly reports of usage—does not specify that a response file shall be sent from the MLC to the blanket licensee. The lack of a response file provision is particularly problematic for services that have voluntary licenses. Because many blanket licensees are adjusting both the top line royalty figures *and* usage figures, the MLC matching and response file process is critical to allow those services to accurately pay their voluntary license partners as well as the MLC, just as it is in the ordinary course of monthly reporting.[61]

The MLC opposes the DLC's proposal, detailing the disruptive impact that ''add[ing] an accelerated 45-day deadline for the MLC to deliver ARoU response files to DSPs'' would have on the MLC's core operations.[62] The MLC says that its ''resources are fully dedicated to critical path statutory functions, and—even if it were feasible to accelerate ARoU processing or response files on the proposed timeline—the MLC cannot remove

[49] *See* 85 FR 58114, 58139–40 (discussing changes to proposed certification requirements to reflect that ''under the blanket license, DMPs are no longer solely responsible for making all royalty calculations''); 37 CFR 210.27(k)(4) (contemplating that when royalties are underpaid, as part of an adjustment, the DMP will pay the difference, including ''after being notified by the mechanical licensing collective of the amount due'').

[50] To be clear, the exclusion of such amounts from the reporting of these totals does not alter the ''requirement that DMPs must still certify to any underlying data necessary for such calculations.'' 85 FR 58114, 58140.

[51] *See* 37 CFR 210.27(f)(4)(ii).

[52] *See id.* at 210.27(k)(6)(ii) (permitting AROUs to be adjusted ''[w]hen making an adjustment to a previously estimated input under paragraph (d)(2)(i)'').

[53] *Id.* at 210.27(g)(3) (noting that both must be delivered ''no later than the 20th day of the sixth month following the end of the fiscal year covered by the [AROU]'').

[54] DLC *Ex Parte* Letter at 3, add. at ii (Mar. 14, 2022).

[55] *Id.* at 1–2.

[56] MLC *Ex Parte* Letter at 3 & n.2 (Apr. 4, 2022).

[57] *Compare* 37 CFR 210.27(g)(3) *with id.* at 210.27(k)(4).

[58] *Id.* at 210.27(k)(1).

[59] *Id.* at 210.27(g)(4).

[60] DLC *Ex Parte* Letter add. at iv (Mar. 14, 2022).

[61] *Id.* at 2 (internal citation omitted).

[62] MLC *Ex Parte* Letter at 2–3 (Apr. 4, 2022).

resources and delay such core functions as monthly royalty distributions and processing the substantial historical unmatched royalties in order to assist with these voluntary license administration concerns.'' [63] As the MLC further explains:

> ARoU processing is not at all the same as monthly processing and requires substantial time and work to design and execute. This type of complex processing—which involves data comparison and integration across thousands of usage reporting files from over forty DSPs containing billions of data points—is a very significant task, and this is the first year that it is being done under the blanket license. This project involves requirements gathering, design, implementation, testing, production, and processing. The MLC has begun this project, but it will take a number of additional months and cannot reasonably be accelerated.[64]

The MLC also states that while it intends to provide invoices and response files in connection with AROUs, it is not in a position at this time to guarantee or estimate any particular turnaround time before receiving and reviewing the various AROUs.[65]

The Office agrees with the DLC that an invoice and response file process should be established for ROAs (and by extension, AROUs that are combined with ROAs). With respect to invoices, there appears to perhaps be some ambiguity in the September 2020 rule, which allows a royalty payment to be delivered ''promptly after being notified by the mechanical licensing collective of the amount due.'' [66] In describing this provision, the DLC says it ''*appear[s]* to contemplate *some* process by which the MLC can inform a service of the amount of money owed after submission of the report of adjustment.'' [67] To resolve any potential uncertainty about this provision, the Office takes this opportunity to amend § 210.27(k)(4) to clarify that the notice to be delivered by the MLC of the amount due in connection with an ROA should be an invoice containing information similar to what is required for MROU invoices.[68] Since invoices for MROUs and ROAs serve similar functions, it seems reasonable that their content be similar. The Office is also establishing a timeframe for the MLC to deliver such invoices (subject to the transition period discussed below). If the DMP is going to receive a response file in connection with the ROA, then the invoice must be delivered contemporaneously with the response file (see discussion below concerning response file timing); otherwise, the invoice must be delivered in a reasonably timely manner. This timing is similar to how the timing works for MROU invoices and response files and appears reasonable to adopt in the ROA context.[69]

Regarding response files, the MLC does not seem to disagree with the DLC that they should be provided, but the MLC appears to be primarily concerned with the DLC's proposed turnaround time. These concerns echo those expressed by the MLC in connection with the adoption of the invoice and response file process for MROUs under the September 2020 rule.[70] As the Office said then, and believes now in the context of ROAs, ''a rule would ultimately be valuable to build reliance that DMPs can obtain these items.'' [71] Therefore, the Office is adopting a requirement for the MLC to provide DMPs with response files in connection with ROAs (and by extension, AROUs that are combined with ROAs) if requested by the DMP. Such a requirement naturally follows from the Office's above-discussed previous recognition that DMPs may be dependent on the MLC to make ultimate royalty calculations in connection with ROAs and then provide notice of the amount due (if there is an underpayment).[72]

The Office believes, however, that the MLC's timing concerns have merit and should be accommodated. First, the supplemental interim rule provides two different deadlines for delivering response files to DMPs in connection with ROAs—45 days after receipt of the ROA, or 60 days after receipt of the AROU where the ROA is combined with it. By proposing a 45-day deadline where the DMP ''states that a response file is necessary to the digital music provider's ability to timely submit an annual report of usage,'' [73] the DLC seems to suggest that a 45-day deadline is a reasonable turnaround time for DMPs with respect to ROAs that are not combined with AROUs. Meanwhile, the MLC's comments appear to be primarily focused on AROUs, rather than uncombined ROAs. Given that 45 days is nearly double the 25-day timeline for the MLC to provide MROU response files,[74] and that ROAs that are not combined with AROUs will not necessarily be arriving mostly all at the same time like AROUs and likely will not cover the same volume of adjustments that AROUs are anticipated to cover, the Office believes that 45 days is reasonable based on the current record. Based on the MLC's comments, however, the Office believes that additional time is warranted for providing response files for ROAs that are combined with AROUs, and 60 days strikes the Office as a reasonable deadline to both provide the MLC with extra processing time while not unreasonably delaying delivery of response files to DMPs needing to rely on them for voluntary license administration or other purposes.

Second, the supplemental interim rule provides for a nine-month transition period during which the MLC is not required to deliver invoices or response files within the specified timeframes. In adopting the September 2020 rule on an interim basis, the Office said that ''if any significant changes prove necessary, the Office intends, as the DLC requests, to provide adequate and appropriate transition periods.'' [75] Just as the Office provided DMPs with transition periods for aspects of the September 2020 rule that required them to update their systems or develop new processes, the Office finds it reasonable to provide one to the MLC here to minimize any potential disruption on the MLC's current operations.[76] The Office understands that the adoption of a transition period may mean that certain DMPs may be unable to obtain response files from the MLC in time to meet certain near-term obligations that may exist under their voluntary licenses. While this is an unfortunate result, the MLC represents that, at this point, ''even if an additional reasonable fee was paid,'' it still would ''not have the resources to complete an accelerated timetable'' for processing AROUs and

[63] *Id.* at 2.

[64] *Id.*

[65] *Id.* at 3.

[66] 37 CFR 210.27(k)(4).

[67] DLC *Ex Parte* Letter at 2 (Mar. 14, 2022) (internal citation omitted) (emphasis added).

[68] *See* 37 CFR 210.27(g)(1) (requiring MROU invoices to ''set[] forth the royalties payable by the blanket licensee under the blanket license for the applicable monthly reporting period, which shall be broken down by each applicable activity or offering including as may be defined in part 385'').

[69] *See id.* at 210.27(g)(2)(v).

[70] *See* 85 FR 22518, 22528 (citation omitted) (''The MLC does not seem to generally disagree with this choreography and ultimately states that it intends to provide DMPs with both invoices and response files, but argues that such matters, particularly with respect to timing, are not ripe for rulemaking.'').

[71] *Id.*

[72] *Cf.* 37 CFR 210.27(g)(2)(ii) (''The mechanical licensing collective shall engage in efforts to confirm uses of musical works subject to voluntary licenses and individual download licenses, and, if applicable, the corresponding amounts to be deducted from royalties that would otherwise be due under the blanket license.'').

[73] DLC *Ex Parte* Letter add. at iv (Mar. 14, 2022).

[74] *See* 37 CFR 210.27(g)(1), (2)(v).

[75] 85 FR 58114, 58116.

[76] *See, e.g.,* 37 CFR 210.27(e)(2)(i), (e)(3)(ii), (e)(5), (h)(3).

delivering response files to DMPs.[77] Consequently, while the supplemental interim rule is intended to address this issue going forward, DMPs affected by the MLC's current, though ultimately temporary, inability to provide response files for AROUs and ROAs may need to make other arrangements with respect to their voluntary licenses.[78]

Based on the current record, the Office believes the supplemental interim rule ''is a reasonable approach to ensuring that DMPs that need invoices and response files can get them, while providing the MLC the time it needs to generate them.'' [79] The Office recognizes that because the MLC is still in the process of developing systems to process AROUs and has not yet reviewed the various AROUs yet to be delivered, the MLC may not be in a position to fully address the timing of the new response file requirement for several months—long after the comment period for the supplemental interim rule has expired. Consequently, the Office will continue to welcome updates from the MLC's operations advisory committee or the MLC or DLC separately if, after development is further along or after the process becomes operational and the MLC has reviewed the AROUs, the parties believe timing changes are necessary.

AROU deadline postponement. In light of the changes being made by the Office to the AROU and ROA regulations, the Office declines to adopt the DLC's alternative solution to ''postpon[e] the deadline for the 2021 annual reports of usage entirely until some period after the [CRJs] decide[ ] the *Phonorecords III* rate proceeding.'' [80] Moreover, it does not appear that delaying the deadline would necessarily provide meaningful relief to DMPs needing response files in the near-term. As the DLC explains, ''for some services that have independent annual reporting obligations under voluntary licenses, those services may still require response files from the MLC to fulfill existing obligations,'' ''[b]ut presumably if all annual reporting to the MLC were postponed, the MLC would then have sufficient bandwidth to address the needs of those services.'' [81] In response, the MLC makes clear that this is ''not accurate,'' as ''the ARoU processing design and implementation needs to be completed before any ARoUs can be processed.'' [82] Thus, it appears that postponing the deadline would not resolve the issue any more satisfactorily than the solution being adopted in the supplemental interim rule.

List of Subjects in 37 CFR Part 210

Copyright, Phonorecords, Recordings.

Interim Regulations

For the reasons stated in the preamble, the U.S. Copyright Office amends 37 CFR part 210 as follows:

PART 210—COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHYSICAL AND DIGITAL PHONORECORDS OF NONDRAMATIC MUSICAL WORKS

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 17 U.S.C. 115, 702.

■ 2. Amend § 210.27 as follows:
■ a. In paragraph (f)(4) introductory text, add the words ''which may, as appropriate, be calculated using estimates permitted under paragraph (d)(2)(i) of this section,'' after the word ''information,'' and before the word ''cumulative'' in the first sentence.
■ b. In paragraph (f)(4)(i), add a sentence at the end of the paragraph.
■ c. In paragraph (f)(4)(iii), add a sentence at the end of the paragraph.
■ d. In paragraph (g)(3), remove the words ''and, if any, related royalty payment''.
■ e. In paragraph (g)(4), remove the words ''and, if any, related royalty payment''.
■ f. Revise paragraph (k)(4).
■ g. Add paragraphs (k)(8) and (9).

The revision and additions read as follows:

§ 210.27 Reports of usage and payment for blanket licensees.

* * * * *

(f) * * *

(4) * * *

(i) * * * Where the blanket licensee will receive an invoice under paragraph (k)(4) of this section with respect to an adjustment made in connection with the annual report of usage as described in paragraph (k)(1) of this section, the reporting of such total royalty payable may exclude non-invoiced amounts related to such adjustment.

* * * * *

(iii) * * * Where the blanket licensee will receive an invoice under paragraph (k)(4) of this section with respect to an adjustment made in connection with the annual report of usage as described in paragraph (k)(1) of this section, the reporting of such total adjustment(s) may exclude non-invoiced amounts related to such adjustment.

* * * * *

(k) * * *

(4) In the case of an underpayment of royalties, the blanket licensee shall pay the difference to the mechanical licensing collective contemporaneously with delivery of the report of adjustment or promptly after receiving an invoice from the mechanical licensing collective that sets forth the royalties payable by the blanket licensee under the blanket license with respect to the adjustment, which shall be broken down by each applicable activity or offering including as may be defined in part 385 of this title. Where the blanket licensee will receive a response file under paragraph (k)(8) of this section, the mechanical licensing collective shall deliver the invoice to the blanket licensee contemporaneously with such response file. The mechanical licensing collective shall otherwise deliver the invoice to the blanket licensee in a reasonably timely manner. A report of adjustment and its related royalty payment may be delivered together or separately, but if delivered separately, the payment must include information reasonably sufficient to allow the mechanical licensing collective to match the report of adjustment to the payment.

* * * * *

(8) If requested by the blanket licensee, the mechanical licensing collective shall deliver a response file to the blanket licensee that contains the information required by paragraph (g)(2)(v) of this section to the extent applicable to the adjustment. The response file shall be delivered no later than 45 calendar days after receiving the relevant report of adjustment, unless the report of adjustment is combined with an annual report of usage, in which case the response file shall be delivered no later than 60 calendar days after receiving the relevant annual report of usage.

(9) The mechanical licensing collective may make use of a transition period ending February 24, 2023, during which the mechanical licensing collective shall not be required to deliver invoices or response files within

[77] MLC *Ex Parte* Letter at 2 n.1 (Apr. 4, 2022).

[78] The Office understands that DMPs used outside vendors or in-house services to meet reporting obligations that may have existed under their voluntary licenses prior to the MMA's enactment. DMPs may wish to revisit those earlier methods to meet any obligations under their voluntary licenses until the MLC is able to deliver invoices or response files under this rule.

[79] 85 FR 22518, 22528 (referencing monthly invoice and response file process). Despite the MLC's contention that ''this issue is extremely confined and does not affect blanket licensees at large,'' MLC *Ex Parte* Letter at 2 (Apr. 4, 2022), the Office believes that promulgating a rule is reasonable.

[80] DLC *Ex Parte* Letter at 4 (Mar. 14, 2022).

[81] *Id.* at 4 n.3.

[82] MLC *Ex Parte* Letter at 3 (Apr. 4, 2022).

the timeframes specified in paragraphs (k)(4) and (8) of this section.

* * * * *

Dated: May 18, 2022.

Shira Perlmutter,

Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2022–11174 Filed 5–23–22; 8:45 am]

BILLING CODE 1410–30–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

Clarification Regarding Self-Employment in the Context of ''Employment'' for VET TEC Training Programs

AGENCY: Department of Veterans Affairs.

ACTION: Notification of interpretation.

SUMMARY: The Department of Veterans Affairs (VA) provides notice of a policy advisory released on January 19, 2022, by VA's Education Service. The policy advisory clarifies VA's previous regulatory interpretation of ''employment'' and also explains when ''self-employment'' will be considered ''employment'' for the purpose of paying training providers participating in the Veterans Employment Through Technology Education Courses (VET TEC) training program.

DATES: May 24, 2022.

FOR FURTHER INFORMATION CONTACT: Cheryl Amitay, Chief of Policy and Regulations Team, Education Service (225), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, at 202–461–9800. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On August 16, 2017, Public Law 115–48, the Harry W. Colmery Veterans Educational Assistance Act of 2017, was signed into law. Section 116 of this Act, codified at 38 U.S.C. 3001 note, requires the Secretary of Veterans Affairs to carry out a pilot program (commonly known as VET TEC) for 5 years to provide eligible Veterans who are entitled to educational assistance under 38 U.S.C. chapter 30, 32, 33, 34, or 35, or 10 U.S.C. chapter 1606 or 1607, with the opportunity to enroll in high technology programs of education intended to provide training and skills sought by employers in a relevant field or industry. Under section 116(c)(2)(C) of Public Law 115–48, VA must pay 50% of the cost of providing a high technology program of education to qualified providers upon ''employment'' of a Veteran in a certain field of study. Also, under section 116(c)(5)(B), VA is required to give preference to a qualified provider that offers tuition reimbursement for students who do not find full-time ''meaningful employment'' in their field of study within 180 days after completing their program.

Based on a review of employment information since the initial roll-out of VET TEC, VA issued a policy advisory on January 19, 2022, titled Clarification Regarding Self-Employment in the Context of ''Employment'' for VET TEC Training Programs Established under section 116 of Public Law 115–48, to clarify how self-employment satisfies the meaning of ''employment'' for the purposes of determining whether VA must pay qualified providers for training provided to Veterans and selecting qualified providers. The advisory establishes objective standards for determining under what circumstances VA will consider self-employment to be employment and is intended to maximize economic outcomes for VET TEC participants. The advisory states generally that VA considers a person to be ''employed'' if that person performs services for another individual and is compensated for such services. It further states that the nature of the relationship may be that of an employee/employer or contractor/client. More specifically, the advisory states that ''employment'' includes the following:

- Establishing a new employee/employer relationship in a career supported by the completed program of study; or,
- Promotion in the Veteran's current employee/employer relationship in a career supported by the completed program of study; or,
- Self-employment in a career supported by the completed program of study.

With regard to clarifying the job certification requirements surrounding what is deemed as acceptable and reasonable for the reporting of employment, including self-employment (*i.e.,* the minimum standards for declaring a Veteran has obtained employment), the advisory provides as follows:

The following documentation is required for payment of employment certifications that claim any form of employment (both ''employment'' under section 116(c)(2)(C) and ''meaningful employment'' under section 116(c)(5)(B)):

- Contract Jobs. Reports of Contract Jobs must be *at least* 6 months in length.
- Salary or hourly wages.
- Hours worked per week. Employment must be full-time. There is a minimum 30 hours per week requirement for all employment claims.
- Promotion in current job. Must be a monetary promotion. A promotion is NOT simply a job title change without an increase in salary.
- Offer letter and/or first pay stub. Documentation must be official and display the official company letterhead.

''Self-Employment'' Criteria and Verification Regarding Self-Employment

VA supports self-employment and other entrepreneurial endeavors as viable paths to achieving meaningful employment. However, training providers should encourage students to explore all possible employment prospects and opportunities, and should not direct students towards self-employment as the primary option for employment. To ensure that individuals electing to pursue employment through self-employment are adequately equipped for success, the following documentation is required for payment of employment certifications that claim any form of self-employment:

- Proof of ownership of the business. These can include a Federal Tax ID Number; Articles of Organization, or Articles of Incorporation; copy of personal tax return with schedule C; a copy of the Doing Business As declarations, etc. It may also include a state tax ID Number or state business registration information.
- Copies of any valid personal licenses or certifications required for business operations.
- A bill and payment from a client to show proof of legitimate business transactions for the type of services being provided and/or products sold; and
- Other documents: VA may request additional documentation to support the claim if existing evidence provided is insufficient to make a determination.

To avoid a conflict of interest, neither the training provider, its subsidiaries, nor a parent company may become the client of the self-employed VET TEC student.

Implementation of the new policy began on February 1, 2022, and it is applicable to both VET TEC students and training providers, regardless of when the student began or graduated from their program. Compliance with the requirements specified in the new policy is part of the annual approval or

reapproval process for training providers.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on May 11, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2022–10693 Filed 5–23–22; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2021–0950; FRL–9395–02–R10]

Air Plan Approval; ID; Incorporation by Reference Updates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Idaho State Implementation Plan (SIP) submitted on October 12, 2021. The submission updates the incorporation by reference of the national ambient air quality standards (NAAQS) and other Federal provisions into the Idaho SIP as of July 1, 2020. Idaho undertakes regular updates to ensure State air rules and the SIP remain consistent with Federal air program requirements.

DATES: This final rule is effective June 23, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2021–0950. 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: Kristin Hall (15–H13), EPA Region 10, 1200 Sixth Avenue (Suite 155), Seattle, WA 98101, (206) 553–6357, *hall.kristin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'' or ''our'' is used, it refers to the EPA.

Table of Contents

I. Background

On October 12, 2021, Idaho submitted updates to the SIP to incorporate the NAAQS and other Federal regulations by reference as of July 1, 2020. The SIP revision, State effective June 17, 2021, includes specific air quality regulations codified in the Idaho Rules for the Control of Air Pollution (IDAPA 58.01.01).

On March 22, 2022, the EPA proposed to approve the submitted SIP revision (87 FR 16131). The reasons for our proposed approval are included in the proposal and will not be restated here. The public comment period closed on April 21, 2022. We received no public comments. Therefore, we are finalizing the action as proposed.

II. Final Action

The EPA is approving and incorporating by reference updates to the Idaho SIP submitted on October 12, 2021. Upon the effective date of this action, the Idaho SIP will include IDAPA 58.01.01.107.03, paragraphs a through e, State effective June 17, 2021.

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 Idaho regulatory provisions described in Section II of this preamble and set forth below in the amendments to 40 CFR part 52. The EPA has made, and will continue to make, these materials generally available through *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.[1]

IV. Statutory and Executive Order Reviews

Under the Clean Air Act (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 approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

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

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

methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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 July 25, 2022. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 17, 2022.

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 N—Idaho

■ 2. In § 52.670, amend the table in paragraph (c) by revising entry ''107'' to read as follows:

§ 52.670 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IDAHO REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanations
Idaho Administrative Procedures Act (IDAPA) 58.01.01—Rules for the Control of Air Pollution in Idaho				
*	*	*	*	*
107	Incorporation by Reference	6/17/2021	5/24/2022, [INSERT **Federal Register** CITATION].	Except Section 107.03.f through 107.03.p.
*	*	*	*	*

* * * * *

[FR Doc. 2022–11055 Filed 5–23–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2022–0285; FRL–9645–02–R7]

Air Plan Approval; Missouri; Restriction of Emissions Credit for Reduced Pollutant Concentrations From the Use of Dispersion Techniques

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State Implementation Plan (SIP) for the State of Missouri submitted on January 30, 2020. This final action amends the SIP by approving revisions to a state regulation that limits the use of dispersion techniques to meet ambient air quality standards in the vicinity of major sources of air pollution. These revisions to the state rule are a revised restructured version of the same rule. The revisions are administrative in nature and do not impact the stringency of the SIP or air quality.

DATES: This final rule is effective on June 23, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2022–0285. 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, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Steven Brown, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7718; email address: *brown.steven@epa.gov.*

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

Table of Contents

I. What is being addressed in this document?

The EPA is taking final action to approve a SIP revision submitted by the State of Missouri on January 30, 2020. Missouri requested that the EPA approve revisions to their SIP by replacing the existing rule, Title 10, Division 10 of the Code of State Regulations (CSR), (10 CSR 10–6.140) ''Restriction of Emissions Credit for Reduced Pollutant Concentrations from the Use of Dispersion Techniques'', with a revised restructured version of the same rule. The state has revised this rule in order to incorporate the provisions of 40 CFR part 51, Appendix W-Guideline on Air Quality Models, add definitions specific to this rule, organize the rule into standard rule organizational format, and removes unnecessary words. After review and analysis of the revisions, the EPA concludes that these changes meet the requirements of the Clean Air Act and do not have adverse effects on air quality. The full text of these changes can be found in the State's submission, which is included in the docket for this action. The EPA's analysis of the revisions can be found in the technical support document (TSD), also included in the docket.

The EPA proposed approval of the State's January 30, 2020, SIP revision in a notice of proposed rulemaking (NPRM) published on March 25, 2022. (87 FR 17050) The EPA received no comments on our proposed rulemaking.

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

The State's submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from June 3, 2019, to August 1, 2019, and received no comments. In addition, as explained above and in more detail in the state submittal document and EPA's TSD, which is in the docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is the EPA taking?

The EPA proposed approval of the State's January 30, 2020, SIP revision in a notice of proposed rulemaking (NPRM) published on March 25, 2022. (87 FR 17050) During the public comment period, which opened on March 25, 2022 and closed on April 25, 2022, the EPA received no comments.

Therefore, the EPA is taking final action to amend the Missouri SIP by approving the State's request to revise 10 CSR 10–6.140 ''Restriction of Emissions Credit for Reduced Pollutant Concentrations from the Use of Dispersion Techniques.'' Approval of these revisions ensures consistency between state and federally approved rules. The EPA has determined that these changes meet the requirements of the Clean Air Act and do not have a negative impact to air quality.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Missouri Regulations described in Section I of this preamble and set forth below in the amendments to 40 CFR part 52. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

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

V. Statutory and Executive Order Reviews

Under the Clean Air Act 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, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).
- 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 25, 2022. 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

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

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

Dated: May 17, 2022.

Meghan A. McCollister,

Regional Administrator, Region 7.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising the entry ''10–6.140'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.140	Restriction of Emissions Credit for Reduced Pollutant Concentrations from the Use of Dispersion Techniques.	1/30/2020	5/24/2022, [insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2022–10993 Filed 5–23–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 75

RIN 0991–AC16

Health and Human Services Grants Regulation

AGENCY: Office of the Assistant Secretary for Financial Resources (ASFR), Health and Human Services (HHS or the Department).

ACTION: Notification; postponement of effectiveness.

SUMMARY: The U.S. District Court for the District of Columbia in *Facing Foster Care et al.* v. *HHS,* 21–cv–00308 (DDC Feb. 2, 2021), has postponed the effective date of portions of the final rule making amendments to the Uniform Administrative Requirements promulgated on January 12, 2021.

DATES: Pursuant to court order, the effectiveness of the final rule published January 12, 2021, at 86 FR 2257, is postponed until June 1, 2022. *See* **SUPPLEMENTARY INFORMATION** for details.

FOR FURTHER INFORMATION CONTACT: Johanna Nestor at *Johanna.Nestor@hhs.gov* or 202–205–5904.

SUPPLEMENTARY INFORMATION: On January 12, 2021 (86 FR 2257), the Department issued amendments to and repromulgated portions of the Uniform Administrative Requirements, 45 CFR part 75. That rule repromulgated provisions of part 75 that were originally published late in 2016. It also made amendments to 45 CFR 75.300(c) and (d).

Specifically, the rule amended paragraph (c), which had stated, ''It is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services based on non-merit factors such as age, disability, sex, race, color, national origin, religion, gender identity, or sexual orientation. Recipients must comply with this public policy requirement in the administration of programs supported by HHS awards. The rule amended paragraph (c) to state, ''It is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services, to the extent doing so is prohibited by Federal statute.''

Additionally, the rule amended paragraph (d), which had stated, ''In accordance with the Supreme Court decisions in *United States* v. *Windsor* and in *Obergefell* v. *Hodges,* all recipients must treat as valid the marriages of same-sex couples. This does not apply to registered domestic partnerships, civil unions or similar formal relationships recognized under state law as something other than a marriage.'' The rule amended paragraph (d) to state, ''HHS will follow all applicable Supreme Court decisions in administering its award programs.''

On February 2, 2021, the portions of rule-making amendments to § 75.300 (and a conforming amendment at § 75.101(f)) were challenged in the U.S. District Court for the District of Columbia. *Facing Foster Care et al.* v. *HHS,* 21–cv–00308 (D.D.C. filed Feb. 2, 2021). On February 9, the court postponed, pursuant to 5 U.S.C. 705, the

effective date of the challenged portions of the rule by 180 days, until August 11, 2021.[1] On August 5, 2021, the court again postponed the effective date of the rule until November 9, 2021.[2] On November 3, 2021, the court further postponed the effective date of the rule until January 17, 2022.[3] On December 27, 2021, the court further postponed the effective date of the rule until April 18, 2022.[4] On April 15, 2022, the court further postponed the effective date of the rule until May 2, 2022.[5] On April 29, 2022, the court further postponed the effective date of the rule until June 1, 2022.[6] The Department is issuing this notice to apprise the public of the court's order.

Xavier Becerra,

Secretary.

[FR Doc. 2022–11014 Filed 5–23–22; 8:45 am]

BILLING CODE 4151–19–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 22–525; MB Docket No. 21–502; FR ID 87802]

Radio Broadcasting Services; Snowflake, Arizona; Millerton, Oklahoma; Powers, Oregon; Mount Enterprise and Paint Rock, Texas; Hardwick, Vermont; and Meeteetse, Wyoming

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the FM Table of Allotments, of the Commission's rules, by removing Channel 265C2 at Millerton, Oklahoma; Channel 293C2 at Powers, Oregon; Channel 279A at Mount Enterprise, Texas; Channel 296C3 at Paint Rock, Texas; Channel 290A at Hardwick, Vermont; and Channel 259C at Meeteetse, Wyoming. All of these allotments were offered in previous FM auctions and received no bids. We will not delete Channel 259C2 at Snowflake, Arizona, because Estrella Broadcasting LLC filed a bona fide expression of interest.

DATES: Effective May 24, 2022.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order,* adopted May 11, 2022 and released May 13, 2022. The full text of this Commission decision is available online at *https://apps.fcc.gov/ecfs/.* This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will not send a copy of the *Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the adopted rule is a rule of particular applicability.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336 and 339.

■ 2. In § 73.202, amend table 1 to paragraph (b) by:

■ a. Revising the entry for ''Millerton'' under Oklahoma;

■ b. Revising the entry for ''Powers'' under Oregon;

■ c. Revising the entries for ''Mount Enterprise'' and ''Paint Rock'' under Texas;

■ d. Revising the entry for ''Hardwick'' under Vermont; and

■ e. Revising the entry for ''Meeteetse'' under Wyoming.

The revisions read as follows:

§ 73.202 Table of Allotments.

* * * * *

(b) * * *

TABLE 1 TO PARAGRAPH (b)

U.S. States	Channel No.
Oklahoma	
* * * * *	
Millerton.	
* * * * *	
Oregon	
* * * * *	
Powers.	
* * * * *	
Texas	
* * * * *	
Mount Enterprise.	
* * * * *	
Paint Rock.	
* * * * *	
Vermont	
Hardwick.	
* * * * *	
Wyoming	
* * * * *	
Meeteetse.	
* * * * *	

* * * * *

[FR Doc. 2022–10964 Filed 5–23–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 22–114; RM–11920; DA 22–539; FR ID 88331]

Television Broadcasting Services Bozeman, Montana

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On March 10, 2022, the Media Bureau, Video Division (Bureau) issued a *Notice of Proposed Rulemaking* (*NPRM*) in response to a petition for rulemaking filed by Scripps Broadcasting Holdings LLC (Petitioner), the licensee of KBZK (Station), channel 13, Bozeman, Montana, requesting the substitution of channel 27 for channel 13 at Bozeman in the Table of

[1] *See* Order, *Facing Foster Care et al.* v. *HHS,* No. 21–cv–00308 (D.D.C. Feb. 2, 2021) (order postponing effective date), ECF No. 18.

[2] *See* Order, *Facing Foster Care et al.* v. *HHS,* No. 21–cv–00308 (D.D.C. Aug. 5, 2021) (order postponing effective date), ECF No. 23.

[3] *See* Order, *Facing Foster Care et al.* v. *HHS,* No. 21–cv–00308 (D.D.C. Nov. 3, 2021) (order postponing effective date), ECF No. 8.

[4] *See* Order, *Facing Foster Care et al.* v. *HHS,* No. 21–cv–00308 (D.D.C. Dec. 27, 2021) (order postponing effective date and holding the case in abeyance).

[5] *See* Order, *Facing Foster Care et al.* v. *HHS,* No. 21–cv–00308 (D.D.C. Apr. 15, 2022) (order postponing effective date), ECF No 34.

[6] *See* Order, *Facing Foster Care et al.* v. *HHS,* No. 21–cv–00308 (D.D.C. Apr. 29, 2022) (order postponing effective date), ECF No 37.

Allotments. For the reasons set forth in the *Report and Order* referenced below, the Bureau amends FCC regulations to substitute channel 27 for channel 13 at Bozeman.

DATES: Effective May 24, 2022.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647 or *Joyce.Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: The proposed rule was published at 87 FR 16158 on March 22, 2022. The Petitioner filed comments in support of the petition reaffirming its commitment to apply for channel 27. No other comments were filed.

According to the Petitioner, it has received many complaints from viewers unable to receive a reliable signal on VHF channel 13, and the Commission has recognized that VHF channels have certain characteristics that pose challenges for their use in providing digital television service. The proposed channel 27 contour would continue to reach virtually all of the population within the Station's current service area and an analysis using the Commission's *TVStudy* software tool indicates that KBZK's move from channel 13 to channel 27 is predicted to create a small area where 675 persons will lose service. The loss area, however, is partially overlapped by the noise limited contour of Scripps' owned television station KXLF–TV, Butte, Montana, which, like KBZK, is a CBS network affiliate. Taking KXLF–TV into consideration reduces the number who are predicted to lose CBS network service to less than 500 persons, a number which the Commission has found to be *de minimis.* In addition, viewers in the loss area would continue to have access to other major network programming.

This is a synopsis of the Commission's *Report and Order,* MB Docket No. 22–114; RM–11920; DA 22–539, adopted May 17, 2022, and released May 17, 2022. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622(j), amend the Table of Allotments, under Montana, by revising the entry for ''Bozeman'' to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * * *	
MONTANA	
* * * * *	
Bozeman	*8, 27
* * * * *	

[FR Doc. 2022–11031 Filed 5–23–22; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 87, No. 100
Tuesday, May 24, 2022

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 430

[EERE–2021–BT–TP–0030]

RIN 1904–AF29

Energy Conservation Program: Test Procedure for Central Air Conditioners and Heat Pumps

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

ACTION: Notice of proposed rulemaking; reopening of public comment period.

SUMMARY: On March 24, 2022, the U.S. Department of Energy (''DOE'') published in the **Federal Register** a notice of proposed rulemaking (''NOPR'') to amend test procedure for central air conditioners and heat pumps, with a deadline for submitting comments of May 23, 2022. Since publication of the proposed rule, DOE has received two requests to extend the comment period. DOE has reviewed these requests and is reopening the comment period until June 6, 2022.

DATES: The comment period for the NOPR published in the **Federal Register** on March 24, 2022 (87 FR 16830) is reopened until June 6, 2022. Written comments, data, and information are requested and will be accepted on and before June 6, 2022.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov*. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE– 2021–BT–TP–0030, by any of the following methods:

(1) *Federal eRulemaking Portal: www.regulations.gov*. Follow the instructions for submitting comments.

(2) *Email: CentralACHeatPumps2021TP0030@ee.doe.gov*. Include the docket number EERE– 2021–BT–TP–0030 regulatory information number (''RIN'') 1904–AF29 in the subject line of the message.

No telefacsimiles (''faxes'') will be accepted.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing COVID–19 pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the COVID–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

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

The docket web page can be found at *www.regulations.gov/docket/EERE-2021-BT-TP-0030*. The docket web page will contain simple instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT:

Mr. Lucas Adin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *ApplianceStandardsQuestions@ee.doe.gov*.

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9496. Email: *peter.cochran@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: DOE published a NOPR in the **Federal Register** on March 24, 2022, proposing amendments to the DOE test procedures for central air conditioners and heat pumps at Title 10 of the Code of Federal Regulations (''CFR''), part 430, subpart B, appendices M (''appendix M'') and M1 (''appendix M1''). In that NOPR, DOE stated it would receive written comments, data, and information on the proposal by May 23, 2022. 87 FR 16830.

On May 6, 2022, DOE received separate written comments from National Comfort Products (NCP) and The American Heating, Refrigeration, and Air Conditioning Institute (AHRI) requesting an extension of the comment period. In their comment, NCP requested a 45-day extension of the comment period, citing their need for additional time to address specific impacts of the proposed rule on their company. AHRI stated its support for NCP's extension request, also indicating that the originally provided comment period ''deviates from the Process Rule's 75-day comment period'' and that the original comment deadline conflicts with several other rulemakings affecting AHRI members.[1]

DOE has reviewed these requests, and is reopening the comment period to allow additional time for interested parties to submit comments. In light of the potentially more significant impacts of certain provisions of the proposal on NCP, and the coincidental rulemaking activity cited by AHRI, DOE believes that additional time is warranted, and that reopening the comment period until June 6, 2022, is sufficient. In determining the appropriate extension, DOE notes that the Energy Policy and Conservation Act, as amended (''EPCA''),[2] specifically requires that the comment period for a proposed test procedure shall be not less than 60-day, and may be extended for good cause to be not more than 270 days (42 U.S.C. 6293(b)(2)). DOE also clarifies that, contrary to AHRI's assertion, the Process Rule (10 CFR part 430, subpart C, appendix A) does not provide a minimum comment period for test procedure proposed rules. Therefore,

[1] DOE understands AHRI's reference to the ''Process Rule'' to mean the regulatory provisions entitled ''Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment,'' found at appendix A to subpart C of 10 CFR part 430.

[2] 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).

DOE is reopening the comment period until June 6, 2022.

Signing Authority

This document of the Department of Energy was signed on May 18, 2022, by Kelly J. Speakes-Backman, 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 May 18, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–11056 Filed 5–23–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0617; Airspace Docket No. 22–ASW–4]

RIN 2120–AA66

Proposed Amendment of VOR Federal Airway V–573 and Area Navigation (RNAV) Route T–398 in the Vicinity of Sulphur Springs, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend VHF Omnidirectional Range (VOR) Federal airway V–573 and Area Navigation (RNAV) route T–398. The FAA is proposing this action due to the planned decommissioning of the VOR portion of the Sulphur Springs, TX (SLR), VOR/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID). The Sulphur Springs VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before July 8, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0617; Airspace Docket No. 22–ASW–4 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–0617; Airspace Docket No. 22–ASW–4) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0617; Airspace Docket No. 22–ASW–4.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas,

air traffic service routes, and reporting points.

Background

The FAA is planning to decommission the Sulphur Springs, TX, VOR in February 2023. The Sulphur Springs VOR was one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the Final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

Although the VOR portion of the Sulphur Springs VOR/DME is planned for decommissioning, the co-located DME portion of the NAVAID is being retained to support NextGen PBN flight procedure requirements.

The ATS routes affected by the Sulphur Springs VOR decommissioning are VOR Federal airway V–573 and RNAV route T–398. The V–573 airway is affected directly with the Sulphur Springs VOR being included in the route description. However, the T–398 route is a mitigation to address the proposed loss of the V–573 airway segment affected by the planned Sulphur Springs VOR decommissioning. With the planned decommissioning of the Sulphur Springs VOR, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of V–573. As such, modifications to the airway would result in creating a gap in the airway.

To overcome the airway gap in V–573, instrument flight rules (IFR) traffic could use portions of adjacent VOR Federal airways V–16, V–124, and V–278 to circumnavigate the affected area, or receive air traffic control (ATC) radar vectors to fly through the affected area. Additionally, IFR pilots equipped with RNAV capabilities could file and navigate point to point using the existing fixes that would remain in place, or could use the T–398 route extension proposed in this action, to support continued operations though the affected area. Visual flight rules (VFR) pilots who elect to navigate via the affected ATS routes could also take advantage of the adjacent ATS routes or ATC services listed previously.

As noted above, the FAA proposes to extend RNAV route T–398 between the RRORY, TX, waypoint (WP) being established near the Bonham, TX, VOR/Tactical Air Navigation (VORTAC) and the existing SLOTH, TX, WP located near the Texarkana, AR, VORTAC. The proposed T–398 route extension would overlay the V–573 airway segment between the Bonham VORTAC and the Texarkana VORTAC and, in part, mitigate the proposed removal of the V–573 airway segment between those NAVAIDs. The new T-route extension would provide airspace users equipped with RNAV capabilities an enroute structure between the Bonham, TX, area eastward to the Pinehurst, NC, area. Further, the extended T–398 route would support the FAA's NextGen efforts to modernize the NAS navigation system from a ground-based system to a satellite-based system.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend VOR Federal airway V–573 and RNAV route T–398 due to the planned decommissioning of the VOR portion of the Sulphur Springs, TX (SLR), VOR/DME. The proposed ATS route actions are described below.

V–573: V–573 currently extends between the Will Rogers, OK, VORTAC and the Little Rock, AR, VORTAC. The FAA proposes to remove the airway segment overlying the Sulphur Springs VOR/DME between the Bonham, TX, VORTAC and the Texarkana, AR, VORTAC. The unaffected portions of the existing airway would remain as charted.

T–398: T–398 currently extends between the SLOTH, TX, WP, and the GMINI, NC, WP. The FAA proposes to extend the route further westward between the RRORY, TX, WP being established near the Bonham, TX, VORTAC and the SLOTH, TX, WP. The added RNAV route segment would overlay the V–573 airway segment proposed for removal between the Bonham, TX, VORTAC and Texarkana, AR, VORTAC noted above. The full route legal description is listed in ''The Proposed Amendment'' section, below. The unaffected portions of the existing route would remain as charted.

All NAVAID radials listed in the VOR Federal airway description below are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010(a) and RNAV T-routes are published in paragraph 6011 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The ATS routes listed in this document would be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–573 [Amended]

From Will Rogers, OK; INT Will Rogers 195° and Ardmore, OK, 327° radials; Ardmore; to Bonham, TX. From Texarkana,

AR; INT Texarkana 037° and Hot Springs, AR, 225° radials; Hot Springs; to Little Rock, AR.

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–398 RRORY, TX TO GMINI, NC [AMENDED]

RRORY, TX	WP	(Lat. 33°32′14.95″ N, long. 096°14′03.45″ W)
MERIC, TX	WP	(Lat. 33°11′54.97″ N, long. 095°32′32.66″ W)
SLOTH, TX	WP	(Lat. 33°30′49.99″ N, long. 094°04′24.38″ W)
MUFRE, AR	FIX	(Lat. 34°05′31.32″ N, long. 093°10′43.80″ W)
LITTR, AR	WP	(Lat. 34°40′39.90″ N, long. 092°10′49.26″ W)
EMEEY, AR	WP	(Lat. 34°34′30.29″ N, long. 090°40′27.14″ W)
GOINS, MS	WP	(Lat. 34°46′12.64″ N, long. 089°29′46.81″ W)
HAGIE, AL	WP	(Lat. 34°42′25.87″ N, long. 087°29′29.76″ W)
FILUN, AL	WP	(Lat. 34°47′50.14″ N, long. 086°38′01.14″ W)
JILIS, GA	WP	(Lat. 34°57′23.98″ N, long. 085°08′03.46″ W)
CRAND, GA	FIX	(Lat. 34°57′28.88″ N, long. 084°51′20.59″ W)
BALNN, GA	WP	(Lat. 34°56′34.20″ N, long. 083°54′56.42″ W)
BURGG, SC	WP	(Lat. 35°02′00.55″ N, long. 081°55′36.86″ W)
GAFFE, SC	FIX	(Lat. 35°05′38.90″ N, long. 081°33′23.92″ W)
CRLNA, NC	WP	(Lat. 35°12′49.48″ N, long. 080°56′57.32″ W)
LOCAS, NC	FIX	(Lat. 35°12′05.18″ N, long. 080°26′44.89″ W)
RELPY, NC	FIX	(Lat. 35°12′45.70″ N, long. 079°47′28.76″ W)
GMINI, NC	WP	(Lat. 35°12′23.01″ N, long. 079°34′01.98″ W)

* * * * *

Issued in Washington, DC, on May 18, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–11013 Filed 5–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 147

[Docket No. FAA–2015–3901; Notice No. 15–10 and Notice No. 19–02]

RIN 2120–AK48

Aviation Maintenance Technician Schools; Withdrawal

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

ACTION: Notice of proposed rulemaking and supplemental notice of proposed rulemaking; withdrawal.

SUMMARY: The FAA is withdrawing a previously published notice of proposed rulemaking (NPRM) that would have modernized and reorganized the required curriculum subjects for certificated Aviation Maintenance Technician Schools (AMTS), relocated course content items from the appendices into each school's operations specifications, and updated curriculum requirements to meet current industry needs. The FAA is also withdrawing the subsequently published supplemental notice of proposed rulemaking (SNPRM) that would have expanded the scope of the NPRM to allow competency-based training and satellite training locations and replaced the national passing norms specified in the quality of instruction requirements with a standard pass rate. The FAA is withdrawing these regulatory actions because they have been superseded by the Aircraft Certification, Safety, and Accountability Act.

DATES: The NPRM published on October 2, 2015 (80 FR 59674), is withdrawn as of May 24, 2022. The SNPRM published on April 16, 2019 (84 FR 15533), is withdrawn as of May 24, 2022.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Tanya Glines, Aircraft Maintenance Division, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 380–5896; email *Tanya.Glines@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On October 2, 2015, the FAA published an NPRM (Notice No. 15–10) to modernize the curriculum requirements for certificated AMTSs. The FAA proposed to revise the required curriculum subjects listed in the appendices of part 147 and to relocate the course content items from the part 147 appendices to each school's operations specifications. The FAA proposed these revisions because the existing curriculum requirements are outdated, do not meet current industry needs, and could be changed only through notice and comment rulemaking. These amendments would have ensured that AMTS students receive up-to-date foundational training to meet the demands of the aviation industry. The comment period for the NPRM was originally scheduled to close on December 31, 2015, but was subsequently extended to February 1, 2016 (80 FR 72404).

On April 16, 2019, the FAA published an SNPRM (Notice No. 19–02), expanding the scope of the NPRM to propose the allowance of competency-based training and satellite training locations and to replace the national passing norms specified in the quality of instruction requirements with a standard pass rate. The FAA proposed these revisions based on public comments received on the NPRM. The comment period for the SNPRM closed on June 17, 2019.

Reason for Withdrawal

The FAA is withdrawing the NPRM (Notice No. 15–10) and SNPRM (Notice No. 19–02) due to Section 135 of the Aircraft Certification, Safety, and Accountability Act, Public Law 116–260, which was enacted on December 27, 2020 (the ''Act''). Section 135, Promoting Aviation Regulations for Technical Training, requires the FAA to issue interim final regulations in accordance with the requirements of Section 135. Additionally, Section 135 provides that current part 147 and any regulations issued under section 624 of the FAA Reauthorization Act of 2018 (Pub. L. 115–254) shall have no force or effect on or after the effective date of the interim final regulations. The proposed requirements contained in the NPRM (Notice No. 15–10) and SNPRM (Notice No. 19–02) would have significantly exceeded the scope of the statutory mandate. Accordingly, to comply with Section 135, the FAA is withdrawing the NPRM (Notice No. 15–10) and SNPRM (Notice No. 19–02). Instead of finalizing these proposals, the FAA published an interim final rule concurrently with this notice of withdrawal that establishes requirements for certificated AMTSs in accordance with Section 135 of the Act.

Conclusion

The FAA has determined that Notice Nos. 15–10 and 19–02 have been superseded by the Aircraft Certification, Safety, and Accountability Act. Therefore, the FAA withdraws Notice No. 15–10, published at 80 FR 59674 on October 2, 2015, and Notice No. 19–02, published at 84 FR 15533 on April 16, 2019, as directed.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC.

Robert C. Carty,

Deputy Executive Director, Flight Standards Service.

[FR Doc. 2022–10054 Filed 5–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 10, 12, 16, and 205

[Docket No. FDA–2020–N–1663]

RIN 0910–AH11

National Standards for the Licensure of Wholesale Drug Distributors and Third-Party Logistics Providers; Extension of Comment Period

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is extending the comment period for the proposed rule on national standards for licensure for wholesale drug distributors and third-party logistics providers that appeared in the **Federal Register** of February 4, 2022. The Agency is taking this action in response to a request for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the proposed rule published February 4, 2022 (87 FR 6708). Submit either electronic or written comments by September 6, 2022.

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 September 6, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 6, 2022. 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–2020–N–1663 for ''National Standards for the Licensure of Wholesale Drug Distributors and Third-Party Logistics Providers.'' 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: Aaron Weisbuch, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4261, Silver Spring, MD 20993, 301–796–3130.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 4, 2022 (87 FR 6708), FDA published a proposed rule proposing to establish national standards for licensure for wholesale drug distributors and third-party logistics providers. The proposed rule provided a 120-day period for submission of public comments.

The Agency has received a request for a 90-day extension of the comment period for the proposed rule. The request conveyed concern that the current 120-day comment period, which ends on June 6, 2022, does not allow sufficient time to develop a meaningful or thoughtful response to the proposed rule.

FDA has considered the request and is extending the comment period for the proposed rule for 90 days, until September 6, 2022. The Agency believes that a 90-day extension allows adequate time for interested persons to submit comments.

Dated: May 17, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–11116 Filed 5–23–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 630 and 640

[Docket No. FDA–2022–D–0588]

Compliance Policy Regarding Blood and Blood Component Donation Suitability, Donor Eligibility and Source Plasma Quarantine Hold Requirements; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability, draft compliance policy.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a draft document entitled ''Compliance Policy Regarding Blood and Blood Component Donation Suitability, Donor Eligibility and Source Plasma Quarantine Hold Requirements; Draft Guidance for Industry.'' The draft guidance document addresses certain requirements that apply to blood establishments that collect blood and blood components, including Source Plasma. Specifically, the draft guidance explains the conditions under which FDA does not intend to take regulatory action for a blood establishment's failure to comply with certain requirements in the biologics regulations regarding donation suitability, donor eligibility, and quarantine hold for Source Plasma. FDA expects that the compliance policy described in the draft guidance will increase the availability of blood and blood components, including Source Plasma, while maintaining the health of blood donors and the safety of blood and blood components.

DATES: Submit either electronic or written comments on the draft guidance by July 25, 2022 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance. Submit electronic or written comments on the proposed collection of information in the draft guidance by July 25, 2022.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–D–0588 for ''Compliance Policy Regarding Blood and Blood Component Donation Suitability, Donor Eligibility and Source Plasma Quarantine Hold Requirements; Draft Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

With regard to the draft guidance: Phillip Kurs, Center for Biologics

Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

With regard to the proposed collection of information: 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,*PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Compliance Policy Regarding Blood and Blood Component Donation Suitability, Donor Eligibility and Source Plasma Quarantine Hold Requirements.'' The draft guidance document addresses certain requirements that apply to blood establishments that collect blood and blood components, including Source Plasma. Specifically, the draft guidance explains the conditions under which FDA does not intend to take regulatory action for a blood establishment's failure to comply with certain requirements in title 21 of the Code of Federal Regulations § 630.30 (21 CFR 630.30) regarding donation suitability; 21 CFR 630.10(c)(2) regarding donor eligibility; and 21 CFR 640.69(f) regarding quarantine hold for Source Plasma.

To address the urgent and immediate need for blood and blood components during the Coronavirus Disease 2019 (COVID–19) public health emergency, FDA issued certain exceptions and alternatives to the requirements regarding blood and blood components under 21 CFR 640.120(b) through the guidance entitled, ''Alternative Procedures for Blood and Blood Components During the COVID–19 Public Health Emergency; Guidance for Industry'' dated April 2020 (April 2020 guidance).

Since publication of the April 2020 guidance, FDA has received numerous comments from the blood industry requesting that FDA continue to permit the exceptions and alternatives beyond the public health emergency related to COVID–19 because the changes have increased availability of blood and blood components while maintaining the health of blood donors and safety of blood and blood components. Further, blood establishments have requested that FDA provide our recommendations before the end of the public health emergency to reduce the operational burdens associated with changes in standard operating procedures and blood establishment computer systems. FDA is issuing this guidance after considering the public comments, available data on donor health and the safety and availability of blood and blood components since publication of the April 2020 guidance, and the applicable regulations.

FDA expects that the compliance policy described in this draft guidance will increase the availability of blood and blood components, including Source Plasma, while maintaining the health of blood donors and the safety of blood and blood components.

While the April 2020 guidance is intended to remain in effect only for the duration of the public health emergency (PHE) related to COVID–19 declared by the Department of Health and Human Services (HHS), including any renewals made by the HHS Secretary in accordance with section 319(a)(2) of the Public Health Service Act (PHS Act), the draft guidance ''Compliance Policy Regarding Blood and Blood Component Donation Suitability, Donor Eligibility and Source Plasma Quarantine Hold Requirements,'' when finalized, will remain in effect even after the HHS Secretary declares that this PHE no longer exists or the expiration of the 90-day period beginning on the date the HHS Secretary issues a renewal of the determination that a PHE exists.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on compliance with blood and blood component donation suitability, donor eligibility and Source Plasma quarantine hold requirements. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (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 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.

Compliance Policy Regarding Blood and Blood Component Donation Suitability, Donor Eligibility and Source Plasma Quarantine Hold Requirements

OMB Control Number 0910–0116—Revision

As noted, blood establishments that collect blood and blood components, including Source Plasma, must comply with requirements in § 630.30 regarding donation suitability. The draft guidance explains the conditions under which FDA does not intend to take regulatory action for a blood establishment's failure to comply with this requirement and describes proposed procedures in section III.A. under the heading ''Record Maintenance, Investigation and Annual Reporting'' for such an establishment's filing of annual reports on the release of unsuitable donations to FDA. FDA will use the reports to monitor error rates associated with the collection of unsuitable donations and work with establishments to implement corrective actions, if necessary. The information is needed to support FDA's efforts to protect the health of blood donors and the safety of blood and blood components. We are requesting approval to revise the scope of the information collections included in OMB control number 0910–0116 to include the information collection associated with the draft guidance.

Description of Respondents: Licensed and registered-only establishments that collect blood and blood components for transfusion and further manufacturing, and elect to release unsuitable donations pursuant to the compliance policy described in the guidance.

Burden Estimate: FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/draft guidance section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Annual report—Licensed blood collection establishments/ Section III.A	50	1	50	4	200
Annual report—Registered-only blood establishments/Section III.A	50	1	50	4	200
Total	400				

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We base our estimate of the proposed reporting provisions in the guidance on our experience with similar information collections and a review of similar Agency data.

This draft guidance also refers to previously approved FDA collections of information. The collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338 and the collections of information in 21 CFR parts 606 and 630 have been approved under OMB control number 0910–0116.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: May 18, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–11120 Filed 5–23–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. OSHA–2021–0012]

RIN 1218–AD43

Arizona State Plan for Occupational Safety and Health; Proposed Reconsideration and Revocation; Extension of Comment Period; Extension of Hearing Request Period; Extension of Period To Submit Written Testimony; Extension of Period To Submit Notices of Intention To Appear at Public Hearing

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; extension of comment period; extension of period for submitting request for an informal hearing; extension of period to submit written testimony; extension of deadline for submitting notices of intention to appear at public hearing.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is extending the deadlines for submitting comments on the Notice of Proposed Reconsideration and Revocation of Final Approval of the Arizona State Plan for Occupational Safety and Health (Notice), requests for an informal hearing, and submission of written testimony for an additional 40 days to July 5, 2022, and extending the deadline for submitting notices of intention to appear at its informal public hearing for an additional 55 days to July 5, 2022. In its prior Notice announcing this proposed action, OSHA advised the public that any informal public hearing to be held on this matter will begin on August 16, 2022, at 10:00 a.m., ET.

DATES:

Written comments: Written comments on the Notice and requests for a hearing must be submitted electronically at *www.regulations.gov,* which is the Federal e-Rulemaking Portal, by July 5, 2022.

Informal public hearing: Any interested person may request an informal hearing concerning the proposed revocation. OSHA will hold such a hearing if the Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) finds that substantial objections have been filed. The agency will hold such an informal public hearing beginning on August 16, 2022, virtually on WebEx. OSHA expects the hearing to last from 10:00 a.m. to 6:00 p.m., ET; a schedule will be released prior to the start of the hearing. The exact daily schedule may be amended at the discretion of the presiding administrative law judge (ALJ). If necessary, the hearing will continue at the same time on subsequent days.

Notice of intention to appear at the hearing: Interested persons who intend to present testimony or question witnesses at the hearing must submit a notice of their intention to do so by July 5, 2022.

Hearing testimony and documentary evidence: Interested persons who request more than 5 minutes to present testimony, or who intend to submit documentary evidence, at the hearing must submit the full text of their testimony and all documentary evidence by July 5, 2022.

ADDRESSES:

Written comments: You may submit comments and attachments electronically at *www.regulations.gov,* which is the Federal e-Rulemaking Portal. Follow the instructions on-line for making electronic submissions.

Informal public hearing: If the agency holds an informal public hearing, the hearing will be held virtually on WebEx. Additional information on how to access the informal hearing will be

posted when available at *www.osha.gov/stateplans.*

Notice of intention to appear, hearing testimony, and documentary evidence: You may submit your notice of intention to appear, hearing testimony, and documentary evidence, identified by docket number (OSHA–2021–0012), electronically at *www.regulations.gov.* Follow the instructions online for electronic submission of materials, including attachments.

Instructions: All submissions must include the agency name and docket number for this rulemaking (Docket No. OSHA–2021–0012). All submissions, including any personal information, are placed in the public docket without change and may be available online at *www.regulations.gov.* Therefore, OSHA cautions you about submitting certain personal information, such as social security numbers and birthdates. For additional information on submitting notices of intention to appear, hearing testimony, or documentary evidence, see Section V, ''Public Participation'', and the **DATES** and **ADDRESSES** sections of the Notice preamble (87 FR 23783, 23783–84, 23788–89; April 21, 2022).

Docket: To read or download comments, notices of intention to appear, and materials submitted in response to this **Federal Register** notice, go to Docket No. OSHA–2021–0012 at *www.regulations.gov.* All comments and submissions are listed in the *www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through that website. All comments and submissions are available for inspection and, where permissible, copying at the OSHA Docket Office, U.S. Department of Labor; telephone: (202) 693–2350 (TTY number: (877) 889–5627).

Electronic copies of this **Federal Register** document are available at *www.regulations.gov.* This document, as well as news releases and other relevant information, is also available at OSHA's website at *www.osha.gov.*

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Contact Frank Meilinger, OSHA Office of Communications, U.S. Department of Labor; telephone (202) 693–1999; email *meilinger.francis2@dol.gov.*

For general and technical information: Contact Douglas J. Kalinowski, Director, OSHA Directorate of Cooperative and State Programs, U.S. Department of Labor; telephone (202) 693–2200; email: *kalinowski.doug@dol.gov.*

SUPPLEMENTARY INFORMATION: OSHA published a Notice of Proposed Reconsideration and Revocation of Final Approval of the Arizona State Plan for Occupational Safety and Health (Notice) on April 21, 2022 (87 FR 23783). This Notice requested written comments and requests for a hearing by May 26, 2022, and notices of intention to appear at the public hearing by May 11, 2022; and the Notice tentatively scheduled an informal public hearing on this proposal to begin on August 16, 2022. OSHA is extending the deadline for submitting notices of intention to appear at the hearing by 55 days to July 5, 2022, and the deadline for submitting written comments and testimony and requests for a hearing by 40 days to July 5, 2022. OSHA is not changing the tentative hearing date; if an informal public hearing is held, the hearing will commence on August 16, 2022.

Authority and Signature

This document was prepared under the direction of Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC. OSHA is issuing this notice under the authority specified by Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), Secretary of Labor's Order No. 8–2020 (85 FR 58393 (Sept. 18, 2020)), and 29 CFR parts 1902, 1952, 1953, 1954, and 1955.

Signed at Washington, DC, on May 11, 2022.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–10714 Filed 5–23–22; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0394; EPA–HQ–OAR–2021–0663; FRL–9772–01–R9]

Air Plan Disapproval; California; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Clean Air Act (CAA or the ''Act''), the Environmental Protection Agency (EPA) is proposing to disapprove a State Implementation Plan (SIP) submittal from California addressing interstate transport for the 2015 8-hour ozone national ambient air quality standards (NAAQS). The ''good neighbor'' or ''interstate transport'' provision of the Act requires that each state's SIP contain adequate provisions to prohibit emissions from within the state from significantly contributing to nonattainment or interfering with maintenance of the NAAQS in other states. This requirement is part of the broader set of ''infrastructure'' requirements, which are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. This disapproval, if finalized, will establish a 2-year deadline for the EPA to promulgate a Federal Implementation Plan (FIP) to address the relevant interstate transport requirements, unless the EPA approves a subsequent SIP submittal that meets these requirements. Disapproval does not start a mandatory sanctions clock.

DATES:

Comments: Written comments must be received on or before July 25, 2022.

ADDRESSES: You may send comments, identified as Docket No. EPA–R09–OAR–2022–0394, by any of the following methods: Federal eRulemaking Portal at *https://www.regulations.gov* following the online instructions for submitting comments or via email to *kelly.thomasp@epa.gov.* Include Docket ID No. EPA–R09–OAR–2022–0394 in the subject line of the message.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tom Kelly, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: 415–972–3856 or by email at *kelly.thomasp@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public Participation: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0394, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information

you consider to be 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).

There are two dockets supporting this action, EPA–R09–OAR–2022–0394 and EPA–HQ–OAR–2021–0663. Docket No. EPA–R09–OAR–2022–0394 contains information specific to California, including the notice of proposed rulemaking. Docket No. EPA–HQ–OAR–2021–0663 contains additional modeling files, emissions inventory files, technical support documents, and other relevant supporting documentation regarding interstate transport of emissions for the 2015 8-hour ozone NAAQS that are being used to support this action. All comments regarding information in either of these dockets are to be made in Docket No. EPA–R09–OAR–2022–0394. For additional submission methods, if you need assistance in a language other than English, or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact Tom Kelly, (415) 972–3856, *kelly.thomasp@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The index to the docket for this action, Docket No. EPA–R09–OAR–2022–0394, is available electronically at *www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

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

Table of Contents

I. Background

A. Description of Statutory Background

On October 1, 2015, the EPA promulgated a revision to the ozone NAAQS (''2015 8-hour ozone NAAQS''), lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm).[1] Section 110(a)(1) of the CAA requires states to submit, within 3 years after promulgation of a new or revised standard, SIP submissions meeting the applicable requirements of section 110(a)(2).[2] One of these applicable requirements is found in CAA section 110(a)(2)(D)(i)(I), otherwise known as the ''interstate transport'' or ''good neighbor'' provision, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on other states due to interstate transport of pollution. There are two so-called ''prongs'' within CAA section 110(a)(2)(D)(i)(I). An interstate SIP submission for a new or revised NAAQS must contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting air pollutants in amounts that will significantly contribute to nonattainment of the NAAQS in another state (prong 1) or interfere with maintenance of the NAAQS in another state (prong 2). The EPA and states must give independent significance to prong 1 and prong 2 when evaluating downwind air quality problems under CAA section 110(a)(2)(D)(i)(I).[3]

[1] National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

[2] SIP revisions that are intended to meet the applicable requirements of section 110(a)(1) and (2) of the CAA are often referred to as infrastructure SIPs and the applicable elements under section 110(a)(2) are referred to as infrastructure requirements.

[3] See *North Carolina* v. *EPA,* 531 F.3d 896, 909–11 (DC Cir. 2008).

B. Description of the EPA's Four Step Interstate Transport Regulatory Process

The EPA is using the 4-step interstate transport framework (or 4-step framework) to evaluate the state's SIP submittal addressing the interstate transport provision for the 2015 8-hour ozone NAAQS. The EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to prior ozone NAAQS in several regional regulatory actions, including the Cross-State Air Pollution Rule (CSAPR), which addressed interstate transport with respect to the 1997 ozone NAAQS as well as the 1997 and 2006 fine particulate matter standards,[4] and the Cross-State Air Pollution Rule Update (CSAPR Update) [5] and the Revised CSAPR Update, both of which addressed the 2008 ozone NAAQS.[6] Through the development and implementation of the CSAPR rulemakings and prior regional rulemakings pursuant to the interstate transport provision,[7] the EPA, working in partnership with states, developed the following 4-step framework to evaluate a State's obligations to eliminate interstate transport emissions under the interstate transport provision for the ozone NAAQS: (1) Identify monitoring sites that are projected to have problems attaining and/or maintaining the NAAQS (*i.e.,* nonattainment and/or maintenance receptors); (2) identify states that impact those air quality problems in other (*i.e.,* downwind) states sufficiently such that the states are considered ''linked'' and therefore warrant further review and analysis; (3) identify the emissions reductions necessary (if any), applying a multifactor analysis, to eliminate each linked upwind state's significant contribution to nonattainment or interference with maintenance of the

[4] See Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (Aug. 8, 2011).

[5] Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 81 FR 74504 (Oct. 26, 2016).

[6] In 2019, the D.C. Circuit Court of Appeals remanded the CSAPR Update to the extent it failed to require upwind states to eliminate their significant contribution by the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a). *Wisconsin* v. *EPA,* 938 F.3d 303, 313 (DC Cir. 2019). The Revised CSAPR Update for the 2008 Ozone NAAQS, 86 FR 23054 (April 30, 2021), responded to the remand of the CSAPR Update in *Wisconsin* and the vacatur of a separate rule, the ''CSAPR Close-Out,'' 83 FR 65878 (December 21, 2018), in *New York* v. *EPA,* 781 F. App'x. 4 (DC Cir. 2019).

[7] In addition to the CSAPR rulemakings, other regional rulemakings addressing ozone transport include the ''NO_X SIP Call,'' 63 FR 57356 (October 27, 1998), and the ''Clean Air Interstate Rule'' (CAIR), 70 FR 25162 (May 12, 2005).

NAAQS at the locations identified in Step 1; and (4) adopt permanent and enforceable measures needed to achieve those emissions reductions.

C. Background on the EPA's Ozone Transport Modeling Information

The EPA has performed nationwide air quality modeling to project ozone design values that are used in combination with measured data to identify nonattainment and maintenance receptors. To quantify the contribution of emissions from specific upwind states to 2023 ozone design values for the identified downwind nonattainment and maintenance receptors, the EPA performed nationwide, state-level ozone source apportionment modeling. The source apportionment modeling provided contributions to ozone at receptors from precursor emissions of anthropogenic nitrogen oxides (NO_X) and volatile organic compounds (VOCs) in individual states and other sources.[8]

The EPA has released several documents containing projected ozone design values, contributions, and information relevant to evaluating interstate transport with respect to the 2015 8-hour ozone NAAQS. First, on January 6, 2017, the EPA published a notice of data availability (NODA) in which we requested comment on preliminary interstate ozone transport data including projected ozone design values and interstate contributions for 2023 using a 2011 base year platform.[9] In the NODA, the EPA used the year 2023 as the analytic year for this preliminary modeling because that year aligns with the expected attainment year for ''Moderate'' ozone nonattainment areas for the 2015 8-hour ozone NAAQS.[10] On October 27, 2017, we released a memorandum using the ''en'' emissions inventory (''October 2017 memorandum'') containing updated modeling data for 2023, which incorporated changes made in response to comments on the NODA, and noted that the modeling may be useful for states developing SIPs to address interstate transport obligations for the 2008 ozone NAAQS.[11] On March 27, 2018, we issued a memorandum (''March 2018 memorandum'') noting that the same 2023 modeling data released in the October 2017 memorandum could also be useful for identifying potential downwind air quality problems with respect to the 2015 8-hour ozone NAAQS at Step 1 of the 4-step interstate transport framework.[12] The March 2018 memorandum also included the then newly available contribution modeling data for 2023 to assist states in evaluating their impact on potential downwind air quality problems for the 2015 8-hour ozone NAAQS under Step 2 of the 4-step interstate transport framework.[13] The EPA subsequently issued two more memoranda in August and October 2018, providing additional information to states developing interstate transport SIP submissions for the 2015 8-hour ozone NAAQS concerning, respectively, potential contribution thresholds that may be appropriate to apply in Step 2 of the 4-step interstate transport framework, and considerations for identifying downwind areas that may have problems maintaining the standard at Step 1 of the 4-step interstate transport framework.[14]

Since the release of the modeling data shared in the March 2018 memorandum, the EPA performed updated modeling using a 2016-based emissions modeling platform (*i.e.,* 2016v1). This emissions platform was developed under the EPA/Multi-Jurisdictional Organization (MJO)/state collaborative project.[15] This collaborative project was a multi-year joint effort by the EPA, MJOs, and states to develop a new, more recent emissions platform for use by the EPA and states in regulatory modeling as an improvement over the dated 2011-based platform that the EPA had used to project ozone design values and contribution data provided in the 2017 and 2018 memoranda. The EPA used the 2016v1 emissions to project ozone design values and contributions for 2023. On October 30, 2020, in the notice of proposed rulemaking for the Revised CSAPR Update, the EPA released and accepted public comment on 2023 modeling that used the 2016v1 emissions platform.[16] Although the Revised CSPAR Update addressed transport for the 2008 ozone NAAQS, the projected design values and contributions from the 2016v1 platform are also useful for identifying downwind ozone problems and linkages with respect to the 2015 ozone NAAQS.[17]

Following the final Revised CSAPR Update, the EPA made further updates to the 2016 emissions platform to include mobile emissions from the EPA's Motor Vehicle Emission Simulator MOVES3 model[18] and updated emissions projections for electric generating units (EGUs) that reflect the emissions reductions from the Revised CSAPR Update, recent information on plant closures, and other sector trends. The construct of the updated emissions platform, 2016v2, is described in the emissions modeling technical support document (TSD) for this proposed rule.[19] The EPA performed air quality modeling of the 2016v2 emissions using the most recent public release version of the Comprehensive Air-quality Model with extensions (CAMx) photochemical modeling, version 7.10.[20] The EPA now proposes to primarily rely on modeling based on the updated and newly

[8] More information on the source apportionment modeling can be found in the Air Quality Modeling Technical Support Document for the 2015 Ozone NAAQS Transport SIP Proposed Actions.

[9] See Notice of Availability of the Environmental Protection Agency's Preliminary Interstate Ozone Transport Modeling Data for the 2015 8-hour Ozone National Ambient Air Quality Standard (NAAQS), 82 FR 1733 (January 6, 2017).

[10] 82 FR 1733, 1735.

[11] See Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), October 27, 2017, available in docket ID No. EPA–HQ–OAR–2021–0663.

[12] See Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), March 27, 2018 (''March 2018 memorandum''), available in docket ID No. EPA–HQ–OAR–2021–0663.

[13] The March 2018 memorandum, however, provided, ''While the information in this memorandum and the associated air quality analysis data could be used to inform the development of these SIPs, the information is not a final determination regarding states' obligations under the good neighbor provision. Any such determination would be made through notice-and-comment rulemaking.''

[14] See Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, August 31, 2018 (''August 2018 memorandum''), and Considerations for Identifying Maintenance Receptors for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, October 19, 2018 (''October 2018 memorandum''), available in docket ID No. EPA–HQ–OAR–2021–0663.

[15] The results of this modeling, as well as the underlying modeling files, are included in docket ID No. EPA–HQ–OAR–2021–0663.

[16] See 85 FR 68964, 68981.

[17] See the Air Quality Modeling Technical Support Document for the Final Revised Cross-State Air Pollution Rule Update, included in the Headquarters docket ID No. EPA–HQ–OAR–2021–0663.

[18] Additional details and documentation related to the MOVES3 model can be found at *https://www.epa.gov/moves/latest-version-motor-vehicle-emission-simulator-moves.*

[19] See Technical Support Document (TSD) Preparation of Emissions Inventories for the 2016v2 North American Emissions Modeling Platform included in the Headquarters docket ID No. EPA–HQ–OAR–2021–0663.

[20] Ramboll Environment and Health, January 2021, *www.camx.com.*

available 2016v2 emissions platform in evaluating these submissions with respect to Steps 1 and 2 of the 4-step interstate transport framework and generally referenced within this action as 2016v2 modeling for 2023. By using the updated modeling results, the EPA is using the most current and technically appropriate information for this proposed rulemaking. Section III.C. of this notice and the Air Quality Modeling TSD for 2015 Ozone NAAQS Transport SIP Proposed Actions, included in Docket ID No. EPA–HQ–OAR–2021–0663 for this proposal, contain additional detail on the EPA's 2016v2 modeling. In this notice, the EPA is accepting public comment on this updated 2023 modeling, which uses the 2016v2 emissions platform. Comments on the EPA's air quality modeling should be submitted in the Regional docket for this action, docket ID No. EPA–R09–OAR–2022–0394. Comments are not being accepted in docket ID No. EPA–HQ–OAR–2021–0663.

States may have chosen to rely on the results of EPA modeling and/or alternative modeling performed by states or MJOs to evaluate downwind air quality problems and contributions as part of their submissions. In Section III.A. and III.B. we evaluate how California used air quality modeling information in their submission.

D. The EPA's Approach To Evaluating Interstate Transport SIPs for the 2015 8-Hour Ozone NAAQS

The EPA proposes to apply a consistent set of policy judgments across all states for purposes of evaluating interstate transport obligations and the approvability of interstate transport SIP submittals for the 2015 8-hour ozone NAAQS. These policy judgments reflect consistency with relevant case law and past agency practice as reflected in the CSAPR and related rulemakings. Nationwide consistency in approach is particularly important in the context of interstate ozone transport, which is a regional-scale pollution problem involving many smaller contributors. Effective policy solutions to the problem of interstate ozone transport going back to the NO_X SIP Call have necessitated the application of a uniform framework of policy judgments in order to ensure an ''efficient and equitable'' approach. See *EME Homer City Generation, LP* v. *EPA,* 572 U.S. 489, 519 (2014).

In the March, August, and October 2018 memoranda, the EPA recognized that states may be able to establish alternative approaches to addressing their interstate transport obligations for the 2015 8-hour ozone NAAQS that vary from a nationally uniform framework. The EPA emphasized in these memoranda, however, that such alternative approaches must be technically justified and appropriate in light of the facts and circumstances of each particular state's submittal. In general, the EPA continues to believe that deviation from a nationally consistent approach to ozone transport must be substantially justified and have a well-documented technical basis that is consistent with relevant case law. Where states submitted SIPs that rely on any such potential ''flexibilities'' as may have been identified or suggested in the past, the EPA will evaluate whether the state adequately justified the technical and legal basis for doing so.

The EPA notes that certain concepts included in an attachment to the March 2018 memorandum require unique consideration, and these ideas do not constitute agency guidance with respect to transport obligations for the 2015 ozone NAAQS. Attachment A to the March 2018 memorandum identified a ''Preliminary List of Potential Flexibilities'' that could potentially inform SIP development.[21] However, the EPA made clear in that Attachment that the list of ideas were not suggestions endorsed by the Agency but rather ''comments provided in various forums'' on which the EPA sought ''feedback from interested stakeholders.'' [22] Further, Attachment A stated, ''EPA is not at this time making any determination that the ideas discussed below are consistent with the requirements of the CAA, nor are we specifically recommending that states use these approaches.'' [23] Attachment A to the March 2018 memorandum, therefore, does not constitute agency guidance, but was intended to generate further discussion around potential approaches to addressing ozone transport among interested stakeholders. To the extent states sought to develop or rely on these ideas in support of their SIP submittals, the EPA will thoroughly review the technical and legal justifications for doing so.

The remainder of this section describes the EPA's proposed framework with respect to analytic year, definition of nonattainment and maintenance receptors, selection of contribution threshold, and multifactor control strategy assessment.

[21] March 2018 memorandum, Attachment A.

[22] Id. at A–1.

[23] Id.

1. Selection of Analytic Year

In general, the states and the EPA must implement the interstate transport provision in a manner ''consistent with the provisions of [title I of the CAA.]'' CAA section 110(a)(2)(D)(i). This requires, among other things, that these obligations are addressed consistently with the timeframes for downwind areas to meet their CAA obligations. With respect to ozone NAAQS, under CAA section 181(a), this means obligations must be addressed ''as expeditiously as practicable'' and no later than the schedule of attainment dates provided in CAA section 181(a)(1).[24] Several D.C. Circuit court decisions address the issue of the relevant analytic year for the purposes of evaluating ozone transport air quality problems. On September 13, 2019, the D.C. Circuit issued a decision in *Wisconsin* v. *EPA,* remanding the CSAPR Update to the extent that it failed to require upwind states to eliminate their significant contribution by the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a). 938 F.3d at 313.

On May 19, 2020, the D.C. Circuit issued a decision in *Maryland* v. *EPA* that cited the *Wisconsin* decision in holding that the EPA must assess the impact of interstate transport on air quality at the next downwind attainment date, including ''Marginal'' area attainment dates, in evaluating the basis for the EPA's denial of a petition under CAA section 126(b). *Maryland* v. *EPA,* 958 F.3d 1185, 1203–04 (D.C. Cir. 2020). The court noted that ''section 126(b) incorporates the Good Neighbor Provision,'' and, therefore, ''EPA must find a violation [of section 126] if an upwind source will significantly contribute to downwind nonattainment at the *next downwind attainment deadline.* Therefore, the agency must evaluate downwind air quality at that deadline, not at some later date.'' *Id.* at 1204 (emphasis added). The EPA interprets the court's holding in *Maryland* as requiring the states and the Agency, under the good neighbor provision, to assess downwind air quality as expeditiously as practicable and no later than the next applicable attainment date,[25] which is now the

[24] For attainment dates for the 2015 8-hour ozone NAAQS, refer to CAA section 181(a), 40 CFR 51.1303, and Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018, effective August 3, 2018).

[25] We note that the court in *Maryland* did not have occasion to evaluate circumstances in which the EPA may determine that an upwind linkage to a downwind air quality problem exists at steps 1

Moderate area attainment date under CAA section 181 for ozone nonattainment. The Moderate area attainment date for the 2015 8-hour ozone NAAQS is August 3, 2024.[26] The EPA believes that 2023 is now the appropriate year for analysis of interstate transport obligations for the 2015 8-hour ozone NAAQS, because the 2023 ozone season is the last relevant ozone season during which achieved emissions reductions in linked upwind states could assist downwind states with meeting the August 3, 2024 Moderate area attainment date for the 2015 8-hour ozone NAAQS.

The EPA recognizes that the attainment date for nonattainment areas classified as Marginal for the 2015 8-hour ozone NAAQS was August 3, 2021. Under the *Maryland* holding, any necessary emissions reductions to satisfy interstate transport obligations should have been implemented by no later than this date. At the time of the statutory deadline to submit interstate transport SIPs (October 1, 2018), many states relied upon the EPA modeling of the year 2023, and no state provided an alternative analysis using a 2021 analytic year (or the prior 2020 ozone season). However, the EPA must act on SIP submittals using the information available at the time it takes such action. In this circumstance, the EPA does not believe it would be appropriate to evaluate states' obligations under CAA section 110(a)(2)(D)(i)(I) as of an attainment date that is wholly in the past, because the Agency interprets the interstate transport provision as forward looking. See 86 FR at 23054, 23074; see also *Wisconsin,* 938 F.3d at 322. Consequently, in this proposal the EPA will use the analytical year of 2023 to evaluate each state's CAA section 110(a)(2)(D)(i)(I) SIP submission with respect to the 2015 8-hour ozone NAAQS.

2. Step 1 of the 4-Step Interstate Transport Framework

In Step 1, the EPA identifies monitoring sites that are projected to have problems attaining and/or maintaining the NAAQS in the 2023 analytic year. Where the EPA's analysis shows that a site does not fall under the definition of a nonattainment or maintenance receptor, that site is excluded from further analysis under the EPA's 4-step interstate transport framework. For sites that are identified as a nonattainment or maintenance receptor in 2023, we proceed to the next step of our 4-step interstate transport framework by identifying the upwind state's contribution to those receptors.

The EPA's approach to identifying ozone nonattainment and maintenance receptors in this action is consistent with the approach used in previous transport rulemakings. The EPA's approach gives independent consideration to both the ''contribute significantly to nonattainment'' and the ''interfere with maintenance'' prongs of CAA section 110(a)(2)(D)(i)(I), consistent with the D.C. Circuit's direction in *North Carolina* v. *EPA.*[27]

For the purpose of this proposal, the EPA identifies nonattainment receptors as those monitoring sites that are projected to have average design values that exceed the NAAQS and that are also measuring nonattainment based on the most recent monitored design values. This approach is consistent with prior transport rulemakings, such as the CSAPR Update, where the EPA defined nonattainment receptors as those areas that both currently measure nonattainment and that the EPA projects will be in nonattainment in the future analytic year (*i.e.,* 2023).[28]

In addition, in this proposal, the EPA identifies a receptor to be a ''maintenance'' receptor for purposes of defining interference with maintenance, consistent with the method used in the CSAPR and upheld by the D.C. Circuit in *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 136 (D.C. Cir. 2015).[29] Specifically, the EPA identified maintenance receptors as those receptors that would have difficulty maintaining the relevant NAAQS in a scenario that takes into account historical variability in air quality at that receptor. The variability in air quality was determined by evaluating the ''maximum'' future design value at each receptor based on a projection of the maximum measured design value over the relevant base period. The EPA interprets the projected maximum future design value to be a potential future air quality outcome consistent with the meteorology that yielded maximum measured concentrations in the ambient data set analyzed for that receptor (*i.e.,* ozone conducive meteorology). The EPA also recognizes that previously experienced meteorological conditions (*e.g.,* dominant wind direction, temperatures, vertical mixing, insolation, and air mass patterns) promoting ozone formation that led to maximum concentrations in the measured data may reoccur in the future. The maximum design value gives a reasonable projection of future air quality at the receptor under a scenario in which such conditions do, in fact, reoccur. The projected maximum design value is used to identify upwind emissions that, under those circumstances, could interfere with the downwind area's ability to maintain the NAAQS.

Recognizing that nonattainment receptors are also, by definition, maintenance receptors, the EPA often uses the term ''maintenance-only'' to refer to those receptors that are not nonattainment receptors. Consistent with the concepts for maintenance receptors, as described above, the EPA identifies ''maintenance-only'' receptors as those monitoring sites that have projected average design values above the level of the applicable NAAQS, but that are not currently measuring nonattainment based on the most recent official design values. In addition, those monitoring sites with projected average design values below the NAAQS, but with projected maximum design values above the NAAQS are also identified as ''maintenance only'' receptors, even if they are currently measuring nonattainment based on the most recent official design values.

3. Step 2 of the 4-Step Interstate Transport Framework

In Step 2 the EPA quantifies the contribution of each upwind state to each receptor in the 2023 analytic year. The contribution metric used in Step 2 is defined as the average impact from each state to each receptor on the days with the highest ozone concentrations at the receptor based on the 2023 modeling. If a state's contribution value does not equal or exceed the threshold of 1 percent of the NAAQS (*i.e.,* 0.70 ppb for the 2015 8-hour ozone NAAQS),

and 2 of the interstate transport framework by a particular attainment date, but for reasons of impossibility or profound uncertainty the Agency is unable to mandate upwind pollution controls by that date. See *Wisconsin,* 938 F.3d at 320. The D.C. Circuit noted in *Wisconsin* that upon a sufficient showing, these circumstances may warrant flexibility in effectuating the purpose of the interstate transport provision.

[26] See CAA section 181(a); 40 CFR 51.1303; Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018, effective Aug. 3, 2018).

[27] See *North Carolina* v. *EPA,* 531 F.3d at 910–11 (holding that the EPA must give ''independent significance'' to each prong of CAA section 110(a)(2)(D)(i)(I)).

[28] See 81 FR 74504 (October 26, 2016). This same concept, relying on both current monitoring data and modeling to define nonattainment receptors, was also applied in CAIR. *See* 70 FR 25162, 25241 and 25249 (January 14, 2005); see also *North Carolina,* 531 F.3d at 913–14 (affirming as reasonable EPA's approach to defining nonattainment in CAIR).

[29] See 76 FR 48208 (August 8, 2011). CSAPR Update and Revised CSAPR Update also used this approach. See 81 FR 74504 (October 26, 2016) and 86 FR 23054 (April 30, 2021).

the upwind state is not ''linked'' to a downwind air quality problem, and the EPA, therefore, concludes that the state does not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in the downwind states. However, if a state's contribution equals or exceeds the 1 percent threshold, the state's emissions are further evaluated in Step 3, considering both air quality and cost as part of a multi-factor analysis, to determine what, if any, emissions might be deemed ''significant'' and, thus, must be eliminated under CAA section 110(a)(2)(D)(i)(I). The EPA is proposing to rely in the first instance on the 1 percent threshold for the purpose of evaluating a state's contribution to nonattainment or maintenance of the 2015 8-hour ozone NAAQS (*i.e.,* 0.70 ppb) at downwind receptors. This is consistent with the Step 2 approach that the EPA applied in CSAPR for the 1997 ozone NAAQS, which has subsequently been applied in the CSAPR Update when evaluating interstate transport obligations for the 2008 ozone NAAQS. The EPA continues to find 1 percent to be an appropriate threshold. For ozone, as the EPA found in the Clean Air Interstate Rule (CAIR), CSAPR, and CSAPR Update, a portion of the nonattainment problems from anthropogenic sources in the U.S. results from the combined impact of relatively small contributions from many upwind states, along with contributions from in-state sources and, in some cases, substantially larger contributions from a subset of particular upwind states. The EPA's analysis shows that much of the ozone transport problem being analyzed in this proposed rule is still the result of the collective impacts of contributions from many upwind states. Therefore, application of a consistent contribution threshold is necessary to identify those upwind states that should have responsibility for addressing their contribution to the downwind nonattainment and maintenance problems to which they collectively contribute. Continuing to use 1 percent of the NAAQS as the screening metric to evaluate collective contribution from many upwind states also allows the EPA (and states) to apply a consistent framework to evaluate interstate emissions transport under the interstate transport provision from one NAAQS to the next. See 81 FR 74504, 74518. See also 86 FR 23054, 23085 (reviewing and explaining rationale from CSAPR, 76 FR 48,208, 48237–38, for selection of 1 percent threshold).

The EPA's August 2018 memorandum recognized that in certain circumstances, a state may be able to establish that an alternative contribution threshold of 1 ppb is justifiable. Where a state relies on this alternative threshold, and where that state determined that it was not linked at Step 2 using the alternative threshold, the EPA will evaluate whether the state provided a technically sound assessment of the appropriateness of using this alternative threshold based on the facts and circumstances underlying its application in the particular SIP submission.

4. Step 3 of the 4-Step Interstate Transport Framework

Consistent with the EPA's longstanding approach to eliminating significant contribution or interference with maintenance, at Step 3, states linked at Steps 1 and 2 are generally expected to prepare a multifactor assessment of potential emissions controls. The EPA's analysis at Step 3 in prior federal actions addressing interstate transport requirements has primarily focused on an evaluation of cost-effectiveness of potential emissions controls (on a marginal cost-per-ton basis), the total emissions reductions that may be achieved by requiring such controls (if applied across all linked upwind states), and an evaluation of the air quality impacts such emissions reductions would have on the downwind receptors to which a state is linked; other factors may potentially be relevant if adequately supported. In general, where the EPA's or alternative air quality and contribution modeling establishes that a state is linked at Steps 1 and 2, it will be insufficient at Step 3 for a state merely to point to its existing rules requiring control measures as a basis for approval. In general, the emissions-reducing effects of all existing emissions control requirements are already reflected in the air quality results of the modeling for Steps 1 and 2. If the state is shown to still be linked to one or more downwind receptor(s), states must provide a well-documented evaluation determining whether their emissions constitute significant contribution or interference with maintenance by evaluating additional available control opportunities by preparing a multifactor assessment. While the EPA has not prescribed a particular method for this assessment, the EPA expects states at a minimum to present a sufficient technical evaluation. This would typically include information on emissions sources, applicable control technologies, emissions reductions, costs, cost effectiveness, and downwind air quality impacts of the estimated reductions, before concluding that no additional emissions controls should be required.[30]

5. Step 4 of the 4-Step Interstate Transport Framework

At Step 4, states (or the EPA) develop permanent and federally enforceable control strategies to achieve the emissions reductions determined to be necessary at Step 3 to eliminate significant contribution to nonattainment or interference with maintenance of the NAAQS. For a state linked at Steps 1 and 2 to rely on an emissions control measure at Step 3 to address its interstate transport obligations, that measure must be included in the state's SIP so that it is permanent and federally enforceable. See CAA section 110(a)(2)(D) (''Each such [SIP] shall . . . contain adequate provisions . . . .''). See also CAA 110(a)(2)(A); *Committee for a Better Arvin* v. *U.S. E.P.A.,* 786 F.3d 1169, 1175–76 (9th Cir. 2015) (holding that measures relied on by state to meet CAA requirements must be included in the SIP).

II. SIP Submission Addressing Interstate Transport of Air Pollution for the 2015 8-Hour Ozone NAAQS

In California, the California Air Resources Board (CARB or ''State'') is the state agency responsible for the adoption and submission to the EPA of California state, county, and local SIPs and SIP revisions. CARB submitted its infrastructure SIP revision (''2018 Infrastructure SIP,'' ''California's 2018 Submittal,'', or ''2018 Submittal'') for the 2015 ozone NAAQS on October 1, 2018.[31] In 2021, the EPA finalized action on most of the ''infrastructure'' requirements in that submittal but did not act on the interstate transport requirements of 110(a)(2)(D)(i)(I).[32] We are proposing action on the interstate transport portions of California's 2018 Submittal in this action.

[30] As examples of general approaches for how such an analysis could be conducted for their sources, states could look to the CSAPR Update, 81 FR 74504, 74539–51; CSAPR, 76 FR 48208, 48246–63; CAIR, 70 FR 25162, 25195–229; or the NO_X SIP Call, 63 FR 57356, 57399–405. See also Revised CSAPR Update, 86 FR 23054, 23086–23116. Consistently across these rulemakings, the EPA has developed emissions inventories, analyzed different levels of control stringency at different cost thresholds, and assessed resulting downwind air quality improvements.

[31] Letter dated October 1, 2018, from Richard W. Corey, Executive Officer, CARB, to Michael Stoker, Regional Administrator, EPA Region IX.

[32] 86 FR 16533 (March 30, 2021).

A. Information Provided at Steps 1 and 2

Enclosure 4 of California's 2018 Submittal contains the state's ''Good Neighbor State Implementation Plan.'' For Steps 1 and 2 of its four-step analysis, California reviewed the results of the EPA's modeling runs released with the January 2017 NODA, the October 2017 memorandum, and the March 2018 memorandum.[33] CARB presented modeled design values for monitoring sites that the modeling released with the January 2017 NODA or the October 2017 memoranda projected to be nonattainment or maintenance receptors in 2023, using the EPA's definition of those terms.[34] CARB explained it focused its evaluation on receptor sites in Colorado and Arizona because those were the western states, other than California, where the EPA's modeling identified nonattainment or maintenance sites in 2023 using the data in the March 2018 memorandum.[35] Accordingly, CARB identified the following receptor sites and modeled design values, noting that the EPA's modeling released with the October 2017 memorandum and March 2018 memorandum yielded the same design values for 2023.[36]

TABLE 1—MODELED RECEPTOR DESIGN VALUES IN WESTERN STATES IN CALIFORNIA'S 2018 SUBMITTAL

Site	County	AQS No.	January 2017 modeling-average 2023 DV (ppb)	January 2017 modeling-maximum 2023 DV (ppb)	October 2017 modeling-average 2023 DV (ppb)	October 2017 modeling-maximum 2023 DV (ppb)
Colorado						
Chatfield	Douglas	08–035–0004	69.6	71.6	71.1	73.2
Rocky Flats North	Jefferson	08–059–0006	70.5	72.9	71.3	73.7
NREL	Jefferson	08–059–0011	69.7	72.7	70.9	73.9
Fort Collins West	Larimer	08–069–0011	68.6	70.4	71.2	73.0
Highland Reservoir	Arapahoe	08–005–0002	68.0	70.0	69.3	71.3
Weld Co. Tower	Weld	08–123–0009	67.2	68.3	70.2	71.4
Arizona						
West Phoenix	Maricopa	04–013–0019	67.9	70.0	69.3	71.4
North Phoenix	Maricopa	04–013–1004	68.7	69.8	69.8	71.0

Source: California's 2018 Submittal, p. A4–11, Table 1.

To ''assess the potential for transport impacts from California to Colorado receptors,'' CARB identified geographic and meteorologic features of the Denver Metro/North Front Range nonattainment area.[37] Geographic features identified by CARB included the Front Range, extending up to 8,000 feet in elevation on the western side of the metropolitan area, as well as mountains on the southern and southeastern end of the area. CARB noted that both form barriers to air flow.[38] CARB also notes that to the east and north of the Denver area are gradually rising hills that generally are open to airflow with the Denver area. Meteorological conditions identified by CARB include sunlight, temperature and winds conducive to formation of ozone, and diurnal recirculation that allows emissions and ozone concentrations to build up over multi-day periods.[39] CARB additionally notes that this terrain, combined with unique atmospheric conditions and high temperatures during the summer months, are highly conducive to the accumulation of local emissions and the formation of ozone in the Denver-Aurora-Lakewood Core Based Statistical Area, and, additionally, allows for ozone concentrations to remain higher for more hours, leading to higher 8-hour averages at monitoring sites.

CARB notes additional local features that contribute to high ozone concentrations in the Denver nonattainment area, including upslope and downslope flow in the foothill regions on broad high-pressure days near several violating monitoring sites. CARB also claims that wildfires had an impact on ozone concentrations in the Denver area, specifically noting that on September 4, 2017, large wildfire events across five western states brought plumes of smoke southward along the Front Range, inevitably mixing with the surface, and as a result, elevated ozone concentrations were observed at the Rocky Flats North site, reaching 0.078 ppm 8-hour average ozone concentrations.

CARB conducted a trajectory analysis from California to Colorado using the National Oceanic and Atmospheric Administration (NOAA) Hybrid Single Particle Lagrangian Integrated Trajectory (HYSPLIT) model.[40] CARB found that only two percent of nearly 500 backward trajectories from Colorado receptor sites on high ozone days in June and July (initiated from 10, 1000, and 2000 meters above ground level with a duration of 96 hours) indicated air parcels may have traveled from a mixed layer within California, where pollutants become well dispersed, to a mixed layer at the Colorado receptor sites.[41] CARB also found only one forward trajectory (starting at 10 meters above the ground with a duration of 96 hours) from the mixed layer in California reached the mixed layer at a Colorado receptor site.[42]According to CARB, this suggests that the complexity of the physical environment between California and Colorado limits the reproducibility of modeled transport and that considerable multi-faceted analyses would be necessary to explore transport mechanisms through areas of complex terrain.[43]

CARB's conclusion based on the HYSPLIT trajectories was that upper-level air was almost always above the mixed layer over California, Colorado, or both.[44] Without vertical mixing of the air between the mixed layer near the ground and the upper level, CARB

[33] California's 2018 Submittal, p. A4–10.

[34] Id. at A4–11, Table 1.

[35] Id. at A4–10.

[36] Id.

[37] Id. at A4–13.

[38] Id.

[39] Id. at A4–13–A4–14.

[40] Id. at A4–17.

[41] Id. at A4–17–A4–18.

[42] Id. at A4–18.

[43] Id.

[44] Id.

asserted, little to no impact from transport of emissions or pollutants would be expected at the surface.[45] CARB concluded that transport from California emissions sources to Colorado is possible but extremely unlikely on high ozone days at the Colorado receptor sites identified by the EPA modeling.[46] CARB also noted that this conclusion appeared consistent with Colorado's weight of evidence (WOE) analysis for its Denver Metro/North Front Range attainment plan SIP submittal for the 0.075 ppm 8-hour ozone standard.[47]

CARB also attempted to rely on one of the preliminary ''potential flexibilities'' in Attachment A to the EPA's March 2018 memorandum to evaluate California's impacts on receptors in Colorado.[48] CARB cited the idea of ''consider[ing] removal of certain data from modeling analysis for the purposes of projecting design values and calculating the contribution metric where data removal is based on model performance and technical analyses support the exclusion.'' [49] In making use of this potential flexibility, CARB used exceptional event data from Colorado's ''weight of evidence'' (WOE) analysis included in its Denver Metro/North Front Range attainment SIP submittal for the 0.075 ppm 8-hour ozone standard.[50] CARB asserted that, although Colorado did not submit formal demonstrations for these events under the Exceptional Event Rule because they did not affect design values in the area's attainment year, the EPA concurred with Colorado's assessment that the model Colorado used for its Denver Metro/North Front Range attainment SIP submittal was properly configured, met EPA performance requirements, and was appropriately used in its application.[51]

To recalculate projected design values excluding exceptional event data flagged by Colorado, CARB first calculated design values from prior years for the four monitors analyzed in Colorado's Denver Metro/North Front Range attainment SIP submittal for the 2008 8-hour ozone standard of 0.075 ppm (Chatfield, Rocky Flats North, NREL, and Fort Collins West) as well as for two additional monitors: Highland Reservoir and Weld Co. Tower.[52] CARB found that the average design values for the years 2009–2011, 2010–2012, and 2011–2013 dropped by 1–2 ppb at all six sites when data flagged by Colorado was excluded.[53] CARB found that maximum base year design values dropped by 2–3 ppb.[54]

CARB also attempted to replicate Colorado's future design value calculations from Colorado's WOE analysis to be consistent with Colorado's approach by using the ''el'' version of the emissions inventory.[55] CARB excluded Colorado's flagged events to recalculate design values for future year modeling for 2023 based on EPA's Good Neighbor SIP modeling released in the January 2017 NODA (using the ''el'' emissions inventory).[56] CARB calculated that average design values at the six sites dropped by 1 to 2 ppb, and maximum design values dropped by 2 ppb.[57] CARB found this resulted in no nonattainment or maintenance receptors being projected in Colorado in 2023.[58]

CARB repeated the same process with EPA's Good Neighbor SIP modeling released in the October 2017 memorandum using the ''en'' emissions inventory.[59] CARB found that excluding data flagged by Colorado reduced the 2023 average design values by 0–2 ppb and the maximum design values by 1–2 ppb. CARB asserted that its approach was consistent with Attachment A to the March 2018 memorandum with respect to ''collaboration among states linked to a common receptor and among linked upwind and downwind states in developing and applying a regionally consistent approach.'' [60]

CARB analyzed the projected design values in the October 2017 memorandum and March 2018 memorandum in order to understand why the 2023 design values in Colorado were higher in the latter modeling compared to the former.[61] CARB noted that ''receptors'' in Colorado based on the January 2017 modeling were clean in 2023 after removing atypical events, but some of these sites became receptors in the March 2018 modeling even after atypical events were removed in the projection of 2023 design values. CARB performed an analysis of contributions and emissions to determine why four monitors in Denver changed from being clean (after removing atypical events) in the older January 2017 modeling to maintenance-only receptors (after removing atypical events) using the March 2018 modeling. CARB concluded that higher emissions, and therefore higher contributions, from Colorado sources were the primary reason why the four monitors changed from clean in the January 2017 modeling to maintenance-only in the March 2018 modeling. CARB used this result to argue that emissions in Colorado, not California, are responsible for the projected maintenance problem at these four receptors.[62] CARB also noted that differences in EPA's methodology for calculating average contributions at individual monitors between the January 2017 NODA and the March 2018 memorandum could have contributed to the receptor changes that CARB identified in its submittal. CARB further noted that the updated emissions inventory (''en'') would not have accounted for Colorado's planned controls on Colorado's nonpoint source emissions from oil and gas and therefore overstated those emissions.[63]

Ultimately, CARB decided it was more appropriate to rely on the ''en'' emissions inventory-based modeling released with the October 2017 memorandum, stating that this would be the more conservative approach.[64]

To analyze receptors in, and California's contributions to, Arizona, CARB first noted that the EPA's modeling released with the October 2017 memorandum identified the West Phoenix and North Phoenix monitoring sites in the Phoenix-Mesa nonattainment area as potential maintenance receptors, while the earlier version of the modeling released with the January 2017 NODA did not project any receptors in Arizona.[65] CARB identified geographic features of the Phoenix-Mesa nonattainment area, including the Sierra Estrella Mountains to the southwest, the White Tank Mountains to the west, the Bradshaw Mountains to the north and northeast, the Superstition Mountains to the east, and the South Mountains to the south.[66] CARB explained this ''topographic bowl'' significantly limits air flow during non-stormy periods.[67] CARB also identified meteorological factors affecting the Phoenix area, such as upper-level high pressure systems over

[45] Id.

[46] Id. at A4–18–A4–19.

[47] Id. at A4–19.

[48] Id. at A4–23.

[49] Id. at A4–23. See also March 2018 memorandum, Attachment A at A–2.

[50] California's 2018 Submittal at A4–23–A4–24 (citing 83 FR 14807 (April 6, 2018) and 83 FR 31068 (July 3, 2018)).

[51] Id. at A4–23.

[52] Id. at A4–23–A4–24.

[53] Id. at A4–24.

[54] Id.

[55] Id. at A4–25

[56] Id. at A4–26.

[57] Id. A4–26.

[58] Id.

[59] Id. at A4–27.

[60] Id. at A4–23.

[61] Id. at A4–29.

[62] Id. At A4–29—A4–33

[63] Id. at A4–31–A4–32.

[64] Id. at A4–32–A4–33.

[65] Id. at A4–35.

[66] Id.

[67] Id. at A4–35.

the western U.S. that produce high temperatures, limit cloud formation, and generally lead to light winds.[68] Additional meteorological factors identified by CARB included cooling in the evening that brings emissions and pollutants back to the metropolitan area at night, the summer monsoon, temperature inversions outside of monsoon season, atmospheric mixing heights of several thousand feet on hot afternoons, and ''dry'' thunderstorms that may ignite wildfires.[69]

CARB also conducted a simplified, short-ranged trajectory analysis.[70] CARB viewed backward HYSPLIT model trajectories for the two receptor sites in Arizona to evaluate the potential for transport of ozone or ozone precursors from California. CARB concluded that air is typically from within the Phoenix area for trajectories at 100 and 500 meters above ground level and that trajectories at 1000 meters are most frequently from the north-northeast, southeast, or southwest. CARB interpreted its analysis to suggest air from California was unlikely to be a significant factor contributing to higher ozone values in Phoenix.[71]

CARB then compared the two receptor sites' 2023 projections from the two versions of transport modeling that EPA released in the January 2017 NODA (''el'' emissions inventory) and the October 2017 memorandum (''en'' emissions inventory). CARB noted that the design values at the two Arizona sites increased by 1–2 ppb from the earlier to the later version of the EPA's modeling, and that based on the contribution data included in the March 2018 memorandum, Arizona's own contribution increased by 1.8–2.2 ppb.[72] CARB concluded that the difference in Arizona's design values appeared to be mainly driven from Arizona's own contributions, and that the balance of difference between Arizona's contributions and the changes to the design values came from emissions categorized as ''Other'', which included emissions from Canada and Mexico.[73] Specifically, CARB noted that fire impacts increased at both sites and that international contributions increased at the West Phoenix site.[74] At both sites, CARB explained that the home state's contribution grew by more than the amount necessary to make the site a maintenance receptor in modeling released with the October 2017 memorandum (using the ''en'' emissions inventory).[75] CARB also noted that, while Arizona's contribution increased from the modeling released with the January 2017 NODA (''el'' emissions inventory) to the modeling results released with the October 2017 memorandum (''en'' emissions inventory), California's contribution decreased at both monitoring sites between the same versions.[76]

CARB decided to give more weight to the modeling results released with the October 2017 memorandum (''en'' emissions inventory),[77] which indicated that California contributes above 1 percent of the NAAQs to two maintenance receptors in Arizona. However, CARB concluded that the differences between the modeling results based on the ''el'' and ''en'' emissions inventories resulting in increased modeled design values for the two maintenance receptors in Arizona were not due to increased contributions from California.[78] Based on this information, CARB found it ''reasonable to conclude that emissions from California do not significantly interfere with attainment/maintenance of the 0.070 ppm 8-hour ozone NAAQS at the modeled ozone receptors in Arizona.''[79]

Overall, California's conclusion for Step 2 was that it is linked to downwind sites in Colorado and Arizona, based on the EPA modeling results released with the October 2017 memorandum.[80] However, based on the additional analyses CARB provided at Step 2 (and further analysis of emissions control measures provided at Step 3 of their submittal), CARB concludes that California does not contribute significantly to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in other states.

B. Information Provided at Step 3

For Step 3, CARB reviewed and evaluated California's emissions control measures.[81] CARB noted that, based on the 2011 National Emissions Inventory (NEI) and based on 2023 projected emissions, a NO_X control strategy would be most effective for reducing regional scale ozone transport.[82] Table 2 below shows California emissions in 2011 and 2023 by sector and percentage.

TABLE 2—CALIFORNIA EMISSIONS IN 2021 AND 2023 BY SECTOR AND PERCENTAGE

Modeled emissions by sector	NO_X			VOCs		
	Mobile	Stationary	≤Area	Mobile	Stationary	Area
Percent of 2011 NEI Emissions	78.4	11.2	10.4	34.8	6.5	58.7
Percent of 2023 Projected Emissions	67.1	26.9	6.0	28.6	29.3	42.1

Source: California's 2018 Submittal, p. A4–46, Table 31.

CARB noted that a NO_X-focused approach is consistent with the EPA's historical focus for transport control measures, then summarized its controls for mobile sources, stationary sources, and consumer products.[83]

CARB summarized its NO_X controls for mobile sources, including the Smog Check program, low emission vehicle fleet standards and zero emission vehicle regulation, and California's reformulated gasoline standard. CARB also described programs to reduce NO_X emissions from heavy-duty vehicles by nearly 70 percent by 2023 and from off-road equipment by 45 percent by 2031. In the South Coast Air Quality Management District, CARB stated that mobile source control programs are projected to reduce NO_X emissions by 153 tons per day (tpd) in 2023 and by 184 tpd by 2031. CARB also noted that the federal government has primary regulatory authority over mobile sources such as ocean-going vessels, aircraft, and locomotives.[84]

CARB also described NO_X controls for stationary sources, noting that California's 35 air districts have primary authority over those sources. CARB

[68] Id. at A4–35–A4–36.
[69] Id. at A4–26.
[70] Id. at A4–39.
[71] Id.
[72] Id. at A4–40.
[73] Id. A4–40–A4–41.
[74] Id. at A4–42.
[75] Id. at A4–43.
[76] Id.
[77] Id. at A4–44.
[78] Id.
[79] Id.
[80] Id.
[81] Id. at A4–45.
[82] Id. at A4–46.
[83] Id. at A4–46–A4–56.
[84] Id. at A4–47–A4–48.

provided examples of prohibitory rules for NO_X and VOC already approved into the California SIP. These included rules controlling VOC emissions from Graphic Arts Operations in the Ventura County Air Pollution Control District (APCD), Placer County APCD, and San Diego County APCD. Other examples included rules controlling NO_X emissions from Natural Gas-Fired Fan-Type Central Furnaces and Small Water Heaters in Santa Barbara APCD, from Gasoline Transfer and Dispensing in the South Coast Air Quality Management District, from Natural Gas-Fired Water Heaters, Small Boilers, and Process Heaters in Placer County APCD, and from Large Water Heaters and Small Boilers in Ventura County APCD. Separately, CARB described California's consumer product control program to regulate reactive organic gas emissions, a subset of VOCs.[85]

After summarizing these controls, CARB provided information about its electric generating units (EGUs) and non-EGU stationary sources.[86] Noting that the EPA has historically targeted EGUs for reductions in ozone transport pollution, CARB stated that the only two EGUs in the state emitting NO_X at rates higher than 0.061 lb/MMBtu are either ''unlikely'' to have further cost-effective emission control opportunities or planned to retire by the end of 2019.[87] CARB also explained that the only EGU emitting more than 250 tpy NO_X in 2011 ceased operation in 2014, and that two EGUs emitting over 100 tpy NO_X in the San Joaquin Valley APCD ceased operation in 2011.[88]

CARB also noted that in 2016, the EPA assessed further NO_X reductions from EGUs and that the CSAPR Update resulted in a cost threshold of $1400 per ton.[89] CARB stated that the EPA's analysis showed ozone season EGU NO_X reductions in California would not occur until the $5000 per ton emissions-control scenario.[90] CARB concluded that due to ''strict and comprehensive emissions regulations on emissions, EGUs do not appreciably contribute to NO_X such that the emissions could significantly contribute to ozone formation in another state.'' [91]

For non-EGUs, CARB noted that, although they emitted 6.7 times as much NO_X as EGUs did in 2011 in California, they only represented 5.2 percent of the statewide NO_X inventory.[92] CARB concluded that, for the large non-EGU sources that are either subject to NO_X control measures that have not been submitted for approval into the California SIP, or fall outside the geographic jurisdiction of the applicable district rules, further emission controls would be unlikely to reduce any potential impact on downwind states' air quality because such sources comprise no more than 0.8 percent of the total NO_X emitted in California in 2011.[93] CARB also highlighted its consumer product control program, which regulates reactive organic gas.[94]

CARB's Step 3 conclusion was that ''the State's emission reduction control system leads the nation in stringency for most sectors of emission sources'' and that ''California's emission reduction programs adequately prohibit the emission of air pollutants in amounts that will significantly contribute to nonattainment, or interfere with maintenance, of the 0.070 ppm 8-hour ozone standard in any downwind state.'' [95]

C. Information Provided at Step 4

For its Step 4 analysis, CARB stated, ''Although linked to other western states with projected air quality problems in 2023, California is not significantly contributing to nonattainment or maintenance problems in any other states. This is in large part due to the stringency of California's air pollution control program. Therefore, no further reductions or measures are necessary for Good Neighbor SIP purposes.'' [96]

CARB then provided a weight of evidence (WOE) analysis. The WOE analysis purported to ''describe the U.S. EPA's contribution modeling when grouping upwind states' contributions,'' asserted that transport relationships among eastern and western states are different, and argued that the role of interstate transport in western states is a very small portion of projected design values and that the collective impact of all upwind states is also a small portion.[97] CARB also asserted that previous rounds of EPA's photochemical modeling identified smaller collective contribution for western states than eastern states.[98]

CARB's WOE analysis further described differences it claims exist between transport in eastern and western states.[99] Differences asserted by CARB included large populations in eastern states, the relatively small size of eastern states and consequent high population density, and numerous metropolitan areas in eastern states that cross state boundaries. CARB also noted the complex topography in western states, which presents a challenge to air quality modeling, as well as the relative distances between nonattainment areas and emissions sources in western states and the larger overall sizes of western states compared to eastern states.[100]

CARB continued its WOE analysis by reiterating that California has little impact on ozone levels outside its borders, specifically because of the distance between California's eastern border and its emissions sources, as well as because of the Sierra Nevada mountains, which limit airflow from California to the east and which are sparsely populated.[101] CARB's WOE analysis concluded with a per-capita NO_X emissions comparison across the states, in which California ranked nearly last (even though it ranked second highest in total NO_X emissions (after Texas)), and stated, ''U.S. EPA's modeling of state contributions bears out the expectation that California's impacts on other states would be very small.'' [102]

In summary, California's 2018 submittal concluded that, while California is linked to receptors in Arizona and Colorado with projected air quality problems in 2023, California is not significantly contributing to nonattainment or maintenance problems in any other states.[103] Further, CARB asserted that its emissions reduction programs adequately prohibit the emission of air pollutants for transport purposes, and that California has already adopted and implemented permanent and enforceable measures of sufficient stringency to ensure that the state does not contribute significantly to ozone nonattainment or maintenance problems in downwind states.[104]

III. EPA Evaluation

The EPA is proposing to find that California's 2018 SIP Submittal does not meet the State's obligations with respect to prohibiting emissions that contribute significantly to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other state based on the EPA's evaluation of the SIP submission using the 4-step interstate transport framework, and the EPA is

[85] Id. at A4–48–A4–53.
[86] Id. at A4–54–A4–55.
[87] Id. at A4–54.
[88] Id. at A4–54–A4–55.
[89] Id. at A4–55.
[90] Id.
[91] Id.
[92] Id.
[93] Id., p. A4–55
[94] Id. at A4–56.
[95] Id., p. A4–57
[96] Id.
[97] Id. at A4–58–A4–69.
[98] Id. at A4–59.
[99] Id. at A4–61–A4–67.
[100] Id. at A4–63.
[101] Id. at A4–67–A4–69.
[102] Id. at A4–68.
[103] Id. at A4–72–A4–73.
[104] Id. at A4–73–A4–74.

therefore proposing to disapprove California's 2018 SIP Submittal.

A. Evaluation of California Weight of Evidence Analysis

As an initial matter, the EPA will address CARB's ''WOE analysis'' that included the statement: ''[b]y not promulgating a version of the CSAPR in the West, U.S. EPA could be viewed as tacitly acknowledging a disparity in the significance of interstate transport of ozone between western and eastern states.'' [105] That is an incorrect interpretation. The EPA took comment on including western states in the CSAPR Update, but did not finalize due to the possibility that ''there may be additional factors to consider in the EPA's and state's evaluations'' such as unspecified ''geographically specific factors[.]'' [106] The EPA stated explicitly that even though no western state was included in the CSAPR Update, ''western states are not relieved of their statutory obligation to address interstate transport under the [CAA] section 110(a)(2)(d)(i)(I)'' and that the ''EPA and western states, working together, are continuing to evaluate interstate transport obligations on a case-by-case basis.'' [107]

While the EPA has in limited circumstances found unique issues associated with addressing ozone transport in western states, the EPA has consistently applied the 4-step transport framework in western states and has identified ozone transport problems in the west that are similar to those in the east.[108] For example, in a prior action addressing California's interstate transport obligations for the 2008 ozone NAAQS, the EPA concluded that ''the collective contribution of emissions from upwind states represent a considerable portion of the ozone concentrations at the maintenance receptors in the Denver area.'' [109] Similarly, the EPA's view in acting on Wyoming and Utah's 2008 ozone NAAQS SIP submittals was that ''the air quality problem in [the Denver nonattainment area of Colorado] resulted in part from the relatively small individual contribution of upwind states that collectively contribute a larger portion of the ozone contributions (9.7 percent), comparable to some eastern receptors . . . .'' [110]

The remaining discussion in CARB's WOE analysis is of limited relevance to the question of assessing interstate ozone transport. CARB's description of western geography, settlement patterns, early American expansionist policy, and historically low population density do not overcome the fundamental conclusion from each successive round of EPA modeling, discussed below: California contributes more than 1 percent of the 2015 ozone NAAQS to multiple nonattainment and/or maintenance receptors in other states. As explained in further detail below, the EPA has examined the reliability of its nationwide modeling for characterizing ozone transport in the west and finds that the modeling is reliable. The remainder of CARB's analysis at Steps 3 and 4 is not approvable. CARB did not adequately evaluate additional emissions control opportunities to support its conclusion that emissions from sources in California do not significantly contribute to nonattainment or interfere with maintenance in other States. The EPA acknowledges that California may have one of, if not the, most stringent emissions control strategies in the country, but the state remains obligated to analyze additional control opportunities once a linkage has been established at Steps 1 and 2. Finally, while the EPA approved California's transport SIP submittal for the 2008 ozone NAAQS at Step 3 on the basis that the State's emissions were overall relatively well-controlled, the EPA cannot reach the same conclusion here for the more stringent 2015 ozone NAAQS. In particular, the EPA finds persistent linkages between California and several out of state receptors under the more stringent NAAQS. Further, the EPA finds based on new modeling, see Section III.B. of this document, that the State failed to adequately assess emissions control opportunities at certain non-EGU facilities.

B. Evaluation of Information Provided by California Regarding Step 1 and 2

1. Different Versions of EPA Modeling and Regulatory Flexibility

At Step 1 and 2 of the 4-step interstate transport framework, CARB assessed the EPA modeling released with the January 2017 NODA and the October 2017 memorandum, noting they yielded the same design values to identify nonattainment and maintenance receptors in Colorado and Arizona in 2023.[111] CARB used the EPA's modeling released with the January 2017 NODA and the March 2018 memorandum to identify California's contributions to receptors in Colorado and Arizona, and decided to give more weight to the contribution modeling released with the March 2018 memorandum (which was based on the ''en'' emissions inventory).[112] [113] With regard to the Arizona receptors, CARB compared different versions of the EPA's modeling and noted that California's contribution decreased from the earlier to later modeling versions, while Arizona's own emissions increased. Ultimately, CARB chose to rely on the version of the EPA modeling that identified 2 receptors in Arizona, as well as contributions from California to those receptors above 1 percent of the NAAQS.[114] CARB acknowledged that California is linked to downwind air quality problems in Arizona above the 1 percent of the NAAQS threshold at Step 2.[115]

With regard to receptors in Colorado, CARB likewise compared different versions of the EPA's modeling. Additionally, however, CARB attempted to rely on a potential ''flexibility'' identified in Attachment A to the March 2018 memorandum to exclude exceptional events flagged by Colorado in its Denver Metro/North Front Range attainment SIP submittal for the 2008 ozone NAAQS to revise base year design values. This analysis led CARB to conclude that there will be fewer receptors in Colorado in 2023 than under either the EPA's modeled design values released with the January 2017 NODA or the October 2017 memorandum: Zero nonattainment or maintenance receptors using the January 2017 NODA version of EPA's modeling and the ''el'' emissions inventory, and zero nonattainment and four maintenance receptors using the October 2017 memorandum version of EPA's modeling and the ''en'' emissions inventory.

Nonetheless, CARB's analysis did not conclude that California was not linked below 1 percent of the NAAQS to the

[105] Id. at A4–62.

[106] 81 FR 74503, 74523.

[107] Id.

[108] See 81 FR 31513 (May 19, 2016) (Arizona); 83 FR 65093 (December 19, 2018) (California); 85 FR 26361 (May 4, 2020) (New Mexico); 81 FR 71991 (Oct. 19, 2016) (Utah prong 2); 82 FR 9155 (February 3, 2017) (Utah prong 1); 84 FR 14270 (April 10, 2019) (Wyoming).

[109] 83 FR 5381 (February 7, 2018). See also 82 FR 9155, 9157 (February 3, 2017).

[110] See 84 FR 3389, 3391 (Feb. 12, 2019). See also 81 FR 71991, 71994–95 (Oct. 19, 2016); 81 FR 28807, 28810 (May 10, 2016) (Colorado receptors are impacted by interstate transport where total upwind state contribution is 11 percent of the total ozone concentration and five states were projected to be linked).

[111] Id. at A4–11 and Table 1.

[112] Id. at A4–33. A4–34, A4–36.

[113] As explained in Section I, the October 2017 memorandum provided projected ozone design values for 2023. The data released in the March 2018 memorandum built off the information provided in the October 2017 memorandum by including contribution data to assist states in the development of their interstate transport SIPs for the 2015 ozone NAAQS.

[114] Id. at A4–44.

[115] Id.

four maintenance sites it identified in Colorado. On the contrary, CARB acknowledged that it chose to rely on the EPA modeling released with the October 2017 memorandum (using the ''en'' emissions inventory) and that California was linked to four maintenance receptors in Colorado using that version of the modeling, even after CARB removed flagged data.[116]

As explained in Section I.D. above, the concepts presented in Attachment A to the March 2018 memorandum were neither guidance nor determined by the EPA to be consistent with the CAA. The EPA made clear at the time that it would thoroughly review the technical and legal justifications states put forward in relying on any concepts from Attachment A to the March 2018 memorandum. In this case, what CARB proposes is potentially consistent with the EPA's modeling guidance, insofar as the EPA has recognized that it may be appropriate to exclude certain flagged data associated with atypical events (*e.g.,* wildfires) when calculating base period design values to project to a future year. However, CARB's removal of atypical data did not change its conclusion that there are receptors in Colorado in 2023 and that California contributes above 1 percent of the NAAQS to one or more of them.[117]

2. Wildfires

In response to California's claim that recorded violations at projected receptors in both Colorado and Arizona are heavily influenced by wildfires experienced in western states, the EPA acknowledges that wildfires could influence downwind pollutant concentrations and that it is likely that wildfires would occur in 2023 and future years. However, there is no way to accurately forecast the timing, location, and extent of fires across a future three-year period that would be used to calculate ozone design values. In the EPA's CSAPR Update Modeling provided in the March 2018 memorandum and in the EPA's 2016v2 emissions platform based modeling, the EPA held the meteorological data and the fire and biogenic emissions constant at base year levels in the future year modeling, as those emissions are highly-correlated with the meteorological conditions in the base year.

CARB'sanalysis focused on changes in air quality projections at receptors after removing data associated with atypical events (*e.g.,* wildfires) and questioned whether the number of receptors would be diminished or be nonexistent by 2023 if those data were removed. However, we note that measured design values at the identified Colorado and Arizona receptors continue to have design values well in excess of the 2015 ozone NAAQS, as shown in Tables 3 and 4 below.[118]

TABLE 3—OZONE DESIGN VALUES FOR DENVER NONATTAINMENT AREA MONITORS [119]

AQS site ID	State	County	2014–2016 Design value (ppb)	2015–2017 Design value (ppb)	2016–2018 Design value (ppb)	2017–2019 Design value (ppb)	2018–2020 Design value (ppb)
80013001	Colorado	Adams	67	67	67	65	69
80050002	Colorado	Arapahoe			73	74	77
80050006	Colorado	Arapahoe	67	67	69	69	71
80310002	Colorado	Denver	66	68	69	68	70
80350004	Colorado	Douglas	77	77	78	78	81
80590005	Colorado	Jefferson	72	75	72	71	71
80590006	Colorado	Jefferson	77	77	78	76	79
80590011	Colorado	Jefferson	80	79	79	76	80
80690007	Colorado	Larimer	69	68	70	68	70
80690011	Colorado	Larimer	75	75	77	75	75
80691004	Colorado	Larimer	70	68	69	67	67

TABLE 4—OZONE DESIGN VALUES FOR SELECTED ARIZONA MONITORS [120] [121]

AQS site ID	State	County	2014–2016 Design value (ppb)	2015–2017 Design value (ppb)	2016–2018 Design value (ppb)	2017–2019 Design value (ppb)	2018–2020 Design value (ppb) [b]
04–013–0019	Arizona	Maricopa	73	74	74	73	74
04–013–1004	Arizona	Maricopa	75	75	76	75	78
40278011	Arizona	Yuma	74	72	71	71	68

While elevated ozone levels in some instances may be associated with wildfires or other atypical events, presently neither Arizona or Colorado have sought, nor has the EPA concurred on, exceptional events demonstrations that would indicate official design values at these monitors should be appreciably lower than presently reported.

3. Back Trajectory Analysis

For both Colorado and Arizona, CARB analyzed HYSPLIT back trajectories, but these also did not affect CARB's conclusions regarding California's linkages to downwind monitors.

[116] A4–33, A4–34.

[117] Id. at A4–44.

[118] In addition, the EPA's most recent modeling identifies receptors in 2023 in Utah, Nevada, and on tribal lands. Yuma, Arizona is also identified as a receptor in EPA's most recent modeling, while the Phoenix area no longer has receptors and now has a longer timeframe for attainment due to proposed changes in nonattainment classification. Projections for receptors that the EPA's most recent modeling identifies are provided later in this notice in Table 5.

[119] Historic design values at individual monitoring sites nationwide are provided in the file: 2010–2020 Design Values.xlsx which is included in docket ID No. EPA–HQ–OAR–2021–0663. Design value reports can also be obtained on EPA's website at *https://www.epa.gov/air-trends/air-quality-design-values.*

[120] Design values obtained from *https://www.epa.gov/air-trends/air-quality-design-values,* April 21, 2022.

[121] CARB presented data for these two Maricopa County monitors in its submittal. Those monitors are no longer projected to be receptors in the EPA's most recent modeling. However, Yuma, Arizona, along with monitors in Utah, Nevada, and on tribal land, as described in Table 5 of this notice, are still projected to be receptors.

HYSPLIT back trajectory analyses use archived meteorological modeling that includes actual observed data (surface, upper air, airplane data, etc.) and modeled meteorological fields to estimate the most likely route of an air parcel transported to a receptor at a specified time. The method essentially follows a parcel of air backward in hourly steps for a specified length of time. HYSPLIT estimates the central path in both the vertical and horizontal planes. The HYSPLIT central path represents the centerline with the understanding that there are areas on each side horizontally and vertically that also contribute to the concentrations at the end point. The horizontal and vertical areas that potentially contribute to concentrations at the endpoint grow wider from the centerline the further back in time the trajectory goes. Therefore, a HYSPLIT centerline does not have to pass directly over emissions sources or emission source areas but merely relatively near emission source areas for those areas to contribute to concentrations at the trajectory endpoint. The EPA relies on back trajectory analysis as a corollary analysis along with observation-based meteorological wind fields at multiple heights to examine the general plausibility of the photochemical model ''linkages.'' Because the back trajectory calculations do not account for any air pollution formation, dispersion, transformation, or removal processes as influenced by emissions, chemistry, deposition, etc., the trajectories cannot be used to develop quantitative contributions. Therefore, back trajectories cannot be used to quantitatively evaluate the magnitude of the existing photochemical contributions from upwind states to downwind receptors. In this regard, photochemical modeling simulations for ozone interstate transport assessments are relied upon by the EPA to simulate the formation and fate of oxidant precursors, primary and secondary particulate matter concentrations, and deposition over regional and urban spatial scales. Photochemical modeling is the most sophisticated tool available to estimate future ozone levels and contributions to those modeled future ozone levels. Consideration of the different processes that affect primary and secondary pollutants at the regional scale in different locations is fundamental to understanding and assessing the effects of emissions on air quality concentrations.

CARB's HYSPLIT back trajectory analysis showed that on high ozone days in Colorado at the receptors identified by the EPA in the March 2018 memorandum ''only one backward and forward trajectory pairing indicated that emissions in the California mixed layer should have reached the mixed layer at a Colorado receptor site.'' CARB claims this suggests that ''the complexity of the physical environment between California and Colorado limits the reproducibility of modeled transport and that considerable multi-faceted analyses would be necessary to explore transport mechanisms through areas of complex terrain.'' [122] For Arizona, CARB concluded that ''[o]nly a few trajectories extend from California'' to the Phoenix area.[123] CARB's trajectory analysis confirmed that California is an upwind area for the receptors in Colorado and Arizona often enough to potentially contribute to nonattainment or interfere with maintenance. The analysis did not provide evidence that was contrary to the conclusions of the EPA's photochemical modeling analyses (*i.e.,* the EPA's modeling results in the March 2018 memorandum and EPA 2016v2 model).

Further, the EPA finds CARB's back trajectory analysis to be deficient in proving that California does not contribute significantly to nonattainment or maintenance at the monitors in Colorado that the State was linked to in the EPA's modeling results in the March 2018 memorandum. CARB's back trajectory analysis for Colorado shows a linkage between California and the monitors when evaluating three altitudes: 10 meters, 1,000 meters, and 2,000 meters, during June and July, when most exceedances occurred at these sites. By only evaluating these altitudes, CARB neglects to consider the wide range of heights that might show back trajectories leading back to sources in California, which could potentially further tie the state to more ozone exceedance events. In addition, by excluding trajectories with a centerline above the mixed layer the analysis fails to consider transported pollutants at elevations below the centerline which may be in the mixed layer and therefore impact ground level ozone concentrations.

Similarly for its analysis of Arizona linkages, CARB's back trajectory analysis shows a linkage between California and the monitors when evaluating three altitudes: 100 meters, 500 meters, and 1,000 Meters on ozone exceedance days in 2015 and 2016. CARB's back trajectories for Arizona use a relatively short 24-hour time period, which limits their reliability for evaluating long-distance transport of emissions. As evident from Figure 5 in CARB's SIP submission, there were a number of exceedance days in Phoenix with 24-hour back trajectories that point westward toward California. These trajectories may have crossed portions of California if the trajectories were calculated for a longer time period, such as 48 hours. This would further strengthen the linkage to California that is already indicated by CARB's analysis.

In California's 2018 submittal, CARB noted that projected 2023 DVs in Denver and Phoenix increased from the ''el'' modeling released in the January 2017 NODA and the ''en'' modeling released in the October 2017 memorandum. For Denver, CARB noted that there were three 2023 receptors, all maintenance-only, based on the ''el'' modeling, whereas with the ''en'' modeling projected three monitors to be nonattainment and three monitors to be maintenance-only. For Phoenix, CARB noted that there were no receptors projected for 2023 based on the ''el'' modeling, whereas with the ''en'' modeling, two monitors are projected to be maintenance-only. Based on an analysis of the change in ''home state'' emissions and contributions vs contributions and emissions from California in the ''el'' modeling vs the ''en'' modeling, CARB argues that the nonattainment and maintenance receptors found in the ''en'' modeling in Denver and Phoenix are due to increases in emissions in the ''home state'' rather than contributions from California.

With respect to the information California provided that is related to local emissions and the impact on air quality at the Denver nonattainment area receptors, this information is insufficient to approve California's 2018 SIP submittal. As an initial matter, we do not agree with CARB's conclusions that the remaining nonattainment or maintenance problems in Arizona or in Colorado (after accounting for flagged data) should be ascribed solely to an increase in local emissions in the home state. While CARB asserts that its relative contribution to the problems has declined, CARB does not establish with any quantitative evidence that this contribution drops below 1 percent of the NAAQS.

More fundamentally, regardless of whether local emissions are the largest contributor to a specific nonattainment or maintenance receptor, the good neighbor provision requires that upwind states prohibit emissions that contribute significantly to nonattainment or interfere with maintenance of the NAAQS in downwind states. The EPA

[122] Id. at A4–18, A4–34.

[123] Id. at A4–39, A4–40 Figure 5.

evaluates a state's obligations to eliminate interstate transport emissions under the interstate transport provision according to the EPA's 4-step process, and the EPA's updated modeling at Steps 1 and 2 has identified a linkage between emission from California sources and downwind nonattainment and maintenance receptors.

Further, the EPA disagrees with the implication that local emissions reductions from the jurisdiction where the downwind receptor is located must first be implemented and accounted for before imposing obligations on upwind states under the interstate transport provision. There is nothing in the CAA that supports that position, and it does not provide grounds on which to approve California's 2018 SIP submittal. The D.C. Circuit has held on five different occasions that the timing framework for addressing interstate transport obligations must be consistent with the downwind areas' attainment schedule. In particular, for the ozone NAAQS, the states and the EPA are to address interstate transport obligations ''as expeditiously as practicable'' and no later than the attainment schedule set in accordance with CAA section 181(a). See *North Carolina,* 531 F.3d at 911–13; *Wisconsin,* 938 F.3d at 313–20; *Maryland,* 958 F.3d at 1204; *New York* v. *EPA,* 964 F.3d 1214, 1226 (D.C. Cir. 2020); *New York* v. *EPA,* 781 Fed. App'x 4, 6–7 (D.C. Cir. 2019). The court in *Wisconsin* explained its reasoning in part by noting that downwind jurisdictions often may need to heavily rely on emissions reductions from upwind states in order to achieve attainment of the NAAQS, 938 F.3d at 316–17; such states would face increased regulatory burdens including the risk of bumping up to a higher nonattainment classification if attainment is not reached by the relevant deadline. *Maryland,* 958 F.3d at 1204. The statutory framework of the CAA and these cases establish clearly that states and the EPA must address interstate transport obligations in line with the attainment schedule provided in the Act in order to timely assist downwind states in attaining and maintain the NAAQS, and this schedule is ''central to the regulatory scheme.'' *Wisconsin,* 938 F.3d at 316 (quoting *Sierra Club* v. *EPA,* 294 F.3d 155, 161 (D.C. Cir. 2002)).

Additionally, the 2018 SIP submittal does not assess whether California's own emissions contributed to nonattainment or interfered with maintenance at the linked receptors, or substantiate that emissions from California's sources were not interacting with these monitors. Consequently, the application of local emission reduction measures does not absolve upwind states and sources from the responsibility of addressing their significant contribution. Moreover, California still has an obligation under the Act to address its downwind contribution to ozone nonattainment or interference with maintenance regardless of the emission reduction potential for local control measures. Furthermore, given that the EPA's updated modeling indicates that California is linked to nonattainment and maintenance receptors at Step 2, the EPA disagrees with CARB's claims regarding the application of local emission reduction measures with respect to its downwind linkages in the most recent modeling.

CARB presents a number of arguments that the unique topography and/or meteorology in the western region and, in particular, in and surrounding the Denver and Phoenix nonattainment areas support a conclusion that California does not significantly contribute or interfere with maintenance in those areas. For example, CARB argues that the mountainous topography in California traps ozone-precursors in-state, and that the Rocky Mountains in Colorado and the mountains around Phoenix, Arizona also form barriers to the transport of ozone pollution.[124] First, we note that despite these potential considerations, CARB itself acknowledges in its 2018 submittal that California is linked to at least some receptors in Colorado and Arizona at Step 2 based on the modeling analysis on which it primarily relies. Second, even if CARB intended these arguments to support an alternative argument that it is not linked to those receptors, the EPA finds that these entirely qualitative discussions are insufficient to overcome the robust, quantitative basis to find linkages exist based on the modeling.

We agree with CARB that the terrain in the western U.S. is complex. A complex topography can have a number of impacts on the transport of air and air pollutants, such as enhance vertical mixing of air, serve as a barrier to transported air pollution, enhance accumulation of local emissions in basins and valleys, and influence air flows up, down, and across valleys. While topography can have a significant effect on pollutant (*e.g.,* ozone) formation and transport, it does not prevent transport within the State and beyond. Mountain passes through surrounding ranges can serve as ''transport corridors'' for ozone. For example, in Southern California, areas where upwind pollution is funneled through valley topography experience some of the highest measured ozone concentrations, despite lower local emissions.

In Southern California there are several examples of transport corridors that funnel ozone and ozone precursors. The Riverside County (Coachella) 2015 8-hour ozone NAAQS design value for 2020 was 88 ppb. The area is affected by transported emissions from the South Coast Air Basin through the San Gorgonio Pass.[125] Similarly, the Kern County (Eastern Kern), CA 2015 8-hour ozone NAAQS design value for 2020 was 86 ppb and is primarily influenced by emissions transported from the San Joaquin Valley through the Tehachapi Pass.[126] [127] Ozone and its precursors can be transported into the southern Mojave Desert Air Basin from the greater Los Angeles Air Basin through the Cajon Pass. Ozone can also be transported eastward to the Salton Sea Air Basin through the San Gorgonio Pass and from the San Diego Air Basin through other mountain passes continuing into Arizona. In addition to transport within the mixed layer, orographic lifting of ozone from the surface to the free troposphere by the so called ''mountain chimney effect'' is a potential additional pathway for venting of pollutants into the free troposphere and making them available for long-range transport to downwind states (Langford *et. al.,* 2010 and Li et. al., 2015).[128] [129] While Southern California offers evidence of funneling of pollution through mountain passes and upwelling of pollution into troposphere, we have no reason to conclude these effects could

[124] See, *e.g.,* A4–13–14.

[125] Final 2016 Air Quality Management Plan, at 7–23, South Coast Air Quality Management District, March 2017.

[126] Historic design values at individual monitoring sites nationwide are provided in the file: 2010–2020 Design Values.xlsx that is included in docket ID No. EPA–HQ–OAR–2021–0663. Design value reports can also be obtained on EPA's website at *https://www.epa.gov/air-trends/air-quality-design-values.*

[127] See ''CALIFORNIA Final Area Designations for the 2015 Ozone National Ambient Air Quality Standards Technical Support Document (TSD)'' at pg 67, 178; available in docket ID No. EPA–HQ–OAR–2017–0548 (83 FR 25776, April 30, 2018). Also available on EPA's website at *https://www.epa.gov/sites/default/files/2018-05/documents/ca_tsd_combined_final_0.pdf.*

[128] Langford, A., Senff, C., Alvarez, R., Banta, R., Hardesty, R.: Long-range transport of ozone from the Los Angeles Basin: A case study, J. Geophys. Res., 37, L06807, doi:10.1029/2010GL042507.

[129] Li, J., Georgescu, M., Hyde, P., Mahalov, A., and Moustaoui, M.: Regional-scale transport of air pollutants: Impacts of Southern California emissions on Phoenix ground-level ozone concentrations, Atmos. Chem. Phys., 15, 9345–9360, *https://doi.org/10.5194/acp-15-9345-2015*, 2015.

not occur in the Sierra Nevada Mountains and the Denver Metro/North Front Range.

The EPA has previously explained that its nationwide photochemical grid modeling is reliable for applications in the western region of the U.S. In disapproving Utah's 2008 ozone transport SIP submittal for prong 2, the EPA rejected comments that its CAMx modeling (the same modeling software used here) did not account for unique western geographical considerations. See 81 FR 71991, 71992–93 (Oct. 19, 2016). In particular, the EPA noted that the modeling accounted for differences in emissions (including wildfires), meteorology, and topography'' across all regions of the U.S. *Id.* at 71993. The EPA found that neither the commenters, nor the state in its SIP submittal, had adduced any additional factors that would be relevant for projecting ozone concentrations in the west that were not already factored into and documented in both the modeling itself and in the EPA's technical support documents explaining that modeling. *Id.* The same holds true here. As explained in Appendix A of the Air Quality Modeling TSD included in docket ID No. EPA–HQ–OAR–2021–0663, the EPA has found that its updated 2016v2 emissions platform-based modeling performs equally as well in eastern and western regions in terms of replicating the relative magnitude of concentrations and day-to-day variability that are characteristic of observed 8-hour daily maximum ozone concentrations in each region. It is also important to note that the model accurately captures substantial geographical difference in the temporal nature of ozone concentrations at the receptors in the west, including in the Denver nonattainment area, compared to receptors in the East.[130] The EPA continues to find its modeling reliable for characterizing ozone concentrations and contribution values in the western region of the United States. As such, CARB's qualitative discussions of western geography fail to present evidence that calls into question the results of the EPA's photochemical grid modeling.

C. Results of the EPA's Step 1 and Step 2 Modeling and Findings for California

As described in section I, the EPA performed air quality modeling using the 2016v2 emissions platform to project design values and contributions for 2023. These data were examined to determine if California contributes at or above the threshold of 1 percent of the 2015 8-hour ozone NAAQS (0.70 ppb) to any downwind nonattainment or maintenance receptor. As shown in Table 3, the data[131] indicate that in 2023, emissions from California contribute greater than 1 percent of the standard (*i.e.,* 0.70 ppb) to nonattainment or maintenance-only receptors in Arizona, Colorado, Nevada, and Utah.[132] Emissions from California also contribute greater than 1 percent of the standard to nonattainment receptors on, or representative of, the Morongo and Pechanga reservations.[133]

Therefore, based on the EPA's evaluation of the information submitted by California, and based on the EPA's most recent modeling results for 2023, the EPA proposes to find that California is linked at Steps 1 and 2 and has an obligation to assess potential emissions reductions from sources or other emissions activity at Step 3 of the 4-step framework.

TABLE 5—CALIFORNIA LINKAGE RESULTS BASED ON EPA UPDATED 2023 MODELING

Receptor ID	Location	Nonattainment/ maintenance	2023 Average design value (ppb)	2023 Maximum design value (ppb)	California contribution (ppb)
40278011	Yuma (AZ)	Maintenance-only	70.5	72.2	5.09
80350004	Denver/Chatfield (CO)	Nonattainment	71.7	72.3	0.91
80590006	Rocky Flats (CO)	Nonattainment	72.6	73.3	1.03
80590011	Denver/NREL (CO)	Nonattainment	73.8	74.4	1.17
320030075	Las Vegas/Northwest (NV)	Maintenance-only	70.0	71.0	7.44
490110004	SLC/Bountiful (UT)	Nonattainment	72.9	75.1	2.25
490353006	SLC/Hawthorne (UT)	Nonattainment	73.6	75.3	2.46
490353013	SLC/Herriman (UT)	Nonattainment	74.4	74.9	1.42
490570002	SLC/Ogden (UT)	Maintenance-only	70.6	72.5	2.24
490571003	SLC/Harrisonville (UT)	Maintenance-only	70.5	71.5	2.16
060651016	Morongo Band of Mission Indians	Nonattainment	89.8	90.9	34.24
060650016	Pechanga Band of Mission Indians (represented by Temecula (CA)).	Nonattainment	72.0	72.9	26.32

[130] See Appendix A—Model Performance Evaluation for 2016v2 Base Year CAMx Simulation, of Air Quality Modeling TSD for 2015 Ozone NAAQS Transport SIP Proposed Actions, at A–10.

[131] Design values and contributions at individual monitoring sites nationwide are provide in the file: 2016v2_DVs_state_contributions.xlsx which is included in docket ID No. EPA–HQ–OAR–2021–0663.

[132] These modeling results are consistent with the results of a prior round of 2023 modeling using the 2016v1 emissions platform which became available to the public in the fall of 2020 in the Revised CSAPR Update, as noted in Section I. That modeling showed that California had a maximum contribution greater than 0.70 ppb to at least one nonattainment or maintenance-only receptor in 2023. These modeling results are included in the file ''Ozone Design Values and Contributions Revised CSAPR Update.xlsx'' in docket EPA–HQ–OAR–2021–0663.

[133] We note that, consistent with the EPA's prior good neighbor actions in California, the regulatory ozone monitor located on the Morongo Band of Mission Indians (''Morongo'') reservation is a projected downwind receptor in 2023. See monitoring site 060651016 in Table 3. We also note that the Temecula, California regulatory ozone monitor is a projected downwind receptor in 2023 and in past regulatory actions has been deemed representative of air quality on the Pechanga Band of Luiseño Indians (''Pechanga'') reservation. See, *e.g.,* Approval of Tribal Implementation Plan and Designation of Air Quality Planning Area; Pechanga Band of Luiseño Mission Indians, 80 FR 18120, at 18121–18123 (April 3, 2015); see also monitoring site 060650016 in Table 3. The presence of receptors on, or representative of, the Morongo and Pechanga reservations does not trigger obligations for the Morongo and Pechanga Tribes. Nevertheless, these receptors are relevant to the EPA's assessment of any linked upwind states' good neighbor obligations. See, *e.g.,* Approval and Promulgation of Air Quality State Implementation Plans; California; Interstate Transport Requirements for Ozone, Fine Particulate Matter, and Sulfur Dioxide, 83 FR 65093 (December 19, 2018). Under 40 CFR 49.4(a), tribes are not subject to the specific plan submittal and implementation deadlines for NAAQS-related requirements, including deadlines for submittal of plans addressing transport impacts.

Based on the EPA's evaluation of the information provided in California's 2018 submittal and based on the results of the EPA's 2016v2 emissions platform modeling, the EPA will proceed to evaluate these additional arguments at Step 3 of the 4-step interstate transport framework.

D. Evaluation of Information Provided Regarding Step 3

At Step 3 of the 4-step interstate transport framework, a state's emissions are further evaluated, in light of multiple factors, including air quality and cost considerations, to determine what, if any, emissions significantly contribute to nonattainment or interfere with maintenance and, thus, must be eliminated under CAA section 110(a)(2)(D)(i)(I).

To effectively evaluate which emissions in the state should be deemed ''significant'' and therefore prohibited, states generally should prepare an accounting of sources and other emissions activity for relevant pollutants and assess potential, additional emissions reduction opportunities and resulting downwind air quality improvements. The EPA has consistently applied this general approach (*i.e.,* Step 3 of the 4-step interstate transport framework) when identifying emissions contributions that the Agency has determined to be ''significant'' (or interferes with maintenance) in each of its prior federal, regional ozone transport rulemakings, and this interpretation of the statute has been upheld by the Supreme Court. See *EME Homer City,* 572 U.S. 489, 519 (2014). While the EPA has not directed states that they must conduct a Step 3 analysis in precisely the manner the EPA has done in its prior regional transport rulemakings, state implementation plans addressing the obligations in CAA section 110(a)(2)(D)(i)(I) must prohibit ''any source or other type of emissions activity within the State'' from emitting air pollutants which will contribute significantly to downwind air quality problems. Thus, states must complete something similar to the EPA's analysis (or an alternative approach to defining ''significance'' that comports with the statute's objectives) to determine whether and to what degree emissions from a state should be ''prohibited'' to eliminate emissions that will ''contribute significantly to nonattainment in, or interfere with maintenance of'' the NAAQS in any other state. California did not conduct such an analysis in its 2018 SIP Submittal.

As previously indicated in section II.B. California's 2018 SIP Submittal provided an overview of NO_X emissions by sector for 2011 NEI emissions and 2023 projections. CARB also provided a summary of regulations controlling NO_X and VOCs at the state and district level for various sectors, many of which had been approved into California's SIP. CARB asserted in the 2018 Submittal that, despite its contributions, California had met its good neighbor obligations through the implementation and enforcement of stringent NO_X and VOC control measures that go beyond the EPA's presumptive cost threshold in the CSAPR Update for highly cost-effective emissions reductions, and through the ongoing adoption and revision of additional control measures to further ensure the reduction of ozone in both California and downwind areas.

CARB, however, did not provide an adequate demonstration at Step 3 that California was adequately controlling its emissions for the purposes of the good neighbor provision for the 2015 ozone NAAQS, particularly because CARB acknowledged in its 2018 SIP Submittal that its emissions were linked to Arizona and Colorado receptors at Steps 1 and 2. In general, the air quality modeling that the EPA has conducted as well as the modeling relied on by CARB in its submittal already account for ''on-the-books'' emissions control measures. Both sets of modeling analyzed by CARB (confirmed by the EPA's most recent modeling) clearly establish continued linkages from California to downwind receptors in 2023 at Steps 1 and 2. In general, the listing of existing or on-the-way control measures, whether approved into the state's SIP or not, does not substitute for a complete Step 3 analysis under the EPA's 4-Step framework to define ''significant contribution.'' [134] CARB's submittal does not include an assessment of the overall effects of the identified control measures it identifies or explain what the overall resulting air quality effects would be at identified out-of-state receptors.

Further, CARB did not conduct in its submittal any analysis of potential additional emissions-reduction measures to further reduce its impact on the identified downwind receptors. For example, CARB did not include in the 2018 SIP Submittal an accounting of facilities in the State along with an analysis of potential NO_X emissions control technologies, their associated costs, estimated emissions reductions, and downwind air quality improvements. Nor does the submittal include an analysis of whether such potential additional control technologies or measures could reduce the impact of California's emissions on out of state receptors. Though there is not a prescribed method for a Step 3 analysis, the EPA has consistently applied Step 3 of the good neighbor framework through a more rigorous evaluation of potential additional control technologies or measures than what was provided in the SIP submission. Identifying a range of various emissions controls measures that have been or may be enacted at the state or local level, without analysis of the impact of those measures on the out of state receptors, is not analytically sufficient.

CARB did not offer an explanation as to whether any more stringent emissions reductions that may be available were prohibitively costly or infeasible. CARB did note that the EPA's 2016 cost-effectiveness analysis of EGU emission reductions in the CSAPR Update for the 2008 ozone NAAQS found that NO_X emission reductions at California EGUs would be achieved at a significantly higher cost threshold than the cost threshold finalized for the states ultimately included in the CSAPR Update. CARB further stated that what the ''EPA found true with respect to the 0.075 ppm 8-hour ozone standard is equally valid concerning the 0.070 ppm 8-hour ozone standard. California's emission reduction programs adequately prohibit the emission of air pollutants in amounts that will significantly contribute to nonattainment, or interfere with maintenance, of the 0.070 ppm 8-hour ozone standard in any downwind state.'' [135]

However, this is incorrect. There is no reason to suppose that the EPA or states should conclude that the same degree of emissions-control stringency that was deemed approvable to address good neighbor obligations to meet a less stringent NAAQS should apply to a more stringent NAAQS. While the EPA has not finalized a benchmark cost-effectiveness threshold for good neighbor obligations for the more stringent 2015 ozone NAAQS, it was not the EPA's obligation to do so prior to states developing their SIP submissions.[136] CARB, in its 2018 SIP

[134] See discussion further in this Section discussing why EPA finds its analysis in the approval of California's 2008 ozone NAAQS transport SIP to be appropriate or sufficient for purposes of this action.

[135] Id. at A4–57.

[136] The EPA notes that it has proposed a cost-effectiveness threshold of $11,000 per ton for EGUs in determining good neighbor obligations for the 2015 ozone NAAQS after assessing the full range of NO_X mitigation strategies that could be applied to fossil-fuel fired EGUs. ''Federal Implementation

Submittal, has not conducted an analysis to establish one for the EPA to evaluate, and this is grounds for disapproval.

More fundamentally, relying on the CSAPR Update's (or any other CAA program's) determination of cost-effectiveness without further Step 3 analysis is insufficient. Cost-effectiveness must be assessed in the context of the specific CAA program; assessing cost-effectiveness in the context of interstate ozone transport should reflect a more comprehensive evaluation of the nature of the interstate transport problem, the total emissions reductions available at several cost thresholds, and the air quality impacts of the reductions at downwind receptors. While the EPA has not finalized a benchmark cost-effectiveness value for the 2015 ozone NAAQS interstate transport obligations, because the 2015 ozone NAAQS is a more stringent and more protective air quality standard, it is reasonable to expect control measures or strategies to address interstate transport of ozone to reflect higher marginal control costs. As such, the marginal cost threshold of $1,400 per ton for the CSAPR Update (which addresses the 2008 ozone NAAQS and is in 2011$) is not an appropriate cost threshold and cannot be approved as a benchmark to use for interstate transport SIP submissions for the 2015 ozone NAAQS.

Although the EPA acknowledges states are not necessarily bound to follow the EPA's own analytical framework at Step 3, CARB did not attempt to determine or justify an appropriate uniform cost-effectiveness threshold. This would have been similar to the approach to defining significant contribution that the EPA has applied in prior rulemakings such as CSAPR and the CSAPR Update, even if conducting precisely this type of analysis is not technically mandatory. For example, CARB did not conduct its own updated EGU analysis of all large NO_X emitting EGUs. Nonetheless, the EPA finds based on its own analysis that additional emissions reductions are not required from EGUs to address California's good neighbor obligations for the 2015 ozone NAAQS.[137]

As stated in the SIP submittal, the Greenleaf One unit emits at higher rates with a low utilization, resulting in only 2 tons of NO_X in the 2021 ozone season. Therefore, the EPA agrees it is unlikely that any significant cost-effective emission reduction opportunities exist at this facility. In addition, California has highlighted the retirements of the Redondo Beach units and the ACE Cogeneration facility. The EPA has confirmed the retirements of these and other units in California in the IPM version 6—Summer 2021 Reference Case database.[138] The EPA IPM version 6—Summer 2021 Reference Case uses the National Electric Energy Data System (NEEDS) v6 database as its source for data on all existing and planned-committed units. Units are removed from the NEEDS inventory only if a high degree of certainty could be assigned to future implementation of the announced future closure or retirement. The available retirement-related information was reviewed for each unit, and the following rules are applied to remove:

(i) Units that are listed as retired in the December 2020 EIA Form 860M;

(ii) Units that have a planned retirement year prior to June 30, 2023 in the December 2020 EIA Form 860M;

(iii) Units that have been cleared by a regional transmission operator (RTO) or independent system operator (ISO) to retire before 2023, or whose RTO/ISO clearance to retire is contingent on actions that can be completed before 2023;

(iv) Units that have committed specifically to retire before 2023 under federal or state enforcement actions or regulatory requirements;

(v) And finally, units for which a retirement announcement can be corroborated by other available information. Units required to retire pursuant to enforcement actions or state rules on July 1, 2023 or later are retained in NEEDS v6.

The majority of the EGUs in California have emissions controls and are sufficiently regulated, resulting in the lowest fossil fuel emission rate and highest share of renewable generation among the 26 states examined at the EPA's Step 3 analysis for the proposed Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard. 87 FR 20036, 20088. The EPA evaluated the EGU sources within the state of California and found there were no covered coal steam sources greater than 100 MW that would have emissions reduction potential according to the EPA's assumed EGU SCR retrofit mitigation technologies. The NO_X emission level for California was unchanged at 1,216 tons of NO_X across the various emission control scenarios. The EPA's Step 3 analysis, including analysis of the emissions reduction factors from EGU sources in the state, therefore resulted in no additional emission reductions required to eliminate significant contribution from any EGU sources in California.

The EPA proposes that California's Step 3 analysis was likewise insufficient for non-EGU stationary sources. But whereas EPA is able to conclude, based on the foregoing analysis, that additional emissions reductions are not required from EGU sources in California, we can reach no such conclusion with respect to other industrial sources of emissions in the State. For non-EGUs, CARB did not complete an evaluation of cost effective control opportunities, and instead simply provided a cursory analysis that provided a few examples of regulations to conclude that ''further emission controls would be unlikely to reduce any potential impact on downwind states' air quality[.]'' [139] CARB did not investigate additional potential emissions control opportunities, or their costs or impacts, or attempt to analyze whether, if applied more broadly across linked states, the emissions reductions would constitute the elimination of significant contribution on a regional scale.

The EPA acknowledges that it has previously approved California's 2008 ozone NAAQS transport SIP at Step 3 based on a relatively cursory review of California's existing emissions control programs. See 83 FR 65093, 65094–95 (Dec. 19, 2018). That approval pre-dates the D.C. Circuit's decision in *Wisconsin* v. *EPA,* 938 F.3d 903 (D.C. Cir. 2019), in which the court found the EPA had not properly justified failing to analyze emissions reduction opportunities from industrial sources outside the power

Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard'' 87 FR 20036, 20091–93 (April 6, 2022). While this does not represent a final promulgated cost-effectiveness benchmark for EGUs that California is expected to have applied, the EPA's Step 3 analysis in the proposed FIP indicates the relative paucity of analysis in California's SIP submittal regarding emissions control opportunities at Step 3. Nonetheless, the EPA has not proposed to apply the EGU control strategy in its proposed FIP action to California. See id. at 20088. The EPA continues to find in this proposal that California's EGUs are sufficiently controlled for ozone-precursor emissions for purposes of good neighbor obligations under the 2015 ozone NAAQS.

[137] The EPA reached this proposed conclusion for EGUs in California in the context of a recent proposed federal implementation plan and proposes the same conclusions for these sources in this action. *See* ''Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard,'' 87 FR 20036, 20088 (April 6, 2022).

[138] The ''Capacity Dropped'' and the ''Retired Through 2023'' worksheets in NEEDS list all units that are removed from the NEEDS v6 inventory—NEEDS v6 Summer 2021 Reference Case. This data can be found on the EPA's website at: *https://www.epa.gov/airmarkets/national-electric-energy-data-system-needs-v6.*

[139] Id. at A4–55.

sector. *Id.* at 918–20. At that time, the CSAPR Update had only addressed reductions from the power sector and applied a cost threshold of $1400 per ton. The EPA's analysis of California focused on the fact that California's EGU fleet was very well controlled and that all receptors for the 2008 ozone NAAQS were projected to be clean by 2023. 83 FR 65093, 65095. The EPA engaged in an extremely limited review of other emissions control opportunities in California at non-EGU industrial sources, despite acknowledging that these sources emitted 6.7 times as much NO_X as EGUs, and 19 large stationary sources each individually emitted over 500 tons per year. *Id.*

The EPA finds that good reasons exist for no longer considering such a cursory analysis of emissions reduction opportunities beyond the power sector to be adequate for purposes of CAA section 110(a)(2)(D)(i)(I). First, the EPA and the states are implementing the more stringent 2015 ozone NAAQS of 70 ppb. Under that more stringent NAAQS, our analysis at Steps 1 and 2 indicates a continuing linkage between California's emissions and persistent air quality problems (at least through 2026) in other states in the EPA's modeling. Further, while California may be relatively ''well controlled'' as a state overall on a per capita basis, the same could be said of other states throughout the country that continue to contribute above 1 percent of the NAAQS to at least one out of state receptor despite relatively stringent ozone-precursor emissions control programs. In the CSAPR Update and the Revised CSAPR Update, the EPA has found that states such as New York and New Jersey may nonetheless be found to have additional emissions control obligations in order to address their significant contribution under Section 110(a)(2)(D)(i)(I).[140] Further, the relevance of a per capita emissions rate, which CARB cites as relatively low for California, is not readily apparent. California is a large and very populous state, and by CARB's own admission, total NO_X emissions from the State are second highest in the country, behind only Texas. Finally, the EPA recognizes the critical importance of consistency in application of good neighbor requirements across all states, especially with respect to regional-scale pollutants such as ozone. The EPA's regional analysis in the proposed FIP (discussed below) indicates emissions control opportunities at non-EGUs in California at the same stringency as EPA's Step 3 assessment of 22 other states. Therefore, for all of these reasons, the EPA does not view the degree of analysis at Step 3 that supported approval in the prior California transport action to be sufficient to justify approval in this case.

The EPA notes that in the proposed FIP for California for the 2015 ozone NAAQS, we identified several potential cost-effective NO_X controls for non-EGUs in California.[141] The EPA's non-EGU analysis in the proposed FIP focused on several industrial sectors and found impactful emissions reduction opportunities up to $7,500 per ton, which the EPA proposed are needed to address 23 upwind state's (including California's) good neighbor obligations for the 2015 ozone NAAQS. See 87 FR 20036, 20089–90. In particular for California, the EPA found 1,666 tons of ozone season NO_X emissions reduction available from a 2019 baseline of 14,579 tons of ozone season emissions from the non-EGU sectors analyzed. *Id.* at 20090. The EPA proposed to require these reductions in part because, in conjunction with the other emission control strategies proposed in the FIP across the entire region of linked upwind states, the EPA found ozone levels would improve on average by 0.64 ppb across all impacted receptors, including those receptors affected by California's emissions. *Id.* at 20096. The EPA proposed to determine that these controls would eliminate significant contribution and interference with maintenance for the 2015 ozone NAAQS.

The EPA acknowledges that California need not have conducted a Step 3 analysis in precisely the manner as the proposed FIP, and we further acknowledge that our FIP for California and other states is only a proposal at this stage and is currently undergoing public comment. Nonetheless, the proposed FIP presents an example of how a potentially approvable Step 3 analysis could have been conducted by CARB and highlights that cost-effective emissions reduction opportunities likely exist in California that could address interstate transport obligations, which CARB failed to analyze in the 2018 SIP Submittal.

CARB also attempted to support its conclusion that California does not significantly contribute to nonattainment or maintenance in other states in part because it suggested that emissions originating from outside California, such as local emissions in Arizona and Colorado, as well as international emissions, and wildfires, were the primary driver of higher modeled design values at monitoring sites in those states using the EPA modeling released with the January 2017 NODA and the October 2017 memorandum.[142]

With respect to local, international, and non-anthropogenic emissions contributions, CARB's reasoning is inapplicable to the requirements of CAA section 110(a)(2)(D)(i)(I). The good neighbor provision requires states and the EPA to address interstate transport of air pollution that contributes to downwind states' ability to attain and maintain the NAAQS. Whether emissions from other states or other countries also contribute to the same downwind air quality issue is irrelevant in assessing whether a downwind state has an air quality problem, or whether an upwind state is significantly contributing to that problem. States are not obligated under CAA section 110(a)(2)(D)(i)(I) to reduce emissions sufficient on their own to resolve downwind receptors' nonattainment or maintenance problems. Rather, states are obligated to eliminate their own ''significant contribution'' or ''interference'' with the ability of other states to attain or maintain the NAAQS.

Indeed, the D.C. Circuit in *Wisconsin* specifically rejected petitioner arguments suggesting that upwind states should be excused from good neighbor obligations on the basis that some other source of emissions (whether international or another upwind state) could be considered the ''but-for'' cause of downwind air quality problem. 938 F.3d 303 at 323–324. The court viewed petitioners' arguments as essentially an argument ''that an upwind State 'contributes significantly' to downwind nonattainment only when its emissions are the sole cause of downwind nonattainment.'' 938 F.3d 303 at 324. The court explained that ''an upwind State can 'contribute' to downwind nonattainment even if its emissions are not the but-for cause.'' *Id.* at 324–325. See also *Catawba County* v. *EPA,* 571 F.3d 20, 39 (D.C. Cir. 2009) (rejecting the argument ''that 'significantly contribute' unambiguously means 'strictly cause' '' because there is ''no reason why the statute precludes EPA from determining that [an] addition of [pollutant] into the atmosphere is significant even though a nearby county's nonattainment problem would still persist in its absence''); *Miss. Comm'n on Envtl. Quality* v. *EPA,* 790 F.3d 138, 163 n.12 (D.C. Cir. 2015)

[140] See, *e.g.,* ''Disapproval of Interstate Transport Requirements for the 2008 Ozone National Ambient Air Quality Standards; New York and New Jersey'', 86 FR 60602 (November 3, 2021).

[141] 87 FR 20036 (April 6, 2022).

[142] See California's 2018 Submittal at A4–33–A4–34, A4–44.

(observing that the argument that ''there likely would have been no violation at all . . . if it were not for the emissions resulting from [another source]'' is ''merely a rephrasing of the but-for causation rule that we rejected in Catawba County.''). Therefore, a state is not excused from eliminating its significant contribution on the basis that international emissions also contribute some amount of pollution to the same receptors to which the state is linked.

In conclusion, at Step 3, we propose that California was required to analyze emissions from the sources and other emissions activity from within the state to determine whether its contributions to nonattainment were significant or interfered with maintenance of the NAAQS in downwind states, and we propose to disapprove the 2018 SIP Submittal on the separate, additional basis that it did not assess additional emission control opportunities.

E. Evaluation of Information Provided Regarding Step 4

Step 4 of the 4-step interstate transport framework calls for development of permanent and federally enforceable control strategies to achieve the emissions reductions determined to be necessary at Step 3 to eliminate significant contribution to nonattainment or interference with maintenance of the NAAQS. As mentioned previously, California's 2018 SIP Submittal did not contain an evaluation of additional emission control opportunities (or establish that no additional controls are required), thus, no information was provided at Step 4. Instead, CARB concluded that the state already has ''measures of sufficient stringency to ensure that this State does not contribute significantly to downwind ozone problems, whether they be nonattainment or maintenance, in other states.'' [143] As a result, the EPA proposes to disapprove California's submittal on the separate, additional basis that the State has not developed permanent and enforceable emissions reductions necessary to meet the obligations of CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS.

F. Tribal Consultation

On February 15, 2022, the EPA sent letters to the Morongo and Pechanga tribes inviting consultation on this proposed action.[144] On March 2, 2022, the EPA held an informational meeting with the Morongo Tribe. The Morongo and Pechanga tribes did not request consultation on this Regional action. On April 7, 2022, the EPA opened a 30-day window for federally recognized tribes to request consultation on the national FIP proposal.

G. Conclusion

Based on the EPA's evaluation of California's SIP submission, the EPA is proposing to find that the portion of California's October 1, 2018 SIP Submittal addressing CAA section 110(a)(2)(D)(i)(I) does not meet the State's interstate transport obligations, because it fails to contain the necessary provisions to eliminate emissions that will contribute significantly to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other state.

IV. Proposed Action

We are proposing to disapprove Enclosure 4 of California's 2018 SIP Submittal pertaining to interstate transport of air pollution which will significantly contribute to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in other states. Under CAA section 110(c)(1), disapproval would establish a 2-year deadline for the EPA to promulgate a FIP for California to address the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements pertaining to significant contribution to nonattainment, and interference with maintenance, of the 2015 8-hour ozone NAAQS in other states, unless the EPA approves a SIP submittal that meets these requirements. Disapproval does not start a mandatory sanctions clock for California. The remaining elements of the State's October 1, 2018 SIP Submittal are not addressed in this action and have been acted on in a separate rulemaking.[145]

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA, because this proposed SIP disapproval, if finalized, will not in-and-of itself create any new information collection burdens, but will simply disapprove certain State requirements for inclusion in the SIP.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This proposed SIP disapproval, if finalized, will not in-and-of itself create any new requirements but will simply disapprove certain State requirements for inclusion in the SIP.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP revision that the EPA is proposing to disapprove would not 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 and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

[143] Id. at A4–58

[144] Letter dated February 14, 2022, from Elizabeth J. Adams, Director, Air and Radiation Division, EPA Region IX to Mark Macarro, Chairperson, Pechanga Band of Luiseño Indians of the Pechanga Reservation, Re: Invitation to Consult on California's Interstate Transport State Implementation Plan for the 2015 Ozone National Ambient Air Quality Standards; and letter dated February 14, 2022, from Elizabeth J. Adams, Director, Air and Radiation Division, EPA Region IX to Charles Martin, Chairperson, Morongo Band of Mission Indians, Re: Invitation to Consult on California's Interstate Transport State Implementation Plan for the 2015 Ozone National Ambient Air Quality Standards.

[145] 86 FR 16533 (March 30, 2021).

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because this proposed SIP disapproval, if finalized, will not in-and-of itself create any new regulations, but will simply disapprove certain State requirements for inclusion in the SIP.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action merely proposes to disapprove a SIP submission as not meeting the CAA.

K. CAA Section 307(b)(1)

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the D.C. Circuit: (i) When the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii).[146]

If the EPA takes final action on this proposed rulemaking, the Administrator intends to exercise the complete discretion afforded to him under the CAA to make and publish a finding that the final action (to the extent a court finds the action to be locally or regionally applicable) is based on a determination of ''nationwide scope or effect'' within the meaning of CAA section 307(b)(1). Through this rulemaking action (in conjunction with a series of related actions on other SIP submissions for the same CAA obligations), the EPA interprets and applies section 110(a)(2)(d)(i)(I) of the CAA for the 2015 ozone NAAQS based on a common core of nationwide policy judgments and technical analysis concerning the interstate transport of pollutants throughout the continental U.S. In particular, the EPA is applying here (and in other proposed actions related to the same obligations) the same, nationally consistent 4-step framework for assessing good neighbor obligations for the 2015 ozone NAAQS. The EPA relies on a single set of updated, 2016-base year photochemical grid modeling results of the year 2023 as the primary basis for its assessment of air quality conditions and contributions at steps 1 and 2 of that framework. Further, the EPA proposes to determine and apply a set of nationally consistent policy judgments to apply the 4-step framework. The EPA has selected a nationally uniform analytic year (2023) for this analysis and is applying a nationally uniform approach to nonattainment and maintenance receptors and a nationally uniform approach to contribution threshold analysis.[147] For these reasons, the Administrator intends, if this proposed action is finalized, to exercise the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on one or more determinations of nationwide scope or effect for purposes of CAA section 307(b)(1).[148]

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone.

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

Dated: May 15, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2022–11150 Filed 5–23–22; 8:45 am]

BILLING CODE 6560–50–P

[146] In deciding whether to invoke the exception by making and publishing a finding that an action is based on a determination of nationwide scope or effect, the Administrator takes into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit's authoritative centralized review versus allowing development of the issue in other contexts and the best use of agency resources.

[147] A finding of nationwide scope or effect is also appropriate for actions that cover states in multiple judicial circuits. In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that the ''nationwide scope or effect'' exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03.

[148] The EPA may take a consolidated, single final action on all of the proposed SIP disapproval actions with respect to obligations under CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. Should the EPA take a single final action on all such disapprovals, this action would be nationally applicable, and the EPA would also anticipate, in the alternative, making and publishing a finding that such final action is based on a determination of nationwide scope or effect.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2018–0689; FRL–9654–01–R5]

Air Plan Approval; Minnesota; Approval of Infrastructure SIP Requirements for the 2015 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of a State Implementation Plan (SIP) submission from Minnesota regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2015 ozone National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: Comments must be received on or before June 23, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2018–0689 at *https://www.regulations.gov,* or via email to *arra.sarah@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from

Regulations.gov. For either manner of submission, 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. 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For 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/docketgs/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Olivia Davidson, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0266, *davidson.olivia@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background of this SIP submission?

In this rulemaking, EPA is proposing to approve most elements of an October 1, 2018, submission from the Minnesota Pollution Control Agency (MPCA) intended to address all applicable infrastructure requirements for the 2015 ozone NAAQS. EPA will take action in a separate future rulemaking on the portion of the submission pertaining to the interstate transport [1] and visibility interference requirements of section 110(a)(2)(D)(i)(I) and (II) with respect to the 2015 ozone NAAQS.

Whenever EPA promulgates a new or revised NAAQS, section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This type of SIP submission is commonly referred to as an ''infrastructure SIP.'' These submissions must meet the various requirements of section 110(a)(2), as applicable. Due to ambiguity in some of the language of section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through our September 13, 2013 Infrastructure SIP Guidance and through regional actions on infrastructure submissions (EPA's 2013 Guidance).[2] Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.[3] EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

II. What is EPA's analysis of this SIP submission?

Pursuant to section 110(a), states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. On July 9, 2018, MPCA opened a 30-day comment period and provided the opportunity for public hearing. No comments were received.

Minnesota provided a detailed synopsis of how various components of its SIP meet each of the applicable requirements in section 110(a)(2) for the 2015 ozone NAAQS, as applicable. The following review evaluates the state's submission.

A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures

This section requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.[4] In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

Minnesota Statute (Minn. Stat.) 116.07 gives MPCA the authority to ''adopt, amend and rescind rules and standards having the force of law relating to any purpose . . . for the prevention, abatement, or control of air pollution.'' Also from Minn. Stat. 116.07, MPCA has the authority to ''issue, continue in effect or deny permits, under such conditions as it may prescribe for the prevention of pollution, for the emission of air contaminants,'' and for other purposes.

EPA's 2013 Guidance states that to satisfy section 110(a)(2)(A) requirements, ''an air agency's submission should identify existing EPA-approved SIP provisions or new SIP provisions that the air agency has adopted and submitted for EPA approval that limit emissions of pollutants relevant to the subject NAAQS, including precursors of the relevant NAAQS pollutant where applicable.'' EPA's 2013 Guidance at 18. Minn. Stat. chapter 116 gives MPCA the authority to develop and implement rules, including controls and emission limits to maintain new standards. While Minnesota does not have any nonattainment or maintenance areas for 2015 ozone NAAQS, MPCA identified existing controls and emission limits in Minnesota Rules (Minn. R.) that support compliance with and attainment of the 2015 ozone NAAQS. These regulations include controls and emission limits for volatile organic compounds (VOC) and nitrogen oxides (NO_X), which are precursors to ozone. NO_X emissions are limited by Minn. R. 7011.0500 to 7011.0553 as well as 7011.1700 to 7011.1730. VOC emissions are limited by the National Emission Standards for Hazardous Air Pollutants, which are incorporated by reference into

[1] EPA proposed disapproval of Minnesota's SIP revision submitted October 1, 2018 to address section 110(a)(2)(D)(i)(I) on February 22, 2022 (87 FR 9398).

[2] EPA explains and elaborates on these ambiguities and its approach to address them in our September 13, 2013, Infrastructure SIP Guidance (available at *https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf*), as well as in numerous agency actions, including EPA's prior action on Minnesota's infrastructure SIP to address the 2008 ozone, 2010 nitrogen dioxide (NO_2), 2010 sulfur dioxide (SO_2), and 2012 fine particulate matter ($PM_{2.5}$) NAAQS (80 FR 63436 (October 20, 2015)).

[3] *See Montana Environmental Information Center* v. *EPA,* 902 F.3d 971 (9th Cir. 2018).

[4] *See, e.g.,* EPA's final rule on ''National Ambient Air Quality Standards for Lead.'' 73 FR 66964 at 67034.

Minnesota's state rules at Minn. R. 7011.7000.

In this rulemaking, EPA is not proposing to incorporate into Minnesota's SIP any new provisions in Minnesota's state rules that have not been previously approved by EPA. EPA is also not proposing to approve or disapprove any existing state provisions or rules related to start-up, shutdown or malfunction or director's discretion in the context of section 110(a)(2)(A). EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2015 ozone NAAQS.

B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System

This section requires SIPs to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and, upon request, to make these data available to EPA. EPA's 2013 Guidance states that submission of annual monitoring network plans consistent with EPA's ambient air monitoring regulations at 40 CFR 58.10 is one way of satisfying requirements to provide EPA information regarding air quality monitoring activities. EPA's review of a state's annual monitoring plan includes EPA's determination that the state: (i) Monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System in a timely manner; and (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

In accordance with 40 CFR part 53 and 40 CFR part 58, MPCA continues to operate an air monitoring network that is used to determine compliance with the NAAQS. MPCA's submittal references its 2019 Annual Air Monitoring Network Plan, approved by EPA on September 18, 2018, which included a new appendix D describing Minnesota's Photochemical Assessment Monitoring Station Network Implementation Plan in order to comply with the new 2015 ozone NAAQS. Additionally, EPA approved MPCA's 2020 and 2021 Network Plans on August 23, 2019, and September 15, 2020, respectively. EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2015 ozone NAAQS.

C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures; Minor NSR; PSD

This section requires SIPs to set forth a program providing for enforcement of all SIP measures, and the regulation of construction of new and modified stationary sources to meet New Source Review (NSR) requirements under Prevention of Significant Deterioration (PSD) and Nonattainment NSR (NNSR) programs. Part C of the CAA (sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements. EPA's 2013 Guidance states that the NNSR requirements of section 110(a)(2)(C) are generally outside the scope of infrastructure SIPs; however, a state must provide for regulation of minor sources and minor modifications (minor NSR).

1. Program for Enforcement of Emission Limitations and Control Measures

A state's infrastructure SIP submission should identify the statutes, regulations, or other provisions in the SIP that provide for enforcement of emission limits and control measures.

Minn. Stat. 116.07 gives MPCA the authority to enforce any provisions of the chapter relating to air contamination. These provisions include entering into orders, schedules of compliance, stipulation agreements, requiring owners or operators of emissions facilities to install and operate monitoring equipment, and conducting investigations. Minn. Stat. 116.072 authorizes MPCA to issue orders and assess administrative penalties to correct violations of the agency's rules, statutes, and permits, and Minn. Stat. 115.071 outlines the remedies that are available to address such violations. Lastly, Minn. R. 7009.0030 to 7009.0040 provide for enforcement measures. EPA proposes that Minnesota has met the program for enforcement of emission limitations and control measures requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

2. Minor NSR

An infrastructure SIP submission should identify the existing EPA-approved SIP provisions that govern the minor source pre-construction program that regulates emissions of the relevant NAAQS pollutant.

EPA first approved Minnesota's minor NSR program on May 2, 1995 (60 FR 21447). Since then, MPCA and EPA have relied on these existing provisions to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the ozone and other NAAQS. EPA proposes that Minnesota has met the minor NSR requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

3. PSD

The evaluation of each state's submission addressing the PSD requirements of section 110(a)(2)(C) covers: (i) PSD provisions that explicitly identify NO_X as a precursor to ozone in the PSD program; (ii) identification of precursors to $PM_{2.5}$[5] and the identification of $PM_{2.5}$ and PM_{10}[6] condensables in the PSD program; (iii) $PM_{2.5}$ increments in the PSD program; and (iv) greenhouse gas (GHG) permitting and the ''Tailoring Rule'' in the PSD program.[7]

Some PSD requirements under section 110(a)(2)(C) overlap with elements of section 110(a)(2)(D)(i), section 110(a)(2)(E), and section 110(a)(2)(J). These links are discussed in the appropriate areas below.

a. PSD Provisions That Explicitly Identify NO_X as a Precursor to Ozone in the PSD Program

EPA's ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline'' (Phase 2 Rule) was published on November 29, 2005 (70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO_X as a precursor to ozone (*see* 70 FR 71612 at 71679, 71699–71704). This

[5] $PM_{2.5}$ refers to particles with an aerodynamic diameter of less than or equal to 2.5 micrometers, also referred to as ''fine'' particles.

[6] PM_{10} refers to particles with an aerodynamic diameter of less than or equal to 10 micrometers.

[7] In EPA's April 28, 2011, proposed rulemaking for infrastructure SIPs for the 1997 ozone and $PM_{2.5}$ NAAQS, we stated that each state's PSD program must meet applicable requirements for evaluation of all regulated NSR pollutants in PSD permits (76 FR 23757 at 23760). This view was reiterated in EPA's August 2, 2012 proposed rulemaking for infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS (77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address NO_X as a precursor to ozone, $PM_{2.5}$ precursors, $PM_{2.5}$ and PM_{10} condensables, $PM_{2.5}$ increments, or the Federal GHG permitting thresholds, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to be met irrespective of the NAAQS that triggered the requirement to submit an infrastructure SIP, including the 2015 ozone NAAQS.

requirement was codified at 40 CFR 51.166.[8]

The Phase 2 Rule required that states submit SIP revisions incorporating the requirements of the rule, including the provisions specific to NO_X as a precursor to ozone, by June 15, 2007 (*see* 70 FR 71612 at 71683).

On September 26, 2017 (82 FR 44734), EPA approved into the Minnesota SIP Minn. R. 7007.3000, which incorporates by reference ''as amended'' the Federal PSD rules at 40 CFR 52.21. These Federal PSD rules fully satisfy the requirements of section 110(a)(2)(C) regarding NO_X as a precursor to ozone. EPA therefore proposes that Minnesota has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

b. Identification of Precursors to $PM_{2.5}$ and the Identification of $PM_{2.5}$ and PM_{10} Condensables in the PSD Program

On May 16, 2008 (73 FR 28321), EPA issued the Final Rule on the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct $PM_{2.5}$ and other pollutants that contribute to secondary $PM_{2.5}$ formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of $PM_{2.5,}$ otherwise known as precursors. In the 2008 NSR Rule, EPA identified precursors to $PM_{2.5}$ for the PSD program to be sulfur dioxide (SO_2) and NO_X (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_X emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations). The 2008 NSR Rule also specifies that VOCs are not considered to be precursors to $PM_{2.5}$ in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient $PM_{2.5}$ concentrations.

The explicit references to $SO_{2,}$ NO_X, and VOCs as they pertain to secondary $PM_{2.5}$ formation are codified at 40 CFR 51.166(b)(49)(i)(*b*) and 40 CFR 52.21(b)(50)(i)(*b*). As part of identifying pollutants that are precursors to $PM_{2.5,}$ the 2008 NSR Rule also required states to revise the definition of ''significant'' as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i) define ''significant'' for $PM_{2.5}$ to mean the following emissions rates: 10 tons per year (tpy) of direct $PM_{2.5}$; 40 tpy of SO_2; and 40 tpy of NO_X (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_X emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations). The deadline for states to submit SIP revisions to their PSD programs incorporating these changes was May 16, 2011 (*see* 73 FR 28321 at 28341).[9]

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in $PM_{2.5}$ and PM_{10} emission limits in NSR permits. Instead, EPA determined that states had to account for $PM_{2.5}$ and PM_{10} condensables for applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits beginning on or after January 1, 2011. This requirement is codified in 40 CFR 51.166(b)(49)(i)(*a*) and 40 CFR 52.21(b)(50)(i)(*a*). Revisions to states' PSD programs incorporating the inclusion of condensables were due to EPA by May 16, 2011 (*see* 73 FR 28321 at 28341).

On September 26, 2017 (82 FR 44734), EPA approved into the Minnesota SIP Minn. R. 7007.3000, which incorporates by reference ''as amended'' the Federal PSD rules at 40 CFR 52.21. These Federal PSD rules fully satisfy the requirements of section 110(a)(2)(C) regarding identification of precursors to $PM_{2.5}$ and the identification of $PM_{2.5}$ and PM_{10} condensables. EPA therefore proposes that Minnesota has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

c. $PM_{2.5}$ Increments in the PSD Program

On October 20, 2010 (75 FR 64864), EPA issued the final rule on the ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (2010 NSR Rule). This rule established several components for making PSD permitting determinations for $PM_{2.5}$, including a system of ''increments'' which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c), and are included in the table below.

TABLE 1—$PM_{2.5}$ INCREMENTS ESTABLISHED BY THE 2010 NSR RULE IN MICROGRAMS PER CUBIC METER

	Annual arithmetic mean	24-Hour max
Class I	1	2
Class II	4	9
Class III	8	18

The 2010 NSR Rule also established a new ''major source baseline date'' for $PM_{2.5}$ as October 20, 2010, and a new trigger date for $PM_{2.5}$ as October 20, 2011. These revisions are codified in 40 CFR 51.166(b)(14)(i)(*c*) and (b)(14)(ii)(*c*), and 40 CFR 52.21(b)(14)(i)(*c*) and (b)(14)(ii)(*c*). Lastly, the 2010 NSR Rule revised the definition of ''baseline area'' to include a level of significance of 0.3 micrograms per cubic meter, annual average, for $PM_{2.5.}$ This change is codified in 40 CFR 51.166(b)(15)(i) and 40 CFR 52.21(b)(15)(i).

On September 26, 2017 (82 FR 44734), EPA approved into the Minnesota SIP Minn. R. 7007.3000, which incorporates by reference ''as amended'' the Federal PSD rules at 40 CFR 52.21. These Federal PSD rules fully satisfy the requirements of section 110(a)(2)(C) regarding $PM_{2.5}$ increments. EPA therefore proposes that Minnesota has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

[8] Similar changes were codified in 40 CFR 52.21.

[9] EPA notes that in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013), the U.S. Court of Appeals for the D.C. Circuit held that EPA should have issued the 2008 NSR Rule in accordance with the CAA's requirements for PM_{10} nonattainment areas (Title I, part D, subpart 4), and not the general requirements for nonattainment areas under subpart 1. As the subpart 4 provisions apply only to nonattainment areas, EPA does not consider the portions of the 2008 NSR Rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated by the 2008 NSR Rule in order to comply with the court's decision. Accordingly, EPA's approval of Minnesota's infrastructure SIP as to elements (C), (D)(i)(II), or (J) with respect to the PSD requirements promulgated by the 2008 NSR Rule does not conflict with the court's opinion.

The court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 NSR Rule also does not affect EPA's action on the present infrastructure action. EPA interprets the CAA to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

d. GHG Permitting and the ''Tailoring Rule'' in the PSD Program

With respect to the requirements of section 110(a)(2)(C) as well as section 110(a)(2)(J), EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of section 110(a)(2)(D)(i)(II) may also be satisfied by demonstrating that the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Minnesota has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including GHGs.

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 573 U.S. 302 (2014). The Supreme Court said that EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Court's decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) issued an amended judgment vacating the regulations that implemented Step 2 of EPA's PSD and title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by EPA, the application of the BACT requirement to GHG emissions from Step 1 or ''anyway'' sources. With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), ''to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification . . . .'' *Coalition for Responsible Regulation, Inc.* v. *Environmental Protection Agency,* Nos. 09–1322, 10–073, 10–1092, and 10–1167, Amended Judgment (D.C. Cir. April 10, 2015).

EPA is planning to take additional steps to revise Federal PSD rules in light of the Supreme Court's opinion and subsequent D.C. Circuit's ruling. Some states have begun to revise their existing SIP-approved PSD programs in light of these court decisions, and some states may prefer not to initiate this process until they have more information about the planned revisions to EPA's PSD regulations. EPA is not expecting states to have revised their PSD programs in anticipation of EPA's planned actions to revise its PSD program rules in response to the court decisions. For purposes of infrastructure SIP submissions, EPA is only evaluating such submissions to assure that the state's program addresses GHGs consistent with both court decisions.

EPA is proposing that Minnesota's SIP is sufficient to satisfy CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) with respect to GHGs. This is because the PSD permitting program approved by EPA into the SIP on September 26, 2017 (82 FR 44734) continues to require that PSD permits issued to ''anyway sources'' contain limitations on GHG emissions based on the application of BACT.

EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

D. Section 110(a)(2)(D)—Interstate Transport

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as ''prongs,'' that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) or from interfering with measures to protect visibility in another state (prong 4).

Section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another state. Section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required of any other state to prevent significant deterioration of air quality, or from interfering with measures required of any other state to protect visibility. Section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of CAA section 126 and section 115 (relating to interstate and international pollution abatement, respectively).

1. Significant Contribution to Nonattainment

In this rulemaking, EPA is not evaluating section 110(a)(2)(D)(i)(I) requirements relating to significant contribution to nonattainment for the 2015 ozone NAAQS. Instead, EPA will evaluate these requirements in a separate rulemaking.

2. Interference With Maintenance

In this rulemaking, EPA is not evaluating section 110(a)(2)(D)(i)(I) requirements relating to interference with maintenance for the 2015 ozone NAAQS. Instead, EPA will evaluate these requirements in a separate rulemaking.

3. Interference With PSD

EPA notes that Minnesota's satisfaction of the applicable infrastructure SIP PSD requirements has been detailed in the discussion of section 110(a)(2)(C). EPA further notes that the proposed actions in that discussion related to PSD are consistent with the proposed actions related to PSD for section 110(a)(2)(D)(i)(II) and are reiterated below.

EPA previously approved revisions to Minnesota's SIP to meet certain requirements obligated by the Phase 2 Rule and the 2008 NSR Rule. These revisions included provisions that explicitly identify NO_X as a precursor to ozone, explicitly identify SO_2 and NO_X as precursors to $PM_{2.5}$, regulate condensable $PM_{2.5}$ and PM_{10} in applicability determinations, and regulate condensable $PM_{2.5}$ and PM_{10} in applicability determinations for purposes of establishing emission limits. EPA also previously approved revisions to Minnesota's SIP that incorporate the $PM_{2.5}$ increments and

the associated implementation regulations, including the major source baseline date, trigger date, and level of significance for $PM_{2.5}$, as required by the 2010 NSR Rule. Therefore, EPA is proposing that Minnesota's SIP contains provisions that adequately address the infrastructure requirements for the 2015 ozone NAAQS.

States also have an obligation to ensure that sources located in nonattainment areas do not interfere with a neighboring state's PSD program. This requirement can be satisfied through an NNSR program consistent with the CAA that addresses any pollutants for which there is a designated nonattainment area within the state.

Minnesota's EPA-approved NNSR regulations are contained in Minn. R. 7007 and are consistent with 40 CFR 51.165 (60 FR 27411, May 24, 1995). Therefore, EPA proposes that Minnesota has met all the applicable PSD requirements for the 2015 ozone NAAQS.

4. Interference With Visibility Protection

In this rulemaking, EPA is not evaluating section 110(a)(2)(D)(i)(II) requirements relating to interference with visibility protection for the 2015 ozone NAAQS. Instead, EPA will evaluate these requirements in a separate rulemaking.

5. Interstate and International Pollution Abatement

Section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 126 and section 115 (relating to interstate and international pollution abatement, respectively).

Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources. A lack of such a requirement in state rules would be grounds for disapproval of this element.

Minnesota has provisions in its SIP-approved PSD program in Minn. R. 7007.3000 requiring new or modified sources to notify neighboring states of potential negative air quality impacts and has referenced this program as having adequate provisions to meet the requirements of CAA section 126(a). Minnesota does not have obligations under any other subsection of CAA section 126, nor does it have any pending obligations under CAA section 115. Therefore, EPA is proposing that Minnesota has met all applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) with respect to the 2015 ozone NAAQS.

E. Section 110(a)(2)(E)—Adequate Resources; State Board Requirements

This section requires each state to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues. Section 110(a)(2)(E)(ii) also requires each state to comply with the requirements respecting state boards under section 128.

1. Adequate Resources

To satisfy the adequate resources requirements of section 110(a)(2)(E), the state should provide assurances that its air agency has adequate resources, personnel, and legal authority to implement the relevant NAAQS.

MPCA's Environmental Performance Partnership Agreement with EPA provides MPCA's assurances of resources to carry out certain air programs. EPA also notes that Minn. Stat. 116.07 provides the legal authority under state law to carry out the SIP. Therefore, EPA proposes that Minnesota has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2015 ozone NAAQS.

2. State Board Requirements

Section 110(a)(2)(E) also requires each SIP to set forth provisions that comply with the state board requirements of section 128 of the CAA. Specifically, this section contains two explicit requirements: (i) That any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

Minnesota has no board or body which approves permits or enforcement orders in relation to the CAA. The administrative powers and duties of MPCA, including issuance of permits and enforcement orders, are vested in the Commissioner of the MPCA. Therefore, Minnesota has no further obligations under section 128(a)(1) of the CAA.

Under section 128(a)(2), the head of the executive agency with the power to approve permits or enforcement orders must adequately disclose any potential conflicts of interest. In Minnesota, this power is vested in the Commissioner of the MPCA. Under Minn. Stat. 10A, matters of disclosure and public interest are governed by the Minnesota Campaign Finance and Public Disclosure Board (MCFPDB). Minn. Stat. 10A.09 requires that statements of economic interest be filed with the MCFPDB upon the nomination of the Commissioner, and a supplementary statement must be submitted every year thereafter. Under Minn. Stat. 10A.07, if the Commissioner has a financial interest relating to a matter before the agency, he or she must make this interest known in writing. Decision-making responsibility on the matter must be assigned by the Governor to another employee who does not have a conflict of interest, or the Commissioner must abstain from influence over the matter in a manner prescribed by the MCFPDB. Minn. R. 7000.0300 further prescribes a ''duty of candor'' for the Commissioner.

On November 2, 2017 (82 FR 50807), EPA approved MPCA's request to approve Minn. Stat. 10A.07, Minn. Stat. 10A.09, and Minn. R. 7000.0300 into Minnesota's SIP, and determined that these rules satisfied all requirements under section 128 of the CAA. Therefore, EPA is proposing that Minnesota has satisfied the applicable infrastructure SIP requirements for this section of 110(a)(2)(E) for the 2015 ozone NAAQS.

F. Section 110(a)(2)(F)—Stationary Source Monitoring System

Section 110(a)(2)(F) contains several requirements, each of which are described below.

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

Minn. Stat. 116.07 gives MPCA the authority to require owners or operators

of emission facilities to install and operate monitoring equipment, while Minn. R. 7007.0800 sets forth the minimum monitoring requirements that must be included in stationary source permits. Minn. R. 7017 contains monitoring and testing requirements, and Minn. R. 7019 contains emissions reporting requirements for applicable facilities. EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2015 ozone NAAQS.

G. Section 110(a)(2)(G)—Emergency Powers

Section 110(a)(2)(G) requires the SIP to provide for authority analogous to that in section 303 of the CAA, and adequate contingency plans to implement such authority. EPA's 2013 Guidance states that infrastructure SIP submissions should specify authority, vested in an appropriate official, to restrain any source from causing or contributing to emissions which present an imminent and substantial endangerment to public health or welfare, or the environment.

Minn. Stat. 116.11 provides to MPCA emergency powers, which are further discussed in Minn. R. 7000.5000. Specifically, these regulations allow the agency to ''direct the immediate discontinuance or abatement of the pollution without notice and without a hearing or at the request of the agency, the attorney general may bring an action in the name of the state in the appropriate district court for a temporary restraining order to immediately abate or prevent the pollution.'' EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(G) with respect to the 2015 ozone NAAQS.

H. Section 110(a)(2)(H)—Future SIP Revisions

This section requires states to have the authority to revise their SIPs in response to changes in the NAAQS, to the availability of improved methods for attaining the NAAQS, or to an EPA finding that the SIP is substantially inadequate.

Minn. Stat. 116.07 grants the agency the authority to ''[a]dopt, amend, and rescind rules and standards having the force of law relating to any purpose . . . for the prevention, abatement, or control of air pollution.'' EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(H) with respect to the 2015 ozone NAAQS.

I. Section 110(a)(2)(I)—Nonattainment Planning Requirements of Part D

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas.

EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA will take action on part D attainment plans through separate processes.

J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notification; PSD; Visibility Protection

The evaluation of the submission from Minnesota with respect to the requirements of section 110(a)(2)(J) are described below.

1. Consultation With Government Officials

States must provide a process for consultation with local governments and Federal Land Managers in carrying out NAAQS implementation requirements.

MPCA is an active member of the Lake Michigan Air Director's Consortium (LADCO), which provides technical assessments and a forum for discussion regarding air quality issues to member states. Minnesota has also demonstrated that it frequently consults and discusses air quality issues with pertinent Tribes. In addition to LADCO, MPCA is an active participant in the National Association of Clean Air Agencies, which has a member total of 185 air agencies, including representatives from all EPA regional offices and headquarters, across the United States. EPA proposes that Minnesota has satisfied the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2015 ozone NAAQS.

2. Public Notification

Section 110(a)(2)(J) also requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. MPCA's website (*https://www.pca.state.mn.us/air*) features information regarding health impacts of air pollution, current air quality and forecasting, and non-point, vehicle, and traditionally permitted sources. Additionally, MPCA developed a free mobile application (Minnesota Air) that contains forecasting information. Minnesota's procedural rules are contained in Minn. R. Ch. 7000, and include general guidelines, as well as emergency and variance procedures. Minn. R. Ch. 7007 lists public notice and comment procedures for the issuance of air quality permits, which provide the public with an opportunity to comment and/or request public hearing regarding proposed SIP revisions. Therefore, EPA proposes that Minnesota has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2015 ozone NAAQS.

3. PSD

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. Minnesota's PSD program in the context of infrastructure SIPs has already been discussed above in the paragraphs addressing section 110(a)(2)(C) and section 110(a)(2)(D)(i)(II), and EPA notes that the proposed actions for those sections are consistent with the proposed actions for this portion of section 110(a)(2)(J).

Therefore, EPA proposes that Minnesota has met all the infrastructure SIP requirements for PSD associated with section 110(a)(2)(D)(J) for the 2015 ozone NAAQS.

4. Visibility Protection

States are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). However, EPA has determined that the CAA section 110(a)(2)(J) provision on visibility is not triggered by a new NAAQS because the visibility requirements in part C are not changed by a new NAAQS.

K. Section 110(a)(2)(K)—Air Quality Modeling/Data

SIPs must provide for performance of air quality modeling to predict the effects on air quality from emissions of any NAAQS pollutant and the submission of such data to EPA upon request.

MPCA has the authority under Minn. R. Ch. 7007.0500 to require applicable major sources to perform modelling to show that emissions do not cause or contribute to a violation of any NAAQS. Such information is mandatory for applicants subject to PSD requirements (Minn. R. Ch. 7007.3000) and/or NNSR requirements (Minn. R. Ch. 7007.4000 through 7007.4030). MPCA also maintains staff that conduct permit-related (and other) modeling, to support facilities and ensure modeling accuracy. EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2015 ozone NAAQS.

L. Section 110(a)(2)(L)—Permitting Fees

This section requires SIPs to mandate each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit.

MPCA implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62967). Minn. R. 7002.0005 through 7002.0085 contain the provisions, requirements, and structures associated with the costs for reviewing, approving, implementing, and enforcing various types of permits. EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(L) with respect to the 2015 ozone NAAQS.

M. Section 110(a)(2)(M)—Consultation/ Participation by Affected Local Entities

States must consult with and allow participation from local political subdivisions affected by the SIP.

Minn. Stat. 116.05 authorizes cooperation and agreement between MPCA and other State and local governments, with whom Minnesota regularly consults. The Minnesota Administrative Procedures Act provides general notice and comment procedures that govern rulemaking for all state agencies, which MPCA follows during SIP development. Therefore, EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2015 ozone NAAQS.

III. What action is EPA taking?

EPA is proposing to approve most elements of a submission from MPCA certifying that its current SIP is sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 2015 ozone NAAQS. EPA's proposed actions for the State's satisfaction of infrastructure SIP requirements pursuant to section 110(a)(2) and NAAQS are contained in the table below.

Element	2015 Ozone
(A)—Emission limits and other control measures	A
(B)—Ambient air quality monitoring/data system	A
(C)1—Program for enforcement of control measures	A
(C)2—Minor NSR	A
(C)3—PSD	A
(D)1—I Prong 1: Interstate transport—significant contribution to nonattainment	NA
(D)2—I Prong 2: Interstate transport—interference with maintenance	NA
(D)3—II Prong 3: Interstate transport—interference with PSD	A
(D)4—II Prong 4: Interstate transport—interference with visibility protection	NA
(D)5—Interstate and international pollution abatement	A
(E)1—Adequate resources	A
(E)2—State board requirements	A
(F)—Stationary source monitoring system	A
(G)—Emergency powers	A
(H)—Future SIP revisions	A
(I)—Nonattainment planning requirements of part D	*
(J)1—Consultation with government officials	A
(J)2—Public notification	A
(J)3—PSD	A
(J)4—Visibility protection	*
(K)—Air quality modeling/data	A
(L)—Permitting fees	A
(M)—Consultation/participation by affected local entities	A

In the above table, the key is as follows:

A	Approve.
NA	No Action/Separate Rulemaking.
D	Disapprove.
*	Not germane to infrastructure SIPs.

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of

Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 16, 2022.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2022–10819 Filed 5–23–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2022–0315; EPA–HQ–OAR–2021–0663; FRL–9806–01–R8]

Air Plan Disapproval; Utah; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to disapprove the State Implementation Plan (SIP) submittal from Utah regarding interstate transport for the 2015 8-hour ozone national ambient air quality standard (NAAQS). The ''good neighbor'' or ''interstate transport'' provision requires that each state's SIP contain adequate provisions to prohibit emissions from within the state from significantly contributing to nonattainment or interfering with maintenance of the NAAQS in other states. This requirement is part of the broader set of ''infrastructure'' requirements, which are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. If the EPA finalizes this disapproval, the EPA will continue to be subject to an obligation to promulgate a Federal Implementation Plan (FIP) to address the relevant interstate transport requirements, which was triggered by a finding of failure to submit issued in December of 2019. Disapproval does not start a mandatory CAA sanctions clock.

DATES: *Comments:* Written comments must be received on or before July 25, 2022.

ADDRESSES: You may send comments, identified as Docket No. EPA–R08–OAR–2022–0315, to the Federal eRulemaking Portal at *https://www.regulations.gov* following the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''*Public participation*'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. The EPA Docket Office can be contacted at (202) 566–1744, and is located at EPA Docket Center Reading Room, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. For further information on EPA Docket Center services and the current hours of operation at the EPA Docket Center, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado, 80202–1129, telephone number: (303) 312–7104, email address: *clark.adam@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public participation: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2022–0315, at *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be 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).

There are two dockets supporting this action, EPA–R08–OAR–2022–0315 and EPA–HQ–OAR–2021–0663. Docket No. EPA–R08–OAR–2022–0315 contains information specific to Utah, including the notice of proposed rulemaking. Docket No. EPA–HQ–OAR–2021–0663 contains additional modeling files, emissions inventory files, technical support documents, and other relevant supporting documentation regarding interstate transport of emissions for the 2015 8-hour ozone NAAQS which are being used to support this action. All comments regarding information in either of these dockets are to be made in Docket No. EPA–R08–OAR–2022–0315. For additional submission methods, please contact Adam Clark, telephone number: (303) 312–7104, email address: *clark.adam@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The index for Docket No. EPA–HQ–OAR–2021–0663, is available electronically at *www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

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

Table of Contents

I. Background

A. Description of Statutory Background

On October 1, 2015, the EPA promulgated a revision to the ozone NAAQS (2015 8-hour ozone NAAQS), lowering the level of both the primary

and secondary standards to 0.070 parts per million (ppm).[1] Section 110(a)(1) of the CAA requires states to submit, within 3 years after promulgation of a new or revised standard, SIP submissions meeting the applicable requirements of section 110(a)(2).[2] One of these applicable requirements is found in CAA section 110(a)(2)(D)(i)(I), otherwise known as the ''interstate transport'' or ''good neighbor'' provision, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on other states due to interstate transport of pollution. There are two so-called ''prongs'' within CAA section 110(a)(2)(D)(i)(I). A SIP for a new or revised NAAQS must contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting air pollutants in amounts that will significantly contribute to nonattainment of the NAAQS in another state (prong 1) or interfere with maintenance of the NAAQS in another state (prong 2). The EPA and states must give independent significance to prong 1 and prong 2 when evaluating downwind air quality problems under CAA section 110(a)(2)(D)(i)(I).[3]

B. Description of the EPA's 4-Step Interstate Transport Regulatory Process

The EPA is using the 4-step interstate transport framework (or 4-step framework) to evaluate Utah's SIP submittal addressing the interstate transport provision for the 2015 8-hour ozone NAAQS. The EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to prior ozone NAAQS in several regional regulatory actions, including the Cross-State Air Pollution Rule (CSAPR), which addressed interstate transport with respect to the 1997 ozone NAAQS as well as the 1997 and 2006 fine particulate matter standards,[4] and the Cross-State Air Pollution Rule Update (CSAPR Update)[5] and the Revised CSAPR Update, both of which addressed the 2008 ozone NAAQS.[6] Through the development and implementation of the CSAPR rulemakings and prior regional rulemakings pursuant to the interstate transport provision,[7] the EPA, working in partnership with states, developed the following 4-step interstate transport framework to evaluate a state's obligations to eliminate interstate transport emissions under the interstate transport provision for the ozone NAAQS: (1) Identify monitoring sites that are projected to have problems attaining and/or maintaining the NAAQS (*i.e.,* nonattainment and/or maintenance receptors); (2) identify states that impact those air quality problems in other (*i.e.,* downwind) states sufficiently such that the states are considered ''linked'' and therefore warrant further review and analysis; (3) identify the emissions reductions necessary (if any), applying a multifactor analysis, to eliminate each linked upwind state's significant contribution to nonattainment or interference with maintenance of the NAAQS at the locations identified in Step 1; and (4) adopt permanent and enforceable measures needed to achieve those emissions reductions.

C. Background on the EPA's Ozone Transport Modeling Information

In general, the EPA has performed nationwide air quality modeling to project ozone design values which are used in combination with measured data to identify nonattainment and maintenance receptors. To quantify the contribution of emissions from specific upwind states on 2023 ozone design values for the identified downwind nonattainment and maintenance receptors, the EPA performed nationwide, state-level ozone source apportionment modeling for 2023. The source apportionment modeling provided contributions to ozone at receptors from precursor emissions of anthropogenic nitrogen oxides (NO_X) and volatile organic compounds (VOCs) in individual upwind states.

The EPA has released several documents containing projected ozone design values, contributions, and information relevant to evaluating interstate transport with respect to the 2015 8-hour ozone NAAQS. First, on January 6, 2017, the EPA published a notice of data availability (NODA) in which we requested comment on preliminary interstate ozone transport data including projected ozone design values and interstate contributions for 2023 using a 2011 base year platform.[8] In the NODA, the EPA used the year 2023 as the analytic year for this preliminary modeling because that year aligns with the expected attainment year for Moderate ozone nonattainment areas for the 2015 8-hour ozone NAAQS.[9] On October 27, 2017, we released a memorandum (October 2017 memorandum) containing updated modeling data for 2023, which incorporated changes made in response to comments on the NODA, and noted that the modeling may be useful for states developing SIPs to address interstate transport obligations for the 2008 ozone NAAQS.[10] On March 27, 2018, we issued a memorandum (March 2018 memorandum) noting that the same 2023 modeling data released in the October 2017 memorandum could also be useful for identifying potential downwind air quality problems with respect to the 2015 8-hour ozone NAAQS at Step 1 of the 4-step interstate transport framework.[11] The March 2018 memorandum also included the then newly available contribution modeling data for 2023 to assist states in evaluating their impact on potential downwind air quality problems for the 2015 8-hour ozone NAAQS under Step 2 of the 4-step interstate transport

[1] National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

[2] SIP revisions that are intended to meet the applicable requirements of section 110(a)(1) and (2) of the CAA are often referred to as infrastructure SIPs and the applicable elements under section 110(a)(2) are referred to as infrastructure requirements.

[3] *See North Carolina* v. *EPA,* 531 F.3d 896, 909–11 (D.C. Cir. 2008).

[4] *See* Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011).

[5] Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 81 FR 74504 (October 26, 2016).

[6] In 2019, the D.C. Circuit Court of Appeals remanded the CSAPR Update to the extent it failed to require upwind states to eliminate their significant contribution by the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a). *Wisconsin* v. *EPA,* 938 F.3d 303, 313 (D.C. Cir. 2019). The Revised CSAPR Update for the 2008 Ozone NAAQS, 86 FR 23054 (April 30, 2021), responded to the remand of the CSAPR Update in *Wisconsin* and the vacatur of a separate rule, the ''CSAPR Close-Out,'' 83 FR 65878 (December 21, 2018), in *New York* v. *EPA,* 781 F. App'x. 4 (D.C. Cir. 2019).

[7] In addition to the CSAPR rulemakings, other regional rulemakings addressing ozone transport include the ''NO_X SIP Call,'' 63 FR 57356 (October 27, 1998), and the ''Clean Air Interstate Rule'' (CAIR), 70 FR 25162 (May 12, 2005).

[8] *See* Notice of Availability of the Environmental Protection Agency's Preliminary Interstate Ozone Transport Modeling Data for the 2015 8-hour Ozone National Ambient Air Quality Standard (NAAQS), 82 FR 1733 (January 6, 2017).

[9] 82 FR 1733 at 1735 (January 6, 2017).

[10] *See* Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), October 27, 2017 (''October 2017 memorandum''), available in docket ID No. EPA–HQ–OAR–2021–0663.

[11] *See* Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), March 27, 2018 (''March 2018 memorandum''), available in docket ID No. EPA–HQ–OAR–2021–0663.

framework.[12] The EPA subsequently issued two more memoranda in August and October 2018, providing additional information to states developing interstate transport SIP submissions for the 2015 8-hour ozone NAAQS concerning, respectively, potential contribution thresholds that may be appropriate to apply in Step 2 of the 4-step interstate transport framework, and considerations for identifying downwind areas that may have problems maintaining the standard at Step 1 of the 4-step interstate transport framework.[13]

Since the release of the modeling data shared in the March 2018 memorandum, the EPA performed updated modeling using a 2016-based emissions modeling platform (*i.e.,* 2016v1). This emissions platform was developed under the EPA/Multi-Jurisdictional Organization (MJO)/state collaborative project.[14] This collaborative project was a multi-year joint effort by the EPA, MJOs, and states to develop a new, more recent emissions platform for use by the EPA and states in regulatory modeling as an improvement over the dated 2011-based platform that the EPA had used to project ozone design values and contribution data provided in the 2017 and 2018 memoranda. The EPA used the 2016v1 emissions to project ozone design values and contributions for 2023. On October 30, 2020, in the Notice of Proposed Rulemaking for the Revised CSAPR Update, the EPA released and accepted public comment on 2023 modeling that used the 2016v1 emissions platform.[15] Although the Revised CSPAR Update addressed transport for the 2008 ozone NAAQS, the projected design values and contributions from the 2016v1 platform are also useful for identifying downwind ozone problems and linkages with respect to the 2015 ozone NAAQS.[16]

Following the final Revised CSAPR Update, the EPA made further updates to the 2016 emissions platform to include mobile emissions from the EPA's Motor Vehicle Emission Simulator MOVES3 model[17] and updated emissions projections for electric generating units (EGUs) that reflect the emissions reductions from the Revised CSAPR Update, recent information on plant closures, and other sector trends. The construct of this updated emissions platform, 2016v2, is described in an emissions modeling technical support document (TSD) included in the docket for this proposed rule.[18] The EPA performed air quality modeling of the 2016v2 emissions using the most recent public release version of the Comprehensive Air-quality Model with extensions (CAMx) photochemical modeling, version 7.10.[19] The EPA now proposes to primarily rely on modeling based on the updated and newly available 2016v2 emissions platform in evaluating these submissions with respect to Steps 1 and 2 of the 4-step interstate transport framework. This modeling will generally be referenced within this action as 2016v2 modeling for 2023. By using the updated modeling results, the EPA is using the most current and technically appropriate information for this proposed rulemaking. Section III of this document and the Air Quality Modeling TSD for 2015 Ozone NAAQS Transport SIP Proposed Actions, included in Docket ID No. EPA–HQ–OAR–2021–0663 for this proposal, contain additional detail on the EPA's 2016v2 modeling. In this document, the EPA is accepting public comment on this updated 2023 modeling, which uses a 2016v2 emissions platform. Comments on the EPA's air quality modeling should be submitted in the Regional docket for this action, docket ID No. EPA–R08–OAR–2022–0315. Comments are not being accepted in docket ID No. EPA–HQ–OAR–2021–0663.

States may have chosen to rely on the results of the EPA modeling and/or alternative modeling performed by states or MJOs to evaluate downwind air quality problems and contributions as part of their submissions. In Section III we evaluate how Utah used air quality modeling information in their submission.

D. The EPA's Approach To Evaluating Interstate Transport SIPs for the 2015 8-Hour Ozone NAAQS

The EPA proposes to apply a consistent set of policy judgments across all states for purposes of evaluating interstate transport obligations and the approvability of interstate transport SIP submittals for the 2015 8-hour ozone NAAQS. These policy judgments reflect consistency with relevant case law and past agency practice as reflected in the CSAPR and related rulemakings. Nationwide consistency in approach is particularly important in the context of interstate ozone transport, which is a regional-scale pollution problem involving many smaller contributors. Effective policy solutions to the problem of interstate ozone transport going back to the NO_X SIP Call have necessitated the application of a uniform framework of policy judgments in order to ensure an ''efficient and equitable'' approach. *See EME Homer City Generation, LP* v. *EPA,* 572 U.S. 489, 519 (2014).

In the March, August, and October 2018 memoranda, the EPA recognized that states may be able to establish alternative approaches to addressing their interstate transport obligations for the 2015 8-hour ozone NAAQS that vary from a nationally uniform framework. The EPA emphasized in these memoranda, however, that such alternative approaches must be technically justified and appropriate in light of the facts and circumstances of each particular state's submittal. In general, the EPA continues to believe that deviation from a nationally consistent approach to ozone transport must be substantially justified and have a well-documented technical basis that is consistent with relevant case law. Where states submitted SIPs that rely on any such potential ''flexibilities'' as may have been identified or suggested in the past, the EPA will evaluate whether the state adequately justified the technical and legal basis for doing so.

The EPA notes that certain concepts included in an attachment to the March 2018 memorandum require unique consideration, and these ideas do not constitute agency guidance with respect to transport obligations for the 2015 ozone NAAQS. Attachment A to the

[12] The March 2018 memorandum, however, provided, ''While the information in this memorandum and the associated air quality analysis data could be used to inform the development of these SIPs, the information is not a final determination regarding states' obligations under the good neighbor provision. Any such determination would be made through notice-and-comment rulemaking.''

[13] *See* Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, August 31, 2018 (''August 2018 memorandum''), and Considerations for Identifying Maintenance Receptors for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, October 19, 2018, available in docket ID No. EPA–HQ–OAR–2021–0663.

[14] The results of this modeling, as well as the underlying modeling files, are included in docket ID No. EPA–HQ–OAR–2021–0663.

[15] *See* 85 FR 68964, 68981.

[16] See the Air Quality Modeling Technical Support Document for the Final Revised Cross-State Air Pollution Rule Update, included in the Headquarters docket ID No. EPA–HQ–OAR–2021–0663.

[17] Additional details and documentation related to the MOVES3 model can be found at *https://www.epa.gov/moves/latest-version-motor-vehicle-emission-simulator-moves.*

[18] See Technical Support Document (TSD) Preparation of Emissions Inventories for the 2016v2 North American Emissions Modeling Platform included in the Headquarters docket ID No. EPA–HQ–OAR–2021–0663.

[19] Ramboll Environment and Health, January 2021, *www.camx.com.*

March 2018 memorandum identified a ''Preliminary List of Potential Flexibilities'' that could potentially inform SIP development.[20] However, the EPA made clear in that Attachment that the list of ideas were not suggestions endorsed by the Agency but rather ''comments provided in various forums'' on which the EPA sought ''feedback from interested stakeholders.'' [21] Further, Attachment A stated, ''EPA is not at this time making any determination that the ideas discussed below are consistent with the requirements of the CAA, nor are we specifically recommending that states use these approaches.'' [22] Attachment A to the March 2018 memorandum, therefore, does not constitute agency guidance, but was intended to generate further discussion around potential approaches to addressing ozone transport among interested stakeholders. To the extent states sought to develop or rely on these ideas in support of their SIP submittals, the EPA will thoroughly review the technical and legal justifications for doing so.

The remainder of this section describes the EPA's proposed framework with respect to analytic year, definition of nonattainment and maintenance receptors, selection of contribution threshold, and multifactor control strategy assessment.

1. Selection of Analytic Year

In general, the states and the EPA must implement the interstate transport provision in a manner ''consistent with the provisions of [title I of the CAA.]'' CAA section 110(a)(2)(D)(i). This requires, among other things, that these obligations are addressed consistently with the timeframes for downwind areas to meet their CAA obligations. With respect to ozone NAAQS, under CAA section 181(a), this means obligations must be addressed ''as expeditiously as practicable'' and no later than the schedule of attainment dates provided in CAA section 181(a)(1).[23] Several D.C. Circuit court decisions address the issue of the relevant analytic year for the purposes of evaluating ozone transport air-quality problems. On September 13, 2019, the D.C. Circuit issued a decision in *Wisconsin* v. *EPA,* remanding the CSAPR Update to the extent that it failed to require upwind states to eliminate their significant contribution by the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a). 938 F.3d 303 at 313.

On May 19, 2020, the D.C. Circuit issued a decision in *Maryland* v. *EPA* that cited the *Wisconsin* decision in holding that the EPA must assess the impact of interstate transport on air quality at the next downwind attainment date, including Marginal area attainment dates, in evaluating the basis for the EPA's denial of a petition under CAA section 126(b). *Maryland* v. *EPA,* 958 F.3d 1185, 1203–04 (D.C. Cir. 2020). The court noted that ''section 126(b) incorporates the Good Neighbor Provision,'' and, therefore, ''EPA must find a violation [of section 126] if an upwind source will significantly contribute to downwind nonattainment at the *next downwind attainment deadline.* Therefore, the agency must evaluate downwind air quality at that deadline, not at some later date.'' *Id.* at 1204 (emphasis added). The EPA interprets the court's holding in *Maryland* as requiring the states and the Agency, under the good neighbor provision, to assess downwind air quality as expeditiously as practicable and no later than the next applicable attainment date,[24] which is now the Moderate area attainment date under CAA section 181 for ozone nonattainment. The Moderate area attainment date for the 2015 8-hour ozone NAAQS is August 3, 2024.[25] The EPA believes that 2023 is now the appropriate year for analysis of interstate transport obligations for the 2015 8-hour ozone NAAQS, because the 2023 ozone season is the last relevant ozone season during which achieved emissions reductions in linked upwind states could assist downwind states with meeting the August 3, 2024 Moderate area attainment date for the 2015 8-hour ozone NAAQS.

The EPA recognizes that the attainment date for nonattainment areas classified as Marginal for the 2015 8-hour ozone NAAQS was August 3, 2021. Under the *Maryland* holding, any necessary emissions reductions to satisfy interstate transport obligations should have been implemented by no later than this date. At the time of the statutory deadline to submit interstate transport SIPs (October 1, 2018), many states relied upon the EPA modeling of the year 2023, and no state provided an alternative analysis using a 2021 analytic year (or the prior 2020 ozone season). However, the EPA must act on SIP submittals using the information available at the time it takes such action. In this circumstance, the EPA does not believe it would be appropriate to evaluate states' obligations under CAA section 110(a)(2)(D)(i)(I) as of an attainment date that is wholly in the past, because the Agency interprets the interstate transport provision as forward looking. *See* 86 FR 23054 at 23074; *see also Wisconsin,* 938 F.3d at 322. Consequently, in this proposal the EPA will use the analytical year of 2023 to evaluate Utah's CAA section 110(a)(2)(D)(i)(I) SIP submission with respect to the 2015 8-hour ozone NAAQS.

2. Step 1 of the 4-Step Interstate Transport Framework

In Step 1, the EPA identifies monitoring sites that are projected to have problems attaining and/or maintaining the NAAQS in the 2023 analytic year. Where the EPA's analysis shows that a site does not fall under the definition of a nonattainment or maintenance receptor, that site is excluded from further analysis under the EPA's 4-step interstate transport framework. For sites that are identified as a nonattainment or maintenance receptor in 2023, we proceed to the next step of our 4-step interstate transport framework by identifying the upwind state's contribution to those receptors.

The EPA's approach to identifying ozone nonattainment and maintenance receptors in this action is consistent with the approach used in previous transport rulemakings. The EPA's approach gives independent consideration to both the ''contribute significantly to nonattainment'' and the ''interfere with maintenance'' prongs of CAA section 110(a)(2)(D)(i)(I), consistent with the D.C. Circuit's direction in *North Carolina* v. *EPA.*[26]

For the purpose of this proposal, the EPA identifies nonattainment receptors as those monitoring sites that are

[20] March 2018 memorandum, Attachment A.

[21] *Id.* at A–1.

[22] *Id.*

[23] For attainment dates for the 2015 8-hour ozone NAAQS, refer to CAA section 181(a), 40 CFR 51.1303, and Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018, effective August 3, 2018).

[24] We note that the court in *Maryland* did not have occasion to evaluate circumstances in which the EPA may determine that an upwind linkage to a downwind air quality problem exists at Steps 1 and 2 of the interstate transport framework by a particular attainment date, but for reasons of impossibility or profound uncertainty the Agency is unable to mandate upwind pollution controls by that date. *See Wisconsin,* 938 F.3d at 320. The D.C. Circuit noted in *Wisconsin* that upon a sufficient showing, these circumstances may warrant flexibility in effectuating the purpose of the interstate transport provision.

[25] *See* CAA section 181(a); 40 CFR 51.1303; Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018, effective August 3, 2018).

[26] *See North Carolina* v. *EPA,* 531 F.3d 896, 910–11 (D.C. Cir. 2008) (holding that the EPA must give ''independent significance'' to each prong of CAA section 110(a)(2)(D)(i)(I)).

projected to have average design values that exceed the NAAQS and that are also measuring nonattainment based on the most recent monitored design values. This approach is consistent with prior transport rulemakings, such as the CSAPR Update, where the EPA defined nonattainment receptors as those areas that both currently measure nonattainment and that the EPA projects will be in nonattainment in the future analytic year (*i.e.,* 2023).[27]

In addition, in this proposal, the EPA identifies a receptor to be a ''maintenance'' receptor for purposes of defining interference with maintenance, consistent with the method used in the CSAPR and upheld by the D.C. Circuit in *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 136 (D.C. Cir. 2015).[28] Specifically, the EPA identified maintenance receptors as those receptors that would have difficulty maintaining the relevant NAAQS in a scenario that takes into account historical variability in air quality at that receptor. The variability in air quality was determined by evaluating the ''maximum'' future design value at each receptor based on a projection of the maximum measured design value over the relevant base period. The EPA interprets the projected maximum future design value to be a potential future air quality outcome consistent with the meteorology that yielded maximum measured concentrations in the ambient data set analyzed for that receptor (*i.e.,* ozone conducive meteorology). The EPA also recognizes that previously experienced meteorological conditions (*e.g.,* dominant wind direction, temperatures, vertical mixing, insolation, and air mass patterns) promoting ozone formation that led to maximum concentrations in the measured data may reoccur in the future. The maximum design value gives a reasonable projection of future air quality at the receptor under a scenario in which such conditions do, in fact, reoccur. The projected maximum design value is used to identify upwind emissions that, under those circumstances, could interfere with the downwind area's ability to maintain the NAAQS.

Recognizing that nonattainment receptors are also, by definition, maintenance receptors, the EPA often uses the term ''maintenance-only'' to refer to those receptors that are not nonattainment receptors. Consistent with the concepts for maintenance receptors, as described above, the EPA identifies ''maintenance-only'' receptors as those monitoring sites that have projected average design values above the level of the applicable NAAQS, but that are not currently measuring nonattainment based on the most recent official design values. In addition, those monitoring sites with projected average design values below the NAAQS, but with projected maximum design values above the NAAQS are also identified as ''maintenance only'' receptors, even if they are currently measuring nonattainment based on the most recent official design values.

3. Step 2 of the 4-Step Interstate Transport Framework

In Step 2 the EPA quantifies the contribution of each upwind state to each receptor in the 2023 analytic year. The contribution metric used in Step 2 is defined as the average impact from each state to each receptor on the days with the highest ozone concentrations at the receptor based on the 2023 modeling. If a state's contribution value does not equal or exceed the threshold of 1 percent of the NAAQS (*i.e.,* 0.70 ppb for the 2015 8-hour ozone NAAQS), the upwind state is not linked to a downwind air quality problem, and the EPA, therefore, concludes that the state does not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind states. However, if a state's contribution equals or exceeds the 1 percent threshold, the state's emissions are further evaluated in Step 3, considering both air quality and cost as part of a multi-factor analysis, to determine what, if any, emissions might be deemed ''significant'' and, thus, must be eliminated under CAA section 110(a)(2)(D)(i)(I). The EPA is proposing to rely in the first instance on the 1 percent threshold for the purpose of evaluating a state's contribution to nonattainment or maintenance of the 2015 8-hour ozone NAAQS (*i.e.,* 0.70 ppb) at downwind receptors. This is consistent with the Step 2 approach that the EPA applied in CSAPR for the 1997 ozone NAAQS, which has subsequently been applied in the CSAPR Update when evaluating interstate transport obligations for the 2008 ozone NAAQS. The EPA continues to find 1 percent to be an appropriate threshold. For ozone, as the EPA found in the Clean Air Interstate Rule (CAIR), CSAPR, and CSAPR Update, a portion of the nonattainment problems from anthropogenic sources in the U.S. results from the combined impact of relatively small contributions from many upwind states, along with contributions from in-state sources and, in some cases, substantially larger contributions from a subset of particular upwind states. The EPA's analysis shows that much of the ozone transport problem being analyzed in this proposed rule is the result of the collective impacts of contributions from multiple upwind states. Therefore, application of a consistent contribution threshold is necessary to identify those upwind states that should have responsibility for addressing their contribution to the downwind nonattainment and maintenance problems to which they collectively contribute. Continuing to use 1 percent of the NAAQS as the screening metric to evaluate collective contribution from many upwind states also allows the EPA (and states) to apply a consistent framework to evaluate interstate emissions transport under the interstate transport provision from one NAAQS to the next. *See* 81 FR at 74518. *See also* 86 FR at 23085 (reviewing and explaining rationale from CSAPR, 76 FR at 48237–38, for selection of 1 percent threshold).

The EPA's August 2018 memorandum recognized that in certain circumstances, a state may be able to establish that an alternative contribution threshold of 1 ppb is justifiable. Where a state relies on this alternative threshold, and where that state determined that it was not linked at Step 2 using the alternative threshold, the EPA will evaluate whether the state provided a technically sound assessment of the appropriateness of using this alternative threshold based on the facts and circumstances underlying its application in the particular SIP submission.

4. Step 3 of the 4-Step Interstate Transport Framework

Consistent with the EPA's longstanding approach to eliminating significant contribution or interference with maintenance, at Step 3, states linked at Steps 1 and 2 are generally expected to prepare a multifactor assessment of potential emissions controls. The EPA's analysis at Step 3 in prior federal actions addressing interstate transport requirements has primarily focused on an evaluation of cost-effectiveness of potential emissions controls (on a marginal cost-per-ton basis), the total emissions reductions

[27] *See* 81 FR 74504 (October 26, 2016). This same concept, relying on both current monitoring data and modeling to define nonattainment receptors, was also applied in CAIR. *See* 70 FR 25162 at 25241, 25249 (January 14, 2005); *see also North Carolina,* 531 F.3d at 913–14 (affirming as reasonable EPA's approach to defining nonattainment in CAIR).

[28] *See* 76 FR 48208 (August 8, 2011). CSAPR Update and Revised CSAPR Update also used this approach. *See* 81 FR 74504 (October 26, 2016) and 86 FR 23054 (April 30, 2021).

that may be achieved by requiring such controls (if applied across all linked upwind states), and an evaluation of the air quality impacts such emissions reductions would have on the downwind receptors to which a state is linked; other factors may potentially be relevant if adequately supported. In general, where the EPA's or alternative air quality and contribution modeling establishes that a state is linked at Steps 1 and 2, it will be insufficient at Step 3 for a state merely to point to its existing rules requiring control measures as a basis for approval. Generally the emissions-reducing effects of all existing emissions control requirements are already reflected in the air quality results of the modeling for Steps 1 and 2. If the state is shown to still be linked to one or more downwind receptor(s), states must provide a well-documented evaluation determining whether their emissions constitute significant contribution or interference with maintenance by evaluating additional available control opportunities by preparing a multifactor assessment. While the EPA has not prescribed a particular method for this assessment, the EPA expects states at a minimum to present a sufficient technical evaluation. This would typically include information on emissions sources, applicable control technologies, emissions reductions, costs, cost effectiveness, and downwind air quality impacts of the estimated reductions, before concluding that no additional emissions controls should be required.[29]

5. Step 4 of the 4-Step Interstate Transport Framework

At Step 4, states (or the EPA) develop permanent and federally enforceable control strategies to achieve the emissions reductions determined to be necessary at Step 3 to eliminate significant contribution to nonattainment or interference with maintenance of the NAAQS. For a state linked at Steps 1 and 2 to rely on an emissions control measure at Step 3 to address its interstate transport obligations, that measure must be included in the state's SIP so that it is permanent and federally enforceable. *See* CAA section 110(a)(2)(D) (''Each such [SIP] shall . . . contain adequate provisions . . .''). *See also* CAA 110(a)(2)(A); *Committee for a Better Arvin* v. *U.S. E.P.A.,* 786 F.3d 1169, 1175–76 (9th Cir. 2015) (holding that measures relied on by state to meet CAA requirements must be included in the SIP).

II. Utah SIP Submission Addressing Interstate Transport of Air Pollution for the 2015 8-Hour Ozone NAAQS

On October 24, 2019, the State of Utah submitted a SIP revision to the EPA addressing the 110(a)(1) and (2) infrastructure requirements for the 2015 ozone NAAQS, including CAA section 110(a)(2)(D)(i)(I). The EPA evaluated this submission for completeness pursuant to the criteria in 40 CFR part 51, appendix V, and concluded that it was incomplete because Utah had not provided the necessary certification under section 2.1(g) of appendix V that a public hearing was held or provided the opportunity for the public to request a public hearing in accordance with 40 CFR 51.102(a). On November 21, 2019, the EPA sent a letter to Utah explaining our incompleteness determination.[30] On December 5, 2019, the EPA issued a finding that several states, including Utah, had failed to submit SIPs to meet the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. *See* 84 FR 66612. On January 29, 2020, the State submitted a new SIP revision addressing the infrastructure requirements for the 2015 ozone NAAQS, including CAA section 110(a)(2)(D)(i)(I), as well as CAA section 110(a)(2)(D)(i)(I) prong 2 for the 2008 ozone NAAQS.[31]

The SIP submission provided an analysis by the Utah Division of Air Quality (UDAQ) of the State's impact on air quality in downwind states and concluded that emissions from Utah will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in other states in 2023.[32] In the SIP submittal, UDAQ conducted a weight-of-evidence analysis, which sought to rely in part on certain outside parties' ideas for ''flexibilities'' in assessing good neighbor obligations that had been listed in Attachment A to the March 2018 memorandum. *See* section I.D. above. UDAQ's weight-of-evidence analysis utilized the EPA's 4-step interstate transport framework approach. At Step 1 of the framework, UDAQ used EPA modeling released with the March 2018 memorandum to conclude that the Denver nonattainment area was the only area with identified nonattainment and maintenance receptors in 2023 to which sources in Utah could possibly contribute (Step 1).[33] In identifying this area at Step 1, UDAQ considered the ''flexibility'' listed in Attachment A of the March 2018 memo, consideration of ''the current and projected local emission reductions and whether downwind areas have considered and/or used available mechanisms for regulatory relief.'' UDAQ considered current and projected emissions reductions in the Denver nonattainment area.[34] Specifically, UDAQ considered recent oil and gas control requirements Colorado adopted for oil and gas sources within the Denver nonattainment area.[35]

At Step 2 of the 4-step interstate transport framework, UDAQ utilized a weight of evidence approach.[36] As part of its weight of evidence, UDAQ considered EPA's modeling from the March 2018 memorandum to identify which nonattainment and/or maintenance receptors were linked to emissions from Utah. UDAQ identified five nonattainment and maintenance receptors to which the State was projected to contribute greater than 0.70 ppb (1 percent) to the 2023 design values. Table 1 provides information on the five nonattainment and maintenance receptors identified by UDAQ in their SIP submittal.

[29] As examples of general approaches for how such an analysis could be conducted for their sources, states could look to the CSAPR Update, 81 FR 74504, 74539–51; CSAPR, 76 FR 48208, 48246–63; CAIR, 70 FR 25162, 25195–229; or the NO_X SIP Call, 63 FR 57356, 57399–405. *See also* Revised CSAPR Update, 86 FR 23054, 23086–23116. Consistently across these rulemakings, the EPA has developed emissions inventories, analyzed different levels of control stringency at different cost thresholds, and assessed resulting downwind air quality improvements.

[30] The EPA's November 21, 2019 letter to the State of Utah is included in docket ID EPA–R08–OAR–2022–0315 for this action.

[31] The EPA is not proposing any action on the 2008 ozone portion of Utah's January 29, 2020 submittal, or any of the other infrastructure elements apart from those portions submitted to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS.

[32] Utah's SIP submission at C–005, C–013.

[33] Id. at C–007. The EPA notes that the modeling released with the March 2018 memorandum used 2011 base year inventory data.

[34] Id.

[35] Id.

[36] Id. at C–007–C008.

TABLE 1—2023 AVERAGE AND MAXIMUM DESIGN VALUES AT DOWNWIND RECEPTORS WITH UTAH CONTRIBUTIONS EQUAL TO AND GREATER THAN 0.70 ppb [a]

Receptor ID	State	County	Average design value (ppb)	Maximum design value (ppb)	Utah modeled contribution (ppb)
Nonattainment Receptors:					
80350004	CO	Douglas	71.1	73.2	1.08
80590006	CO	Jefferson	71.3	73.7	0.83
80690011	CO	Larimer	71.2	73.0	1.05
Maintenance Receptors:					
80050002	CO	Arapahoe	69.3	71.3	1.23
80590011	CO	Jefferson	70.9	73.9	1.04

[a] Data according to March 2018 memorandum modeling.

UDAQ presented all of the monitors to which the State was modeled to contribute at or above the 1 percent of the NAAQS threshold. However, UDAQ indicated in their SIP submittal that they support the use of a 1 ppb threshold and referenced the EPA's August 2018 memorandum, which they characterized as the EPA finding alternative thresholds as ''appropriate.'' [37] UDAQ conducted a comparison of the 1 percent and 1 ppb thresholds at the five nonattainment or maintenance receptor sites shown in Table 1, analyzing the differences in capture of upwind contribution under the two thresholds (60% for 1 percent and 47% for 1 ppb) to assert that the 1 ppb threshold is appropriate because the capture rates were comparable.[38] UDAQ noted that by using a 1 ppb threshold, the State would only be linked to four [39] of the five receptors listed in Table 1. UDAQ still elected to evaluate contributions from the fifth receptor (Receptor ID 806590011) ''to make a more complete assessment of the modeled results.'' [40] Table 2 provides UDAQ's analysis of the two contribution thresholds as presented in its January 29, 2020 submission.

TABLE 2—COMPARISON OF 2023 CONTRIBUTION THRESHOLDS AT RECEPTOR SITES IN COLORADO [a]

Receptor ID	County	Total upwind state contr. (ppb)	Sum of upwind contr. captured with 0.70 ppb (1%) threshold	Sum of upwind contr. captured with 1 ppb threshold	Percent of upwind contr. captured using a 0.70 ppb (1%) threshold	Percent of upwind contr. captured using a 1 ppb threshold
80050002	Arapahoe	5.98	3.47	3.47	58.0	58.0
80350004	Douglas	5.94	3.35	3.35	56.4	56.4
80590006	Jefferson	7.06	4.68	2.34	66.3	33.1
80590011	Jefferson	6.98	4.51	3.57	64.6	51.1
80690011	Larimer	6.33	3.48	2.60	55.0	41.1

[a] Data according to March 2018 memorandum modeling.

In its weight-of-evidence analysis, UDAQ also referenced the EPA's proposed approval of Arizona's interstate transport SIP for the 2008 ozone NAAQS as providing an administrative precedent for its conclusions regarding Utah.[41] UDAQ stated that in that proposal, the EPA considered ''the magnitude of ozone attributable to transport from all upwind states collectively contributing to the air quality problem'' and, after considering the total contributions from all states that contributed to the same receptors linked to Arizona, determined the collective contribution of emissions to those downwind receptors was negligible ''particularly when compared to the relatively large contributions from upwind states in the East.'' To support the applicability of the Arizona action, UDAQ again pointed to the March 2018 memorandum modeling to illustrate ''the disparity between upwind contributions from states in the East versus the West.'' [42] Specifically, UDAQ cited modeled collective upwind state contributions to receptors in Connecticut (44.24 ppb to Receptor ID 900190003) and New York (30.68 ppb to Receptor ID 360810124) in comparison to the lesser in-state contributions (3.71 ppb to Receptor ID 900190003 and 13.55 ppb to Receptor ID 360810124) to these receptors. UDAQ then compared these ratios against the highest collective contributions from upwind states to any of the Colorado nonattainment or maintenance receptors (7.06 ppb to Receptor ID 80590006) and the in-state (Colorado) contribution to this receptor (25.52 ppb). Table 3 provides UDAQ's summary of in-state and upwind state contributions using the March 2018 memorandum modeling. UDAQ asserted that the difference in magnitude between Colorado's modeled in-state contributions to its nonattainment and maintenance receptors and Utah's modeled contributions, especially when compared to receptors in the eastern U.S., led the State to conclude that their interstate contributions to these receptors are negligible.[43]

[37] Utah's SIP submission at C–008.

[38] Id.

[39] Each of the five receptors apart from Receptor ID 80590006 (Jefferson, Colorado).

[40] Utah's SIP submission at C–008.

[41] Id. (quoting 81 FR 15200 (March 22, 2016)).

[42] Id.

[43] Id. at C–009.

TABLE 3—IN-STATE VS. COLLECTIVE UPWIND STATE CONTRIBUTIONS [a]

Receptor ID	County	State	Average design value (ppb)	Maximum design value (ppb)	In-state contribution (ppb)	Total contribution from upwind states (ppb)
80050002	Arapahoe	CO	69.3	71.3	22.94	5.98
80350004	Douglas	CO	71.1	73.2	24.71	5.94
80590006	Jefferson	CO	71.3	73.7	25.52	7.06
80590011	Jefferson	CO	70.9	73.9	24.72	6.98
80690011	Larimer	CO	71.2	73.0	21.74	6.33

[a] Data according to March 2018 memorandum modeling.

As part of its weight of evidence analysis, UDAQ also considered the impacts of non-anthropogenic and international contributions on the Denver area receptors to which it was linked by the March 2018 memorandum modeling, claiming that this was identified as a flexibility under Step 3 in the March 2018 memorandum.[44] UDAQ included the information provided in Table 4 to support this point and asserted that the high level of ''[u]ncontrollable'' emissions made it unnecessary for the State to consider Step 3 of the 4-step interstate transport framework in its analysis.[45]

TABLE 4—CONTRIBUTIONS FROM CANADA/MEXICO, OFFSHORE, FIRE, AND BIOGENIC EMISSIONS AND THE INITIAL/BOUNDARY CONDITIONS TO COLORADO RECEPTOR SITES [a]

Receptor ID	County	2023 Maximum design value (ppb)	Non-U.S./non anthro [b] (ppb)	Initial and Boundary conditions	Total uncontrollable contribution (ppb)	Percent of max DV
80050002	Arapahoe	71.3	5.39	34.84	40.23	56
80350004	Douglas	73.2	5.53	34.74	40.27	55
80590006	Jefferson	73.7	7.13	31.41	38.54	52
80590011	Jefferson	73.9	6.05	32.96	39.01	53
80690011	Larimer	73.0	8.42	34.54	42.96	59

[a] Data according to March 2018 memorandum modeling.
[b] Includes contributions from Canada/Mexico, Offshore, Fire, and Biogenic sources.

Lastly, UDAQ's weight-of-evidence argument points to reductions in ozone precursor pollutants nitrogen oxides (NO_X) and volatile organic compounds (VOC) that have taken place in the State since 2011, the base year for the March 2018 memorandum modeling.[46] UDAQ asserted that their statewide emissions inventory had decreased by 37% (NO_X) and 30% (VOC), respectively, between 2011 and 2017.[47] UDAQ also pointed to then-forthcoming Best Available Control Technology (BACT) requirements for the Salt Lake City, UT $PM_{2.5}$ Nonattainment Area, estimating these would result in projected further reductions of 1,440 tons/year of NO_X and 5,624 tons/year of VOC within the nonattainment area by 2020.[48] UDAQ also discussed the anticipated reduction in mobile source emissions due to the national Tier 3 Vehicle Emissions and Fuel Standards, as well as increased inspection and compliance requirements for the oil and gas sector, though they did not quantify either of these reductions.[49] UDAQ concluded that it would not be necessary to require additional reductions at Steps 3 and 4 given the amount of reductions already achieved.[50]

Overall, Utah's SIP submittal asserts that: (1) A 1 ppb threshold is appropriate for states contributing to the Denver area receptors, including Utah; (2) contributions from Utah to linked nonattainment and maintenance receptors are not significant when considering in-state contributions from Colorado and total collective contributions from all upwind states; (3) contributions from Utah should not be controlled at Step 3 due to the amount of uncontrollable international and non-anthropogenic emissions contributing to the downwind nonattainment and maintenance receptors, and; (4) emissions of VOCs and NO_X in Utah are declining or have declined such that it is unnecessary to require further reductions at Steps 3 and 4. UDAQ asserted that the combined information in its weight of evidence analysis demonstrates that emissions from the State do not significantly contribute to nonattainment or interfere with the maintenance of the 2015 ozone NAAQS in any downwind state.

III. The EPA's Evaluation

The EPA is proposing to find that Utah's January 29, 2020 SIP submission does not meet the State's obligations with respect to prohibiting emissions that contribute significantly to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other state. The Agency's decision to propose disapproval of Utah's SIP submission is based on our evaluation of the SIP using the 4-step interstate transport framework.

A. Evaluation of Information Provided by Utah Regarding Step 1 and Step 2

At Step 1 and Step 2 of the 4-step interstate transport framework, UDAQ relied on EPA modeling released in the March 2018 memorandum to identify nonattainment and maintenance receptors and upwind state linkages to those nonattainment and maintenance receptors in 2023. In this proposal, the

[44] Id.
[45] Id.
[46] Id. at C–011.
[47] Id.
[48] Id.
[49] Id.
[50] Id. at C–013.

EPA relies on the Agency's most recently available modeling (2016v2) to identify upwind contributions and linkages to downwind air quality problems in 2023. The earlier modeling relied on by UDAQ identified a number of nonattainment and maintenance receptor sites in 2023 as did the more recent 2023 modeling. Thus, EPA agrees with UDAQ that for Step 1 under the 4-step interstate transport framework, a number of nonattainment and maintenance receptors for the 2015 ozone NAAQS were projected for 2023 in the Denver area.

In their January 2020 SIP submittal, UDAQ stated that a 1 ppb threshold is appropriate for the Denver area receptors to which it is linked. As noted in Section II of this proposed action, UDAQ cited the EPA's August 2018 memorandum to justify using a 1 ppb alternative contribution threshold at Step 2 as a basis to assert that Utah would not be linked to some projected downwind nonattainment or maintenance receptors. UDAQ did not appear to argue in its submittal that 1 percent of the NAAQS would *not* be an appropriate threshold for upwind contribution to the Denver area receptors, and purported to evaluate contribution even at a fifth receptor to which it contributed less than 1 ppb (See Submittal at C–009). The EPA views the 1 percent of NAAQS threshold as the more appropriate threshold, as explained elsewhere in this document.[51]

As discussed in the August 2018 memorandum, the EPA suggested that, with appropriate additional analysis, it may be reasonable for states to use a 1 ppb contribution threshold, as an alternative to a 1 percent threshold, at Step 2 of the 4-step interstate transport framework, for the purposes of identifying linkages to downwind receptors. Utah conducted an analysis comparing the 1 ppb and 1 percent thresholds, as shown in Table 2 of this document and asserted that the 1 ppb threshold is appropriate because the capture rates are generally comparable in the March 2018 memorandum modeling. However, UDAQ did not adequately explain how a 1 ppb threshold would be justified with respect to all the receptors to which Utah is linked. While the EPA agrees that the capture rate is comparable with regard to some of the listed Denver area receptors, the use of the alternative 1 ppb threshold would have the result of reducing the amount of cumulative upwind state contributions that would be captured for other receptors. Specifically, the two Jefferson Country receptors (sites 80590006 and 80590011) captured 33.2% and 13.5% less upwind contribution, respectively, at 1 ppb than at 1 percent using the March 2018 memorandum modeling UDAQ relied on (see Table 2). This far exceeds the roughly 7 percent loss in total upwind state contributions the EPA found would occur at 1 ppb on a nationwide basis in its August 2018 memorandum, but UDAQ offered no further explanation why that level of loss in cumulative upwind state contribution would be approvable with respect to the receptors to which it was linked. Indeed, this degree of loss in cumulative upwind state contribution appears more comparable to what would occur at a threshold of 2 ppb, which the EPA indicated in its August 2018 memorandum would generally not be approvable.[52] While the EPA does not, in this action, approve of UDAQ's application of the 1 ppb threshold, because all of Utah's linkages based on the EPA's updated 2016v2 modeling (*See* Table 5 below) are greater than 1 ppb to projected downwind nonattainment or maintenance receptors, UDAQ's use of this alternative threshold at Step 2 of the 4-step interstate framework would not alter our review and proposed disapproval of this SIP submittal.

The EPA here shares further evaluation of its experience since the issuance of the August 2018 memorandum regarding use of alternative thresholds at Step 2. This experience leads the Agency to now believe it may not be appropriate to continue to attempt to recognize alternative contribution thresholds at Step 2. The August 2018 memorandum stated that ''it may be reasonable and appropriate'' for states to rely on an alternative threshold of 1 ppb threshold at Step 2.[53] (The memorandum also indicated that any higher alternative threshold, such as 2 ppb, would likely not be appropriate.) However, the EPA also provided that ''air agencies should consider whether the recommendations in this guidance are appropriate for each situation.'' Following receipt and review of 49 good neighbor SIP submittals for the 2015 8-hour ozone NAAQS, the EPA's experience has been that nearly every state that attempted to rely on a 1 ppb threshold did not provide sufficient information and analysis to support a determination that an alternative threshold was reasonable or appropriate for that state. For instance, in nearly all submittals, the states did not provide the EPA with analysis specific to their state or the receptors to which its emissions are potentially linked. In one case, the proposed approval of Iowa's SIP submittal, the EPA expended its own resources to attempt to supplement the information submitted by that state, in order to more thoroughly evaluate the state-specific circumstances that could support approval.[54] It was at the EPA's sole discretion to perform this analysis in support of Iowa's submittal, and the Agency is not obligated to conduct supplemental analysis to fill the gaps whenever it believes a state's analysis is insufficient. The Agency no longer intends to undertake supplemental analysis of SIP submittals with respect to alternative thresholds at Step 2 for purposes of the 2015 ozone NAAQS. Furthermore, the EPA's experience since 2018 is that allowing for alternative Step 2 thresholds may be impractical or otherwise inadvisable for a number of additional policy reasons. For a regional air pollutant such as ozone, consistency in requirements and expectations across all states is essential. Based on its review of submittals to-date and after further consideration of the policy implications of attempting to recognize an alternative Step 2 threshold for certain states, the Agency now believes the attempted use of different thresholds at Step 2 with respect to the 2015 ozone NAAQS raises substantial policy consistency and practical implementation concerns.[55] The availability of different thresholds at Step 2 has the potential to result in inconsistent application of good neighbor obligations based solely on the strength of a state's SIP submittal at Step 2 of the 4-step interstate transport framework. From the perspective of ensuring effective regional implementation of good neighbor obligations, the more important analysis is the evaluation of the emissions

[51] We note the explanation for how the 1 percent contribution threshold was originally derived is available in the 2011 CSAPR rulemaking. *See* 76 FR 48208, 48237–38. Further, in the CSAPR Update, the EPA re-analyzed the threshold for purposes of the 2008 ozone NAAQS and determined it was appropriate to continue to apply this threshold. *See* 81 FR 74504, 74518–19.

[52] *See* August 2018 memorandum at 4.

[53] Id.

[54] *See* Air Plan Approval; Iowa; Infrastructure State Implementation Plan Requirements for the 2015 Ozone National Ambient Air Quality Standard, 85 FR 12232 (March 2, 2020). The Agency received adverse comment on this proposed approval and has subsequently formally withdrawn the proposed approval. 87 FR 9477 (Feb. 22, 2022).

[55] We note that Congress has placed on the EPA a general obligation to ensure the requirements of the CAA are implemented consistently across states and regions. *See* CAA section 301(a)(2). Where the management and regulation of interstate pollution levels spanning many states is at stake, consistency in application of CAA requirements is paramount.

reductions needed, if any, to address a state's significant contribution after consideration of a multifactor analysis at Step 3, including a detailed evaluation that considers air quality factors and cost. Where alternative thresholds for purposes of Step 2 may be ''similar'' in terms of capturing the relative amount of upwind contribution (as described in the August 2018 memorandum), nonetheless, use of an alternative threshold would allow certain states to avoid further evaluation of potential emission controls while other states must proceed to a Step 3 analysis. This can create significant equity and consistency problems among states. Further, it is not clear that national ozone transport policy is best served by allowing for less stringent thresholds at Step 2. The EPA recognized in the August 2018 memorandum that there was some similarity in the amount of total upwind contribution captured (on a nationwide basis) between 1 percent and 1 ppb. However, the EPA notes that while this may be true in some sense, that is hardly a compelling basis to move to a 1 ppb threshold. Indeed, the 1 ppb threshold has the disadvantage of losing a certain amount of total upwind contribution for further evaluation at Step 3 (*e.g.,* roughly seven percent of total upwind state contribution was lost according to the modeling underlying the August 2018 memorandum; [56] in the EPA's updated modeling, the amount lost is five percent). Considering the core statutory objective of ensuring elimination of all significant contribution to nonattainment or interference of the NAAQS in other states and the broad, regional nature of the collective contribution problem with respect to ozone, there does not appear to be a compelling policy imperative in allowing some states to use a 1 ppb threshold while others rely on a 1 percent of NAAQS threshold.

Consistency with past interstate transport actions such as CSAPR, and the CSAPR Update and Revised CSAPR Update rulemakings (which used a Step 2 threshold of 1 percent of the NAAQS for two less stringent ozone NAAQS), is also important. Continuing to use a 1 percent of NAAQS approach ensures that as the NAAQS are revised and made more stringent, an appropriate increase in stringency at Step 2 occurs, so as to ensure an appropriately larger amount of total upwind-state contribution is captured for purposes of fully addressing interstate transport. *Accord* 76 FR 48237–38. Therefore, notwithstanding the August 2018 memorandum's recognition of the potential viability of alternative Step 2 thresholds, and in particular, a potentially applicable 1 ppb threshold, the EPA's experience since the issuance of that memorandum has revealed substantial programmatic and policy difficulties in attempting to implement this approach. Nonetheless, the EPA is not at this time rescinding the August 2018 memorandum. The basis for disapproval of Utah's SIP submission with respect to the Step 2 analysis is, in the Agency's view, warranted even under the terms of the August 2018 memorandum. The EPA invites comment on this broader discussion of issues associated with alternative thresholds at Step 2. Depending on comment and further evaluation of this issue, the EPA may determine to rescind the August 2018 memorandum in the future.

As described in Section I of this preamble, the EPA recently performed air quality modeling using the 2016v2 emissions platform to project design values and contributions for 2023. These data were examined to determine if Utah contributes at or above the threshold of 1 percent of the 2015 8-hour ozone NAAQS (0.70 ppb) to any downwind nonattainment or maintenance receptor. As shown in Table 5, the EPA's 2016v2 modeling projects that in 2023, emissions from Utah will contribute greater than 1 percent of the standard to nonattainment receptors in both Douglas and Jefferson Counties, Colorado.[57]

TABLE 5—UTAH LINKAGE RESULTS BASED ON EPA UPDATED 2023 MODELING [a]

Receptor ID	Location	Nonattainment/maintenance	2023 Average design value (ppb)	2023 Maximum design value (ppb)	Utah contribution (ppb)
80350004	Douglas County, CO	Nonattainment	71.7	72.3	1.37
80590006	Jefferson County, CO	Nonattainment	72.6	73.3	1.10
80590011	Jefferson County, CO	Nonattainment	73.8	74.4	1.06

[a] According to data from 2016v2 platform modeling.

In regard to UDAQ's argument that contributions from Utah are not significant when considering total collective contributions from all upwind states to the same receptors, as well as UDAQ's argument that ozone transport is somehow fundamentally different in the west than the east, the EPA disagrees. The EPA's recent air quality modeling shows that multiple upwind states collectively contributed to projected downwind nonattainment or maintenance receptors in Colorado. In particular, the EPA found that the total upwind states' contribution to ozone concentrations (from linked and unlinked states) to identified downwind air quality problems in Colorado is between 6 and 7 percent, as shown in Table 6. The EPA has found that the collective contribution of emissions from upwind states represents a significant portion of the ozone concentrations at projected nonattainment and maintenance receptors in Colorado.

In its SIP submittal, UDAQ pointed to the EPA's approval of an Arizona interstate transport SIP for the 2008 ozone NAAQS based on collective transport contributions.[58] However, for that SIP, Arizona was the only state linked to the downwind monitoring sites at issue and the range of total upwind-state contributions to those sites identified in the Arizona case were

[56] *See* August 2018 memorandum, at 4.

[57] These modeling results are consistent with the results of a prior round of 2023 modeling using the 2016v1 emissions platform which became available to the public in the fall of 2020 in the Revised CSAPR Update, as noted in Section I. That modeling showed that Utah had a maximum contribution equal to or greater than 0.70 ppb to multiple nonattainment or maintenance-only receptor in 2023. These modeling results are included in the file ''Ozone Design Values and Contributions Revised CSAPR Update.xlsx'' in docket EPA–HQ–OAR–2021–0663.

[58] Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Arizona; Infrastructure Requirements To Address Interstate Transport for the 2008 Ozone NAAQS. 81 FR 31513 (May 19, 2016).

very low as well, in the range of 2.5 to 4.4 percent of the design value for *all* upwind states, including both linked (above 1 percent) and unlinked (below 1 percent) state contributions.

TABLE 6—ALL UPWIND STATE CONTRIBUTIONS TO NONATTAINMENT RECEPTORS IN COLORADO [a]

Site ID	State	County	2023 Avg (ppb)	2023 Max (ppb)	Contribution of all upwind states combined (ppb) [b]	Percent contribution of all upwind states combined [c]
80350004	Colorado	Douglas	71.7	72.3	5.17	7.21
80590006	Colorado	Jefferson	72.6	73.3	4.23	5.83
80590011	Colorado	Jefferson	73.8	74.4	4.34	5.88

[a] According to data from 2016v2 platform modeling.
[b] The contribution from all upwind states and percent contribution are based on individual upwind contributions that are truncated to two digits to the right of the decimal, as provided in *regulations.gov* at document EPA–HQ–OAR–2021–0668–0069.
[c] Calculated using the projected 2023 average design values for the applicable receptors.

As noted, the EPA has consistently found that the 1 percent threshold is appropriate for identifying interstate transport linkages for states collectively contributing to downwind ozone nonattainment or maintenance problems because that threshold captures a high percentage of the total pollution transport affecting downwind receptors. The EPA believes contribution from an individual state equal to or above 1 percent of the NAAQS could be considered significant where the collective contribution of emissions from one or more upwind states is responsible for a considerable portion of the downwind air quality problem regardless of where the receptor is geographically located. In the case of the two Jefferson County, Colorado nonattainment receptors listed in Table 6, two states, including Utah, contribute emissions greater than or equal to 1 percent of the 2015 ozone NAAQS. Three states, also including Utah, contribute above 1 percent to the nonattainment receptor located in Douglas County, CO. Given the 2016v2 modeling results and the EPA's consistent application of the 1 percent threshold to establish linkages, the EPA is proposing to determine that Utah contributes to nonattainment and interferes with maintenance of the 2015 ozone NAAQS in the Denver, Colorado area.

Further, the EPA has explained in prior actions on western states' ozone transport SIPs that a 1 percent threshold may be appropriate in the west just as much as in the east. When the EPA took action on Utah's SIP submittal as to prong 2 for the 2008 ozone NAAQS, the EPA addressed the basis for applying a 1 percent threshold at least as to Colorado receptors and rejected comments advocating for a higher threshold. 81 FR 71991, 71994–95 (Oct. 19, 2016). The EPA explained the basis for the 1 percent threshold as derived in the CSAPR and CSAPR Update rulemakings, and then explained that the same reasoning would hold true with respect to the Colorado receptors to which Utah was linked. *Id.* The EPA noted that Utah's advocacy for a higher contribution threshold of 2 percent of the NAAQS was not technically supported and ''appears to only be justified by the conclusion that Utah would not have been linked to Denver receptors at this level.'' *Id.* at 71995.

Similarly, in acting on Wyoming's interstate transport submittals for the 2008 ozone NAAQS, the EPA consistently applied the 1 percent threshold and rejected use of a higher threshold. The EPA explained that a 1 percent threshold was appropriate to apply for a Colorado receptor ''because the air quality problem in that area resulted in part from the relatively small individual contribution of upwind states that collectively contribute a larger portion of the ozone contributions (9.7%), comparable to some eastern receptors . . . .'' *See* 84 FR 3389, 3391 (Feb. 12, 2019).

When the EPA approved Arizona's 2008 ozone NAAQS transport SIP submittal, it found the 1 percent threshold appropriate to apply as to that western state. 81 FR 15200, 15202–03 (March 22, 2016). We stated that we disagreed with Arizona's contention that it is unclear what screening threshold is significant for southwestern states when addressing interstate transport contributions. We explained that we believe contribution from an individual state equal to or above 1 percent of the NAAQS could be considered significant where the collective contribution of emissions from one or more upwind states is responsible for a considerable portion of the downwind air quality problem regardless of where the receptor is geographically located. *See id.* 15202.

As discussed in further detail below, the EPA found based on an analysis of the California monitoring sites at issue in that action that Arizona was not contributing to downwind nonattainment or maintenance problems.

UDAQ relies on the EPA's approval of Arizona's 2008 ozone NAAQS transport SIP as a basis for the claim that its contributions to Colorado are ''negligible.'' [59] In that action the EPA made an assessment of the nature of certain monitoring sites in California. The EPA noted that a ''factor [. . .] relevant to determining the nature of a projected receptor's interstate transport problem is the magnitude of ozone attributable to transport from all upwind states collectively contributing to the air quality problem.'' 81 FR at 15203. The EPA observed that only one upwind state (Arizona) was linked above 1 percent of the 2008 ozone NAAQS to the two relevant monitoring sites in California, and the cumulative ozone contribution from all upwind states to those sites was 2.5 percent and 4.4 percent of the total ozone concentration, respectively. The EPA determined the size of those cumulative upwind contributions was ''negligible, particularly when compared to the relatively large contributions from upwind states in the East *or in certain other areas of the West.*'' *Id.* (emphasis added). In that action, the EPA concluded the two California sites to which Arizona was linked should not be treated as receptors for the purposes of determining Good Neighbor obligations for the 2008 ozone NAAQS. *Id.*

As an initial matter, we note that this analysis is properly considered at Step

[59] *See* 81 FR 15200 (March 22, 2016) (proposal); 81 FR 31513 (May 19, 2016) (final rule; no comments received).

1 of the 4-step framework rather than at Step 2, as it is a determination of whether an interstate-pollution transport problem should be considered to exist at all, *before* reaching a determination as to which states contribute to that problem. As the EPA explained in its Arizona action, it considered the 1 percent of NAAQS threshold appropriate to apply at Step 2. *Id.* at 15202. *See also id.* at 15203 (''EPA believes the emissions that result in transported ozone from upwind states have limited impacts on the projected air quality problems in El Centro, California and Los Angeles, California, and therefore should not be treated as receptors for purposes of determining the interstate transport obligations of upwind states.''). However, because UDAQ has presented this argument as a part of its weight of evidence analysis at Step 2, we present this analysis in turn here, as related to UDAQ's Step 2 arguments.

Turning to the substance of UDAQ's argument that the EPA's Arizona action supports an approval here: The conclusions the EPA reached regarding El Centro and Los Angeles California cannot be reached with respect to the receptors in Colorado, and the EPA has consistently taken this same position across several prior actions addressing Wyoming's and Utah's interstate transport obligations, where we have concluded that the receptors in Colorado are ''substantially'' influenced by upwind-state emissions. *See* 82 FR 9155, 9157 (Feb. 3, 2017). The EPA's view in acting on Wyoming and Utah's 2008 ozone NAAQS SIP submittals was that ''the air quality problem in [the Denver nonattainment area of Colorado] resulted in part from the relatively small individual contribution of upwind states that collectively contribute a larger portion of the ozone contributions (9.7%), comparable to some eastern receptors . . . .'' *See* 84 FR 3389, 3391 (Feb. 12, 2019).[60] *See also* 81 FR 71991, 71994–95 (Oct. 19, 2016); 81 FR 28807, 28810 (May 10, 2016) (Colorado receptors are impacted by interstate transport where total upwind state contribution is about 11 percent of the total ozone concentration, and five states were projected to be linked).

Indeed, the EPA has specifically addressed this precise comparison between the circumstances of Arizona's approval and the nature of the receptors in Colorado. In approving Utah's transport SIP as to prong 1 for the 2008 ozone NAAQS, the EPA found its analysis as to Arizona's impact on California sites did not apply to Utah's impact on Colorado's sites (which the EPA found remained at least maintenance receptors as to the 2008 ozone NAAQS). *See* 82 FR 9155, 9157 (Feb. 3, 2017) (''The EPA's assessment concluded that emissions reductions from Arizona are not necessary to address interstate transport because the total collective upwind state ozone contribution to these receptors is relatively low compared to the air quality problems typically addressed by the good neighbor provision. As discussed previously, the EPA similarly evaluated collective contribution to the Douglas County, Colorado monitor *and finds the collective contribution of transported pollution to be substantial*'') (emphasis added).[61]

The modeling data on which UDAQ relied in its SIP submittal (from the EPA's March 2018 memorandum) continue to bear out these conclusions (*see* Table 3 of UDAQ's submittal). That modeling showed contributions from more than one upwind state above 1 percent of the NAAQS at all Colorado receptors, and it showed total upwind-state contribution to be between 8 and 10 percent of the total ozone concentrations at those receptors. The EPA disagrees that that degree of upwind state contribution can be characterized as ''negligible.''

The EPA acknowledges that in its most recent modeling of 2023 (using the 2016v2 platform), the degree of the interstate transport problem to Colorado is now projected to lessen somewhat compared to previous projections of 2023. However, these projected improvements are still not sufficient to draw a conclusion that Colorado is not impacted to a considerable degree by out of state emissions. The EPA's recent air quality modeling continues to show that multiple upwind states collectively contribute to projected downwind nonattainment or maintenance receptors in Colorado—specifically, California, Utah, and Wyoming all contribute above 1 percent of the NAAQS to at least one of Colorado's receptors in 2023. (In contrast, at the time EPA approved Arizona's 2008 ozone NAAQS good neighbor SIP, Arizona was the only state linked above 1 percent at the relevant California monitoring sites.) Further, our most recent modeling shows that the total upwind state contribution to ozone concentrations at identified downwind air quality problems in Colorado is approximately 6 to 7 percent, as shown in Table 6. That remains higher than the 2 to 4% range of total upwind contribution the EPA found to be negligible with respect to the California sites analyzed in the Arizona action. Therefore, the EPA continues to find that the collective contribution of emissions from upwind states represents a significant portion of the ozone concentrations at projected nonattainment and maintenance receptors in Colorado.

Based on the EPA's evaluation of Utah's January 2020 submission and consideration of the EPA's most recent (2016v2) modeling results for 2023, the EPA proposes to find that Utah is linked at Steps 1 and 2 and has an obligation to assess potential emissions reductions from sources or other emissions activity at Step 3 of the 4-step framework.

B. Evaluation of Information Provided Regarding Step 3

At Step 3 of the 4-step interstate transport framework, a state's emissions are further evaluated, in light of multiple factors, including air quality and cost considerations, to determine what, if any, emissions significantly contribute to nonattainment or interfere with maintenance and, thus, must be eliminated under CAA section 110(a)(2)(D)(i)(I).

To effectively evaluate which emissions in the state should be deemed ''significant'' and therefore prohibited, states generally should prepare an accounting of sources and other emissions activity for relevant pollutants and assess potential, additional emissions reduction opportunities and resulting downwind air quality improvements. The EPA has consistently applied this general approach (*i.e.,* Step 3 of the 4-step interstate transport framework) when identifying emissions contributions that the Agency has determined to be ''significant'' (or interfere with maintenance) in each of its prior federal, regional ozone transport rulemakings, and this interpretation of the statute has been upheld by the Supreme Court. *See EME Homer City,* 572 U.S. 489, 519 (2014). While the EPA has not directed states that they must conduct a Step 3 analysis in precisely the manner the EPA has done in its prior regional transport rulemakings, state implementation plans addressing the

[60] While EPA ultimately approved Wyoming's transport SIP submittal as proposed in this 2019 action, this was on the basis of a unique air quality demonstration developed by Colorado itself to establish that there would be no air quality problem in Colorado with respect to the 2008 ozone NAAQS once air quality monitoring data influenced by ''atypical events'' were removed (assuming 2023 was the correct analytical year). *See* 84 FR 3392–94; 84 FR 14270 (April 10, 2019) (final action; no comments received).

[61] As noted in that action, because Utah was found to still be linked to Colorado's *maintenance* receptors under the 2008 ozone NAAQS, EPA's disapproval of the SIP as to prong 2 remained in place. *See id.* at 9156.

obligations in CAA section 110(a)(2)(D)(i)(I) must prohibit ''any source or other type of emissions activity within the State'' from emitting air pollutants which will contribute significantly to downwind air quality problems. Thus, states must complete something similar to the EPA's analysis (or an alternative approach to defining ''significance'' that comports with the statute's objectives) to determine whether and to what degree emissions from a state should be ''prohibited'' to eliminate emissions that will ''contribute significantly to nonattainment in, or interfere with maintenance of'' the NAAQS in any other state.

UDAQ did not conduct such an analysis in its SIP submission, determining instead that the relatively large impact of so-called ''uncontrollable'' emissions (*i.e.,* international and non-anthropogenic emissions) and home state emissions at the Colorado receptors, as well as emissions reductions already achieved as a result of other regulatory programs, meant the State had no further obligation to assess or implement additional emissions control measures at Steps 3 or 4. The EPA disagrees with these conclusions for the reasons below.

UDAQ asserted that receptors in the western U.S. are much more impacted by emissions from non-U.S. sources or non-anthropogenic sources (see Table 4) than by upwind State contributions, especially when compared to such impacts in the eastern U.S., making Utah's contributions to Denver area receptors comparably negligible. The EPA disagrees that contributions from other sources, including international or non-anthropogenic emissions, in any way excuse Utah from addressing its own significant contribution to nonattainment or interference with maintenance at downwind areas under CAA section 110(a)(2)(D)(i)(I). The EPA acknowledges that the consideration of international contributions was among the ''Preliminary List of Potential Flexibilities'' provided in the March 2018 memorandum, as UDAQ noted. However, as described in section I.D. of this proposed action, the EPA does not consider the potential flexibilities described in the March 2018 memorandum as constituting agency guidance; rather, the EPA must thoroughly review the technical and legal merits of invoking the concepts in that Appendix.

UDAQ's reasoning related to international and non-anthropogenic emissions is inapplicable to the requirements of CAA section 110(a)(2)(D)(i)(I). The good neighbor provision requires states and the EPA to address interstate transport of air pollution that *contributes to* downwind states' ability to attain and maintain NAAQS. Whether emissions from other countries or non-anthropogenic sources also contribute to the same downwind air quality issue is irrelevant in assessing whether a downwind state has an air quality problem, or whether an upwind state is significantly contributing to that problem. States are not obligated under CAA section 110(a)(2)(D)(i)(I) to reduce emissions sufficient on their own to resolve downwind receptors' nonattainment or maintenance problems. Rather, states are obligated to eliminate their own ''significant contribution'' or ''interference'' with the ability of other states to attain or maintain the NAAQS.

Indeed, the D.C. Circuit in *Wisconsin* specifically rejected petitioner arguments suggesting that upwind states should be excused from good neighbor obligations on the basis that some other source of emissions (whether international or another upwind state) could be considered the ''but-for'' cause of downwind air quality problem. 938 F.3d 303 at 323–324. The court viewed petitioners' arguments as essentially an argument ''that an upwind State 'contributes significantly' to downwind nonattainment only when its emissions are the sole cause of downwind nonattainment.'' 938 F.3d 303 at 324. The court explained that ''an upwind State can 'contribute' to downwind nonattainment even if its emissions are not the but-for cause.'' *Id.* at 324–325. *See also Catawba County* v. *EPA,* 571 F.3d 20, 39 (D.C. Cir. 2009) (rejecting the argument ''that 'significantly contribute' unambiguously means 'strictly cause' '' because there is ''no reason why the statute precludes EPA from determining that [an] addition of [pollutant] into the atmosphere is significant even though a nearby county's nonattainment problem would still persist in its absence''); *Miss. Comm'n on Envtl. Quality* v. *EPA,* 790 F.3d 138, 163 n.12 (D.C. Cir. 2015) (observing that the argument that ''there likely would have been no violation at all . . . if it were not for the emissions resulting from [another source]'' is ''merely a rephrasing of the but-for causation rule that we rejected in *Catawba County.*''). Therefore, a state is not excused from eliminating its significant contribution on the basis that some amount of ''uncontrollable'' emissions (whether international or non-anthropogenic) also contribute some amount of pollution to the same receptors to which the state is linked.

Further, the data supplied in UDAQ's SIP submission tends to be self-refuting on this point. Table 4 of the submission indicates that 52 percent–59 percent (depending on receptor) of the total ozone concentrations at the Colorado receptors are from non-anthropogenic or non-U.S. emissions sources. This means that between 41 percent–48 percent of the ozone levels at the Colorado receptors *are* the result of anthropogenic emissions originating in the U.S. Those emissions are clearly within the authority of states and the EPA to redress, and reducing some portion of those emissions can be assumed to improve air quality at the Colorado receptors. While not all of those U.S. anthropogenic emissions can be attributed to Utah, Utah's emissions are shown by the modeling to contribute to Colorado's air quality problem at levels sufficient to warrant evaluation of emissions control opportunities at Step 3 of the EPA's longstanding analytical framework.

The EPA also disagrees that greater in-state emissions, in this case anthropogenic emissions generated in Colorado, preclude upwind states' good neighbor obligations under CAA section 110(a)(2)(D)(i)(I). The D.C. Circuit has held on five different occasions that the timing framework for addressing interstate transport obligations must be consistent with the downwind areas' attainment schedule. In particular, for the ozone NAAQS, the states and the EPA are to address interstate transport obligations ''as expeditiously as practicable'' and no later than the attainment schedule set in accordance with CAA section 181(a). *See North Carolina,* 531 F.3d at 911–13; *Wisconsin,* 938 F.3d at 313–20; *Maryland,* 958 F.3d at 1204; *New York* v. *EPA,* 964 F.3d 1214, 1226 (D.C. Cir. 2020); *New York* v. *EPA,* 781 Fed. App'x 4, 6–7 (D.C. Cir. 2019). The court in *Wisconsin* explained its reasoning in part by noting that downwind jurisdictions often may need to heavily rely on emissions reductions from upwind states in order to achieve attainment of the NAAQS, 938 F.3d at 316–17; such states would face increased regulatory burdens including the risk of bumping up to a higher nonattainment classification if attainment is not reached by the relevant deadline, *Maryland,* 958 F.3d at 1204. The statutory framework of the CAA and these cases establish clearly that states and the EPA must address interstate transport obligations in line with the attainment schedule provided in the CAA in order to timely assist downwind states in attaining and

maintaining the NAAQS, and this schedule is ''central to the regulatory scheme.'' *Wisconsin,* 938 F.3d at 316 (quoting *Sierra Club* v. *EPA,* 294 F.3d 155, 161 (D.C. Cir. 2002)). Therefore, the EPA does not find that it should be the sole responsibility of the downwind state to resolve its nonattainment, especially after having established that collective contribution of emissions from multiple upwind states is responsible for a considerable portion of the downwind air quality problem. To that end, the EPA does not find UDAQ's arguments regarding the impacts of emissions from sources other than upwind states to be relevant to the analysis of interstate transport to Denver area nonattainment receptors. Therefore, the EPA finds that Utah has not adequately addressed its modeled contributions to projected downwind nonattainment receptors identified by the EPA.

UDAQ also pointed to reductions in emissions of VOCs and NO_X in the State through a combination of regulatory actions. Though the EPA considers the measures UDAQ described to be beneficial in reducing VOCs and NO_X in the State, UDAQ's analysis primarily quantifies anticipated reductions from area source rules in the Salt Lake City 2006 $PM_{2.5}$ nonattainment area. These rules all were finalized between 2008 and 2018 (see UDAQ submittal Table 5). UDAQ also cites but does not quantify emissions reductions from certain oil and gas sector rules which have effective dates in March 2019 (Table 6 in UDAQ's submittal). However, the EPA's modeling captures the air quality effects of existing on-the-books control measures in the emissions inventory baseline, and that modeling confirms that these control programs were not sufficient to eliminate Utah's linkage at Steps 1 and 2 under the 2015 8-hour ozone NAAQS. The State was therefore obligated at Step 3 to assess *additional* control measures using a multifactor analysis.

Further, the emissions reductions cited in Table 5 of UDAQ's submittal are predominantly from reductions in VOC emissions. The EPA has long recognized that the more important ozone-precursors for purposes of addressing regional and long-range interstate ozone transport are nitrogen oxides (NO_X).[62] According to Table 5 of the submittal, the existing rules UDAQ cited may achieve on the order of roughly 600 tons of NO_X reductions per ozone season (roughly 4 tons per day multiplied by the number of days in an ozone season). The import of this figure is unclear; regardless, UDAQ did not explain the baseline from which that amount of emissions reductions was derived, nor did UDAQ explain how or why that amount of emissions reduction is sufficient to eliminate significant contribution or interference with maintenance. For example, UDAQ could have but did not conduct a comparative assessment of additional emissions control opportunities and associated costs, develop a regional emissions-reduction assessment, or analyze the air quality benefits of those strategies at the downwind receptors. All of these are factors in the analysis the EPA has consistently performed at Step 3 over several ozone transport rulemakings such as CSAPR and the CSAPR Update.

In particular, UDAQ's analysis failed to evaluate emissions and emissions-reduction opportunities from most of the highest emitting NOx sources in the State, including multiple electric generating units located further east of the Salt Lake City, Utah area and thus closer to the Denver area receptors to which Utah contributes greater than 1 percent of the NAAQS. A state conducting a Step 3 analysis should undertake an evaluation of these kinds of substantial and potentially cost-effective emissions reduction opportunities, and the failure to do so is grounds for disapproval.

For these reasons, the EPA finds that the historically-achieved emissions reductions listed in Utah's January 2020 submission are not a satisfactory Step 3 analysis and do not demonstrate that the Utah SIP contains adequate provisions prohibiting emissions that will significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

We therefore propose to find that Utah was required to analyze emissions from the sources and other emissions activity from within the State to determine whether its contributions were significant, and we propose to disapprove its submission because the State failed to do so.

C. Evaluation of Information Provided Regarding Step 4

Step 4 of the 4-step interstate transport framework calls for development of permanent and federally enforceable control strategies to achieve the emissions reductions determined to be necessary at Step 3 to eliminate significant contribution to nonattainment or interference with maintenance of the NAAQS. As mentioned previously, Utah's SIP submission did not contain an evaluation of additional emission control opportunities (or establish that no additional controls are required), thus, no information was provided at Step 4. As a result, the EPA proposes to disapprove Utah's submittal on the separate, additional basis that the State has not developed permanent and enforceable emissions reductions necessary to meet the obligations of CAA section 110(a)(2)(D)(i)(I).

D. Conclusion

Based on the EPA's evaluation of Utah's SIP submission, the Agency is proposing to find that the portion of the State's January 29, 2020 SIP submission addressing CAA section 110(a)(2)(D)(i)(I) for the 2015 8-hour ozone NAAQS does not meet Utah's interstate transport obligations, because it fails to contain the necessary provisions to eliminate emissions that will contribute significantly to nonattainment or interfere with maintenance of this NAAQS in any other state.

IV. Proposed Action

We are proposing to disapprove Utah's SIP submission pertaining to interstate transport of air pollution which will significantly contribute to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in other states. Under CAA section 110(c)(1), disapproval would establish a 2-year deadline for the EPA to promulgate a FIP for Utah to address the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements pertaining to significant contribution to nonattainment and interference with maintenance of the 2015 8-hour ozone NAAQS in other states, unless the EPA approves a SIP that meets these requirements. Disapproval does not start a mandatory CAA sanctions clock for Utah. The remaining elements of the State's January 29, 2020 submission are not addressed in this action and either have been or will be acted on in a separate rulemaking.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

This proposed action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

[62] *See, e.g.,* 86 FR 23054, 23087.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action merely proposes to disapprove a SIP submission as not meeting the CAA.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely proposes to disapprove a SIP submission as not meeting the CAA.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action merely proposes to disapprove a SIP submission as not meeting the CAA.

K. CAA Section 307(b)(1)

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the D.C. Circuit: (i) When the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii).[63]

If the EPA takes final action on this proposed rulemaking the Administrator intends to exercise the complete discretion afforded to him under the CAA to make and publish a finding that the final action (to the extent a court finds the action to be locally or regionally applicable) is based on a determination of ''nationwide scope or effect'' within the meaning of CAA section 307(b)(1). Through this rulemaking action (in conjunction with a series of related actions on other SIP submissions for the same CAA obligations), the EPA interprets and applies section 110(a)(2)(d)(i)(I) of the CAA for the 2015 ozone NAAQS based on a common core of nationwide policy judgments and technical analysis concerning the interstate transport of pollutants throughout the continental U.S. In particular, the EPA is applying here (and in other proposed actions related to the same obligations) the same, nationally consistent 4-step framework for assessing good neighbor obligations for the 2015 ozone NAAQS. The EPA relies on a single set of updated, 2016-base year photochemical grid modeling results of the year 2023 as the primary basis for its assessment of air quality conditions and contributions at Steps 1 and 2 of that framework. Further, the EPA proposes to determine and apply a set of nationally consistent policy judgments to apply the 4-step framework. The EPA has selected a nationally uniform analytic year (2023) for this analysis and is applying a nationally uniform approach to nonattainment and maintenance receptors and a nationally uniform approach to contribution threshold analysis.[64] For these reasons, the Administrator intends, if this proposed action is finalized, to exercise the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on one or more determinations of nationwide scope or effect for purposes of CAA section 307(b)(1).[65]

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone.

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

Dated: May 16, 2022.

KC Becker,

Regional Administrator, Region 8.

[FR Doc. 2022–11152 Filed 5–23–22; 8:45 am]

BILLING CODE 6560–50–P

[63] In deciding whether to invoke the exception by making and publishing a finding that an action is based on a determination of nationwide scope or effect, the Administrator takes into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit's authoritative centralized review versus allowing development of the issue in other contexts and the best use of agency resources.

[64] A finding of nationwide scope or effect is also appropriate for actions that cover states in multiple judicial circuits. In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that the ''nationwide scope or effect'' exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03.

[65] The EPA may take a consolidated, single final action on all of the proposed SIP disapproval actions with respect to obligations under CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. Should the EPA take a single final action on all such disapprovals, this action would be nationally applicable, and the EPA would also anticipate, in the alternative, making and publishing a finding that such final action is based on a determination of nationwide scope or effect.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0138; EPA–HQ–OAR–2021–0663; FRL–9799–01–R9]

Air Plan Disapproval; Nevada; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Clean Air Act (CAA or ''Act''), the Environmental Protection Agency (EPA) is proposing to disapprove a state implementation plan (SIP) submittal from Nevada addressing interstate transport for the 2015 8-hour ozone national ambient air quality standards (NAAQS). The ''good neighbor'' or ''interstate transport'' provision of the Act requires that each state's SIP contain adequate provisions to prohibit emissions from within the state from significantly contributing to nonattainment or interfering with maintenance of the NAAQS in other states. This requirement is part of the broader set of ''infrastructure'' requirements, which are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. This disapproval, if finalized, will establish a 2-year deadline for the EPA to promulgate a federal implementation plan (FIP) to address the relevant interstate transport requirements, unless the EPA approves a subsequent SIP submittal that meets these requirements. Disapproval does not start a mandatory sanctions clock.

DATES: *Comments:* Written comments must be received on or before July 25, 2022.

ADDRESSES: You may send comments, identified as Docket No. EPA–R09–OAR–2022–0138, by any of the following methods: Federal eRulemaking Portal at *https://www.regulations.gov* following the online instructions for submitting comments or via email to *kelly.thomasp@epa.gov.* Include Docket ID No. EPA–R09–OAR–2022–0138 in the subject line of the message.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tom Kelly, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 972–3856, *kelly.thomasp@epa.gov.*

SUPPLEMENTARY INFORMATION: *Public Participation:* Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0138, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be 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).

There are two dockets supporting this action, EPA–R09–OAR–2022–0138 and EPA–HQ–OAR–2021–0663. Docket No. EPA–R09–OAR–2022–0138 contains information specific to Nevada, including the notice of proposed rulemaking. Docket No. EPA–HQ–OAR–2021–0663 contains additional modeling files, emissions inventory files, technical support documents, and other relevant supporting documentation regarding interstate transport of emissions for the 2015 8-hour ozone NAAQS that are being used to support this action. All comments regarding information in either of these dockets are to be made in Docket No. EPA–R09–OAR–2022–0138. For additional submission methods, if you need assistance in a language other than English, or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact Tom Kelly, (415) 972–3856, *kelly.thomasp@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The index to the docket for this action, Docket No. EPA–R09–OAR–2022–0138, is available electronically at *https://www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

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

Table of Contents

I. Background

A. Description of Statutory Background

On October 1, 2015, the EPA promulgated a revision to the 2015 8-hour ozone NAAQS, lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm).[1] Section 110(a)(1) of the CAA requires states to submit, within 3 years after promulgation of a new or revised standard, SIP submissions meeting the applicable requirements of section 110(a)(2).[2] One of these applicable requirements is found in CAA section 110(a)(2)(D)(i)(I), otherwise known as the ''interstate transport'' or ''good neighbor'' provision, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on other states due to interstate transport of pollution. There are two so-called ''prongs'' within CAA

[1] National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

[2] SIP revisions that are intended to meet the applicable requirements of section 110(a)(1) and (2) of the CAA are often referred to as infrastructure SIPs, and the applicable elements under section 110(a)(2) are referred to as infrastructure requirements.

section 110(a)(2)(D)(i)(I). A SIP for a new or revised NAAQS must contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting air pollutants in amounts that will significantly contribute to nonattainment of the NAAQS in another state (prong 1) or interfere with maintenance of the NAAQS in another state (prong 2). The EPA and states must give independent significance to prong 1 and prong 2 when evaluating downwind air quality problems under CAA section 110(a)(2)(D)(i)(I).[3]

B. Description of the EPA's Four Step Interstate Transport Regulatory Process

The EPA is using the 4-step interstate transport framework (or ''4-step framework'') to evaluate the states' SIP submittals addressing the interstate transport provision for the 2015 8-hour ozone NAAQS. The EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to prior ozone NAAQS in several regional regulatory actions, including the Cross-State Air Pollution Rule (CSAPR), which addressed interstate transport with respect to the 1997 ozone NAAQS as well as the 1997 and 2006 fine particulate matter (''$PM_{2.5}$'') standards,[4] and the CSAPR Update [5] and the Revised CSAPR Update, both of which addressed the 2008 ozone NAAQS.[6] Through the development and implementation of the CSAPR rulemakings and prior regional rulemakings pursuant to the interstate transport provision,[7] the EPA, working in partnership with states, developed the following 4-step framework to evaluate a state's obligations to eliminate interstate transport emissions under the interstate transport provision for the ozone NAAQS: (1) Identify monitoring sites that are projected to have problems attaining and/or maintaining the NAAQS (*i.e.,* nonattainment and/or maintenance receptors); (2) identify states that impact those air quality problems in other (*i.e.,* downwind) states sufficiently such that the states are considered ''linked'' and therefore warrant further review and analysis; (3) identify the emissions reductions necessary (if any), applying a multifactor analysis, to eliminate each linked upwind state's significant contribution to nonattainment or interference with maintenance of the NAAQS at the locations identified in Step 1; and (4) adopt permanent and enforceable measures needed to achieve those emissions reductions.

C. Background on the EPA's Ozone Transport Modeling Information

In general, the EPA has performed nationwide air quality modeling to project ozone design values which are used in combination with measured data to identify nonattainment and maintenance receptors. To quantify the contribution of emissions from specific upwind states on 2023 ozone design values for the identified downwind nonattainment and maintenance receptors, the EPA performed nationwide, state-level ozone source apportionment modeling for 2023. The source apportionment modeling provided contributions to ozone at receptors from precursor emissions of anthropogenic nitrogen oxides (NO_X) and volatile organic compounds in individual upwind states.

The EPA has released several documents containing projected ozone design values, contributions, and information relevant to evaluating interstate transport with respect to the 2015 8-hour ozone NAAQS. First, on January 6, 2017, the EPA published a notice of data availability (NODA) in which we requested comment on preliminary interstate ozone transport data including projected ozone design values and interstate contributions for 2023 using a 2011 base year platform.[8] In the NODA, the EPA used the year 2023 as the analytic year for this preliminary modeling because that year aligns with the expected attainment year for ''Moderate'' ozone nonattainment areas for the 2015 8-hour ozone NAAQS.[9] On October 27, 2017, we released a memorandum (''October 2017 memorandum'') containing updated modeling data for 2023, which incorporated changes made in response to comments on the NODA, and noted that the modeling may be useful for states developing SIPs to address interstate transport obligations for the 2008 ozone NAAQS.[10] On March 27, 2018, we issued a memorandum (''March 2018 memorandum'') noting that the same 2023 modeling data released in the October 2017 memorandum could also be useful for identifying potential downwind air quality problems with respect to the 2015 8-hour ozone NAAQS at Step 1 of the 4-step framework.[11] The March 2018 memorandum also included the then newly available contribution modeling data for 2023 to assist states in evaluating their impact on potential downwind air quality problems for the 2015 8-hour ozone NAAQS under Step 2 of the 4-step framework.[12] The EPA subsequently issued two more memoranda in August and October 2018, providing additional information to states developing interstate transport SIP submissions for the 2015 8-hour ozone NAAQS concerning, respectively, potential contribution thresholds that may be appropriate to apply in Step 2 of the 4-step framework, and considerations for identifying downwind areas that may have problems maintaining the standard at Step 1 of the 4-step framework.[13]

Since the release of the modeling data shared in the March 2018

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[3] See *North Carolina* v. *EPA,* 531 F.3d 896, 909–11 (D.C. Cir. 2008).

[4] See Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011).

[5] Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 81 FR 74504 (October 26, 2016).

[6] In 2019, the D.C. Circuit Court of Appeals remanded the CSAPR Update to the extent it failed to require upwind states to eliminate their significant contribution by the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a). *Wisconsin* v. *EPA,* 938 F.3d 303, 313 (D.C. Cir. 2019). The Revised CSAPR Update for the 2008 Ozone NAAQS, 86 FR 23054 (April 30, 2021), responded to the remand of the CSAPR Update in *Wisconsin* and the vacatur of a separate rule, the ''CSAPR Close-Out,'' 83 FR 65878 (December 21, 2018), in *New York* v. *EPA,* 781 F. App'x. 4 (D.C. Cir. 2019).

[7] In addition to the CSAPR rulemakings, other regional rulemakings addressing ozone transport include the ''NO_X SIP Call,'' 63 FR 57356 (October 27, 1998), and the ''Clean Air Interstate Rule'' (CAIR), 70 FR 25162 (May 12, 2005).

[8] See Notice of Availability of the Environmental Protection Agency's Preliminary Interstate Ozone Transport Modeling Data for the 2015 8-hour Ozone National Ambient Air Quality Standard (NAAQS), 82 FR 1733 (January 6, 2017).

[9] 82 FR 1733, 1735.

[10] See Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), October 27, 2017, available in docket ID No. EPA–HQ–OAR–2021–0663.

[11] See Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), March 27, 2018 (''March 2018 memorandum''), available in docket ID No. EPA–HQ–OAR–2021–0663.

[12] The March 2018 memorandum, however, provided, ''While the information in this memorandum and the associated air quality analysis data could be used to inform the development of these SIPs, the information is not a final determination regarding states' obligations under the good neighbor provision. Any such determination would be made through notice-and-comment rulemaking.''

[13] See Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, August 31, 2018 (''August 2018 memorandum''), and Considerations for Identifying Maintenance Receptors for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, October 19, 2018, available in docket ID No. EPA–HQ–OAR–2021–0663.

memorandum, the EPA performed updated modeling using a 2016-based emissions modeling platform (*i.e.,* 2016v1). This emissions platform was developed under the EPA/Multi-Jurisdictional Organization (MJO)/state collaborative project.[14] This collaborative project was a multi-year joint effort by the EPA, MJOs, and states to develop a new, more recent emissions platform for use by the EPA and states in regulatory modeling as an improvement over the dated 2011-based platform that the EPA had used to project ozone design values and contribution data provided in the 2017 and 2018 memoranda. The EPA used the 2016v1 emissions to project ozone design values and contributions for 2023. On October 30, 2020, in the notice of proposed rulemaking for the Revised CSAPR Update, the EPA released and accepted public comment on 2023 modeling that used the 2016v1 emissions platform.[15] Although the Revised CSPAR Update addressed transport for the 2008 ozone NAAQS, the projected design values and contributions from the 2016v1 platform are also useful for identifying downwind ozone problems and linkages with respect to the 2015 ozone NAAQS.[16]

Following the final Revised CSAPR Update, the EPA made further updates to the 2016 emissions platform to include mobile emissions from the EPA's Motor Vehicle Emission Simulator MOVES3 model [17] and updated emissions projections for electric generating units that reflect the emissions reductions from the Revised CSAPR Update, recent information on plant closures, and other sector trends. The construct of the updated emissions platform, 2016v2, is described in the emissions modeling technical support document (TSD) for this proposed rule.[18] The EPA performed air quality modeling of the 2016v2 emissions using the most recent public release version of the Comprehensive Air-quality Model with extensions (CAMx) photochemical modeling, version 7.10.[19] The EPA now proposes to primarily rely on modeling based on the updated and newly available 2016v2 emissions platform in evaluating these submissions with respect to Steps 1 and 2 of the 4-step interstate transport framework and generally referenced within this action as 2016v2 modeling for 2023. By using the updated modeling results, the EPA is using the most current and technically appropriate information for this proposed rulemaking. Section III of this notice and the Air Quality Modeling TSD for 2015 Ozone NAAQS Transport SIP Proposed Actions, included in Docket ID No. EPA–HQ–OAR–2021–0663 for this proposal, contain additional detail on the EPA's 2016v2 modeling. In this notice, the EPA is accepting public comment on this updated 2023 modeling, which uses a 2016v2 emissions platform. Comments on the EPA's air quality modeling should be submitted in the regional docket for this action, docket ID No. EPA–R09–OAR–2022–0138. Comments are not being accepted in docket ID No. EPA–HQ–OAR–2021–0663.

States may have chosen to rely on the results of EPA modeling and/or alternative modeling performed by states or MJOs to evaluate downwind air quality problems and contributions as part of their submissions. In Section III we evaluate how Nevada used air quality modeling information in their submission.

D. The EPA's Approach To Evaluating Interstate Transport SIPs for the 2015 8-Hour Ozone NAAQS

The EPA proposes to apply a consistent set of policy judgments across all states for purposes of evaluating interstate transport obligations and the approvability of interstate transport SIP submittals for the 2015 8-hour ozone NAAQS. These policy judgments reflect consistency with relevant case law and past agency practice as reflected in the CSAPR and related rulemakings. Nationwide consistency in approach is particularly important in the context of interstate ozone transport, which is a regional-scale pollution problem involving many smaller contributors. Effective policy solutions to the problem of interstate ozone transport going back to the NO_X SIP Call have necessitated the application of a uniform framework of policy judgments in order to ensure an ''efficient and equitable'' approach. *See EME Homer City Generation, LP* v. *EPA,* 572 U.S. 489, 519 (2014).

In the March, August, and October 2018 memoranda, the EPA recognized that states may be able to establish alternative approaches to addressing their interstate transport obligations for the 2015 8-hour ozone NAAQS that vary from a nationally uniform framework. The EPA emphasized in these memoranda, however, that such alternative approaches must be technically justified and appropriate in light of the facts and circumstances of each particular state's submittal. In general, the EPA continues to believe that deviation from a nationally consistent approach to ozone transport must be substantially justified and have a well-documented technical basis that is consistent with relevant case law. Where states submitted SIPs that rely on any such potential ''flexibilities'' as may have been identified or suggested in the past, the EPA will evaluate whether the state adequately justified the technical and legal basis for doing so.

The EPA notes that certain concepts included in an attachment to the March 2018 memorandum require unique consideration, and these ideas do not constitute agency guidance with respect to transport obligations for the 2015 ozone NAAQS. Attachment A to the March 2018 memorandum identified a ''Preliminary List of Potential Flexibilities'' that could potentially inform SIP development.[20] However, the EPA made clear in that Attachment that the list of ideas were not suggestions endorsed by the Agency but rather ''comments provided in various forums'' on which the EPA sought ''feedback from interested stakeholders.'' [21] Further, Attachment A stated, ''EPA is not at this time making any determination that the ideas discussed below are consistent with the requirements of the CAA, nor are we specifically recommending that states use these approaches.'' [22] Attachment A to the March 2018 memorandum, therefore, does not constitute agency guidance, but was intended to generate further discussion around potential approaches to addressing ozone transport among interested stakeholders. To the extent states sought to develop or rely on these ideas in support of their SIP submittals, the EPA will thoroughly review the technical and legal justifications for doing so.

The remainder of this section describes the EPA's proposed framework with respect to analytic year, definition of nonattainment and maintenance receptors, selection of

[14] The results of this modeling, as well as the underlying modeling files, are included in docket ID No. EPA–HQ–OAR–2021–0663.

[15] See 85 FR 68964, 68981.

[16] See the Air Quality Modeling Technical Support Document for the Final Revised Cross-State Air Pollution Rule Update, included in the Headquarters docket ID No. EPA–HQ–OAR–2021–0663.

[17] Additional details and documentation related to the MOVES3 model can be found at *https://www.epa.gov/moves/latest-version-motor-vehicle-emission-simulator-moves.*

[18] See Technical Support Document (TSD) Preparation of Emissions Inventories for the 2016v2 North American Emissions Modeling Platform included in the Headquarters docket ID No. EPA–HQ–OAR–2021–0663.

[19] Ramboll Environment and Health, January 2021, *https://www.camx.com.*

[20] March 2018 memorandum, Attachment A.

[21] Id. at A–1.

[22] Id.

contribution threshold, and multifactor control strategy assessment.

1. Selection of Analytic Year

In general, states and the EPA must implement the interstate transport provision in a manner ''consistent with the provisions of [title I of the CAA.]'' CAA section 110(a)(2)(D)(i). This requires, among other things, that these obligations are addressed consistently with the timeframes for downwind areas to meet their CAA obligations. With respect to ozone NAAQS, under CAA section 181(a), this means obligations must be addressed ''as expeditiously as practicable'' and no later than the schedule of attainment dates provided in CAA section 181(a)(1).[23] Several D.C. Circuit court decisions address the issue of the relevant analytic year for the purposes of evaluating ozone transport air quality problems. On September 13, 2019, the D.C. Circuit issued a decision in *Wisconsin* v. *EPA,* remanding the CSAPR Update to the extent that it failed to require upwind states to eliminate their significant contribution by the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a). 938 F.3d at 313.

On May 19, 2020, the D.C. Circuit issued a decision in *Maryland* v. *EPA* that cited the *Wisconsin* decision in holding that the EPA must assess the impact of interstate transport on air quality at the next downwind attainment date, including ''Marginal'' area attainment dates, in evaluating the basis for the EPA's denial of a petition under CAA section 126(b). *Maryland* v. *EPA,* 958 F.3d 1185, 1203–04 (D.C. Cir. 2020). The court noted that ''section 126(b) incorporates the Good Neighbor Provision,'' and, therefore, ''EPA must find a violation [of section 126] if an upwind source will significantly contribute to downwind nonattainment at the next downwind attainment deadline. Therefore, the agency must evaluate downwind air quality at that deadline, not at some later date.'' *Id.* at 1204. The EPA interprets the court's holding in *Maryland* as requiring the states and the Agency, under the good neighbor provision, to assess downwind air quality as expeditiously as practicable and no later than the next applicable attainment date,[24] which is now the Moderate area attainment date under CAA section 181 for ozone nonattainment. The Moderate area attainment date for the 2015 8-hour ozone NAAQS is August 3, 2024.[25] The EPA believes that 2023 is now the appropriate year for analysis of interstate transport obligations for the 2015 8-hour ozone NAAQS, because the 2023 ozone season is the last relevant ozone season during which achieved emissions reductions in linked upwind states could assist downwind states with meeting the August 3, 2024 Moderate area attainment date for the 2015 8-hour ozone NAAQS.

The EPA recognizes that the attainment date for nonattainment areas classified as Marginal for the 2015 8-hour ozone NAAQS was August 3, 2021. Under the *Maryland* holding, any necessary emissions reductions to satisfy interstate transport obligations should have been implemented by no later than this date. At the time of the statutory deadline to submit interstate transport SIPs (October 1, 2018), many states relied upon the EPA modeling of the year 2023, and no state provided an alternative analysis using a 2021 analytic year (or the prior 2020 ozone season). However, the EPA must act on SIP submittals using the information available at the time it takes such action. In this circumstance, the EPA does not believe it would be appropriate to evaluate states' obligations under CAA section 110(a)(2)(D)(i)(I) as of an attainment date that is wholly in the past, because the Agency interprets the interstate transport provision as forward looking. *See* 86 FR at 23074; *see also Wisconsin,* 938 F.3d at 322. It would not make sense to analyze air quality, contribution levels, or emissions control strategies for the 2021 attainment date, for purposes of interstate transport obligations, when no emissions reductions, if shown to be needed, could be implemented by that date anyway.[26] Consequently, in this proposal the EPA will use the analytical year of 2023 to evaluate each state's CAA section 110(a)(2)(D)(i)(I) SIP submission with respect to the 2015 8-hour ozone NAAQS.

2. Step 1 of the 4-Step Interstate Transport Framework

In Step 1, the EPA identifies monitoring sites that are projected to have problems attaining and/or maintaining the NAAQS in the 2023 analytic year. Where the EPA's analysis shows that a site does not fall under the definition of a nonattainment or maintenance receptor, that site is excluded from further analysis under the EPA's 4-step interstate transport framework. For sites that are identified as a nonattainment or maintenance receptor in 2023, we proceed to the next step of our 4-step framework by identifying the upwind state's contribution to those receptors.

The EPA's approach to identifying ozone nonattainment and maintenance receptors in this action is consistent with the approach used in previous transport rulemakings. The EPA's approach gives independent consideration to both the ''contribute significantly to nonattainment'' and the ''interfere with maintenance'' prongs of CAA section 110(a)(2)(D)(i)(I), consistent with the D.C. Circuit's direction in *North Carolina* v. *EPA*.[27]

For the purpose of this proposal, the EPA identifies nonattainment receptors as those monitoring sites that are projected to have average design values that exceed the NAAQS and that are also measuring nonattainment based on the most recent monitored design values. This approach is consistent with prior transport rulemakings, such as the CSAPR Update, where the EPA defined nonattainment receptors as those areas that both currently measure nonattainment and that the EPA projects will be in nonattainment in the future analytic year (*i.e.,* 2023).[28]

In addition, in this proposal, the EPA identifies a receptor to be a ''maintenance'' receptor for purposes of defining interference with maintenance, consistent with the method used in the CSAPR and upheld by the D.C. Circuit

[23] For attainment dates for the 2015 8-hour ozone NAAQS, refer to CAA section 181(a), 40 CFR 51.1303, and Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018, effective August 3, 2018).

[24] We note that the court in *Maryland* did not have occasion to evaluate circumstances in which the EPA may determine that an upwind linkage to a downwind air quality problem exists at steps 1 and 2 of the interstate transport framework by a particular attainment date, but for reasons of impossibility or profound uncertainty the Agency is unable to mandate upwind pollution controls by that date. See *Wisconsin,* 938 F.3d at 320. The D.C. Circuit noted in *Wisconsin* that upon a sufficient showing, these circumstances may warrant flexibility in effectuating the purpose of the interstate transport provision.

[25] See CAA section 181(a); 40 CFR 51.1303; Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018, effective August 3, 2018).

[26] Nor does the EPA view 2022 as a reasonable analytic year for a similar reason: It would be impossible to finalize this action and implement any emissions reductions measures that could be shown to be needed by the 2022 ozone season. Thus, 2023 is the appropriate analytic year and also aligns with the next attainment date.

[27] See *North Carolina* v. *EPA,* 531 F.3d at 910–11 (holding that the EPA must give ''independent significance'' to each prong of CAA section 110(a)(2)(D)(i)(I)).

[28] See 81 FR 74504 (October 26, 2016). This same concept, relying on both current monitoring data and modeling to define nonattainment receptor, was also applied in CAIR. See 70 FR at 25162, 25249 (May 12, 2005); see also *North Carolina,* 531 F.3d at 913–14 (affirming as reasonable EPA's approach to defining nonattainment in CAIR).

in *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 136 (D.C. Cir. 2015).[29] Specifically, the EPA identified maintenance receptors as those receptors that would have difficulty maintaining the relevant NAAQS in a scenario that takes into account historical variability in air quality at that receptor. The variability in air quality was determined by evaluating the ''maximum'' future design value at each receptor based on a projection of the maximum measured design value over the relevant base period. The EPA interprets the projected maximum future design value to be a potential future air quality outcome consistent with the meteorology that yielded maximum measured concentrations in the ambient data set analyzed for that receptor (*i.e.,* ozone conducive meteorology). The EPA also recognizes that previously experienced meteorological conditions (*e.g.,* dominant wind direction, temperatures, vertical mixing, insolation, and air mass patterns) promoting ozone formation that led to maximum concentrations in the measured data may reoccur in the future. The maximum design value gives a reasonable projection of future air quality at the receptor under a scenario in which such conditions do, in fact, reoccur. The projected maximum design value is used to identify upwind emissions that, under those circumstances, could interfere with the downwind area's ability to maintain the NAAQS.

Recognizing that nonattainment receptors are also, by definition, maintenance receptors, the EPA often uses the term ''maintenance-only'' to refer to those receptors that are not nonattainment receptors. Consistent with the concepts for maintenance receptors, as described above, the EPA identifies ''maintenance-only'' receptors as those monitoring sites that have projected average design values above the level of the applicable NAAQS, but that are not currently measuring nonattainment based on the most recent official design values. In addition, those monitoring sites with projected average design values below the NAAQS, but with projected maximum design values above the NAAQS are also identified as ''maintenance only'' receptors, even if they are currently measuring nonattainment based on the most recent official design values.

[29] See 76 FR 48208 (August 8, 2011). CSAPR Update and Revised CSAPR Update also used this approach. See 81 FR 74504 (October 26, 2016) and 86 FR 23054 (April 30, 2021).

3. Step 2 of the 4-Step Interstate Transport Framework

In Step 2 the EPA quantifies the contribution of each upwind state to each receptor in the 2023 analytic year. The contribution metric used in Step 2 is defined as the average impact from each state to each receptor on the days with the highest ozone concentrations at the receptor based on the 2023 modeling. If a state's contribution value does not equal or exceed the threshold of 1 percent of the NAAQS (*i.e.,* 0.70 parts per billion (ppb) for the 2015 8-hour ozone NAAQS), the upwind state is not ''linked'' to a downwind air quality problem, and the EPA, therefore, concludes that the state does not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in the downwind states. However, if a state's contribution equals or exceeds the 1 percent threshold, the state's emissions are further evaluated in Step 3, considering both air quality and cost as part of a multi-factor analysis, to determine what, if any, emissions might be deemed ''significant'' and, thus, must be eliminated under CAA section 110(a)(2)(D)(i)(I). The EPA is proposing to rely in the first instance on the 1 percent threshold for the purpose of evaluating a state's contribution to nonattainment or maintenance of the 2015 8-hour ozone NAAQS (*i.e.,* 0.70 ppb) at downwind receptors. This is consistent with the Step 2 approach that the EPA applied in CSAPR for the 1997 ozone NAAQS, which has subsequently been applied in the CSAPR Update when evaluating interstate transport obligations for the 2008 ozone NAAQS. The EPA continues to find 1 percent to be an appropriate threshold. For ozone, as the EPA found in the Clean Air Interstate Rule (CAIR), CSAPR, and CSAPR Update, a portion of the nonattainment problems from anthropogenic sources in the U.S. results from the combined impact of relatively small contributions from many upwind states, along with contributions from in-state sources and, in some cases, substantially larger contributions from a subset of particular upwind states. The EPA's analysis shows that much of the ozone transport problem being analyzed in this proposed rule is still the result of the collective impacts of contributions from many upwind states. Therefore, application of a consistent contribution threshold is necessary to identify those upwind states that should have responsibility for addressing their contribution to the downwind nonattainment and maintenance problems to which they collectively contribute. Continuing to use 1 percent of the NAAQS as the screening metric to evaluate collective contribution from many upwind states also allows the EPA (and states) to apply a consistent framework to evaluate interstate emissions transport under the interstate transport provision from one NAAQS to the next. *See* 81 FR 74504 at 74518. *See also* 86 FR 23054 at 23085, reviewing and explaining rationale from CSAPR, 76 FR 48208 at 48237–38, for selection of 1 percent threshold.

The EPA's August 2018 memorandum recognized that in certain circumstances, a state may be able to establish that an alternative contribution threshold of 1 ppb is justifiable. Where a state relies on this alternative threshold, and where that state determined that it was not linked at Step 2 using the alternative threshold, the EPA will evaluate whether the state provided a technically sound assessment of the appropriateness of using this alternative threshold based on the facts and circumstances underlying its application in the particular SIP submission.

a. EPA's Experience With Alternative Step 2 Thresholds

The EPA's August 2018 memorandum recognized that in certain circumstances, a state may be able to establish that an alternative contribution threshold of 1 ppb is justifiable. Where a state relies on this alternative threshold, and where that state determined that it was not linked at Step 2 using the alternative threshold, the EPA will evaluate whether the state provided a technically sound assessment of the appropriateness of using this alternative threshold based on the facts and circumstances underlying its application in the particular SIP submission.

The EPA here shares further evaluation of its experience since the issuance of the August 2018 memorandum regarding use of alternative thresholds at Step 2. This experience leads the Agency to now believe it may not be appropriate to continue to attempt to recognize alternative contribution thresholds at Step 2. The August 2018 memorandum stated that ''it may be reasonable and appropriate'' for states to rely on an alternative threshold of 1 ppb threshold at Step 2.[30] (The memorandum also indicated that any higher alternative threshold, such as 2 ppb, would likely not be appropriate.) However, the EPA also provided that ''air agencies should

[30] See August 2018 memorandum at 4.

consider whether the recommendations in this guidance are appropriate for each situation.'' Following receipt and review of 49 good neighbor SIP submittals for the 2015 8-hour ozone NAAQS, the EPA's experience has been that nearly every state that attempted to rely on a 1 ppb threshold did not provide sufficient information and analysis to support a determination that an alternative threshold was reasonable or appropriate for that state.

For instance, in nearly all submittals, the states did not provide the EPA with analysis specific to their state or the receptors to which its emissions are potentially linked. In one case, the proposed approval of Iowa's SIP submittal, the EPA expended its own resources to attempt to supplement the information submitted by the state, in order to more thoroughly evaluate the state-specific circumstances that could support approval.[31] It was at the EPA's sole discretion to perform this analysis in support of the state's submittal, and the Agency is not obligated to conduct supplemental analysis to fill the gaps whenever it believes a state's analysis is insufficient. The Agency no longer intends to undertake supplemental analysis of SIP submittals with respect to alternative thresholds at Step 2 for purposes of the 2015 8-hour ozone NAAQS.

Furthermore, the EPA's experience since 2018 is that allowing for alternative Step 2 thresholds may be impractical or otherwise inadvisable for a number of additional policy reasons. For a regional air pollutant such as ozone, consistency in requirements and expectations across all states is essential. Based on its review of submittals to date and after further consideration of the policy implications of attempting to recognize an alternative Step 2 threshold for certain states, the Agency now believes the attempted use of different thresholds at Step 2 with respect to the 2015 8-hour ozone NAAQS raises substantial policy consistency and practical implementation concerns.[32] The availability of different thresholds at Step 2 has the potential to result in inconsistent application of good neighbor obligations based solely on the strength of a state's implementation plan submittal at Step 2 of the 4-step interstate transport framework. From the perspective of ensuring effective regional implementation of good neighbor obligations, the more important analysis is the evaluation of the emissions reductions needed, if any, to address a state's significant contribution after consideration of a multifactor analysis at Step 3, including a detailed evaluation that considers air quality factors and cost. Where alternative thresholds for purposes of Step 2 may be ''similar'' in terms of capturing the relative amount of upwind contribution (as described in the August 2018 memorandum), nonetheless, use of an alternative threshold would allow certain states to avoid further evaluation of potential emission controls while other states must proceed to a Step 3 analysis. This can create significant equity and consistency problems among states.

Further, it is not clear that national ozone transport policy is best served by allowing for less stringent thresholds at Step 2. The EPA recognized in the August 2018 memorandum that there was some similarity in the amount of total upwind contribution captured (on a nationwide basis) between 1 percent and 1 ppb. However, the EPA notes that while this may be true in some sense, that is hardly a compelling basis to move to a 1 ppb threshold. Indeed, the 1 ppb threshold has the disadvantage of losing a certain amount of total upwind contribution for further evaluation at Step 3 (*e.g.,* roughly 7 percent of total upwind state contribution was lost according to the modeling underlying the August 2018 memorandum; [33] in the EPA's updated modeling, the amount lost is 5 percent). Considering the core statutory objective of ensuring elimination of all significant contribution to nonattainment or interference of the NAAQS in other states and the broad, regional nature of the collective contribution problem with respect to ozone, there does not appear to be a compelling policy imperative in allowing some states to use a 1 ppb threshold while others rely on a 1 percent of the NAAQS threshold.

Consistency with past interstate transport actions such as CSAPR, and the CSAPR Update and Revised CSAPR Update rulemakings (which used a Step 2 threshold of 1 percent of the NAAQS for two less stringent ozone NAAQS), is also important. Continuing to use a 1 percent of NAAQS approach ensures that as the NAAQS are revised and made more stringent, an appropriate increase in stringency at Step 2 occurs, so as to ensure an appropriately larger amount of total upwind-state contribution is captured for purposes of fully addressing interstate transport. See 76 FR 48208, 48237–38 (August 8, 2011).

Therefore, notwithstanding the August 2018 memorandum's recognition of the potential viability of alternative Step 2 thresholds, and in particular, a potentially applicable 1 ppb threshold, the EPA's experience since the issuance of that memorandum has revealed substantial programmatic and policy difficulties in attempting to implement this approach. Nonetheless, the EPA is not at this time rescinding the August 2018 memorandum. As discussed further below in Section III, the basis for disapproval of the Nevada SIP submission with respect to the Step 2 analysis is, in the Agency's view, warranted even under the terms of the August 2018 memorandum. The EPA invites comment on this broader discussion of issues associated with alternative thresholds at Step 2. Depending on comment and further evaluation of this issue, the EPA may determine to rescind the August 2018 memorandum in the future.

4. Step 3 of the 4-Step Interstate Transport Framework

Consistent with the EPA's longstanding approach to eliminating significant contribution or interference with maintenance, at Step 3, states linked at Steps 1 and 2 are generally expected to prepare a multifactor assessment of potential emissions controls. The EPA's analysis at Step 3 in prior federal actions addressing interstate transport requirements has primarily focused on an evaluation of cost-effectiveness of potential emissions controls (on a marginal cost-per-ton basis), the total emissions reductions that may be achieved by requiring such controls (if applied across all linked upwind states), and an evaluation of the air quality impacts such emissions reductions would have on the downwind receptors to which a state is linked; other factors may potentially be relevant if adequately supported. In general, where the EPA's or alternative air quality and contribution modeling establishes that a state is linked at Steps 1 and 2, it will be insufficient at Step 3 for a state merely to point to its existing rules requiring control measures as a basis for approval. In general, the emissions-reducing effects of all existing emissions control

[31] Air Plan Approval; Iowa; Infrastructure State Implementation Plan Requirements for the 2015 Ozone National Ambient Air Quality Standard, 85 FR 12232 (March 2, 2020). The Agency received adverse comment on this proposed approval and has subsequently formally withdrawn the proposed approval. 87 FR 9477 (Feb. 22, 2022).

[32] The EPA notes that Congress has placed on the EPA a general obligation to ensure the requirements of the CAA are implemented consistently across states and regions. See CAA section 301(a)(2). Where the management and regulation of interstate pollution levels spanning many states is at stake, consistency in application of CAA requirements is paramount.

[33] See August 2018 memorandum at 4.

requirements are already reflected in the air quality results of the modeling for Steps 1 and 2. If the state is shown to still be linked to one or more downwind receptor(s), states must provide a well-documented evaluation determining whether their emissions constitute significant contribution or interference with maintenance by evaluating additional available control opportunities by preparing a multifactor assessment. While the EPA has not prescribed a particular method for this assessment, the EPA expects states at a minimum to present a sufficient technical evaluation. This would typically include information on emissions sources, applicable control technologies, emissions reductions, costs, cost effectiveness, and downwind air quality impacts of the estimated reductions, before concluding that no additional emissions controls should be required.[34]

5. Step 4 of the 4-Step Interstate Transport Framework

At Step 4, states (or the EPA) develop permanent and federally enforceable control strategies to achieve the emissions reductions determined to be necessary at Step 3 to eliminate significant contribution to nonattainment or interference with maintenance of the NAAQS. For a state linked at Steps 1 and 2 to rely on an emissions control measure at Step 3 to address its interstate transport obligations, that measure must be included in the state's SIP so that it is permanent and federally enforceable. *See* CAA section 110(a)(2)(D) (''Each such [SIP] shall . . . contain adequate provisions . . . .''). *See also* CAA 110(a)(2)(A); *Committee for a Better Arvin* v. *U.S. E.P.A.,* 786 F.3d 1169, 1175–76 (9th Cir. 2015) (holding that measures relied on by state to meet CAA requirements must be included in the SIP).

II. SIP Submission Addressing Interstate Transport of Air Pollution for the 2015 8-Hour Ozone NAAQS

In Nevada, the Nevada Division of Environmental Protection (NDEP or ''State'') is the state agency responsible for the adoption and submission to the EPA of Nevada SIPs and SIP revisions. NDEP submitted Nevada's infrastructure SIP revision for the 2015 ozone NAAQS on October 1, 2018 (''Nevada's 2018 SIP submission'' or ''submittal'').[35] We find this submittal meets the applicable completeness criteria in Appendix V to 40 CFR part 51. We are proposing to act on Nevada's Infrastructure SIP Submittals. Nevada's 2018 SIP submission included information from the two other agencies that regulate air quality in Nevada: The Clark County Department of Air Quality [36] and the Washoe County Health District Air Quality Management Division.[37]

The NDEP portion of Nevada's 2018 SIP submission addressed the good neighbor provisions of the CAA on page 9 of the submittal and in Appendix E.[38] The NDEP analysis is reiterated in the Clark County and Washoe County portions of Nevada's 2018 SIP submission, which did not include a separate transport evaluation but instead includes NDEP's analysis verbatim.[39] We refer to the collective information on good neighbor provisions as the ''the NDEP analysis.''

The NDEP analysis concludes the state does not contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. This determination is based on the modeling results contained in EPA's March 2018 memorandum. The NDEP analysis further states, ''Nevada commits to continue to review new air quality information as it becomes available to ensure that this negative declaration is still supported by such information.'' [40]

The NDEP analysis follows the 4-step framework to analyze its impact on other states. In Step 1, NDEP identified the nonattainment and maintenance monitors identified in the modeling results for 2023 released with the March 2018 memorandum, which included a total of forty-five nonattainment monitors and twenty maintenance receptors.[41]

In conducting Step 2, the NDEP analysis relied on the contribution modeling released with the March 2018 memorandum.[42] NDEP also states that the State does not support the use of a 1 percent of the NAAQS screening level to determine potentially significant contributions in the CSAPR for western states. However, the NDEP analysis described the screening threshold as a ''very conservative approach since interstate contributions in the West are relatively small, especially given the large contributions from background and intrastate emissions.'' [43] The NDEP analysis cited an EPA memorandum on significant impact levels for ozone and $PM_{2.5}$ in prevention of significant deterioration (PSD) permitting [44] as ''further evidence that the CSAPR screening threshold is a conservative approach to identify contributing upwind states.'' [45] Despite this, the 2018 Nevada submittal utilized a 1 percent of the NAAQS threshold at Step 2.[46]

Whilethe NDEP analysis contained concerns about the use of the CSAPR screening level (1 percent of the NAAQS) in western states, it expressed confidence in the EPA's contribution modeling, stating, ''contribution modeling is the best available data with which to conduct Nevada's transport analysis,'' and contribution modeling ''is state-of-the-science given the USEPA's constraints.'' [47] Based on the EPA's contribution modeling results released in the March 2018 memorandum, Nevada's 2018 submittal concluded that the largest contribution from Nevada to a nonattainment or

[34] As examples of general approaches for how such an analysis could be conducted for their sources, states could look to the CSAPR Update, 81 FR 74504, 74539–51; CSAPR, 76 FR 48208, 48246–63; CAIR, 70 FR 25162, 25195–229; or the NO_X SIP Call, 63 FR 57356, 57399–405. See also Revised CSAPR Update, 86 FR 23054, 23086–23116. Consistently across these rulemakings, the EPA has developed emissions inventories, analyzed different levels of control stringency at different cost thresholds, and assessed resulting downwind air quality improvements.

[35] Letter dated October 1, 2018, from Greg Lovato, Administrator, NDEP, to Mike Stoker, Regional Administrator, EPA Region IX, regarding: The Nevada State Implementation Plan for the 2015 Primary and Secondary Ozone NAAQS.

[36] Letter dated September 18, 2018, from Mike Sword for Marci Henson, Director of the Clark County Department of Air Quality, regarding: Clark County Portion of the Nevada Infrastructure State Implementation Plan for the 2015 Ozone NAAQS. See Appendix C for the NDEP Ozone Interstate Transport Analysis.

[37] Letter dated August 28, 2018, from Charlene Albee, Director Air Quality Management Division, to Greg Lovato, Administrator, NDEP, 2015 regarding: Ozone National Ambient Air Quality Standard Infrastructure State Implementation Plan (SIP).

[38] The Nevada Division of Environmental Protection Portion of the Nevada State Implementation Plan for the 2015 Ozone NAAQS: Demonstration of Adequacy, dated October 1, 2018.

[39] See (1) Appendix C of the Clark County Portion of the Nevada State Implementation Plan to Meet the Ozone Infrastructure SIP Requirements of Clean Air Act Section 110(a)(2), Clark County Department of Air Quality, August 2018; and (2) Attachment C of the Washoe County Portion of the Nevada State Implementation Plan to Meet the Ozone Infrastructure SIP Requirements of Clean Air Act Section 110(a)(2), adopted by the Washoe County District Board of Health on July 26, 2018.

[40] Nevada's 2018 SIP submission, 9.

[41] NDEP used the terms nonattainment and maintenance receptors as the EPA defines those terms. See Appendix E, E–2, E–3, and E–4.

[42] Appendix E at E–2 and E–3.

[43] NDEP Portion of the 2018 Nevada Submittal, E–5.

[44] Memorandum dated April 17, 2018, from Peter Tsirigotis, Director, EPA Office of Air Quality Planning and Standards, to Regional Air Division Directors, Regions 1–10, regarding: Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program.

[45] Appendix E, E–5.

[46] Id. at E–10.

[47] Id.

maintenance receptors in another state in 2023 was 0.9 percent of the 2015 ozone NAAQS.[48]

Nevada's 2018 SIP submission also referenced its own comment letters and those of the Western States Air Resources Council on the EPA ozone transport proposed rules, proposed changes to modeling guidance, modeling white papers, and interstate transport models.

Based on its conclusion that emissions sources in Nevada do not contribute above 1 percent of the NAAQS to any nonattainment and maintenance receptors, according to the modeling results contained in the EPA's March 2018 memorandum, NDEP, Washoe County, and Clark County determined that identification of necessary emissions reductions at Step 3 of the EPA's 4-step interstate transport framework is not needed.[49] Accordingly, NDEP, Washoe County, and Clark County did not address reduction of upwind emissions at Step 4 of the interstate transport framework.[50]

III. EPA Evaluation

The EPA is proposing to find that Nevada's 2018 SIP submission does not meet the State's obligations with respect to prohibiting emissions that contribute significantly to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other state based on the EPA's evaluation of the SIP submission using the 4-step interstate transport framework. The EPA is therefore proposing to disapprove Nevada's 2018 SIP submission.

A. Evaluation of Information provided by Nevada Regarding Steps 1 and 2

At Step 1 of the 4-Step interstate transport framework, Nevada relied on EPA modeling released in the March 2018 memorandum to identify nonattainment and maintenance receptors in 2023. Since new modeling has been performed by the EPA with updated emissions data, the EPA proposes to primarily rely on the most recent modeling to identify nonattainment and maintenance receptors in 2023. Nonetheless, the NDEP analysis also identified a number of nonattainment and maintenance receptor sites in 2023 using the EPA's older modeling.[51]

At Step 2 of the 4-step interstate transport framework, Nevada relied on EPA modeling released in the March 2018 memorandum to identify upwind state linkages to nonattainment and maintenance receptors in 2023. Based on this, the analysis concluded that Nevada would contribute below 1 percent of the NAAQS to receptors in 2023 and was therefore not ''linked'' to any other state.[52] However, in this proposal, the EPA relies on the Agency's most recently available modeling, which uses a more recent base year and more up-to-date emissions inventories, to identify upwind contributions and ''linkages'' to downwind air quality problems in 2023 using a threshold of 1 percent of the NAAQS. As shown in Table 1 (and explained in III.B below), the updated EPA modeling identifies Nevada's maximum contribution to a downwind nonattainment or maintenance receptor to be greater than 1 percent of the standard (*i.e.,* greater than 0.70 ppb). Because the entire technical basis for the State's submittal is that the State is not linked at Step 2, the EPA proposes to disapprove the SIP submission based on the EPA's finding that such a linkage does exist.

Although the State did not rely on the 1 ppb threshold in its SIP submittal, the EPA recognizes that the most recently available EPA modeling at the time the State submitted its SIP submittal indicated the State did not contribute above 1 percent of the NAAQS to a projected downwind nonattainment or maintenance receptor. Therefore, the State may not have considered analyzing the reasonableness and appropriateness of a 1 ppb threshold at Step 2 of the 4-step interstate transport framework per the August 2018 memorandum. However, the EPA's August 2018 memorandum provided that whether use of a 1 ppb threshold is appropriate must be based on an evaluation of state-specific circumstances, and no such evaluation was included in the State's submittal. The EPA's experience with the alternative Step 2 threshold is discussed in Section I.D.3. As discussed there, the EPA is considering withdrawing the August 2018 memorandum.

The NDEP analysis mentions the EPA's memorandum titled ''Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program'' (''SILs Guidance'') without specifically proposing the replacement of the screening threshold for interstate transport (1 percent of the NAAQS) with the screening level in the guidance (1 ppb).[53] Even so, because the SILs Guidance is mentioned, we wish to clarify that it relates to a different provision of the CAA regarding implementation of the Prevention of Significant Deterioration (PSD) permitting program, *i.e.,* a program that applies in areas that have been designated attainment of the NAAQS, and it is not applicable to the good neighbor provision, which requires states to eliminate significant contribution or interference with maintenance of the NAAQS at known and ongoing air quality problem areas in other states.

B. Results of the EPA's Step 1 and Step 2 Modeling and Findings for Nevada

As described in section I.B, the EPA performed air quality modeling using the 2016v2 emissions platform to project design values and contributions for 2023. These data were examined to determine if Nevada contributes at or above the threshold of 1 percent of the 2015 8-hour ozone NAAQS (0.70 ppb) to any downwind nonattainment or maintenance receptor. As shown in Table 1, the data[54] indicate that in 2023, emissions from Nevada contribute greater than 1 percent of the standard to nonattainment or maintenance-only receptors in Salt Lake County and Davis County, Utah.[55]

[48] Id. at E–6 and Attachment A. Specific contributions to nonattainment and maintenance monitors are contained in Table E–A3 (Nevada's Contributions to 2023 Ozone Design Values for Nonattainment and Maintenance Monitors Outside of Nevada).

[49] Id. at E–11.

[50] Id.

[51] Id. at E–3 (Table E1) and E–4 (Table E2).

[52] Id. at E–11.

[53] Id. at E–4 and E–5 (citing Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program. Memorandum from Peter Tsirigotis, Director, EPA Office of Air Quality Planning and Standards, to Regional Air Division Directors, Regions 1–10. April 17, 2018).

[54] Design values and contributions at individual monitoring sites nationwide are provided in the file: 2016v2_DVs_state_contributions.xlsx which is included in docket ID No. EPA–HQ–OAR–2021–0663.

[55] These modeling results are consistent with the results of a prior round of 2023 modeling using the 2016v1 emissions platform which became available to the public in the fall of 2020 in the Revised CSAPR Update, as noted in Section I. That modeling showed that Nevada had a maximum contribution greater than 0.70 ppb to at least one nonattainment or maintenance-only receptor in 2023. These modeling results are included in the file ''Ozone Design Values and Contributions Revised CSAPR Update.xlsx'' in docket EPA–HQ–OAR–2021–0663.

TABLE 1—NEVADA LINKAGE RESULTS BASED ON EPA UPDATED 2023 MODELING

Receptor ID	Location	Nonattainment/maintenance	2023 Average design value (ppb)	2023 Maximum design value (ppb)	Nevada contribution (ppb)
490353006	Salt Lake County	Nonattainment	73.6	75.3	0.89
490110004	Davis County	Nonattainment	72.9	75.1	0.86

Therefore, based on the EPA's evaluation of the information submitted by Nevada, and based on the EPA's most recent modeling results for 2023 using the 2016v2 emission platform, the EPA proposes to find that Nevada is linked at Steps 1 and 2 and has an obligation to assess potential emissions reductions from sources or other emissions activity at Step 3 of the 4-step framework.

C. Evaluation of Information Provided Regarding Step 3

At Step 3 of the 4-step interstate transport framework, a state's emissions are further evaluated, in light of multiple factors, including air quality and cost considerations, to determine what, if any, emissions significantly contribute to nonattainment or interfere with maintenance and, thus, must be eliminated under CAA section 110(a)(2)(D)(i)(I).

To effectively evaluate which emissions in the state should be deemed ''significant'' and therefore prohibited, states generally should prepare an accounting of sources and other emissions activity for relevant pollutants and assess potential, additional emissions reduction opportunities and resulting downwind air quality improvements. The EPA has consistently applied this general approach (*i.e.,* Step 3 of the 4-step interstate transport framework) when identifying emissions contributions that the Agency has determined to be ''significant'' (or interfere with maintenance) in each of its prior federal, regional ozone transport rulemakings, and this interpretation of the statute has been upheld by the Supreme Court. *See EME Homer City,* 572 U.S. 489, 519 (2014). While the EPA has not directed states that they must conduct a Step 3 analysis in precisely the manner the EPA has done in its prior regional transport rulemakings, SIPs addressing the obligations in CAA section 110(a)(2)(D)(i)(I) must prohibit ''any source or other type of emissions activity within the State'' from emitting air pollutants which will contribute significantly to downwind air quality problems. Thus, states must complete something similar to the EPA's analysis (or an alternative approach to defining ''significance'' that comports with the statute's objectives) to determine whether and to what degree emissions from a state should be ''prohibited'' to eliminate emissions that will ''contribute significantly to nonattainment in, or interfere with maintenance of'' the NAAQS in any other state. Nevada did not conduct such an analysis in its SIP submission.

The EPA modeling results released with the March 2018 memorandum indicated Nevada would not contribute above 1 percent of the NAAQS to any downwind receptor. Therefore, the NDEP analysis stated it ''determined the identification of emissions reductions necessary to prevent Nevada from contributing significantly to downwind air quality problems is moot.'' [56] Furthermore, NDEP ''commit[ed] to continue to review new air quality information as it becomes available to ensure that this negative declaration is still supported by such information.'' [57] However, as mentioned above, the EPA has newly available information that indicates that sources in Nevada are linked to downwind air quality problems for the 2015 ozone standards. We therefore propose that Nevada was required to assess additional emissions control opportunities, and we propose to disapprove its submission because Nevada did not do so.

D. Evaluation of Information Provided Regarding Step 4

Step 4 of the 4-step interstate transport framework calls for development of permanent and federally enforceable control strategies to achieve the emissions reductions determined to be necessary at Step 3 to eliminate significant contribution to nonattainment or interference with maintenance of the NAAQS. As mentioned previously, Nevada's SIP submission did not contain an evaluation of additional emissions control opportunities (or establish that no additional controls are required), and in fact NDEP analysis explicitly declined to address Step 4.[58] As a result, the EPA proposes to disapprove Nevada's submittal on the separate, additional basis that the State has not developed permanent and enforceable emissions reductions necessary to meet the obligations of CAA section 110(a)(2)(d)(i)(I).

E. Conclusion

Based on the EPA's evaluation of Nevada's SIP submission, the EPA is proposing to find that Nevada's 2018 SIP submission addressing CAA section 110(a)(2)(D)(i)(I) does not meet the State's interstate transport obligations, because it fails to contain the necessary provisions to eliminate emissions that will contribute significantly to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other state.

IV. Proposed Action

We are proposing to disapprove the portion of Nevada's 2018 SIP submission pertaining to interstate transport of air pollution that will significantly contribute to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in other states. The following parts of the Nevada SIP submittal, transmitted to the EPA in a letter dated October 1, 2018,[59] comprise the material to be disapproved:

- The subheading (D)(i) and the text under the subheading on page 9 of the Nevada Division of Environmental Protection Portion of the Nevada State Implementation Plan for the 2015 Ozone NAAQS: Demonstration of Adequacy, dated October 1, 2018;
- Appendix E of the Nevada Division of Environmental Protection Portion of the Nevada State Implementation Plan for the 2015 Ozone NAAQS: Demonstration of Adequacy, dated October 1, 2018;
- The text under the element heading (D)(i)(I) on page 5 of the Clark County Portion of the Nevada State Implementation Plan to Meet the Ozone Infrastructure SIP Requirements of Clean Air Act Section 110(a)(2), Clark

[56] Submittal, E–11.

[57] Nevada's 2018 SIP submission, 9.

[58] Id. at E–11.

[59] Letter dated October 1, 2018, from Greg Lovato, Administrator, NDEP, to Mike Stoker, Regional Administrator, EPA Region IX, regarding: The Nevada State Implementation Plan for the 2015 Primary and Secondary Ozone NAAQS.

County Department of Air Quality, August 2018;

- Appendix C of the Clark County Portion of the Nevada State Implementation Plan to Meet the Ozone Infrastructure SIP Requirements of Clean Air Act Section 110(a)(2), Clark County Department of Air Quality, August 2018;
- The text under the subheading element (D)(i) on page 4 of the Washoe County Portion of the Nevada State Implementation Plan to Meet the Ozone Infrastructure SIP Requirements of Clean Air Act Section 110(a)(2), adopted by the Washoe County District Board of Health on July 26, 2018.
- Attachment C of the Washoe County Portion of the Nevada State Implementation Plan to Meet the Ozone Infrastructure SIP Requirements of Clean Air Act Section 110(a)(2), adopted by the Washoe County District Board of Health on July 26, 2018.

Under CAA section 110(c)(1), disapproval would establish a 2-year deadline for the EPA to promulgate a FIP for Nevada to address the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements pertaining to significant contribution to nonattainment and interference with maintenance of the 2015 8-hour ozone NAAQS in other states, unless the EPA approves a SIP that meets these requirements. Disapproval does not start a mandatory sanctions clock for Nevada. The remaining elements of Nevada's 2018 SIP submission are not addressed in this action and will be acted on in a separate rulemaking.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

This proposed action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action merely proposes to disapprove a SIP submission as not meeting the CAA.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely proposes to disapprove a SIP submission as not meeting the CAA.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action merely proposes to disapprove a SIP submission as not meeting the CAA.

K. CAA Section 307(b)(1)

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the D.C. Circuit: (i) When the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii).[60]

If the EPA takes final action on this proposed rulemaking the Administrator intends to exercise the complete discretion afforded to him under the CAA to make and publish a finding that the final action (to the extent a court finds the action to be locally or regionally applicable) is based on a determination of ''nationwide scope or effect'' within the meaning of CAA section 307(b)(1). Through this rulemaking action (in conjunction with a series of related actions on other SIP submissions for the same CAA obligations), the EPA interprets and applies section 110(a)(2)(d)(i)(I) of the CAA for the 2015 ozone NAAQS based on a common core of nationwide policy judgments and technical analysis concerning the interstate transport of pollutants throughout the continental U.S. In particular, the EPA is applying here (and in other proposed actions related to the same obligations) the same, nationally consistent 4-step framework for assessing good neighbor obligations for the 2015 ozone NAAQS. The EPA relies on a single set of updated, 2016-base year photochemical grid modeling results of the year 2023 as the primary basis for its assessment of air quality conditions and

[60] In deciding whether to invoke the exception by making and publishing a finding that an action is based on a determination of nationwide scope or effect, the Administrator takes into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit's authoritative centralized review versus allowing development of the issue in other contexts and the best use of agency resources.

contributions at steps 1 and 2 of that framework. Further, the EPA proposes to determine and apply a set of nationally consistent policy judgments to apply the 4-step framework. The EPA has selected a nationally uniform analytic year (2023) for this analysis and is applying a nationally uniform approach to nonattainment and maintenance receptors and a nationally uniform approach to contribution threshold analysis.[61] For these reasons, the Administrator intends, if this proposed action is finalized, to exercise the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on one or more determinations of nationwide scope or effect for purposes of CAA section 307(b)(1).[62]

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone.

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

Dated: May 16, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2022–11151 Filed 5–23–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2022–0268; EPA–HQ–OAR–2021–0663; FRL–9805–01–R8]

Air Plan Disapproval; Wyoming; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to disapprove the State Implementation Plan (SIP) submittal from Wyoming regarding interstate transport for the 2015 8-hour ozone national ambient air quality standards (NAAQS). The ''good neighbor'' or ''interstate transport'' provision requires that each state's SIP contain adequate provisions to prohibit emissions from within the state from significantly contributing to nonattainment or interfering with maintenance of the NAAQS in other states. This requirement is part of the broader set of ''infrastructure'' requirements, which are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. This disapproval, if finalized, will establish a 2-year deadline for the EPA to promulgate a Federal Implementation Plan (FIP) to address the relevant interstate transport requirements, unless the EPA approves a subsequent SIP submittal that meets these requirements. Disapproval does not start a mandatory CAA sanctions clock.

DATES: *Comments:* Written comments must be received on or before July 25, 2022.

ADDRESSES: You may send comments, identified as Docket No. EPA–R08–OAR–2022–0268, to the Federal eRulemaking Portal at *https://www.regulations.gov* following the online instructions for submitting comments.

Instructions: All submissions received must include Docket No. EPA–R08–OAR–2022–0268. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, *see* the ''*Public participation*'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. The EPA Docket Office can be contacted at (202) 566–1744, and is located at EPA Docket Center Reading Room, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. For further information on EPA Docket Center services and the current hours of operation at the EPA Docket Center, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado, 80202–1129, telephone number: (303) 312–6728, email address: *schmitt.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public participation: Submit your comments, identified by Docket No. EPA–R08–OAR–2022–0268, at *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to the EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. 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).

There are two dockets supporting this action, EPA–R08–OAR–2022–0268 and EPA–HQ–OAR–2021–0663. Docket No. EPA–R08–OAR–2022–0268 contains information specific to Wyoming, including the notice of proposed rulemaking. Docket No. EPA–HQ–OAR–2021–0663 contains additional modeling files, emissions inventory files, technical support documents, and other relevant supporting documentation regarding interstate transport of emissions for the 2015 8-hour ozone NAAQS which are being used to support this action. All comments regarding information in either of these dockets are to be made in Docket No. EPA–R08–OAR–2022–0268. For additional submission methods, please contact Ellen Schmitt, telephone number: (303) 312–6728, email address: *schmitt.ellen@epa.gov.* For the EPA's full public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The index for Docket No. EPA–HQ–OAR–2021–0663, is available electronically at *www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our federal partners so that we can respond rapidly as conditions change regarding COVID–19.

[61] A finding of nationwide scope or effect is also appropriate for actions that cover states in multiple judicial circuits. In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that the ''nationwide scope or effect'' exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03.

[62] The EPA may take a consolidated, single final action on all of the proposed SIP disapproval actions with respect to obligations under CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. Should the EPA take a single final action on all such disapprovals, this action would be nationally applicable, and the EPA would also anticipate, in the alternative, making and publishing a finding that such final action is based on a determination of nationwide scope or effect.

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

Table of Contents

I. Background

A. Description of Statutory Background

On October 1, 2015, the EPA promulgated a revision to the ozone NAAQS (2015 8-hour ozone NAAQS), lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm).[1] Section 110(a)(1) of the CAA requires states to submit, within 3 years after promulgation of a new or revised standard, SIP submissions meeting the applicable requirements of section 110(a)(2).[2] One of these applicable requirements is found in CAA section 110(a)(2)(D)(i)(I), otherwise known as the ''interstate transport'' or ''good neighbor'' provision, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on other states due to interstate transport of pollution. There are two so-called ''prongs'' within CAA section 110(a)(2)(D)(i)(I). A SIP for a new or revised NAAQS must contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting air pollutants in amounts that will significantly contribute to nonattainment of the NAAQS in another state (prong 1) or interfere with maintenance of the NAAQS in another state (prong 2). The EPA and states must give independent significance to prong 1 and prong 2 when evaluating downwind air quality problems under CAA section 110(a)(2)(D)(i)(I).[3]

B. Description of the EPA's 4-Step Interstate Transport Regulatory Process

The EPA is using the 4-Step Interstate Transport Framework (or 4-Step Framework) to evaluate Wyoming's SIP submittal addressing the interstate transport provision for the 2015 8-hour ozone NAAQS. The EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to prior ozone NAAQS in several regional regulatory actions, including the Cross-State Air Pollution Rule (CSAPR), which addressed interstate transport with respect to the 1997 ozone NAAQS as well as the 1997 and 2006 fine particulate matter standards,[4] and the Cross-State Air Pollution Rule Update (CSAPR Update) [5] and the Revised CSAPR Update, both of which addressed the 2008 ozone NAAQS.[6] Through the development and implementation of the CSAPR rulemakings and prior regional rulemakings pursuant to the interstate transport provision,[7] the EPA, working in partnership with states, developed the following 4-Step Framework to evaluate a state's obligations to eliminate interstate transport emissions under the interstate transport provision for the ozone NAAQS: (1) Identify monitoring sites that are projected to have problems attaining and/or maintaining the NAAQS (*i.e.,* nonattainment and/or maintenance receptors); (2) identify states that impact those air quality problems in other (*i.e.,* downwind) states sufficiently such that the states are considered ''linked'' and therefore warrant further review and analysis; (3) identify the emissions reductions necessary (if any), applying a multifactor analysis, to eliminate each linked upwind state's significant contribution to nonattainment or interference with maintenance of the NAAQS at the locations identified in Step 1; and (4) adopt permanent and enforceable measures needed to achieve those emissions reductions.

C. Background on the EPA's Ozone Transport Modeling Information

In general, the EPA has performed nationwide air quality modeling to project ozone design values which are used in combination with measured data to identify nonattainment and maintenance receptors. To quantify the contribution of emissions from specific upwind states on 2023 ozone design values for the identified downwind nonattainment and maintenance receptors, the EPA performed nationwide, state-level ozone source apportionment modeling for 2023. The source apportionment modeling provided contributions to ozone at receptors from precursor emissions of anthropogenic nitrogen oxides (NO_X) and volatile organic compounds (VOCs) in individual upwind states.

The EPA has released several documents containing projected ozone design values, contributions, and information relevant to evaluating interstate transport with respect to the 2015 8-hour ozone NAAQS. First, on January 6, 2017, the EPA published a notice of data availability (NODA) in which we requested comment on preliminary interstate ozone transport data including projected ozone design values and interstate contributions for 2023 using a 2011 base year platform.[8] In the NODA, the EPA used the year 2023 as the analytic year for this preliminary modeling because that year aligns with the expected attainment year for Moderate ozone nonattainment areas for the 2015 8-hour ozone NAAQS.[9] On October 27, 2017, we released a memorandum (October 2017 memorandum) containing updated modeling data for 2023, which incorporated changes made in response to comments on the NODA, and noted that the modeling may be useful for states developing SIPs to address interstate transport obligations for the

[1] National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

[2] SIP revisions that are intended to meet the applicable requirements of section 110(a)(1) and (2) of the CAA are often referred to as infrastructure SIPs and the applicable elements under section 110(a)(2) are referred to as infrastructure requirements.

[3] *See North Carolina* v. *EPA,* 531 F.3d 896, 909–11 (D.C. Cir. 2008).

[4] *See* Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011).

[5] Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 81 FR 74504 (October 26, 2016).

[6] In 2019, the D.C. Circuit Court of Appeals remanded the CSAPR Update to the extent it failed to require upwind states to eliminate their significant contribution by the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a). *Wisconsin* v. *EPA,* 938 F.3d 303, 313 (D.C. Cir. 2019). The Revised CSAPR Update for the 2008 Ozone NAAQS, 86 FR 23054 (April 30, 2021), responded to the remand of the CSAPR Update in *Wisconsin* and the vacatur of a separate rule, the ''CSAPR Close-Out,'' 83 FR 65878 (December 21, 2018), in *New York* v. *EPA,* 781 F. App'x. 4 (D.C. Cir. 2019).

[7] In addition to the CSAPR rulemakings, other regional rulemakings addressing ozone transport include the ''NO_X SIP Call,'' 63 FR 57356 (October 27, 1998), and the ''Clean Air Interstate Rule'' (CAIR), 70 FR 25162 (May 12, 2005).

[8] *See* Notice of Availability of the Environmental Protection Agency's Preliminary Interstate Ozone Transport Modeling Data for the 2015 8-hour Ozone National Ambient Air Quality Standard (NAAQS), 82 FR 1733 (January 6, 2017).

[9] 82 FR 1733 at 1735 (January 6, 2017).

2008 ozone NAAQS.[10] On March 27, 2018, we issued a memorandum (March 2018 memorandum) noting that the same 2023 modeling data released in the October 2017 memorandum could also be useful for identifying potential downwind air quality problems with respect to the 2015 8-hour ozone NAAQS at Step 1 of the 4-Step Interstate Transport Framework.[11] The March 2018 memorandum also included the then newly available contribution modeling data for 2023 to assist states in evaluating their impact on potential downwind air quality problems for the 2015 8-hour ozone NAAQS under Step 2 of the 4-Step Framework.[12] The EPA subsequently issued two more memoranda in August and October 2018, providing additional information to states developing interstate transport SIP submissions for the 2015 8-hour ozone NAAQS concerning, respectively, potential contribution thresholds that may be appropriate to apply in Step 2 of the 4-Step Interstate Transport Framework, and considerations for identifying downwind areas that may have problems maintaining the NAAQS at Step 1 of the 4-Step Framework.[13]

Since the release of the modeling data shared in the March 2018 memorandum, the EPA performed updated modeling using a 2016-based emissions modeling platform (*i.e.,* 2016v1). This emissions platform was developed under the EPA/Multi-Jurisdictional Organization (MJO)/state collaborative project.[14] This collaborative project was a multi-year joint effort by the EPA, MJOs, and states to develop a new, more recent emissions platform for use by the EPA and states in regulatory modeling as an improvement over the dated 2011-based platform that the EPA had used to project ozone design values and contribution data provided in the 2017 and 2018 memoranda. The EPA used the 2016v1 emissions to project ozone design values and contributions for 2023. On October 30, 2020, in the Notice of Proposed Rulemaking for the Revised CSAPR Update, the EPA released and accepted public comment on 2023 modeling that used the 2016v1 emissions platform.[15] Although the Revised CSPAR Update addressed transport for the 2008 ozone NAAQS, the projected design values and contributions from the 2016v1 platform are also useful for identifying downwind ozone problems and linkages with respect to the 2015 ozone NAAQS.[16]

Following the final Revised CSAPR Update, the EPA made further updates to the 2016 emissions platform to include mobile emissions from the EPA's Motor Vehicle Emission Simulator MOVES3 model[17] and updated emissions projections for electric generating units (EGUs) that reflect the emissions reductions from the Revised CSAPR Update, recent information on plant closures, and other sector trends. The construct of this updated emissions platform, 2016v2, is described in the emissions modeling technical support document (TSD) supporting this proposed rule.[18] The EPA performed air quality modeling of the 2016v2 emissions using the most recent public release version of the Comprehensive Air-quality Model with extensions (CAMx) photochemical modeling, version 7.10.[19] The EPA now proposes to primarily rely on modeling based on the updated and newly available 2016v2 emissions platform in evaluating these submissions with respect to Steps 1 and 2 of the 4-Step Framework. This modeling will generally be referenced within this action as 2016v2 modeling for 2023. By using the updated modeling results, the EPA is using the most current and technically appropriate information for this proposed rulemaking. Section III of this document and the Air Quality Modeling TSD for 2015 Ozone NAAQS Transport SIP Proposed Actions, included in Docket No. EPA–HQ–OAR–2021–0663 for this proposal, contain additional detail on the EPA's 2016v2 modeling. In this document, the EPA is accepting public comment on this updated 2023 modeling, which uses a 2016v2 emissions platform. Comments on the EPA's air quality modeling should be submitted in the Regional docket for this action, Docket No. EPA–R08–OAR–2022–0268. Comments are not being accepted in Docket No. EPA–HQ–OAR–2021–0663.

States may have chosen to rely on the results of the EPA modeling and/or alternative modeling performed by states or MJOs to evaluate downwind air quality problems and contributions as part of their submissions. In Section III we evaluate how the Wyoming Department of Environmental Quality (WDEQ) used air quality modeling information in their submission.

D. The EPA's Approach To Evaluating Interstate Transport SIPs for the 2015 8-Hour Ozone NAAQS

The EPA proposes to apply a consistent set of policy judgments across all states for purposes of evaluating interstate transport obligations and the approvability of interstate transport SIP submissions for the 2015 8-hour ozone NAAQS. These policy judgments reflect consistency with relevant case law and past Agency practice as reflected in CSAPR and related rulemakings. Nationwide consistency in approach is particularly important in the context of interstate ozone transport, which is a regional-scale pollution problem involving many smaller contributors. Effective policy solutions to the problem of interstate ozone transport going back to the NO_X SIP Call have necessitated the application of a uniform framework of policy judgments in order to ensure an ''efficient and equitable'' approach. *See EME Homer City Generation, LP* v. *EPA,* 572 U.S. 489, 519 (2014).

In the March, August, and October 2018 memoranda, the EPA recognized that states may be able to establish alternative approaches to addressing their interstate transport obligations for the 2015 8-hour ozone NAAQS that vary from a nationally uniform framework.

[10] *See* Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), October 27, 2017 (''October 2017 memorandum''), available in Docket No. EPA–HQ–OAR–2021–0663.

[11] *See* Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), March 27, 2018 (''March 2018 memorandum''), available in Docket No. EPA–HQ–OAR–2021–0663.

[12] The March 2018 memorandum, however, provided, ''While the information in this memorandum and the associated air quality analysis data could be used to inform the development of these SIPs, the information is not a final determination regarding states' obligations under the good neighbor provision. Any such determination would be made through notice-and-comment rulemaking.''

[13] *See* Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, August 31, 2018 (''August 2018 memorandum''), and Considerations for Identifying Maintenance Receptors for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, October 19, 2018, available in Docket No. EPA–HQ–OAR–2021–0663.

[14] The results of this modeling, as well as the underlying modeling files, are included in Docket No. EPA–HQ–OAR–2021–0663.

[15] *See* 85 FR 68964, 68981.

[16] *See* the Air Quality Modeling Technical Support Document for the Final Revised Cross-State Air Pollution Rule Update, included in the Docket No. EPA–HQ–OAR–2021–0663.

[17] Additional details and documentation related to the MOVES3 model can be found at *https://www.epa.gov/moves/latest-version-motor-vehicle-emission-simulator-moves.*

[18] *See* Technical Support Document (TSD) Preparation of Emissions Inventories for the 2016v2 North American Emissions Modeling Platform included in Docket No. EPA–HQ–OAR–2021–0663.

[19] Ramboll Environment and Health, January 2021, *www.camx.com.*

The EPA emphasized in these memoranda, however, that such alternative approaches must be technically justified and appropriate in light of the facts and circumstances of each particular state's submittal. In general, the EPA continues to believe that deviation from a nationally consistent approach to ozone transport must be substantially justified and have a well-documented technical basis that is consistent with relevant case law. Where states submitted SIPs that rely on any such potential ''flexibilities'' as may have been identified or suggested in the past, the EPA will evaluate whether the state adequately justified the technical and legal basis for doing so.

The EPA notes that certain concepts included in an attachment to the March 2018 memorandum require unique consideration, and these ideas do not constitute Agency guidance with respect to transport obligations for the 2015 ozone NAAQS. Attachment A to the March 2018 memorandum identified a ''Preliminary List of Potential Flexibilities'' that could potentially inform SIP development,[20] however, the EPA made clear in that attachment that the list of ideas were not suggestions endorsed by the Agency but rather ''comments provided in various forums'' on which the EPA sought ''feedback from interested stakeholders.'' [21] Further, Attachment A stated, ''EPA is not at this time making any determination that the ideas discussed below are consistent with the requirements of the CAA, nor are we specifically recommending that states use these approaches.'' [22] Attachment A to the March 2018 memorandum, therefore, does not constitute Agency guidance, but was intended to generate further discussion around potential approaches to addressing ozone transport among interested stakeholders. To the extent states sought to develop or rely on these ideas in support of their SIP submissions, the EPA will thoroughly review the technical and legal justifications for doing so.

The remainder of this section describes the EPA's proposed framework with respect to analytic year, definition of nonattainment and maintenance receptors, selection of contribution threshold, and multifactor control strategy assessment.

1. Selection of Analytic Year

In general, the states and the EPA must implement the interstate transport provision in a manner ''consistent with the provisions of [title I of the CAA.]'' CAA section 110(a)(2)(D)(i). This requires, among other things, that these obligations are addressed consistently with the timeframes for downwind areas to meet their CAA obligations. With respect to ozone NAAQS, under CAA section 181(a), this means obligations must be addressed ''as expeditiously as practicable'' and no later than the schedule of attainment dates provided in CAA section 181(a)(1).[23] Several D.C. Circuit court decisions address the issue of the relevant analytic year for the purposes of evaluating ozone transport air-quality problems. On September 13, 2019, the D.C. Circuit issued a decision in *Wisconsin* v. *EPA,* remanding the CSAPR Update to the extent that it failed to require upwind states to eliminate their significant contribution by the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a). 938 F.3d 303 at 313.

On May 19, 2020, the D.C. Circuit issued a decision in *Maryland* v. *EPA* that cited the *Wisconsin* decision in holding that the EPA must assess the impact of interstate transport on air quality at the next downwind attainment date, including Marginal area attainment dates, in evaluating the basis for the EPA's denial of a petition under CAA section 126(b). *Maryland* v. *EPA,* 958 F.3d 1185, 1203–04 (D.C. Cir. 2020). The court noted that ''section 126(b) incorporates the Good Neighbor Provision,'' and, therefore, the ''EPA must find a violation [of section 126] if an upwind source will significantly contribute to downwind nonattainment at the *next downwind attainment deadline.* Therefore, the agency must evaluate downwind air quality at that deadline, not at some later date.'' *Id.* at 1204 (emphasis added). The EPA interprets the court's holding in *Maryland* as requiring the states and the Agency, under the good neighbor provision, to assess downwind air quality as expeditiously as practicable and no later than the next applicable attainment date,[24] which is now the Moderate area attainment date under CAA section 181 for ozone nonattainment. The Moderate area attainment date for the 2015 8-hour ozone NAAQS is August 3, 2024.[25] The EPA believes that 2023 is now the appropriate year for analysis of interstate transport obligations for the 2015 8-hour ozone NAAQS, because the 2023 ozone season is the last relevant ozone season during which achieved emissions reductions in linked upwind states could assist downwind states with meeting the August 3, 2024 Moderate area attainment date for the 2015 8-hour ozone NAAQS.

The EPA recognizes that the attainment date for nonattainment areas classified as Marginal for the 2015 8-hour ozone NAAQS was August 3, 2021. Under the *Maryland* holding, any necessary emissions reductions to satisfy interstate transport obligations should have been implemented by no later than this date. At the time of the statutory deadline to submit interstate transport SIPs (October 1, 2018), many states relied upon the EPA modeling of the year 2023, and no state provided an alternative analysis using a 2021 analytic year (or the prior 2020 ozone season). However, the EPA must act on SIP submittals using the information available at the time it takes such action. In this circumstance, the EPA does not believe it would be appropriate to evaluate states' obligations under CAA section 110(a)(2)(D)(i)(I) as of an attainment date that is wholly in the past, because the Agency interprets the interstate transport provision as forward looking. *See* 86 FR 23054 at 23074; *see also Wisconsin,* 938 F.3d at 322. Consequently, in this proposal the EPA will use the analytical year of 2023 to evaluate Wyoming's CAA section 110(a)(2)(D)(i)(I) SIP submission with respect to the 2015 8-hour ozone NAAQS.

2. Step 1 of the 4-Step Interstate Transport Framework

In Step 1, the EPA identifies monitoring sites that are projected to have problems attaining and/or maintaining the NAAQS in the 2023 analytic year. Where the EPA's analysis shows that a site does not fall under the definition of a nonattainment or maintenance receptor, that site is excluded from further analysis under

[20] March 2018 memorandum, Attachment A.

[21] *Id.* at A–1.

[22] *Id.*

[23] For attainment dates for the 2015 8-hour ozone NAAQS, refer to CAA section 181(a), 40 CFR 51.1303, and Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018, effective August 3, 2018).

[24] We note that the court in *Maryland* did not have occasion to evaluate circumstances in which the EPA may determine that an upwind linkage to a downwind air quality problem exists at Steps 1 and 2 of the 4-Step Framework by a particular attainment date, but for reasons of impossibility or profound uncertainty the Agency is unable to mandate upwind pollution controls by that date. *See Wisconsin,* 938 F.3d at 320. The D.C. Circuit noted in *Wisconsin* that upon a sufficient showing, these circumstances may warrant flexibility in effectuating the purpose of the interstate transport provision.

[25] *See* CAA section 181(a); 40 CFR 51.1303; Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018, effective August 3, 2018).

the EPA's 4-Step Framework. For sites that are identified as a nonattainment or maintenance receptor in 2023, we proceed to the next step of our 4-Step Framework by identifying the upwind state's contribution to those receptors.

The EPA's approach to identifying ozone nonattainment and maintenance receptors in this action is consistent with the approach used in previous transport rulemakings. The EPA's approach gives independent consideration to both the ''contribute significantly to nonattainment'' and the ''interfere with maintenance'' prongs of CAA section 110(a)(2)(D)(i)(I), consistent with the D.C. Circuit's direction in *North Carolina* v. *EPA*.[26]

For the purpose of this proposal, the EPA identifies nonattainment receptors as those monitoring sites that are projected to have average design values that exceed the NAAQS and that are also measuring nonattainment based on the most recent monitored design values. This approach is consistent with prior transport rulemakings, such as the CSAPR Update, where the EPA defined nonattainment receptors as those areas that both currently measure nonattainment and that the EPA projects will be in nonattainment in the future analytic year (*i.e.,* 2023).[27]

In addition, in this proposal, the EPA identifies a receptor to be a ''maintenance'' receptor for purposes of defining interference with maintenance, consistent with the method used in the CSAPR and upheld by the D.C. Circuit in *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 136 (D.C. Cir. 2015).[28] Specifically, the EPA identified maintenance receptors as those receptors that would have difficulty maintaining the relevant NAAQS in a scenario that takes into account historical variability in air quality at that receptor. The variability in air quality was determined by evaluating the ''maximum'' future design value at each receptor based on a projection of the maximum measured design value over the relevant base period. The EPA interprets the projected maximum future design value to be a potential future air quality outcome consistent with the meteorology that yielded maximum measured concentrations in the ambient data set analyzed for that receptor (*i.e.,* ozone conducive meteorology). The EPA also recognizes that previously experienced meteorological conditions (*e.g.,* dominant wind direction, temperatures, vertical mixing, insolation, and air mass patterns) promoting ozone formation that led to maximum concentrations in the measured data may reoccur in the future. The maximum design value gives a reasonable projection of future air quality at the receptor under a scenario in which such conditions do, in fact, reoccur. The projected maximum design value is used to identify upwind emissions that, under those circumstances, could interfere with the downwind area's ability to maintain the NAAQS.

Recognizing that nonattainment receptors are also, by definition, maintenance receptors, the EPA often uses the term ''maintenance-only'' to refer to those receptors that are not nonattainment receptors. Consistent with the concepts for maintenance receptors, as described above, the EPA identifies ''maintenance-only'' receptors as those monitoring sites that have projected average design values above the level of the applicable NAAQS, but that are not currently measuring nonattainment based on the most recent official design values. In addition, those monitoring sites with projected average design values below the NAAQS, but with projected maximum design values above the NAAQS are also identified as ''maintenance only'' receptors, even if they are currently measuring nonattainment based on the most recent official design values.

3. Step 2 of the 4-Step Interstate Transport Framework

In Step 2, the EPA quantifies the contribution of each upwind state to each receptor in the 2023 analytic year. The contribution metric used in Step 2 is defined as the average impact from each state to each receptor on the days with the highest ozone concentrations at the receptor based on the 2023 modeling. If a state's contribution value does not equal or exceed the threshold of 1 percent of the NAAQS (*i.e.,* 0.70 ppb for the 2015 8-hour ozone NAAQS), the upwind state is not linked to a downwind air quality problem, and the EPA, therefore, concludes that the state does not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in the downwind states. However, if a state's contribution equals or exceeds the 1 percent threshold, the state's emissions are further evaluated in Step 3, considering both air quality and cost as part of a multi-factor analysis, to determine what, if any, emissions might be deemed ''significant'' and, thus, must be eliminated under CAA section 110(a)(2)(D)(i)(I). The EPA is proposing to rely in the first instance on the 1 percent threshold for the purpose of evaluating a state's contribution to nonattainment or maintenance of the 2015 8-hour ozone NAAQS (*i.e.,* 0.70 ppb) at downwind receptors. This is consistent with the Step 2 approach that the EPA applied in CSAPR for the 1997 ozone NAAQS, which has subsequently been applied in the CSAPR Update when evaluating interstate transport obligations for the 2008 ozone NAAQS. The EPA continues to find 1 percent to be an appropriate threshold. For ozone, as the EPA found in the Clean Air Interstate Rule (CAIR), CSAPR, and the CSAPR Update, a portion of the nonattainment problems from anthropogenic sources in the U.S. results from the combined impact of relatively small contributions from many upwind states, along with contributions from in-state sources and, in some cases, substantially larger contributions from a subset of particular upwind states. The EPA's analysis shows that much of the ozone transport problem being analyzed in this proposed rule is the result of the collective impacts of contributions from multiple upwind states. Therefore, application of a consistent contribution threshold is necessary to identify those upwind states that should have responsibility for addressing their contribution to the downwind nonattainment and maintenance problems to which they collectively contribute. Continuing to use 1 percent of the NAAQS as the screening metric to evaluate collective contribution from many upwind states also allows the EPA (and states) to apply a consistent framework to evaluate interstate emissions transport under the interstate transport provision from one NAAQS to the next. *See* 81 FR at 74518. *See also* 86 FR at 23085 (reviewing and explaining rationale from CSAPR, 76 FR at 48237–38, for selection of the 1 percent threshold).

The EPA's August 2018 memorandum recognized that in certain circumstances, a state may be able to establish that an alternative contribution threshold of 1 ppb is justifiable. Where a state relies on this alternative threshold, and where that state determined that it was not linked at Step 2 using the alternative threshold,

[26] *See North Carolina* v. *EPA,* 531 F.3d 896, 910–11 (D.C. Cir. 2008) (holding that the EPA must give ''independent significance'' to each prong of CAA section 110(a)(2)(D)(i)(I)).

[27] *See* 81 FR 74504 (October 26, 2016). This same concept, relying on both current monitoring data and modeling to define nonattainment receptor, was also applied in CAIR. *See* 70 FR 25162 at 25241, 25249 (January 14, 2005); *see also North Carolina,* 531 F.3d at 913–14 (affirming as reasonable the EPA's approach to defining nonattainment in CAIR).

[28] *See* 76 FR 48208 (August 8, 2011). The CSAPR Update and the Revised CSAPR Update also used this approach. *See* 81 FR 74504 (October 26, 2016) and 86 FR 23054 (April 30, 2021).

the EPA will evaluate whether the state provided a technically sound assessment of the appropriateness of using this alternative threshold based on the facts and circumstances underlying its application in that particular SIP submission.

4. Step 3 of the 4-Step Interstate Transport Framework

Consistent with the EPA's longstanding approach to eliminating significant contribution or interference with maintenance, at Step 3, states linked at Steps 1 and 2 are generally expected to prepare a multifactor assessment of potential emissions controls. The EPA's analysis at Step 3 in prior federal actions addressing interstate transport requirements has primarily focused on an evaluation of cost-effectiveness of potential emissions controls (on a marginal cost-per-ton basis), the total emissions reductions that may be achieved by requiring such controls (if applied across all linked upwind states), and an evaluation of the air quality impacts such emissions reductions would have on the downwind receptors to which a state is linked; other factors may potentially be relevant if adequately supported. In general, where the EPA's or alternative air quality and contribution modeling establishes that a state is linked at Steps 1 and 2, it will be insufficient at Step 3 for a state merely to point to its existing rules requiring control measures as a basis for approval. Generally, the emissions-reducing effects of all existing emissions control requirements are already reflected in the air quality results of the modeling for Steps 1 and 2. If the state is shown to still be linked to one or more downwind receptor(s), states must provide a well-documented evaluation determining whether their emissions constitute significant contribution or interference with maintenance by evaluating additional available control opportunities by preparing a multifactor assessment. While the EPA has not prescribed a particular method for this assessment, the EPA expects states at a minimum to present a sufficient technical evaluation. This would typically include information on emissions sources, applicable control technologies, emissions reductions, costs, cost effectiveness, and downwind air quality impacts of the estimated reductions, before concluding that no additional emissions controls should be required.[29]

5. Step 4 of the 4-Step Interstate Transport Framework

At Step 4, states (or the EPA) develop permanent and federally enforceable control strategies to achieve the emissions reductions determined to be necessary at Step 3 to eliminate significant contribution to nonattainment or interference with maintenance of the NAAQS. For a state linked at Steps 1 and 2 to rely on an emissions control measure at Step 3 to address its interstate transport obligations, that measure must be included in the state's SIP so that it is permanent and federally enforceable. *See* CAA section 110(a)(2)(D) (''Each such [SIP] shall . . . contain adequate provisions . . . .''). *See also* CAA 110(a)(2)(A); *Committee for a Better Arvin* v. *U.S. E.P.A.,* 786 F.3d 1169, 1175–76 (9th Cir. 2015) (holding that measures relied on by state to meet CAA requirements must be included in the SIP).

II. Wyoming SIP Submission Addressing Interstate Transport of Air Pollution for the 2015 8-Hour Ozone NAAQS

On January 3, 2019, the WDEQ submitted a SIP revision addressing the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 8-hour ozone NAAQS.[30] The SIP submission provided WDEQ's analysis of the State's impact to downwind states and concluded that emissions from Wyoming will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in other states in 2023.[31] The WDEQ SIP submission cited the EPA's 4-Step Framework approach, but also included a ''weight-of-evidence'' analysis.[32] Throughout the submission, the WDEQ also incorporated certain outside parties' ideas for ''flexibilities'' in assessing good neighbor obligations that had been listed in Attachment A to the March 2018 memorandum.[33] In their analysis, the WDEQ used the modeling released with the March 2018 memorandum to identify nonattainment and maintenance receptors in the Denver Metro/North Front Range nonattainment area in 2023 (Step 1).[34] The WDEQ also relied on the EPA's modeling from the March 2018 memorandum to identify contributions to projected nonattainment and/or maintenance receptors and emissions from sources in the State in 2023 (Step 2).[35] The WDEQ identified five nonattainment and maintenance receptors to which the State was projected to contribute equal to and greater than 0.70 ppb (1 percent of the 2015 ozone NAAQS).[36] Table 1 provides information on the five nonattainment and maintenance receptors identified by the WDEQ in the State's SIP submittal.

TABLE 1—2023 AVERAGE AND MAXIMUM DESIGN VALUES AT DOWNWIND RECEPTORS WITH WYOMING CONTRIBUTIONS EQUAL TO AND GREATER THAN 0.70 PPB [a]

Site ID	County	State	Average design value (ppb)	Maximum design value (ppb)	Wyoming modeled contribution (ppb)
80050002	Arapahoe	CO	69.3	71.3	1.04
80350004	Douglas	CO	71.1	73.2	1.00
80590006	Jefferson	CO	71.3	73.7	0.81

[29] As examples of general approaches for how such an analysis could be conducted for their sources, states could look to the CSAPR Update, 81 FR 74504, 74539–51; CSAPR, 76 FR 48208, 48246–63; CAIR, 70 FR 25162, 25195–229; or the NO_X SIP Call, 63 FR 57356, 57399–405. *See also* the Revised CSAPR Update, 86 FR 23054, 23086–23116. Consistently across these rulemakings, the EPA has developed emissions inventories, analyzed different levels of control stringency at different cost thresholds, and assessed resulting downwind air quality improvements.

[30] In its SIP submission, the WDEQ references its Air Quality Division (AQD). In this action, we simply reference the WDEQ. Wyoming State Implementation Plan, Interstate Transport, To Satisfy the Requirements of Clean Air Act 110(a)(2)(i)(I) for the 8-Hour Ozone NAAQS Promulgated in October 2015, December 2018. Located in the docket for this rulemaking at *regulations.gov*, Docket No. EPA–R08–OAR–2022–0268.

[31] Wyoming State Implementation Plan, Attachment B at 10.

[32] See generally id. at 3–10.

[33] Id. at 3, 8.

[34] Id. at 3. The EPA notes that the modeling released with the October 2017 and March 2018 memoranda both used 2011 base year inventory data.

[35] Id. at 6.

[36] Id.

TABLE 1—2023 AVERAGE AND MAXIMUM DESIGN VALUES AT DOWNWIND RECEPTORS WITH WYOMING CONTRIBUTIONS EQUAL TO AND GREATER THAN 0.70 PPB [a]—Continued

Site ID	County	State	Average design value (ppb)	Maximum design value (ppb)	Wyoming modeled contribution (ppb)
80590011	Jefferson	CO	70.9	73.9	1.03
80690011	Larimer	CO	71.2	73.0	0.88

[a] Data according to March 2018 memorandum modeling.

While the WDEQ presented all of the monitors that the modeling projected Wyoming would contribute equal to and greater than the 1 percent threshold, the WDEQ indicated that they supported and applied the use of different thresholds, such as the 1 ppb limit that was established as part of the Significant Impact Level (SIL) for ozone, used in the Prevention of Significant Deterioration (PSD) permitting program. The WDEQ referenced the EPA's August 31, 2018 memorandum, which the State interpreted as the EPA approving 1 ppb as an alternative to the 1 percent of the NAAQS screening threshold at Step 2.[37] The WDEQ noted that by using a 1 ppb threshold, the State is only linked to three [38] of the five receptors listed in Table 1.

Although the WDEQ's use of a 1 ppb threshold eliminated only two of the five receptor linkages, they relied on a weight-of-evidence approach at Step 2 of the 4-Step Framework to assert that Wyoming does not contribute to nonattainment or interfere with maintenance in another state (*i.e.,* at none of the five receptors to which Wyoming's sources contribute greater than 1 percent of the NAAQS in the EPA's 2011-based modeling).[39] The WDEQ stated that the weight-of-evidence approach to evaluating transport in western states is appropriate, since the EPA recognized in the CSAPR Update that it was not appropriate to extend CSAPR to western states without first considering important regional differences such as topography, prevalence of wildfires, altitude, and other factors.[40] The WDEQ referenced the EPA's past actions on California's and Arizona's 2008 ozone interstate transport SIPs as examples of the EPA relying on a weight-of-evidence approach to support approval of the SIP for western states with contributions greater than 1 percent of the NAAQS to a downwind receptor.[41]

In their weight-of-evidence argument, the WDEQ considered the EPA's approval of Arizona's interstate transport SIP for the 2008 ozone NAAQS, in which the total contributions from all states that contributed to the same receptor(s) were factored into the EPA's analysis.[42] The WDEQ stated that for Arizona's 2008 ozone transport approval action, the EPA ''concluded that upwind state contribution to the receptors Arizona was linked to were negligible, 'particularly when compared to the relatively large contributions from upwind states in the East.' '' [43]

Additionally, the WDEQ asserted that the EPA's modeling results in the March 2018 memorandum illustrates a disparity between upwind contributions from states in the East versus the West.[44] The WDEQ stated that the modeling showed that upwind contributions for one site in Connecticut (Site ID 90019003) was 44.24 ppb, 12 times as much as the in-state contributions of 3.71 ppb.[45] The WDEQ compared this to the relative contribution levels at the Colorado receptors previously noted in Table 1. The WDEQ indicated that the highest collective contributions from upwind states to these receptors was 7.06 ppb to site 80590006 (one of the Jefferson County receptors) and that the in-state (Colorado) contribution to the same receptor is 25.52 ppb. Table 2 of this document provides the WDEQ's summary of in-state and upwind state contributions using the EPA's 2023 (2011 platform) modeling. The WDEQ stated in their SIP submission that the total contributions from upwind states to downwind receptors is much higher for eastern states than for western states and therefore the 1 percent threshold needs to be reevaluated for application in western states.[46]

The WDEQ concluded that the total collective contribution from upwind states to the Colorado receptors (including the Arapahoe, Douglas, and one Jefferson County receptor (Site ID 80590011)) is ''negligible.'' [47] For the other Jefferson County receptor (Site ID 80580006) and the Larimer County receptor (the two receptors to which the WDEQ identified that Wyoming contributes above 1 percent of the NAAQs but below 1 ppb), the WDEQ did not include this argument regarding negligible collective contribution, but reiterated that their sources' contributions to this receptor are below 1 ppb, and therefore do not contribute significantly.[48] Citing a potential flexibility from Attachment A to the March 2018 memorandum, the WDEQ also pointed to international and non-anthropogenic emissions contributions as additional support for concluding that it is unnecessary to reach a Step 3 analysis for Wyoming, since contributions from these categories make up over 50 percent of the total maximum design values at each of the five receptors under evaluation.[49]

[37] Id. at 6.

[38] Site ID 80050002 (Arapahoe), Site ID 80350004 (Douglas), and Site ID 80590011 (Jefferson). *Id.*

[39] Id. at 3, 8–9.

[40] Id. at 2.

[41] Id. at 2–3, 6.

[42] *See* ''Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Arizona; Infrastructure Requirements to Address Interstate Transport for the 2008 Ozone NAAQS,'' 81 FR 31513 (May 19, 2016).

[43] Wyoming State Implementation Plan, Attachment B at 6 (citing 81 FR 15203).

[44] Id. at 6.

[45] Id.

[46] Id. at 7.

[47] Id. at 7–8.

[48] Id. at 8.

[49] Id. at 8–9.

TABLE 2—IN-STATE VS. COLLECTIVE UPWIND STATE CONTRIBUTIONS [a]

Site	County	State	Average design value (ppb)	Maximum design value (ppb)	In-state contribution (ppb)	Total contribution from upwind states (ppb)
80050002	Arapahoe	CO	69.3	71.3	22.94	5.98
80350004	Douglas	CO	71.1	73.2	24.71	5.94
80590006	Jefferson	CO	71.3	73.7	25.52	7.06
80590011	Jefferson	CO	70.9	73.9	24.72	6.98
80690011	Larimer	CO	71.2	73.0	21.74	6.33

[a] Data according to March 2018 memorandum modeling.

The WDEQ's SIP submission also pointed to data that indicates that the ''counties currently classified as nonattainment for the 2015 standards are projected to be in attainment by the year 2025.'' [50] The WDEQ acknowledged that 2025 is not an applicable attainment year for the 2015 ozone NAAQS, but wishes to include this projection as part of its weight-of-evidence analysis and to help demonstrate that a downward trend in ozone exists.[51] Also included in Wyoming's SIP submission is the State's projection for VOC and NO_X emissions reductions, including an expected reduction of over 32,000 tons per year (tpy) of NO_X between 2011 and 2023.[52] The WDEQ notes that at the time of its SIP submission, 21,252 tpy of those NO_X reductions had yet to occur, but pointed to the Regional Haze Rule and other agreements between the EPA and Wyoming operators.[53] The WDEQ also noted that additional emissions reductions would be achieved through the Tier 3 Vehicle Emissions and Fuel Standards national rulemaking.[54] The State concluded that based on the anticipated reductions, requiring additional reductions would not be necessary.[55]

Based on the results of its weight-of-evidence analysis at Step 2, the WDEQ's 2019 SIP submission concluded that emissions from the State are not linked to a downwind projected nonattainment or maintenance receptor and therefore do not contribute to nonattainment or interfere with the maintenance of the 2015 ozone NAAQS in any downwind state.[56]

III. The EPA's Evaluation

The EPA is proposing to find that Wyoming's January 3, 2019, SIP submission does not meet the State's obligations with respect to prohibiting emissions that contribute significantly to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other state. The Agency's decision to propose disapproval of Wyoming's SIP submission is based on our evaluation of the SIP using the 4-Step Framework.

A. Evaluation of Information Provided by Wyoming Regarding Step 1 and Step 2

At Step 1 and Step 2 of the 4-Step Framework, Wyoming relied on the EPA modeling released in the March 2018 memorandum to identify nonattainment and maintenance receptors and upwind state linkages to those nonattainment and maintenance receptors in 2023. In this proposal, the EPA relies on the Agency's most recently available modeling (2016v2) to identify upwind contributions and linkages to downwind air quality problems in 2023. The earlier modeling relied on by the WDEQ identified a number of nonattainment and maintenance receptor sites in 2023 as did the more recent 2016v2 2023 modeling. Thus, the EPA agrees with the WDEQ that for Step 1 under the 4-Step Interstate Transport Framework, a number of nonattainment and maintenance receptors for the 2015 ozone NAAQS were projected for 2023.

As noted in Section II, at Step 2, the WDEQ completed a weight-of-evidence analysis to conclude that it was not linked to any projected downwind receptors. The WDEQ stated that a weight-of-evidence approach at Step 2 was the most appropriate method for evaluating interstate transport obligations for western states, and that this approach was consistent with the EPA's past practice of relying on a weight-of-evidence approach in evaluating interstate transport in the West under the 2008 ozone NAAQS. The EPA has not prescribed to states any specific methodology for developing SIP submissions, although the EPA has historically relied on the 4-Step Framework to complete its evaluation of state SIP submissions for ozone transport. Under the previous 2008 ozone NAAQS, the EPA's action on western states' interstate transport SIP submissions has been informed using EPA modeling results and has considered additional factors as appropriate. In the CSAPR Update, the EPA stated, ''The EPA and western states, working together, are continuing to evaluate interstate transport obligations on a case-by-case basis. The EPA will fulfill its backstop role with respect to issuing FIPs for western states if and when that becomes necessary.'' [57] The EPA did note that there ''may be'' geographic factors to consider when acting on western states but did not attempt to elucidate what these were or how they may be relevant to interstate transport policy.[58]

The EPA did not provide, as the WDEQ SIP submission suggests, specific regional differences or a set criteria that must be considered prior to acting on western state SIPs. Further, as discussed in more detail later in this section, the EPA's proposed action on this SIP submission is entirely consistent with the reasoning it previously applied in acting on SIP submissions for western states including Arizona, Utah, and Wyoming under the 2008 ozone NAAQS. Nonetheless, we will evaluate the evidence and arguments supplied by the WDEQ to determine whether the State's conclusion, that no further controls are necessary for Wyoming to meet its obligations under CAA 110(a)(2)(D)(i)(I), is adequately supported.

The first argument the WDEQ relied on to support its conclusion was an alternative threshold at Step 2 to determine a linkage. The WDEQ noted

[50] Id. at 9.
[51] Id.
[52] Id.
[53] Id.
[54] Id.
[55] Id.
[56] Id at 9–10.

[57] *See* 81 FR 74504, at 74523.
[58] *See* id. The EPA also noted that the western states on which it was not acting in the CSAPR Update were not thereby relieved of their statutory obligations to address interstate transport and that the analyses developed for the CSAPR Update, including air quality modeling and emissions control potential ''can be useful for western states in developing SIPs.'' Id.

their support of an alternative threshold to 1 percent of the NAAQS.[59] As noted in Section II of the preamble, the WDEQ referred to the 1 ppb limit of the ozone SIL used in the PSD permitting program and relied on the August 2018 memorandum to conclude using a 1 ppb alternative contribution threshold at Step 2 is ''appropriate'' for Wyoming.[60] The WDEQ further argued that there is a ''need to reevaluate the application of CSAPR and the associated 1 percent threshold in the West.'' [61] As an initial matter, the EPA does not agree with the WDEQ's assessment that 1 percent is not an appropriate threshold for western states. The explanation for how the 1 percent contribution threshold was originally derived is available in the 2011 CSAPR rulemaking. *See* 76 FR 48208, 48237–38. Further, in the CSAPR Update, the EPA re-analyzed the threshold for purposes of the 2008 ozone NAAQS and determined it was appropriate to continue to apply this threshold. *See* 86 FR 23054, 23085 (summarizing CSAPR and the CSAPR Update basis for use of 1 percent of the NAAQS threshold).

Further, the EPA has explained in prior actions on western states' ozone interstate transport SIPs that a 1 percent of the NAAQS threshold may be appropriate in the West just as much as in the East. In acting on Wyoming's interstate transport SIP submissions for the 2008 ozone NAAQS, the EPA consistently applied the 1 percent threshold, and rejected use of a higher threshold. The EPA explained that a 1 percent threshold was appropriate to apply for a Colorado receptor ''because the air quality problem in that area resulted in part from the relatively small individual contribution of upwind states that collectively contribute a larger portion of the ozone contributions (9.7%), comparable to some eastern receptors . . . .'' *See* 84 FR 3389, 3391 (February 12, 2019).[62]

In the EPA's action on Utah's SIP submission as to prong 2 for the 2008 ozone NAAQS, the EPA further addressed the basis for applying a 1 percent threshold at least as to Colorado receptors, and rejected comments advocating for a higher threshold. 81 FR 71991, 71994–95 (October 19, 2016). As in its Wyoming actions, the EPA explained the basis for the 1 percent threshold as derived in CSAPR and the CSAPR Update rulemakings, and then explained that the same reasoning would hold true with respect to the Colorado receptors to which Utah was linked. *Id.* The EPA noted that Utah's state agency's advocacy for a higher contribution threshold of 2 percent of the NAAQS was not technically supported and ''appears to only be justified by the conclusion that Utah would not have been linked to Denver receptors at this level.'' *Id.* at 71995.

When the EPA took action on Arizona's 2008 ozone NAAQS transport SIP submittal, it again found the 1 percent threshold appropriate to apply as to that western state. 81 FR 15200, 15202–03 (March 22, 2016). We stated that we disagreed with Arizona's contention that it is unclear what screening threshold is significant for southwestern states when addressing interstate transport contributions. We explained that we believe contribution from an individual state equal to or above 1 percent of the NAAQS could be considered significant where the collective contribution of emissions from one or more upwind states is responsible for a considerable portion of the downwind air quality problem regardless of where the receptor is geographically located. *See id.* 15202.

As discussed in further detail later in the section, the EPA found, based on an analysis of the California monitoring sites at issue in that action, that Arizona was not contributing to downwind nonattainment or maintenance problems. But this conclusion was not reached on the basis of an alternative threshold at Step 2, which, as explained previously, the EPA did not find justified to assume for an entire region such as the southwest.[63]

The WDEQ also seeks to rely on the EPA's August 2018 memorandum as a basis for using a 1 ppb threshold. However, that memorandum provided that whether use of a 1 ppb threshold is appropriate must be based on an evaluation of state-specific circumstances, and no such evaluation was included in the WDEQ's submission. The August 2018 memorandum did not establish a rule that the application of a 1 ppb threshold to determine a linkage would always be approvable, as the WDEQ appears to assume in its SIP submission. Rather, the EPA suggested that where the percentage of upwind state emissions is comparable to the amount captured at 1 percent, it *may be* reasonable for states to use a 1 ppb contribution threshold, as an alternative to a 1 percent threshold, at Step 2 of the 4-Step Framework, for the purposes of identifying linkages to downwind receptors. This indicates that a more determinative conclusion of appropriateness would require further state-and-receptor-specific analysis.[64] However, the WDEQ's SIP submission does not evaluate whether the level of upwind state contribution captured at the 1 ppb threshold is sufficiently comparable to the amount captured at 1 percent at each linked receptor. The WDEQ does not include any further technical analysis to sufficiently justify use of an alternative 1 ppb threshold at the linked receptors.

The WDEQ also referred to the EPA's use of the ozone SIL in the PSD permitting program as additional justification for use of a 1 ppb threshold. The EPA's SIL guidance relates to a different provision of the CAA regarding implementation of the PSD permitting program, *i.e.,* a program that applies in areas that have been designated attainment or unclassifiable for the NAAQS, and it is not applicable to the good neighbor provision, which requires states to eliminate significant contribution or interference with maintenance of the NAAQS at known and ongoing air quality problem areas in other states.

The analytical gaps identified previously, as well as the EPA's consistent policy of applying a 1 percent of the NAAQS threshold even in the case of western states like Wyoming (particularly with respect to the Colorado receptors), indicate that the use of a 1 ppb threshold for the State is not approvable.

[59] Wyoming State Implementation Plan, Attachment B at 6.

[60] Id. at 6.

[61] Id. at 7.

[62] While the EPA ultimately approved Wyoming's transport SIP submission as proposed in the 2019 action, the approval was on the basis of a unique air quality demonstration developed by Colorado itself to establish that there would be no air quality problem in Colorado with respect to the 2008 ozone NAAQS once air quality monitoring data influenced by ''atypical events'' were removed (assuming 2023 was the correct analytical year). *See* 84 FR 3392–94; 84 FR 14270 (April 10, 2019) (final action; no comments received). No such basis for approval of Wyoming's transport SIP has been developed or submitted with respect to Colorado's ongoing air quality problems under the 2015 ozone NAAQS. Further, as presented in Table 5 in this document, at least four Colorado monitoring sites continue to have design values as of 2020 that are in excess of the 2008 ozone NAAQS, let alone the 2015 ozone NAAQS.

[63] The EPA received no comment on the Arizona 2008 ozone NAAQS interstate transport proposal and therefore finalized its approval without further analysis. 81 FR 31513 (May 19, 2016).

[64] The EPA provided comments on November 1, 2018, regarding the use of a 1 ppb threshold on the WDEQ's draft SIP submittal during the State's comment period. In these comments, the EPA indicated that the August 2018 memorandum suggested that, depending on the particular facts and circumstances, it may be reasonable and appropriate to use a 1 ppb threshold, and if the WDEQ wished to use a 1 ppb threshold in its SIP development, the EPA recommended Wyoming review the August 2018 memorandum and revise their arguments accordingly. The EPA's comments were included in the WDEQ's SIP submission and are also included in Docket No. EPA–R08–OAR–2022–0268.

The EPA here shares further evaluation of its experience since the issuance of the August 2018 memorandum regarding use of alternative thresholds at Step 2. This experience leads the Agency to now believe it may not be appropriate to continue to attempt to recognize alternative contribution thresholds at Step 2. The August 2018 memorandum stated that ''it may be reasonable and appropriate'' for states to rely on an alternative threshold of 1 ppb threshold at Step 2.[65] (The memorandum also indicated that any higher alternative threshold, such as 2 ppb, would likely not be appropriate.) However, the EPA also provided that ''air agencies should consider whether the recommendations in this guidance are appropriate for each situation.'' Following receipt and review of 49 good neighbor SIP submittals for the 2015 8-hour ozone NAAQS, the EPA's experience has been that nearly every state that attempted to rely on a 1 ppb threshold did not provide sufficient information and analysis to support a determination that an alternative threshold was reasonable or appropriate for that state. For instance, in nearly all submittals, the states did not provide the EPA with analysis specific to their state or the receptors to which its emissions are potentially linked. In one case, the proposed approval of Iowa's SIP submittal, the EPA expended its own resources to attempt to supplement the information submitted by the State, in order to more thoroughly evaluate the state-specific circumstances that could support approval.[66] It was at the EPA's sole discretion to perform this analysis in support of the State's submittal, and the Agency is not obligated to conduct supplemental analysis to fill the gaps whenever it believes a state's analysis is insufficient. The Agency no longer intends to undertake supplemental analysis of SIP submittals with respect to alternative thresholds at Step 2 for purposes of the 2015 ozone NAAQS. Furthermore, the EPA's experience since 2018 is that allowing for alternative Step 2 thresholds may be impractical or otherwise inadvisable for a number of additional policy reasons. For a regional air pollutant such as ozone, consistency in requirements and expectations across all states is essential. Based on its review of submittals to-date and after further consideration of the policy implications of attempting to recognize an alternative Step 2 threshold for certain states, the Agency now believes the attempted use of different thresholds at Step 2 with respect to the 2015 ozone NAAQS raises substantial policy consistency and practical implementation concerns.[67] The availability of different thresholds at Step 2 has the potential to result in inconsistent application of good neighbor obligations based solely on the strength of a state's SIP submittal at Step 2 of the 4-Step Framework. From the perspective of ensuring effective regional implementation of good neighbor obligations, the more important analysis is the evaluation of the emissions reductions needed, if any, to address a state's significant contribution after consideration of a multifactor analysis at Step 3, including a detailed evaluation that considers air quality factors and cost. Where alternative thresholds for purposes of Step 2 may be ''similar'' in terms of capturing the relative amount of upwind contribution (as described in the August 2018 memorandum), nonetheless, use of an alternative threshold would allow certain states to avoid further evaluation of potential emission controls while other states must proceed to a Step 3 analysis. This can create significant equity and consistency problems among states. Further, it is not clear that national ozone transport policy is best served by allowing for less stringent thresholds at Step 2. The EPA recognized in the August 2018 memorandum that there was some similarity in the amount of total upwind contribution captured (on a nationwide basis) between 1 percent and 1 ppb. However, the EPA notes that while this may be true in some sense, that is hardly a compelling basis to move to a 1 ppb threshold. Indeed, the 1 ppb threshold has the disadvantage of losing a certain amount of total upwind contribution for further evaluation at Step 3 (*e.g.,* roughly seven percent of total upwind state contribution was lost according to the modeling underlying the August 2018 memorandum; [68] in the EPA's updated modeling, the amount lost is five percent). Considering the core statutory objective of ensuring elimination of all significant contribution to nonattainment or interference of the NAAQS in other states and the broad, regional nature of the collective contribution problem with respect to ozone, there does not appear to be a compelling policy imperative in allowing some states to use a 1 ppb threshold while others rely on a 1 percent of NAAQS threshold.

Consistency with past interstate transport actions such as CSAPR, and the CSAPR Update and Revised CSAPR Update rulemakings (which used a Step 2 threshold of 1 percent of the NAAQS for two less stringent ozone NAAQS), is also important. Continuing to use a 1 percent of NAAQS approach ensures that as the NAAQS are revised and made more stringent, an appropriate increase in stringency at Step 2 occurs, so as to ensure an appropriately larger amount of total upwind-state contribution is captured for purposes of fully addressing interstate transport. *Accord* 76 FR 48237–38. Therefore, notwithstanding the August 2018 memorandum's recognition of the potential viability of alternative Step 2 thresholds, and in particular, a potentially applicable 1 ppb threshold, the EPA's experience since the issuance of that memorandum has revealed substantial programmatic and policy difficulties in attempting to implement this approach. Nonetheless, the EPA is not at this time rescinding the August 2018 memorandum. The basis for disapproval of Wyoming's SIP submission with respect to the Step 2 analysis is, in the Agency's view, warranted even under the terms of the August 2018 memorandum. The EPA invites comment on this broader discussion of issues associated with alternative thresholds at Step 2. Depending on comment and further evaluation of this issue, the EPA may determine to rescind the 2018 memorandum in the future.

As described in Section I of this preamble, the EPA performed air quality modeling using the 2016v2 emissions platform to project design values and contributions for 2023. These data were examined to determine if Wyoming contributes at or above the threshold of 1 percent of the 2015 8-hour ozone NAAQS (0.70 ppb) to any downwind nonattainment or maintenance receptor.

[65] August 2018 memorandum at 4.

[66] *See* ''Air Plan Approval; Iowa; Infrastructure State Implementation Plan Requirements for the 2015 Ozone National Ambient Air Quality Standard,'' 85 FR 12232 (March 2, 2020). The Agency received adverse comment on this proposed approval and has subsequently formally withdrawn the proposed approval. 87 FR 9477 (February 22, 2022).

[67] We note that Congress has placed on the EPA a general obligation to ensure the requirements of the CAA are implemented consistently across states and regions. *See* CAA section 301(a)(2). Where the management and regulation of interstate pollution levels spanning many states is at stake, consistency in application of CAA requirements is paramount.

[68] *See* August 2018 memorandum at 4.

As shown in Table 3, the data[69] indicate that in 2023, emissions from Wyoming contribute greater than 1 percent of the NAAQS to a nonattainment receptor in Douglas County, Colorado (Site ID 80350004).[70]

TABLE 3—WYOMING LINKAGE RESULTS BASED ON THE EPA'S UPDATED 2023 MODELING a

Receptor ID	Location	Nonattainment/maintenance	2023 Average design value (ppb)	2023 Maximum design value (ppb)	Wyoming contribution (ppb)
80350004	Douglas County, Colorado	Nonattainment	71.7	72.3	0.81

a According to data from 2016v2 platform modeling.

Another argument the WDEQ made as part of its Step 2 weight-of-evidence evaluation was a determination that emissions from sources in Wyoming are ''negligible'' when compared to in-state, non-U.S., and nonanthropogenic contributions to three receptors to which it contributed greater than 1 percent of the NAAQS (using the EPA's March 2018 memorandum modeling results). Regarding the WDEQ's argument that contributions from Wyoming are negligible when considering total collective contributions from all upwind states to the same receptors, the EPA disagrees.

The WDEQ makes reference to the EPA's approval of Arizona's 2008 ozone NAAQS transport SIP as a basis for the claim that its emissions are negligible.[71] In that action the EPA made an assessment of the nature of certain monitoring sites in California. The EPA noted that a ''factor [. . .] relevant to determining the nature of a projected receptor's interstate transport problem is the magnitude of ozone attributable to transport from all upwind states collectively contributing to the air quality problem.'' 81 FR at 15203. The EPA observed that only one upwind state (Arizona) was linked above 1 percent of the 2008 ozone NAAQS to the two relevant monitoring sites in California, and the cumulative ozone contribution from all upwind states (including those linked and unlinked) to those sites was 2.5 percent and 4.4 percent of the total ozone concentration, respectively. The EPA determined the size of those cumulative upwind contributions was ''negligible, particularly when compared to the relatively large contributions from upwind states in the East *or in certain other areas of the West.*'' *Id.* (emphasis added). In the Arizona action, the EPA concluded the two California sites to which Arizona was linked should not be treated as receptors for the purposes of determining good neighbor obligations for the 2008 ozone NAAQS. *Id.*

As an initial matter, we note that this analysis is properly considered at Step 1 of the 4-Step Framework rather than at Step 2, as it is a determination of whether an interstate-pollution transport problem should be considered to exist at all, *before* reaching a determination as to which states contribute to that problem. As the EPA explained in its Arizona action, it considered the 1 percent of the NAAQS threshold appropriate to apply at Step 2. *Id.* at 15202. *See also id.* at 15203 (''EPA believes the emissions that result in transported ozone from upwind states have limited impacts on the projected air quality problems in El Centro, California and Los Angeles, California, and therefore should not be treated as receptors for purposes of determining the interstate transport obligations of upwind states.''). However, because Wyoming has presented this argument as a part of its weight-of-evidence analysis at Step 2, we present this analysis in turn here, as related to the WDEQ's Step 2 arguments.

Turning to the substance of the WDEQ's argument that the EPA's Arizona action supports an approval here: The conclusions the EPA reached regarding El Centro and Los Angeles California cannot be reached with respect to the three receptors in Colorado examined by the WDEQ,[72] and the EPA has consistently taken this same position across several prior actions addressing Wyoming's and Utah's interstate transport obligations, where we have concluded that the receptors in Colorado are ''substantially'' influenced by upwind-state emissions. *See* 82 FR 9155, 9157 (February 3, 2017). When acting on Wyoming's and Utah's 2008 ozone NAAQS interstate transport SIP submissions, the EPA's view was that ''the air quality problem in [the Denver nonattainment area of Colorado] resulted in part from the relatively small individual contribution of upwind states that collectively contribute a larger portion of the ozone contributions (9.7%), comparable to some eastern receptors . . . .'' *See* 84 FR 3389, 3391 (February 12, 2019). *See also* 81 FR 71991, 71994–95 (October 19, 2016); 81 FR 28807, 28810 (May 10, 2016) (Colorado receptors are impacted by interstate transport where total upwind state contribution is 11 percent of the total ozone concentration, and five states were projected to be linked).

Indeed, the EPA has specifically addressed this precise comparison between the circumstances of Arizona's approval and the nature of the receptors in Colorado. In approving Utah's interstate transport SIP as to prong 1 for the 2008 ozone NAAQS, the EPA found its analysis as to Arizona's impact on California sites did not apply to Utah's impact on Colorado's sites (which the EPA found remained to be at least maintenance receptors as to the 2008 ozone NAAQS). *See* 82 FR 9155, 9157 (February 3, 2017) (''The EPA's assessment concluded that emissions reductions from Arizona are not necessary to address interstate transport because the total collective upwind state ozone contribution to these receptors is relatively low compared to the air quality problems typically addressed by the good neighbor provision. As discussed previously, the EPA similarly evaluated collective contribution to the Douglas County, Colorado monitor *and finds the collective contribution of*

[69] Design values and contributions at individual monitoring sites nationwide are provided in the file: 2016v2_DVs_state_contributions.xlsx which is included in Docket No. EPA–HQ–OAR–2021–0663.

[70] These modeling results are consistent with the results of a prior round of 2023 modeling using the 2016v1 emissions platform which became available to the public in the fall of 2020 in the Revised CSAPR Update, as noted in Section I of the document. That modeling showed that Wyoming had a maximum contribution equal to or greater than 0.70 ppb to at least one nonattainment or maintenance-only receptor in 2023. These modeling results are included in the file ''Ozone Design Values and Contributions Revised CSAPR Update.xlsx'' in Docket No. EPA–HQ–OAR–2021–0663.

[71] *See* 81 FR 15200 (March 22, 2016) (proposal); 81 FR 31513 (May 19, 2016) (final rule; no comments received).

[72] Site ID 80050002 (Arapahoe), Site ID 80350004 (Douglas), and Site ID 80590011 (Jefferson).

transported pollution to be substantial.'') (emphasis added).[73]

The modeling data on which the WDEQ relied in its SIP submission continue to bear out these conclusions (*see* Appendix B, pages 6–8). That modeling showed contributions from more than one upwind state above 1 percent of the NAAQS at all Colorado receptors and showed total upwind contribution to be between 8 and 10 percent of the total ozone concentrations at those receptors.

The EPA acknowledges that in its most recent modeling of 2023 (using the 2016v2 platform), the degree of the interstate transport problem to Colorado is now projected to lessen somewhat compared to previous projections of 2023. However, these projected improvements are still not sufficient to draw a conclusion that Colorado is not impacted to a considerable degree by out of state emissions. The EPA's recent air quality modeling continues to show that multiple upwind states collectively contribute to projected downwind nonattainment or maintenance receptors in Colorado—specifically, California, Utah, and Wyoming all contribute above 1 percent of the NAAQS to at least one of Colorado's receptors in 2023. (In contrast, at the time EPA approved Arizona's 2008 ozone NAAQS good neighbor SIP, Arizona was the only state linked above 1 percent at the relevant California monitoring sites.) Further, our most recent modeling shows that the total upwind state contribution to ozone concentrations (from linked and unlinked states) at identified downwind air quality problems in Colorado is approximately 6 to 7 percent, as shown in Table 4. That remains higher than the 2 to 4 percent range of total upwind contribution the EPA found to be negligible with respect to the California sites analyzed in the Arizona action. Therefore, the EPA continues to find that the collective contribution of emissions from upwind states represents a significant portion of the ozone concentrations at projected nonattainment and maintenance receptors in Colorado.

TABLE 4—ALL UPWIND STATE CONTRIBUTIONS TO NONATTAINMENT RECEPTORS IN COLORADO *a*

Site ID	State	County	2023 Avg (ppb)	2023 Max (ppb)	Contribution of all upwind states combined (ppb)	Percent contribution of all upwind states combined [b]
80350004	Colorado	Douglas	71.7	72.3	5.17	7
80590006	Colorado	Jefferson	72.6	73.3	4.23	6
80590011	Colorado	Jefferson	73.8	74.4	4.34	6

[a] Based on data from 2016v2 platform modeling.
[b] Calculated using the projected 2023 average design values for the applicable receptors.

As noted, the Agency has consistently found that the 1 percent of the NAAQS threshold is appropriate for identifying interstate transport linkages for states collectively contributing to downwind ozone nonattainment or maintenance problems because that threshold captures a high percentage of the total pollution transport affecting downwind receptors. The EPA believes contribution from an individual state equal to or above 1 percent of the NAAQS could be considered significant where the collective contribution of emissions from one or more upwind state is responsible for a considerable portion of the downwind air quality problem regardless of where the receptor is geographically located. In this case, three states contributing to those identified receptors, including Wyoming, contribute emissions greater than or equal to 1 percent of the 2015 ozone NAAQS. In addition, the total upwind state contribution to ozone levels at the Colorado receptors is on the order of 4 to 5 ppb, or 6 to 7 percent of total ozone concentration, as shown in Table 4. Given these results, and the EPA's consistent use of the 1 percent threshold, in ozone transport actions across all areas of the country (including actions related to Wyoming and Utah's interstate transport obligations with respect to these same receptors), the EPA is proposing to determine that Wyoming contributes to nonattainment and interferences with maintenance of the 2015 ozone NAAQS for the Denver, Colorado area.

The WDEQ, relying on potential ''flexibilities'' in Attachment A to the March 2018 memorandum, also claims that receptors in the West are predominantly impacted by local emissions and ''uncontrollable'' emissions such as those from non-U.S. sources or non-anthropogenic sources, and so the State ''contends that it is unnecessary to consider Step 3 in this analysis.'' [74] As explained previously in the preamble of this document, the concepts presented in Attachment A to the March 2018 memorandum were neither guidance nor determined by the EPA to be consistent with the CAA. While in-state, non-U.S., and non-anthropogenic sources emissions may be contributing to an area's nonattainment or maintenance status, there is nothing in the CAA to suggest that these emissions serve to absolve upwind states of their obligations to control their own emissions.

With respect to local or in-state emissions, there is no statutory basis to conclude that such emissions must be controlled first before a contributing state's share can be controlled under CAA section 110(a)(2)(D)(i)(I). The D.C. Circuit has held on five different occasions that the timing framework for addressing interstate transport obligations must be consistent with the downwind areas' attainment schedule. In particular, for the ozone NAAQS, the states and the EPA are to address interstate transport obligations ''as expeditiously as practicable'' and no later than the attainment schedule set in accordance with CAA section 181(a). *See North Carolina,* 531 F.3d at 911–13; *Wisconsin,* 938 F.3d at 313–20; *Maryland,* 958 F.3d at 1204; *New York* v. *EPA,* 964 F.3d 1214, 1226 (D.C. Cir. 2020); *New York* v. *EPA,* 781 Fed. App'x 4, 6–7 (D.C. Cir. 2019). The court in *Wisconsin* explained its reasoning in part by noting that downwind jurisdictions often may need to heavily rely on emissions reductions from upwind states in order to achieve attainment of the NAAQS, 938 F.3d at

[73] As noted in that action, because Utah was found to still be linked to Colorado's *maintenance* receptors under the 2008 ozone NAAQS, the EPA's disapproval of the SIP as to prong 2 remained in place, and accordingly, there is an outstanding obligation to resolve Utah's transport obligations with respect to the 2008 ozone NAAQS. *See id.* at 9156.

[74] Wyoming SIP submission, Attachment B at 3, 8.

316–17; such states would face increased regulatory burdens including the risk of bumping up to a higher nonattainment classification if attainment is not reached by the relevant deadline, *Maryland,* 958 F.3d at 1204. The statutory framework of the CAA and these cases establish clearly that states and the EPA must address interstate transport obligations in line with the attainment schedule provided in the CAA (*i.e.,* not *after* attainment-planning measures have been taken by the downwind state) in order to timely assist downwind states in attaining and maintain the NAAQS, and this attainment schedule is ''central to the regulatory scheme.'' *Wisconsin,* 938 F.3d at 316 (quoting *Sierra Club* v. *EPA,* 294 F.3d 155, 161 (D.C. Cir. 2002)).

With respect to international and non-anthropogenic emissions contributions, the WDEQ's reasoning is inapplicable to the requirements of CAA section 110(a)(2)(D)(i)(I). The good neighbor provision requires states and the EPA to address interstate transport of air pollution that *contributes to* a downwind states' ability to attain and maintain NAAQS. Whether emissions from other states or other countries also contribute to the same downwind air quality issue is irrelevant in assessing whether a downwind state has an air quality problem, or whether an upwind state is significantly contributing to that problem. States are not obligated under CAA section 110(a)(2)(D)(i)(I) to reduce emissions sufficient on their own to resolve downwind receptors' nonattainment or maintenance problems. Rather, states are obligated to eliminate their own ''significant contribution'' or ''interference'' with the ability of other states to attain or maintain the NAAQS.

Indeed, the D.C. Circuit in *Wisconsin* specifically rejected petitioner arguments suggesting that upwind states should be excused from good neighbor obligations on the basis that some other source of emissions (whether international or another upwind state) could be considered the ''but-for'' cause of downwind air quality problem. 938 F.3d 303 at 323–324. The court viewed petitioners' arguments as essentially an argument ''that an upwind State 'contributes significantly' to downwind nonattainment only when its emissions are the sole cause of downwind nonattainment.'' 938 F.3d 303 at 324. The court explained that ''an upwind State can 'contribute' to downwind nonattainment even if its emissions are not the but-for cause.'' *Id.* at 324–325. *See also Catawba County* v. *EPA,* 571 F.3d 20, 39 (D.C. Cir. 2009) (rejecting the argument ''that 'significantly contribute' unambiguously means 'strictly cause'' because there is ''no reason why the statute precludes EPA from determining that [an] addition of [pollutant] into the atmosphere is significant even though a nearby county's nonattainment problem would still persist in its absence''); *Miss. Comm'n on Envtl. Quality* v. *EPA,* 790 F.3d 138, 163 n.12 (D.C. Cir. 2015) (observing that the argument that ''there likely would have been no violation at all ... if it were not for the emissions resulting from [another source]'' is ''merely a rephrasing of the but-for causation rule that we rejected in *Catawba County.*''). Therefore, a state is not excused from eliminating its significant contribution on the basis that international emissions also contribute some amount of pollution to the same receptors to which the state is linked.

Further, the data supplied in Wyoming's SIP submission tends to be self-refuting on this point. Table 3 in Appendix B to the State's SIP submission indicates, according to the WDEQ, that ''more than 50 percent'' of the total ozone concentrations at the Colorado receptors are from non-anthropogenic or non-U.S. emissions sources. Assuming those numbers are correct, this means that nearly 50 percent of the ozone levels at the Colorado receptors *are* the result of anthropogenic emissions originating in the U.S. Those emissions are clearly within the authority of states and the EPA to redress and reducing some portion of those emissions can be assumed to improve air quality at the Colorado receptors. While not all of those U.S. anthropogenic emissions can be attributed to Wyoming, Wyoming's emissions are shown by the modeling to contribute to Colorado's air quality problem at levels sufficient to warrant evaluation of emissions control opportunities at Step 3 of the EPA's longstanding analytical framework.

The next analysis the WDEQ included in its SIP submission is NO_X and VOC emissions trends. The WDEQ points to a projected downward trend of ozone levels at monitors within the Colorado nonattainment area through 2025, as well as an observed reduction since 2011 in emissions of VOCs and NO_X emissions in Wyoming through a combination of regulatory and permitting actions.[75] The WDEQ also pointed to an estimate provided in the State's 2008 ozone NAAQS infrastructure SIP, which projected a decrease in NO_X emissions between 2011 and 2023 of 32,985.5 tpy and a decrease of VOC emissions between 2011 and 2023 of 905.6 tpy as a result of the Wyoming Existing Source Rule.[76] The EPA considers the measures the WDEQ described to be beneficial in reducing VOC and NO_X emissions, and the EPA's most recent modeling has projected that there will be a downward trend of ozone at the Denver nonattainment monitors. However, the WDEQ has not provided any analysis to demonstrate that the reductions in their State will be sufficient to eliminate its contribution above 1 percent of the NAAQS to Colorado receptors, or that those receptors will cease to exist by 2023. The WDEQ did not quantify the total anticipated reductions in NO_X and VOC emissions from its permitting actions and existing regulatory requirements nor did it evaluate the impact of those reductions in downwind air quality at the Denver area receptors. In general, the air quality modeling that the EPA has conducted already accounts for ''on-the-books'' emissions control measures, including the expected reductions those measures achieve through 2023. Both the 2016v1 and the more current 2016v2 modeling clearly establish continued linkage from Wyoming to downwind receptors in 2023 at Steps 1 and 2, despite those emissions control efforts.

As explained previously in this document, the WDEQ's SIP submission does not provide an adequate technical analysis demonstrating that the SIP contains adequate provisions prohibiting emissions that will significantly contribute to nonattainment or interfere with the 2015 ozone NAAQS in any other state. Moreover, Denver monitors continue to violate the 2015 ozone NAAQS and in fact many Denver monitors showed an increase in 2020 ozone design values when compared to the 2019 design values. *See* Table 5 which includes the last five years of the 3-year design values for the Denver nonattainment area monitors.

[75] Wyoming SIP submission, Attachment B at 9.
[76] Id.

TABLE 5. OZONE DESIGN VALUES FOR DENVER NONATTAINMENT AREA MONITORS [a]

AQS Site ID	State	County	2014–2016 Design value (ppb)	2015–2017 Design value (ppb)	2016–2018 Design value (ppb)	2017–2019 Design value (ppb)	2018–2020 Design value (ppb)
80013001	Colorado	Adams	67	67	67	65	69
80050002	Colorado	Arapahoe	.....	.....	73	74	77
80050006	Colorado	Arapahoe	67	67	69	69	71
80310002	Colorado	Denver	66	68	69	68	70
80350004	Colorado	Douglas	77	77	78	78	81
80590005	Colorado	Jefferson	72	75	72	71	71
80590006	Colorado	Jefferson	77	77	78	76	79
80590011	Colorado	Jefferson	80	79	79	76	80
80690007	Colorado	Larimer	69	68	70	68	70
80690011	Colorado	Larimer	75	75	77	75	75
80691004	Colorado	Larimer	70	68	69	67	67

[a] According to data from 2016v2 platform modeling.

As shown in Table 5, the 3-year design values for majority of the Denver monitors increased between 2019 and 2020, indicating the end of any downward trend of ground-level ozone which the WDEQ may have seen previously. Additionally, the EPA's most recent modeling continues to indicate that emissions from Wyoming are projected to contribute to one downwind nonattainment or maintenance receptors in the Denver, Colorado area through 2023.

In its January 2019 SIP submittal, the WDEQ acknowledges that receptors in the Denver, Colorado nonattainment area could be impacted by emissions from Wyoming, but despite the modeling results that indicate that, the WDEQ concludes that Wyoming is not ''linked'' at Step 2 and that emissions from the State do not significantly contribute to nonattainment in the Denver area.[77] Overall, the EPA believes that Wyoming has not adequately addressed the modeled contributions to projected downwind receptors identified by the EPA's modeling. Therefore, based on the EPA's evaluation of the information submitted by the WDEQ, and based on the EPA's most recent modeling results for 2023, the EPA proposes to find that Wyoming is linked at Steps 1 and 2 and has an obligation to assess potential emissions reductions from sources or other emissions activity at Step 3 of the 4-step framework.

B. Evaluation of Information Provided Regarding Step 3

At Step 3 of the 4-Step Framework, a state's emissions are further evaluated, in light of multiple factors, including air quality and cost considerations, to determine what, if any, emissions significantly contribute to nonattainment or interfere with maintenance and, thus, must be eliminated under CAA section 110(a)(2)(D)(i)(I).

To effectively evaluate which emissions in the state should be deemed ''significant'' and therefore prohibited, states generally should prepare an accounting of sources and other emissions activity for relevant pollutants and assess potential, additional emissions reduction opportunities and resulting downwind air quality improvements. The EPA has consistently applied this general approach (*i.e.,* Step 3 of the 4-Step Framework) when identifying emissions contributions that the Agency has determined to be ''significant'' (or interfere with maintenance) in each of its prior federal, regional ozone transport rulemakings, and this interpretation of the statute has been upheld by the Supreme Court. *See EME Homer City,* 572 U.S. 489, 519 (2014). While the EPA has not directed states that they must conduct a Step 3 analysis in precisely the manner the EPA has done in its prior regional transport rulemakings, state implementation plans addressing the obligations in CAA section 110(a)(2)(D)(i)(I) must prohibit ''any source or other type of emissions activity within the State'' from emitting air pollutants which will contribute significantly to downwind air quality problems. Thus, states must complete something similar to the EPA's analysis (or an alternative approach to defining ''significance'' that comports with the statute's objectives) to determine whether and to what degree emissions from a state should be ''prohibited'' to eliminate emissions that will ''contribute significantly to nonattainment in, or interfere with maintenance of'' the NAAQS in any other state.

Wyoming did not conduct such an analysis in its SIP submission, as a result of their conclusions pursuant to Step 1 and Step 2. As explained in connection with the evaluation of the WDEQ's Step 1 and Step 2 analyses, the EPA disagrees with those conclusions and accordingly the WDEQ should have proceeded to evaluate which emissions in the State should be deemed ''significant'' and therefore prohibited. We therefore propose that Wyoming was required to analyze emissions from the sources and other emissions activity from within the State to determine whether its contributions were significant, and we propose to disapprove its SIP submission because Wyoming failed to do so.

C. Evaluation of Information Provided Regarding Step 4

Step 4 of the 4-Step Framework calls for development of permanent and federally enforceable control strategies to achieve the emissions reductions determined to be necessary at Step 3 to eliminate significant contribution to nonattainment or interference with maintenance of the NAAQS. As mentioned previously, Wyoming's SIP submission did not contain an evaluation of additional emission control opportunities (or establish that no additional controls are required), thus, no information was provided at Step 4. As a result, the EPA proposes to disapprove Wyoming's January 3, 2019 SIP submission on the separate, additional basis that the State has not developed permanent and enforceable emissions reductions necessary to meet the obligations of CAA section 110(a)(2)(D)(i)(I).

D. Conclusion

Based on the EPA's evaluation of the WDEQ's SIP submission, the Agency is proposing to find that the portion of the State's January 3, 2019 SIP submission addressing CAA section 110(a)(2)(D)(i)(I) does not meet Wyoming's interstate transport obligations, because it fails to contain the necessary provisions to eliminate emissions that will contribute significantly to nonattainment or

[77] Id. at 10.

interfere with maintenance of the 2015 8-hour ozone NAAQS in any other state.

IV. Proposed Action

We are proposing to disapprove the WDEQ's SIP submission pertaining to interstate transport of air pollution which will significantly contribute to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in other states. Under CAA section 110(c)(1), disapproval would establish a 2-year deadline for the EPA to promulgate a FIP for Wyoming to address the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements pertaining to significant contribution to nonattainment and interference with maintenance of the 2015 8-hour ozone NAAQS in other states, unless the EPA approves a SIP that meets these requirements. Disapproval does not start a mandatory CAA sanctions clock for Wyoming. The remaining elements of the State's January 3, 2019 submission are not addressed in this action and have been acted on in a separate rulemaking.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

This proposed action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action merely proposes to disapprove a SIP submission as not meeting the CAA.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely proposes to disapprove a SIP submission as not meeting the CAA.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action merely proposes to disapprove a SIP submission as not meeting the CAA.

K. CAA Section 307(b)(1)

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the D.C. Circuit: (i) When the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii).[78]

If the EPA takes final action on this proposed rulemaking, the Administrator intends to exercise the complete discretion afforded to him under the CAA to make and publish a finding that the final action (to the extent a court finds the action to be locally or regionally applicable) is based on a determination of ''nationwide scope or effect'' within the meaning of CAA section 307(b)(1). Through this rulemaking action (in conjunction with a series of related actions on other SIP submissions for the same CAA obligations), the EPA interprets and applies section 110(a)(2)(D)(i)(I) of the CAA for the 2015 ozone NAAQS based on a common core of nationwide policy judgments and technical analysis concerning the interstate transport of pollutants throughout the continental U.S. In particular, the EPA is applying here (and in other proposed actions related to the same obligations) the same, nationally consistent 4-Step Framework for assessing good neighbor obligations for the 2015 ozone NAAQS. The EPA relies on a single set of updated, 2016-base year photochemical grid modeling results of the year 2023 as the primary basis for its assessment of air quality conditions and contributions at Steps 1 and 2 of that 4-Step Framework. Further, the EPA proposes to determine and apply a set of nationally consistent policy judgments to apply the 4-Step Framework. The EPA has selected a nationally uniform analytic year (2023) for this analysis and is applying a nationally uniform approach to nonattainment and maintenance receptors and a nationally uniform approach to contribution threshold analysis.[79] For these reasons, the

[78] In deciding whether to invoke the exception by making and publishing a finding that an action is based on a determination of nationwide scope or effect, the Administrator takes into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit's authoritative centralized review versus allowing development of the issue in other contexts and the best use of agency resources.

[79] A finding of nationwide scope or effect is also appropriate for actions that cover states in multiple

Continued

Administrator intends, if this proposed action is finalized, to exercise the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on one or more determinations of nationwide scope or effect for purposes of CAA section 307(b)(1).[80]

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone.

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

Dated: May 16, 2022.

KC Becker,

Regional Administrator, Region 8.

[FR Doc. 2022–11153 Filed 5–23–22; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2018–0535; FRL–9690–01–R9]

Withdrawal and Partial Approval/Partial Disapproval of Clean Air Plans; San Joaquin Valley, California; Contingency Measures for 2008 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to withdraw the portion of the March 25, 2019 final action conditionally approving state implementation plan (SIP) submissions from the State of California under the Clean Air Act (CAA or ''Act'') to address contingency measure requirements for the 2008 ozone national ambient air quality standards (NAAQS or ''standards'') in the San Joaquin Valley, California ozone nonattainment area. The SIP revisions include the portions of the ''2016 Ozone Plan for the 2008 8-Hour Ozone Standard and the 2018 Updates to the California State Implementation Plan'' that address the contingency measure requirement for San Joaquin Valley. Simultaneously, the EPA is proposing a partial approval and partial disapproval of these SIP submissions. These proposed actions are in response to a decision issued by the U.S. Court of Appeals for the Ninth Circuit (*Association of Irritated Residents* v. *EPA,* Ninth Circuit, No. 19–71223, opinion filed August 26, 2021) remanding the EPA's conditional approval of the contingency measure SIP submissions.

DATES: Written comments must arrive on or before June 23, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2018–0535 at *https://www.regulations.gov.* For comments submitted at *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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laura Lawrence, EPA Region IX, (415) 972–3407, *lawrence.laura@epa.gov.*

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

Table of Contents

I. Background

Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the presence of sunlight.[1] These two pollutants, referred to as ozone precursors, are emitted by many types of sources, including on-and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints. Scientific evidence indicates that adverse health effects occur following exposure to elevated levels of ozone, particularly in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases.[2]

Under section 109 of the CAA, the EPA promulgates NAAQS for pervasive air pollutants, such as ozone. The EPA has previously promulgated NAAQS for ozone in 1979 and 1997.[3] In 2008, the EPA revised and further strengthened the ozone NAAQS by setting the acceptable level of ozone in the ambient air at 0.075 parts per million (ppm) averaged over an 8-hour period.[4] Although the EPA further tightened the 8-hour ozone NAAQS to 0.070 ppm in 2015, this action relates to the requirements for the 2008 ozone NAAQS.[5]

Following promulgation of a new or revised NAAQS, the EPA is required under CAA section 107(d) to designate areas throughout the country as attaining or not attaining the NAAQS. The EPA classifies ozone nonattainment areas under CAA section 181 according to the severity of the ozone pollution problem, with classifications ranging from ''Marginal'' to ''Extreme.'' State planning and emissions control requirements for ozone are determined, in part, by the nonattainment area's classification. The EPA designated the

judicial circuits. In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that the ''nationwide scope or effect'' exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. *See* H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03.

[80] The EPA may take a consolidated, single final action on all of the proposed SIP disapproval actions with respect to obligations under CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. Should the EPA take a single final action on all such disapprovals, this action would be nationally applicable, and the EPA would also anticipate, in the alternative, making and publishing a finding that such final action is based on a determination of nationwide scope or effect.

[1] The State of California refers to reactive organic gases (ROG) rather than VOC in some of its ozone-related SIP submissions. As a practical matter, ROG and VOC refer to the same set of chemical constituents, and for the sake of simplicity, we refer to this set of gases as VOC in this proposed rule.

[2] See ''Fact Sheet—2008 Final Revisions to the National Ambient Air Quality Standards for Ozone'' dated March 2008.

[3] The ozone NAAQS promulgated in 1979 was 0.12 parts per million (ppm) averaged over a 1-hour period. *See* 44 FR 8202 (February 8, 1979). The ozone NAAQS promulgated in 1997 was 0.08 ppm averaged over an 8-hour period. See 62 FR 38856 (July 18, 1997).

[4] See 73 FR 16436 (March 27, 2008).

[5] Information on the 2015 ozone NAAQS is available at 80 FR 65292 (October 26, 2015).

San Joaquin Valley as nonattainment for the 2008 8-hour ozone NAAQS on May 21, 2012, and classified the area as Extreme.[6]

The San Joaquin Valley nonattainment area for the 2008 8-hour ozone NAAQS consists of San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, and Kings counties, and the western portion of Kern County. The San Joaquin Valley nonattainment area stretches over 250 miles from north to south, averages a width of 80 miles, and encompasses over 23,000 square miles. It is partially enclosed by the Coast Mountain range to the west, the Tehachapi Mountains to the south, and the Sierra Nevada range to the east.[7] The population of the San Joaquin Valley in 2015 was estimated to be nearly 4.2 million people and is projected to increase by 25.3 percent by 2030 to over 5.2 million people.[8]

In California, the California Air Resources Board (CARB or ''State'') is the state agency responsible for the adoption and submission to the EPA of California SIP submissions, and it has broad authority to establish emissions standards and other requirements for mobile sources. Under California law, local and regional air pollution control districts in California are responsible for the regulation of stationary sources and are generally responsible for the development of regional air quality plans. In the San Joaquin Valley, the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or ''District'') develops and adopts air quality management plans to address CAA planning requirements applicable to that region. The District then submits such plans to CARB for adoption and submission to the EPA as proposed revisions to the California SIP.

Under the CAA, after the EPA designates areas as nonattainment for a NAAQS, states with nonattainment areas are required to submit SIP revisions. With respect to areas designated as nonattainment, states must implement the 2008 8-hour ozone NAAQS under Title 1, part D of the CAA, which includes section 172 (''Nonattainment plan provisions in general'') and sections 181–185 of subpart 2 (''Additional Provisions for Ozone Nonattainment Areas''). To assist states in developing effective plans to address ozone nonattainment problems, in 2015, the EPA issued a SIP Requirements Rule (SRR) for the 2008 8-hour ozone NAAQS (''2008 Ozone SRR'') that addressed implementation of the 2008 standards, including attainment dates, requirements for emissions inventories, attainment and reasonable further progress (RFP) demonstrations, as well as the transition from the 1997 8-hour ozone NAAQS to the 2008 8-hour ozone NAAQS and associated anti-backsliding requirements.[9] The 2008 Ozone SRR is codified at 40 CFR part 51, subpart AA.

In 2017 and 2018, CARB submitted SIP revisions to address the nonattainment planning requirements for San Joaquin Valley for the 2008 ozone NAAQS, including the District's ''2016 Ozone Plan for the 2008 8-Hour Ozone Standard'' (''2016 Ozone Plan'') and CARB's ''2018 Updates to the California State Implementation Plan'' (''2018 SIP Update''). In two separate final rules, we approved the 2016 Ozone Plan and the 2018 SIP Update as meeting all the applicable statutory and regulatory requirements for the San Joaquin Valley Extreme nonattainment area for the 2008 ozone NAAQS, with the exception of the contingency measure requirement.[10] For the contingency measure requirement, we issued a conditional approval that relied upon a commitment by the District to amend the District's architectural coatings rule to include contingency provisions and a commitment by CARB to submit the amended District rule to the EPA within a year of final conditional approval of the contingency measure element for the San Joaquin Valley.[11]

Under the CAA, ozone nonattainment areas classified under subpart 2 as ''Serious'' or above must include in their SIPs contingency measures consistent with sections 172(c)(9) and 182(c)(9). Contingency measures are additional controls or measures to be implemented in the event the area fails to make RFP or to attain the NAAQS by the attainment date. Contingency measures must be designed so as to be implemented prospectively; already-implemented control measures may not serve as contingency measures even if they provide emissions reductions beyond those needed for any other CAA purpose.[12] The SIP should contain trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measure will be implemented without significant further action by the state or the EPA.[13] Neither the CAA nor the EPA's implementing regulations establish a specific amount of emissions reductions that implementation of contingency measures must achieve, but the 2008 Ozone SRR reiterates the EPA's guidance recommendation that contingency measures should provide for emissions reductions approximately equivalent to one year's worth of RFP, thus amounting to reductions of 3 percent of the baseline emissions inventory for the nonattainment area.[14]

The contingency measure element of the 2016 Ozone Plan, as modified by the 2018 SIP Update, includes a CARB measure referred to as the ''Enhanced Enforcement Activities Program'' and an evaluation of the surplus emissions reductions from already-implemented measures.[15] In this context, ''surplus'' emissions reductions refer to emissions reductions that are not needed to meet other SIP requirements, such as the RFP and attainment demonstrations. In addition, the District and CARB made commitments to adopt and submit a contingency provision [16] as part of the District's architectural coatings rule within a year of the final conditional approval. Once adopted, submitted, and approved, the contingency provision in the architectural coatings rule would become a third part of the contingency measure element. The EPA estimated that the contingency measure, *i.e.,* the contingency provision in the architectural coatings rule, would achieve approximately 9 percent of one year's worth of RFP.

In our March 25, 2019 final rule, we conditionally approved the contingency measure element and found that the one contingency measure (*i.e.,* once adopted, submitted, and approved by the EPA) would be sufficient for the State and District to meet the contingency measure requirement for San Joaquin Valley for the 2008 ozone NAAQS, notwithstanding expected emissions reductions from the measure equivalent to only a fraction of one

[6] See 77 FR 30088 (May 21, 2012).

[7] For a precise definition of the boundaries of the San Joaquin Valley 2008 ozone nonattainment area, see 40 CFR 81.305.

[8] The population estimates and projections include all of Kern County, not just the portion of Kern County within the jurisdiction of the SJVAPCD. See Chapter 1 and table 1–1 of the District's 2016 Ozone Plan for the 2008 8-Hour Ozone Standard.

[9] See 80 FR 12264, March 6, 2015.

[10] 84 FR 3302 (February 12, 2019), corrected at 84 FR 19680 (May 3, 2019); and 84 FR 11198 (March 25, 2019).

[11] 84 FR 11198 (March 25, 2019).

[12] See *Bahr* v. *EPA,* 836 F.3d 1218, at 1235–1237 (9th Cir. 2016).

[13] See 70 FR 71612 (November 29, 2005); see also 2008 Ozone SRR, 80 FR 12264 at 12285 (March 6,2015).

[14] 80 FR 12264 at 12285 (March 6, 2015).

[15] 83 FR 61346, at 61356 (November 29, 2018).

[16] The specific contingency provision that the District committed to adopt is the removal of the exemption for architectural coatings that are sold in containers with a volume of one liter (1.057 quarts) or less, *i.e.,* if triggered by an EPA determination of failure to meet an RFP milestone or failure to attain the 2008 ozone NAAQS by the applicable attainment date.

year's worth of RFP.[17] We found the reductions from the one contingency measure to be sufficient when considered together with the substantial surplus emissions reductions we anticipate to occur in the future from already-implemented measures and from other approved measures in the plan.[18] In our March 25, 2019 final rule, we approved CARB's Enhanced Enforcement Activities Program measure as a ''SIP-strengthening'' measure rather than as a contingency measure.[19]

An environmental organization filed a petition for review of the EPA's March 25, 2019 conditional approval of the contingency measure element for San Joaquin Valley for the 2008 ozone NAAQS, arguing, among other things, that the EPA had abandoned, without providing a reasoned explanation for the change, its longstanding interpretation of the CAA that contingency measures must provide for emissions reductions equivalent to one year's worth of progress. The petitioners also argued that the EPA had violated the CAA by approving CARB's Enhanced Enforcement Activities Program as SIP-strengthening because it is unenforceable.[20]

On August 26, 2021, the U.S. Court of Appeals for the Ninth Circuit granted the petition in part and denied the petition in part, holding that the EPA's conditional approval of the contingency measure element was arbitrary and capricious because, in the court's view, the Agency had changed its position by accepting a contingency measure that would achieve far less than one year's worth of RFP, as meeting the contingency measure requirement without a reasoned explanation.[21] The court found that by taking into account the emissions reductions from already-implemented measures to find that the contingency measure would suffice to meet the applicable requirement, the EPA was circumventing the court's 2016 holding in *Bahr* v. *EPA.* The court rejected the EPA's arguments that the Agency's approach was grounded in its long-standing guidance and was consistent with the court's 2016 *Bahr* v. *EPA* decision. With respect to CARB's Enhanced Enforcement Activities program measure, the court upheld the EPA's approval of it as SIP-strengthening and held that the measure was enforceable according to its terms. The court remanded the conditional approval action back to the Agency for further proceedings consistent with the decision.

II. Proposed Action and Clean Air Act Consequences

As noted above, the Ninth Circuit rejected the EPA's rationale for conditional approval of the contingency measure element of the 2016 Ozone Plan, as modified by the 2018 SIP Update, for San Joaquin Valley for the 2008 ozone NAAQS. Specifically, the court found that the EPA could not rely on surplus emissions reductions from already-implemented measures to justify approval of a contingency measure that would provide only a fraction of one year's worth of RFP as meeting the contingency measure requirement. In this case, if we do not take into account surplus emissions reductions, then the one contingency measure supporting the conditional approval must shoulder the entire burden of achieving roughly one year's worth of RFP (if triggered). As noted previously, the one contingency measure, *i.e.,* the contingency provision in the District's architectural coatings rule to which the District has committed, would provide approximately 9 percent of one year's worth of progress. Because the contingency measure would not provide reductions roughly equivalent to one year's worth of RFP, we find that the conditional approval can no longer be supported. We are therefore proposing to withdraw our March 25, 2019 conditional approval of the contingency measure element.

In light of the decision in the *Association of Irritated Residents* v. *EPA,* we are proposing to partially approve and partially disapprove the contingency measure element of the 2016 Ozone Plan, as modified by the 2018 SIP Update, with respect to the contingency measure requirements under CAA section 172(c)(9) and 182(c)(9). For the reasons discussed above justifying withdrawal of the conditional approval, we are proposing to disapprove the contingency measure element except for the Enhanced Enforcement Activities Program measure.

With respect to the Enhanced Enforcement Activities Program measure, we are proposing approval for the same reasons that we provided in the March 25, 2019 final rule and that were upheld by the Ninth Circuit.[22] Namely, while we find that the Enhanced Enforcement Activities Program measure fails to meet the requirements for a stand-alone contingency measure, we also find that it strengthens the SIP by triggering certain actions upon a failure to meet RFP or attainment by the applicable attainment date that may lead to emissions reductions that would not otherwise be achieved and thereby contribute in part to any remedy for an RFP shortfall or failure to attain.

This proposed withdrawal and partial disapproval, if finalized, would have the effect of removing the contingency measure element of the 2016 Ozone Plan, as modified by the 2018 SIP Update, from the applicable California SIP, except for the Enhanced Enforcement Activities Program measure, and removing the corresponding provisions in 40 CFR 52.220(c) where the EPA's approval of the contingency measure element is currently codified.[23] Lastly, if the EPA finalizes the proposed partial disapproval of the contingency measure element of the 2016 Ozone Plan, as modified by the 2018 SIP Update, the area would be eligible for a protective finding under the transportation conformity rule because the 2016 Ozone Plan, as modified by the 2018 SIP Update, reflects adopted control measures and contains enforceable commitments that fully satisfy the emissions reductions requirements for RFP and attainment for the 2008 Ozone NAAQS.[24]

If we finalize the proposed partial disapproval of the contingency measure

[17] 84 FR 11198, at 11206.

[18] Id.

[19] Id.

[20] *Association of Irritated Residents* v. *EPA,* Ninth Circuit Court of Appeals, Case No. 19–71223, Petitioner's Opening Brief, Docket Entry 18–1, filed September 3, 2019, 2.

[21] *Association of Irritated Residents.* v. *EPA,* 10 F.4th 937 (9th Cir. 2021).

[22] CARB has confirmed that it has decided to retain the Enhanced Enforcement Activities Program measure in the San Joaquin Valley portion of the California SIP for the purposes of the 2008 ozone NAAQS. See email correspondence dated February 24, 2022, from Sylvia Vanderspek, Chief, Air Quality Planning Branch, CARB, to Anita Lee, EPA Region IX.

[23] The affected paragraphs include 40 CFR 52.220(c)(496)(ii)(B)(4) and (514)(ii)(A)(2).

[24] 40 CFR 93.120(a)(3). Without a protective finding, the final disapproval would result in a conformity freeze, under which only projects in the first four years of the most recent conforming Regional Transportation Plan (RTP) and Transportation Improvement Programs (TIP) can proceed. Generally, during a freeze, no new RTPs, TIPs, or RTP/TIP amendments can be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted, the EPA finds its motor vehicle emissions budget(s) adequate pursuant to § 93.118 or approves the submission, and conformity to the implementation plan revision is determined. Under a protective finding, the final disapproval of the contingency measures element would not result in a transportation conformity freeze in the SJV ozone nonattainment area and the metropolitan planning organizations may continue to make transportation conformity determinations.

element, the EPA must promulgate a Federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months. In addition, under 40 CFR 52.35, the offset sanction in CAA section 179(b)(2) will be imposed 18 months after the effective date of this action, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the identified deficiencies before the applicable deadline.

III. Request for Public Comment

The EPA is soliciting public comments on the issues discussed in this document. We will accept comments from the public on this proposal for the next 30 days and will consider comments before taking final action.

IV. 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 not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply disapproves certain state requirements submitted for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of this rulemaking on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed action on small entities, I certify that this proposed action will not have a significant impact on a substantial number of small entities. This rulemaking does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves certain state requirements submitted for inclusion into the SIP. Accordingly, it affords no opportunity for the EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (*e.g.,* higher offset requirements) may or will result from disapproval actions does not mean that the EPA either can or must conduct a regulatory flexibility analysis for this proposed action. Therefore, this proposed action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This proposed action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under state or local law and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this proposed action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' 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, as specified in Executive Order 13132, because it merely disapproves certain state requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this proposed action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This proposed action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP that the EPA is proposing to disapprove would not 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, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this proposed action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive order has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves

certain state requirements submitted for inclusion into the SIP.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. The EPA believes that this proposed action is not subject to requirements of section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 16, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2022–11027 Filed 5–23–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 260, 261, 262, 263, 264, 265, 267, 271 and 761

[EPA–HQ–OLEM–2021–0609; FRL–7308–03–OLEM]

Integrating e-Manifest With Hazardous Waste Exports and Other Manifest-Related Reports, PCB Amendments and Technical Corrections; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for the proposed rule entitled ''Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-related Reports, PCB Amendments and Technical Corrections.'' EPA published the proposed rule in the **Federal Register** on April 1, 2022 (87 FR 19290), and the public comment period was scheduled to end on May 31, 2022. However, EPA has received at least one request for additional time to develop and submit comments on the proposal. In response to the request for additional time, EPA is extending the comment period for an additional 61 days, through August 1, 2022.

DATES: Comments must be received on or before August 1, 2022.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OLEM–2021–0609, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information or other information whose disclosure is restricted by statute.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, OLEM Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID–19. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: For further information on this document, contact Bryan Groce, Program Implementation and Information Division, Office of Resource Conservation and Recovery, (202) 566–0339; email address: *groce.bryan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary

On April 1, 2022 (87 FR 19290), EPA published in the **Federal Register** a proposal to amend certain aspects of the hazardous waste manifest regulations under the Resource Conservation and Recovery Act (RCRA), specifically concerning the e-Manifest system to: (1) Incorporate hazardous waste export manifests into the e-Manifest system; (2) expand the required international shipment data elements on the manifest form; (3) revise aspects of the manifest form to improve compliance with import and export consents and tracking requirements and to allow for greater precision in waste data reported on the manifest; (4) incorporate three manifest-related reports (*i.e.,* discrepancy, exception, and unmanifested waste reports); (5) provide discussion regarding potential future integration of the e-Manifest system with Biennial Reporting requirements; (6) make conforming changes to the polychlorinated biphenyl (PCB) manifest regulations under the Toxic Substances Control Act (TSCA); and (6) make other technical corrections to

remove obsolete requirements, correct typographical errors, establish definitions, and/or improve alignment with the e-Manifest program.

The comment period for the proposed rule was scheduled to end on May 31, 2022. Since publication, EPA has received at least one request to extend that comment period to allow for additional time to develop comments on the proposed rule. After considering this request for additional time, EPA has decided to extend the comment period for an additional 61 days, through August 1, 2022.

II. Public Participation

Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2021–0609, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be 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://www.epa.gov/dockets/commenting-epa-dockets*.

List of Subjects

40 CFR Part 260

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental Protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 262

Environmental protection, Electronic reporting requirements, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 263

Environmental protection, Electronic reporting requirements, Exports, Hazardous materials transportation, Hazardous waste, Imports.

40 CFR Part 264

Environmental protection, Electronic reporting requirements, Hazardous waste, Imports, Packaging and containers, Reporting and recordkeeping requirements, Security measures.

40 CFR Part 265

Environmental protection, Electronic reporting requirements, Hazardous waste, Imports, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 267

Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Electronic reporting requirements, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 761

Environmental protection, Manifest, Polychlorinated biphenyls.

Dated: May 18, 2022.

Carolyn Hoskinson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2022–11081 Filed 5–23–22; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 87, No. 100
Tuesday, May 24, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 19, 2022.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are required regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by June 23, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Servicing Minor Program Loans.

OMB Control Number: 0560–0230.

Summary of Collection: The Farm Service Agency (FSA) Farm Loan Program staff provides supervised credit in the form of loans to family farmers and ranchers to purchase land and finance agricultural production. Regulations are promulgated to implement selected provisions of sections 331 and 335 of the Consolidated Farm and Rural Development Act (CONACT). FSA is authorized under the Section 331 to grant releases from personal liability where security property is transferred to approve applicants who, under agreement, assume the outstanding secured indebtedness and to provide servicing authority covered in the Section 335 for real estate security; operation or lease of realty, disposition of surplus property; conveyance of complete interest of the United States; easements; and condemnations. The information is also collected from FSA Minor Program borrowers who may be individual farmers or farming partnerships, associations, or corporations.

Need and Use of the Information: FSA will collect information related to a program benefit recipient or loan borrower requesting action on security they own, which was purchased with FSA loan funds, improved with FSA loan funds or has otherwise been mortgaged to FSA to secure a government loan. The information collected is primarily financial data, such as borrower's asset values, current financial information and public use and employment data. The information collection will be used solely by the Farm Loan Programs in FSA. Failure to obtain this information at the time of the request for servicing will result in rejection of the borrower's request.

Description of Respondents: Farms; Individuals or households; Business or other-for-profit; Not-for-profit institutions; State. Local and Tribal Government.

Number of Respondents: 58.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 37.

Farm Service Agency

Title: Oriental Fruit Fly (OFF) Program.

OMB Control Number: 0560–0306.

Summary of Collection: The USDA has directed Farm Service Agency (FSA) to implement the Oriental Fruit Fly Program (OFF) for producers of agricultural commodities who suffered a revenue loss in calendar years 2015 and/or 2016 due to the APHIS imposed quarantine in Miami-Dade County Florida, August 28, 2015 through February 13, 2016. FSA establishes provisions for providing assistance as authorized by Section 778 of the Consolidated Appropriation Act of 2019 (Pub. L. 116–6), which appropriated $9 million to the FSA for the purpose of making payments to producers impacted by an Oriental Fruit Fly Quarantine. Funds will remain available until expended. FSA has established the regulation as specified in the 7 CFR 756.

Need and Use of the Information: The information submitted by producers will be used by FSA to determine eligibility and distribute payments to eligible producers under OFF program. In order to determine whether a producer is eligible for OFF and to calculate a payment, a producer is required to submit FSA–438, OFF application; CCC–901, Member Information for Legal Entities, as applicable; CCC–902E, Farm Operating Plan for An Entity; CCC–941, Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information; and CCC–942, Certification of Income from Farming, Ranching, and Forestry Operations, Optional, and AD–1026—Highly Erodible Land Conservation (HELC) and Wetland Conservation Certification. Failure to solicit applications will result in failure to provide payments to eligible producers as intended by Public Law 116–6, Consolidated Appropriations Act of 2019.

Description of Respondents: Farms.

Number of Respondents: 750.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 522.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–11102 Filed 5–23–22; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Notice of Request for Emergency Approval

May 18, 2022.

In compliance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Department of Agriculture (USDA) has submitted a request to the Office of Management and Budget (OMB) for a six-month emergency approval of the following information collection: ICR 0570–NEW, Meat and Poultry Intermediary Lending Program (MPILP). The requested approval would enable the implementation of this program to begin to increase the funds available to lenders to increase capacity for meat and poultry processing.

Rural Business-Cooperative Service

Title: Meat and Poultry Intermediary Lending Program (MPILP).

OMB Control Number: 0570–NEW.

Summary of Collection: The Rural Business-Cooperative Service is requesting emergency clearance approval for this information collection due to the need to effectively implement the program as quickly as possible to begin to increase the funds available to lenders to increase capacity for meat and poultry processing. Increasing capacity will help create a more diverse and secure U.S. food supply chain. Concentration within the meat and poultry sector had a disastrous effect on worker safety, producers' livelihood, and product availability at the height of the pandemic in 2020. This concentration must be addressed in order to avoid future disruptions and further price increases.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–11057 Filed 5–23–22; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Ravalli Resource Advisory Committee (RAC) will hold a virtual meeting by phone and/or video conference. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act for the Bitterroot National Forest within Ravalli County. RAC information and virtual meeting information can be found at the following website: *https://www.fs.usda.gov/main/bitterroot/workingtogether/advisorycommittees.*

DATES: The meeting will be held on June 8, 2022 at 10:00 a.m.–4:00 p.m., Mountain Daylight Time.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting is open to the public and will be held virtually via telephone and/or video conference. Virtual meeting participation details can be found on the website listed under **SUMMARY** or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

FOR FURTHER INFORMATION CONTACT: Abbie Jossie, Designated Federal Officer (DFO), by phone at (406) 821–4244 or email at *abbie.jossie@usda.gov,* or Tod McKay, RAC Coordinator, at (406) 363–7122 or email at *tod.mckay@usda.gov.*

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY). Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours per day, every day of the year, including holidays. Additionally, program information may be made available in languages other than English.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Hear from Title II project proponents and discuss project proposals;
2. Make funding recommendations on Title II projects;
3. Approve meeting minutes; and
4. Schedule the next meeting.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 01, 2022 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Tod McKay, 1801 N 1st St., Hamilton, MT 59840–3114 or by email to *tod.mckay@usda.gov.*

Meeting Accommodations: USDA provides reasonable accommodation to individuals with disabilities where appropriate. Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodation to the person listed under **FOR FURTHER INFORMATION CONTACT**. Determinations for reasonable accommodation will be made on a case-by-case basis.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: May 18, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–11107 Filed 5–23–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta County Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Shasta County Resource Advisory Committee (RAC) will hold a virtual meeting by phone and/or video conference. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act as well as to make recommendations on recreation fee proposals for sites on the Shasta-Trinity National Forest within Shasta County. RAC information can be found at the following website: *https://www.fs.usda.gov/main/stnf/workingtogether/advisorycommittees.*

DATES: The meeting will be held on June 8, 2022, 9:00 a.m.–12:00 p.m., Pacific Daylight Time.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting is open to the public and will be held virtually via telephone and/or video conference. Virtual meeting participation details can be found on the website listed under Summary or can be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Shasta Lake Ranger Station. Please call ahead at 530–275–1587 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Monique Rea, RAC Coordinator, by phone at 916–580–5651 or via email at *monique.rea@usda.gov*.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY). Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours per day, every day of the year, including holidays. Additionally, program information may be made available in languages other than English.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to cover the following:

1. Roll call;
2. Comments from the Designated Federal Officer (DFO);
3. Approve minutes from last meeting;
4. Discuss, recommend, and approve projects;
5. Public comment period; and
6. Closing comments from the DFO.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by the Friday before the meeting to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Monique Rea, RAC Coordinator, 360 Main Street, Weaverville, California 96093 or by email to *monique.rea@usda.gov.*

Meeting Accommodations: USDA provides reasonable accommodation to individuals with disabilities where appropriate. Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodation to the person listed under **FOR FURTHER INFORMATION CONTACT**. Determinations for reasonable accommodation will be made on a case-by-case basis.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: May 18, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–11109 Filed 5–23–22; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Tennessee Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that the Tennessee Advisory Committee to the Commission will hold two virtual (online) meetings on Wednesday, June 15, 2022, at 11 a.m.–1 p.m. (CT) and on Wednesday, June 22, 2022 at 11 a.m.–2 p.m. (CT). The purpose of the meetings is for the Committee to hear testimony regarding Voting Rights in the state of Tennessee.

DATES: The meetings will be held on:

Wednesday, June 15, 2022, 11 a.m. CT, *https://civilrights.webex.com/civilrights/j.php?MTID=m4eb51dd0676d26eb683b981ce0300c3b*

Join via phone: 800–360–9505 USA Toll Free; Access Code: 2761 943 7611#

Wednesday, June 22, 2022, 110a.m. CT, *https://civilrights.webex.com/civilrights/j.php?MTID=m63e74f05d68127f3c4472086e1769f88*

Join via phone: 800–360–9505 USA Toll Free; Access Code: 2760 841 3852#

FOR FURTHER INFORMATION CONTACT: Victoria Moreno at *vmoreno@usccr.gov* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the WebEx link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided above for the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be

emailed to Victoria Moreno at *vmoreno@usccr.gov.* All written comments received will be available to the public.

Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at the *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Wednesday, June 15, 2022 and June 22, 2022; 11 a.m. (CT)

1. Welcome & Roll Call
2. Panel—Voting Rights in Tennessee
3. Public Comment
4. Adjourn

Dated: May 19, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–11162 Filed 5–23–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that the South Dakota State Advisory Committee to the Commission will convene a meeting on Monday, June 13, 2022, at 3:30 p.m. (CT). The purpose of the meeting is to discuss and determine potential panelist invitees for upcoming hearings.

DATES: Monday, June 13, 2022, at 3:30 p.m. (CT).

Public Web Conference Registration Link (video and audio): https://bit.ly/3AnTnxv; password, if needed: USCCR

If Joining by Phone Only, Dial: 1–800–360–9505; access code: 2762 840 3606#

FOR FURTHER INFORMATION CONTACT: Kayla Fajota at *kfajota@usccr.gov.*

SUPPLEMENTARY INFORMATION: The meeting is available to the public through the web link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with conference details found through registering at the web link above. To request other accommodations, please email *kfajota@usccr.gov* at least 10 days prior to the meeting for which accommodations are requested.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Kayla Fajota at *kfajota@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Monday, June 13, 2022, From 3:30 p.m. (CT)

I. Welcome and Roll Call

II. Announcements and Updates

III. Approval of Minutes

IV. Planning Meeting: Potential Panelists

V. Public Comment

VI. Next Steps

VII. Adjournment

Dated: May 18, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–11089 Filed 5–23–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Certification of Identity (Form BC–300)

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on March 18, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Commerce.

Title: Certification of Identity (Form BC–300).

OMB Control Number: 0607–1018.

Form Number(s): Form BC–300.

Type of Request: Regular submission, Request for a Revision of a Currently Approved Collection, as a Common Form.

Number of Respondents: 400 (annual respondents).

Average Hours per Response: 6 minutes.

Burden Hours: 40.

Needs and Uses: The need for the Certification of Identity (Form BC–300) is imperative to performing accurate controls of the disbursement of personnel records to the public. This information collection is necessary to prevent unauthorized disclosure of records of individuals maintained by the U.S. Census Bureau, and allows parties who are, or were, in proceedings to disclose or release their records to an attorney, accredited representative, qualified organization, or other third party. The Form BC–300 will be hosted by the Census Bureau as a Common Form.

Affected Public: Individuals requesting the release of his or her own personnel records.

Frequency: On an as-needed basis.

Respondent's Obligation: Voluntary.

Legal Authority: In accordance with 15 CFR part 4, subpart B, the U.S. Census Bureau requires the submission

of sufficient information to identify individuals that submit requests by mail or otherwise not in person under the Privacy Act of 1974, 5 U.S.C. Section 552a.

This information collection request may be viewed at *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.* 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 0607–1018.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–11127 Filed 5–23–22; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Ruling Applications Filed in Antidumping and Countervailing Duty Proceedings

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) received scope ruling applications, requesting that scope inquiries be conducted to determine whether identified products are covered by the scope of antidumping duty (AD) and/or countervailing duty (CVD) orders and that Commerce issue scope rulings pursuant to those inquiries. In accordance with Commerce's regulations, we are notifying the public of the filing of the scope ruling applications listed below in the month of April 2022.

DATES: Applicable May 24, 2022.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

Notice of Scope Ruling Applications: In accordance with 19 CFR 351.225(d)(3), we are notifying the public of the following scope ruling applications related to AD and CVD orders and findings filed in or around the month of April 2022. This notification includes, for each scope application: (1) Identification of the AD and/or CVD orders at issue (19 CFR 351.225(c)(1)); (2) concise public descriptions of the products at issue, including the physical characteristics (including chemical, dimensional and technical characteristics) of the products (19 CFR 351.225(c)(2)(ii)); (3) the countries where the products are produced and the countries from where the products are exported (19 CFR 351.225(c)(2)(i)(B)); (4) the full names of the applicants; and (5) the dates that the scope applications were filed with Commerce and the name of the ACCESS scope segment where the scope applications can be found.[1] This notice does not include applications which have been rejected and not properly resubmitted. The scope ruling applications listed below are available on Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), at *https://access.trade.gov.*

Scope Ruling Applications

Wooden Cabinets and Vanities and Components Thereof (WCV) from the People's Republic of China (China) (A–570–106; C–570–107); cabinet organizers; [2] produced in and exported from China; submitted by Rev-A-Shelf Company, LLC (Rev-A-Shelf); April 12, 2022; ACCESS scope segments ''Rev-A-Shelf Products.''

WCV from China (A–570–106; C–570–107); WCV produced in China and further manufactured in Malaysia, exported from Malaysia; [3] submitted by the American Kitchen Cabinet Alliance (AKCA); April 22, 2022; ACCESS scope segments ''From Malaysia.''

WCV from China (A–570–106; C–570–107); WCV produced in China, further manufactured in Vietnam, exported from Vietnam; [4] submitted by the AKCA; April 22, 2022; ACCESS scope segments ''From Vietnam.''

Notification to Interested Parties

This list of scope ruling applications is not an identification of scope inquiries that have been initiated. In accordance with 19 CFR 351.225(d)(1), if Commerce has not rejected a scope ruling application nor initiated the scope inquiry within 30 days after the filing of the application, the application will be deemed accepted and a scope

[1] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300, 52316 (September 20, 2021) (*Final Rule*) (''It is our expectation that the **Federal Register** list will include, where appropriate, for each scope application the following data: (1) Identification of the AD and/or CVD orders at issue; (2) a concise public summary of the product's description, including the physical characteristics (including chemical, dimensional and technical characteristics) of the product; (3) the country(ies) where the product is produced and the country from where the product is exported; (4) the full name of the applicant; and (5) the date that the scope application was filed with Commerce.'')

[2] The products subject to Rev-A-Shelf's request include four drawers: Tall Drawers, Standard Drawers, Cutlery Drawers, and Maxx Drawers (collectively referred to by Rev-A-Shelf as cabinet organizers). The cabinet organizers are used to enhance cabinets by providing additional organization and accessibility, after a cabinet's sale to the ultimate consumer and are described as follows: (1) The Tall Drawer, which comes in two sizes, is designed to be mounted inside an open cabinet space. It can either be part of a two-tier Pilaster System, or independently incorporated into a cabinet through mounting slides on the cabinet floor; (2) the Standard Drawer, which comes in seven sizes, is designed to be mounted inside of an open cabinet space. It can either be paired with the Tall Drawer to create a Pilaster System or can be independently installed into the bottom of an empty cabinet space; (3) the Cutlery Drawer, which comes in 16 sizes, is intended to replace a standard cabinet drawer and is specially designed to organize cutlery within carefully crafted and divided storage spaces; and (4) the Maxx Drawer, which comes in one size, has five built-in dividers and comes with 13 additional dividers and clips. The cabinet organizers are manufactured in China and exported from China. The products are classified under the Harmonized Tariff Schedule of the United States (HTSUS) code 9403.91.0080.

[3] The products subject to the AKCA's request are WCV that are produced using cabinet components (*i.e.,* frames, boxes, doors, drawers, panels, and any attached or incorporated desks, shelves, and tables), whether finished or unfinished, that are produced in China and meet the description of merchandise that is subject to the scope of the WCV Order, and undergo further processing (*e.g.,* trimming, cutting, notching, punching, drilling, painting, staining, finishing, assembly, repackaging, combining into a ''ready to assemble'' WCV unit, *etc.*) in Malaysia before being exported from Malaysia to the United States. Malaysia is the declared country of origin. U.S. imports of Chinese-origin WCV and components thereof from Malaysia are being imported into the United States under the following HTSUS subheadings: 9403.40.9060, 9403.60.8081, and 9403.90.7080. The Chinese-origin WCV and components thereof imported from Malaysia have the same uses as imports of subject merchandise from China.

[4] The products subject to the AKCA's request are WCV that are produced using cabinet components (*i.e.,* frames, boxes, doors, drawers, panels, and any attached or incorporated desks, shelves, and tables), whether finished or unfinished, that are produced in China and meet the description of merchandise that is subject to the scope of the Order, and undergo further processing (*e.g.,* trimming, cutting, notching, punching, drilling, painting, staining, finishing, assembly, repackaging, combining into a ''ready to assemble'' WCV unit, *etc.*) in Vietnam before being exported from Vietnam to the United States. Vietnam is the declared country of origin. U.S. imports of Chinese-origin WCV and components thereof from Vietnam are being imported into the United States under the following HTSUS subheadings: 9403.40.9060, 9403.60.8081, and 9403.90.7080.5. The Chinese-origin WCV and components thereof imported from Vietnam have the same uses as imports of subject merchandise from China.

inquiry will be deemed initiated the following day—day 31.[5] Commerce's practice generally dictates that where a deadline falls on a weekend, Federal holiday, or other non-business day, the appropriate deadline is the next business day.[6] Accordingly, if the 30th day after the filing of the application falls on a non-business day, the next business day will be considered the ''updated'' 30th day, and if the application is not rejected or a scope inquiry initiated by or on that particular business day, the application will be deemed accepted and a scope inquiry will be deemed initiated on the next business day which follows the ''updated'' 30th day.[7]

In accordance with 19 CFR 351.225(m)(2), if there are companion AD and CVD orders covering the same merchandise from the same country of origin, the scope inquiry will be conducted on the record of the AD proceeding. Further, please note that pursuant to 19 CFR 351.225(m)(1), Commerce may either apply a scope ruling to all products from the same country with the same relevant physical characteristics, (including chemical, dimensional, and technical characteristics) as the product at issue, on a country-wide basis, regardless of the producer, exporter, or importer of those products, or on a company-specific basis.

For further information on procedures for filing information with Commerce through ACCESS and participating in scope inquiries, please refer to the Filing Instructions section of the Scope Ruling Application Guide, at *https://access.trade.gov/help/Scope_Ruling_Guidance.pdf.* Interested parties, apart from the scope ruling applicant, who wish to participate in a scope inquiry and be added to the public service list for that segment of the proceeding must file an entry of appearance in accordance with 19 CFR 351.103(d)(1) and 19 CFR 351.225(n)(4). Interested parties are advised to refer to the case segment in ACCESS as well as 19 CFR 351.225(f) for further information on the scope inquiry procedures, including the timelines for the submission of comments.

Please note that this notice of scope ruling applications filed in AD and CVD proceedings may be published before any potential initiation, or after the initiation, of a given scope inquiry based on a scope ruling application identified in this notice. Therefore, please refer to the case segment on ACCESS to determine whether a scope ruling application has been accepted or rejected and whether a scope inquiry has been initiated.

Interested parties who wish to be served scope ruling applications for a particular AD or CVD order may file a request to be included on the annual inquiry service list during the anniversary month of the publication of the AD or CVD order in accordance with 19 CFR 351.225(n) and Commerce's procedures.[8]

Interested parties are invited to comment on the completeness of this monthly list of scope ruling applications received by Commerce. Any comments should be submitted to James Maeder, Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, via email to *CommerceCLU@trade.gov.*

This notice of scope ruling applications filed in AD and CVD proceedings is published in accordance with 19 CFR 351.225(d)(3).

Dated: May 18, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–11103 Filed 5–23–22; 8:45 am]

BILLING CODE 3510–DS–P

[5] In accordance with 19 CFR 351.225(d)(2), within 30 days after the filing of a scope ruling application, if Commerce determines that it intends to address the scope issue raised in the application in another segment of the proceeding (such as a circumvention inquiry under 19 CFR 351.226 or a covered merchandise inquiry under 19 CFR 351.227), it will notify the applicant that it will not initiate a scope inquiry, but will instead determine if the product is covered by the scope at issue in that alternative segment.

[6] *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[7] This structure maintains the intent of the applicable regulation, 19 CFR 351.225(d)(1), to allow day 30 and day 31 to be separate business days.

[8] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–037]

Certain Biaxial Integral Geogrid Products From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on certain biaxial integral geogrid products (geogrids) from the People's Republic of China (China) would be likely to lead to continuation or recurrence of countervailing subsidies at the levels indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable May 24, 2022.

FOR FURTHER INFORMATION CONTACT: Jasun Moy, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8194.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2017, Commerce published in the **Federal Register** the CVD order on geogrids from China.[1] On February 1, 2022, Commerce initiated the first sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On February 16, 2022, Commerce received a timely filed notice of intent to participate from Tensar Corporation (Tensar), a domestic interested party, within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] Tensar claimed interested party status under section 771(9)(C) of the Act as a producer of the domestic like product.

On March 3, 2022, Commerce received an adequate substantive response to the *Initiation Notice* from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[4] We received no substantive responses from any other interested parties, including the Government of China. On March 21, 2022, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[5] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B)–(C), Commerce conducted an expedited (120-day) sunset review of the *Order.*

[1] *See Certain Biaxial Integral Geogrid Products from the People's Republic of China: Countervailing Duty Order,* 82 FR 12437 (March 3, 2017) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 5467 (February 1, 2022) (*Initiation Notice*).

[3] *See* Tensar's Letter, ''Notice of Intent to Participate in the First Five-Year Review of the Countervailing Duty Order on Certain Biaxial Integral Geogrid Products from the People's Republic of China,'' dated February 16, 2022.

[4] *See* Tensar's Letter, ''First Five-Year (''Sunset'') Review,'' dated March 3, 2022.

[5] *See* Commerce's Letter, ''Sunset Reviews Initiated on February 1, 2022,'' dated March 21, 2022.

Scope of the Order

The products covered by the *Order* are geogrids from China. For a complete description of the scope of the *Order, see* Appendix I.

Analysis of Comments Received

All issues raised in this sunset review are addressed in the accompanying Issues and Decision Memorandum.[6] The issues discussed in the Issues and Decision Memorandum are listed in Appendix II. 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 Sunset Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the *Order* would likely lead to continuation or recurrence of countervailable subsidies at the rates listed below.

Exporter/producer	Net countervailable subsidy rate (percent)
BOSTD Geosynthetics Qingdao Ltd. and Beijing Orient Science & Technology Development Co., Ltd	15.61
Taian Modern Plastic Co., Ltd	56.24
Chengdu Tian Road Engineering Materials Co., Ltd	152.50
Chongqing Jiudi Reinforced Soil Engineering Co., Ltd	152.50
CNBM International Corporation	152.50
Dezhou Yaohua Geosynthetics Ltd	152.50
Dezhou Zhengyu Geosynthetics Ltd	152.50
Hongye Engineering Materials Co., Ltd	152.50
Hubei Nete Geosynthetics Ltd	152.50
Jiangsu Dingtai Engineering Material Co., Ltd	152.50
Jiangsu Jiuding New Material Ltd	152.50
Lewu New Material Ltd	152.50
Nanjing Jinlu Geosynthetics Ltd	152.50
Nanjing Kunchi Composite Material Ltd	152.50
Nanyang Jieda Geosynthetics Co., Ltd	152.50
Qingdao Hongda Plastics Corp	152.50
Shandong Dexuda Geosynthetics Ltd	152.50
Shandong Haoyang New Engineering Materials Co., Ltd	152.50
Shandong Tongfa Glass Fiber Ltd	152.50
Shandong Xinyu Geosynthetics Ltd	152.50
Tai'an Haohua Plastics Co., Ltd	152.50
Taian Hengbang Engineering Material Co., Ltd	152.50
Taian Naite Geosynthetics Ltd	152.50
Taian Road Engineering Materials Co., Ltd	152.50
Tenax	152.50
Hengshui Zhongtiejian Group Co	152.50
Qingdao Sunrise Dageng Import and Export Co., Ltd	152.50
All-Others	35.93

Administrative Protective Order (APO)

This notice serves as the only reminder to interested parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. 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.

Notification to Interested Parties

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: May 18, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Order

The products covered by the scope are certain biaxial integral geogrid products. Biaxial integral geogrid products are a polymer grid or mesh material (whether or not finished, slit, cut-to-length, attached to woven or non-woven fabric or sheet material, or packaged) in which four-sided openings in the form of squares, rectangles, rhomboids, diamonds, or other four-sided figures predominate. The products covered have integral strands that have been stretched to induce molecular orientation into the material (as evidenced by the strands being thinner in width toward the middle between the junctions than at the junctions themselves) constituting the sides of the openings and integral junctions where the strands intersect. The scope includes products in which four-sided figures predominate whether or not they also contain additional strands intersecting the four-sided figures and whether or not the inside corners of the four-sided figures are rounded off or not sharp angles. As used herein, the term ''integral'' refers to strands and junctions that are homogenous with each other. The products covered have a tensile strength of greater than 5 kilonewtons per meter (kN/m) according to American Society for Testing and Materials (ASTM) Standard Test Method D6637/D6637M in any direction and average overall flexural stiffness of more than 100,000 milligram-centimeter according to the ASTM D7748/D7748M Standard Test Method for Flexural Rigidity of Geogrids, Geotextiles and Related Products, or other equivalent test method standards.

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Countervailing Duty Order on Certain Biaxial Integral Geogrid Products from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise further processed in a third country, including by trimming, slitting, coating, cutting, punching holes, stretching, attaching to woven or non-woven fabric or sheet material, or any other finishing, packaging, or other further processing that would not otherwise remove the merchandise from the scope of the *Order* if performed in the country of manufacture of the biaxial integral geogrid.

The products subject to the scope are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheading: 3926.90.9995. Subject merchandise may also enter under subheadings 3920.20.0050 and 3925.90.0000. The HTSUS subheadings set forth above are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2022–11158 Filed 5–23–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–874]

Certain Hot-Rolled Steel Flat Products From Japan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Nippon Steel Corporation, producer and exporter of hot-rolled steel flat products (hot-rolled steel) from Japan, sold subject merchandise in the United States at prices below normal value during the period of review (POR) October 1, 2019, through September 30, 2020. In addition, Commerce determines that Honda Trading Canada, Inc. (Honda) and Mitsui & Co., Ltd. (Mitsui) had no shipments during the POR.

DATES: Applicable May 24, 2022.

FOR FURTHER INFORMATION CONTACT: Jun Jack Zhao or Myrna Lobo, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1396 or (202) 482–2371, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 19, 2021, Commerce published the *Preliminary Results* of this review in the **Federal Register**.[1] This review covers one mandatory exporter/producer of subject merchandise, Nippon Steel Corporation, Nippon Steel Nisshin Co., Ltd., Nippon Steel Trading Corporation (collectively, NSC).[2] We invited interested parties to comment on the *Preliminary Results*. Between December 20 and 27, 2021, Commerce received timely filed case briefs and rebuttal briefs from NSC, JFE Shoji America LLC and JFE Shoji Corporation (JFE), Nucor Corporation (Nucor),[3] and Tokyo Steel Manufacturing Co., Ltd. (Tokyo Steel).[4] On December 20, 2021, Commerce received a hearing request from NSC.[5] On January 31, 2022, NSC withdrew its hearing request.[6]

On March 10, 2022, we extended the deadline for the final results.[7] The deadline for the final results of this review is May 18, 2022.

These final results cover twenty-nine producers and/or exporters of subject merchandise.[8] Based on an analysis of the comments received, we made certain changes to the weighted-average dumping margin determined for NSC. The weighted-average dumping margins are listed in the ''Final Results of Review'' section, below. Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order[9]

The merchandise covered by the *Order* is certain hot-rolled steel flat products. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.[10]

Final Determination of No Shipments

In the *Preliminary Results,* Commerce preliminarily determined that Honda and Mitsui had no shipments of subject merchandise during the POR. As no party has identified any record evidence which would call into question the preliminary findings with respect to these two companies, we continue to find that they made no shipments of subject merchandise during the POR. Accordingly, consistent with our practice, we intend to instruct U.S. Customs and Border Protection (CBP) to liquidate any existing entries of subject merchandise produced by Honda and Mitsui, but exported by other parties without their own rate, at the all-others rate.[11]

[1] *See Certain Hot-Rolled Steel Flat Products from Japan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2019–2020,* 86 FR 64901 (November 19, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] Commerce found in a changed circumstances review that Nippon Steel Corporation is the successor-in-interest to Nippon Steel & Sumitomo Metal Corporation, Nippon Steel Nisshin Co., Ltd., is the successor-in-interest to Nisshin Steel Co., Ltd., and Nippon Steel Trading Corporation is the successor-in-interest to Nippon Steel & Sumikin Bussan Corporation. *See Certain Hot-Rolled Steel Flat Products from Japan: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 84 FR 46713 (September 5, 2019). Commerce also determined that the three successor-in-interest companies are affiliated and should be collapsed into a single entity. *Id.* Because there is no information on the record of this administrative review that would lead us to revisit this determination, we are continuing to treat these companies as part of a single entity.

[3] In this administrative review, the petitioners are AK Steel Corporation; Nucor Corporation; SSAB Enterprises, LLC; Steel Dynamic, Inc.; and United States Steel Corporation.

[4] *See* NSC's Letter, ''Certain Hot-Rolled Steel Flat Products from Japan: NSC's Case Brief,'' dated December 21, 2021; JFE's Letter, ''Certain Hot-Rolled Steel Flat Products from Japan: Letter in Lieu of Case Brief,'' dated December 20, 2021; Nucor Letter, ''Certain Hot-Rolled Steel Flat Products from Japan: Petitioner's Rebuttal Brief,'' dated December 28, 2021; Tokyo Steel's Letter, ''Letter in lieu of Rebuttal Brief: Certain Hot-Rolled Steel Flat Products from Japan,'' dated December 27, 2021.

[5] *See* NSC's Letter, ''Certain Hot-Rolled Steel Flat Products from Japan: NSC's Hearing Request,'' dated December 20, 2021.

[6] *See* NSC's Letter, ''Certain Hot-Rolled Steel Flat Products from Japan: Withdrawal of NSC's Hearing Request,'' January 31, 2022.

[7] *See* Memorandum, ''Certain Hot-Rolled Steel Products from Japan: Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2019–2020,'' dated March 10, 2022.

[8] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 78990 (December 8, 2020).

[9] *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders,* 81 FR 67962 (October 3, 2016) (*Order*).

[10] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review: Certain Hot-Rolled Steel Flat Products from Japan; 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[11] *See, e.g., Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping*

Continued

Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs in the Issues and Decision Memorandum. The issues are identified in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic 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*.

Changes Since the Preliminary Results

Based on our review and analysis of the comments received from parties, we made changes to NSC's margin calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Rate for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this review, we have calculated a weighted-average dumping margin for NSC that is not zero, *de minimis,* or determined entirely on the basis of facts available. Accordingly, Commerce has assigned to companies not individually examined a margin of 24.07 percent, which is NSC's calculated weighted-average dumping margin.

Final Results of Review

We are assigning the following weighted-average dumping margins to the firms listed below for the period October 1, 2019, through September 30, 2020:

Exporter/producer	Weighted-average dumping margin (percent)
Nippon Steel Corporation/Nippon Steel Nisshin Co., Ltd./Nippon Steel Trading Corporation [12]	24.07
Hanwa Co., Ltd	24.07
Higuchi Manufacturing America, LLC	24.07
Higuchi Seisakusho Co., Ltd	24.07
Hitachi Metals, Ltd	24.07
JFE Steel Corporation/JFE Shoji Trade Corporation [13]	24.07
JFE Shoji Trade America	24.07
Kanematsu Corporation	24.07
Kobe Steel, Ltd	24.07
Metal One Corporation	24.07
Miyama Industry Co., Ltd	24.07
Nakagawa Special Steel Inc	24.07
Nippon Steel & Sumikin Logistics Co., Ltd	24.07
Okaya & Co. Ltd	24.07
Panasonic Corporation	24.07
Saint-Gobain K.K	24.07
Shinsho Corporation	24.07
Sumitomo Corporation	24.07
Suzukaku Co., Ltd	24.07
Suzukaku Corporation	24.07
Tokyo Steel Manufacturing Co., Ltd	24.07
Toyota Tsusho Corporation Nagoya	24.07

Assessment

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Duty Administrative Review, 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[12] We are treating these companies as part of a single entity. *See supra,* n.2.

[13] We collapsed JFE Shoji Trade Corporation with JFE Steel Corporation in the underlying investigation. *See Certain Hot-Rolled Steel Flat Products from Japan: Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination,* 81 FR 15222 (March 22, 2016), and accompanying Preliminary Decision Memorandum at 8–9, unchanged in *Certain Hot-Rolled Steel Flat Products from Japan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 81 FR 53409 (August 12, 2016).

Where the respondent reported reliable entered values, we calculated importer- (or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).[14] Where Commerce calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, Commerce will direct CBP to assess importer- (or customer-) specific assessment rates based on the resulting per-unit rates.[15] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis* (*i.e.,* 0.50 percent), Commerce will instruct CBP to collect the appropriate duties at the time of liquidation.[16] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[17]

For the companies which were not selected for individual review, we will assign an assessment rate based on the methodology described in the ''Rate for Non-Examined Companies'' section, above.

Consistent with Commerce's assessment practice, for entries of subject merchandise during the POR produced by NSC, or the non-examined companies for which the producer did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company/companies involved in the transaction.[18]

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed in these final results will be equal to the weighted-average dumping margins established in the final results of this review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment in which the company was reviewed; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 5.58 percent,[19] the all-others rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written 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 sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h) and 351.221(b)(5) of Commerce's regulations.

Dated: May 18, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2022–11160 Filed 5–23–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC003]

Nominations for U.S. Commissioners to Regional Fisheries Management Organizations

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

ACTION: Notice; call for nominations.

SUMMARY: NMFS is soliciting nominations, which may include self-nominations, for qualified individuals to serve as non-Federal U.S. Commissioners (Commissioners) to certain regional fisheries management organizations (RFMOs). This action is being undertaken to enhance transparency in the process of identifying potential candidates for Commissioner positions and to increase diversity in the candidate pool to help ensure the views and interests of the range of U.S. stakeholders are considered in the process of developing and advancing U.S. positions at RFMOs. Nominations are open to all qualified individuals and may include current or previous Commissioners and Alternate Commissioners for certain RFMOs where eligible.

DATES: Nominations and any supporting documentation must be received by July 8, 2022.

ADDRESSES: Nominations for U.S. Commissioners may be submitted

[14] *See* 19 CFR 351.212(b)(1).

[15] *Id.*

[16] *Id.*

[17] *See* 19 CFR 351.106(c)(2).

[18] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of* Antidumping Duties, 68 FR 23954 (May 6, 2003).

[19] *See Certain Hot-Rolled Steel Flat Products from Japan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 81 FR 53409 (August 12, 2016).

electronically to: *nmfs.rfmo.@noaa.gov.* Please include ''Nomination for ____'' and the relevant organization(s) in the subject line of the message (*e.g.,* ''Nomination for WCPFC'', *etc.*).

FOR FURTHER INFORMATION CONTACT: Terra Lederhouse, phone (301) 427–8360, or by email at *Terra.Lederhouse@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Because fish and other marine species cross national boundaries, the United States shares living marine resources with other countries. The way other countries manage these shared marine resources can directly affect the status and long-term use of fish stocks and protected or endangered species of importance to the United States. For this reason, the United States participates in several RFMOs, which are treaty-based bodies whose objective is to ensure the sustainable conservation and management of shared fish stocks and other living marine resources through international cooperation. Each RFMO has regularly scheduled meetings in which nations adopt binding conservation and management measures, and throughout the year, there are typically intersessional meetings of RFMO subsidiary bodies to address specific scientific and management issues.

The United States is represented in the below-described RFMOs by Commissioners who are appointed by the President or the Secretary of Commerce, depending on the organization. The lead U.S. Commissioner to each RFMO is an employee of the Federal Government. Non-Federal Commissioners are selected from among individuals with fisheries knowledge and experience as described in U.S. statutes that implement the RFMO treaties. The Commissioners may participate in meetings of advisory committees and in other meetings to help develop the United States' positions for RFMO meetings. The Commissioners then serve on the U.S. delegations to RFMO meetings where they must support the finalized, U.S. positions on the conservation and management of shared living marine resources even in cases where such positions may be contrary or different to their views or advice. The Secretary of State, in consultation with the Secretary of Commerce, may designate Alternate U.S. Commissioners to serve in the absence of a U.S. Commissioner.

The purpose of this notice is to solicit nominations for individuals to serve as non-Federal U.S. Commissioners to certain RFMOs. NMFS, and the U.S. government more generally, are committed to advancing diversity, equity, inclusion, and accessibility at all levels, including within the communities we serve and protect. Consistent with this commitment, NMFS is taking steps aimed at increasing the diversity of stakeholder voices that represent the United States in our international fisheries engagements, including by promoting greater diversity and representation of underserved communities in the pool of potential candidates for appointment as non-Federal U.S. Commissioners to RFMOs. Through this notice, NMFS is also taking steps to advance a transparent process that promotes equity, inclusion, and accessibility when seeking nominees to serve in these important roles. As such, NMFS encourages nominations for women and for individuals from underserved communities that meet the knowledge, experience, and other legal requirements of the positions described in this notice. *See* Executive Order (E.O.) 13985 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government) § 2 (defining ''underserved communities'' as ''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,'' ''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.''). E.O. 13985 is available at *https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government.*

NMFS is soliciting nominations for individuals who are qualified to serve as U.S. Commissioners to the RFMOs described below. NMFS' goal is to have on-hand a pool of qualified candidates, who meet qualifications under the relevant RFMO treaty implementing statutes and who can be considered, as the need arises, for recommendations for U.S. Commissioner vacancies. This pool may also be considered, as the need arises, for designation of Alternate Commissioners. Current Commissioners that are interested in being included in the pool of qualified candidates may, but are not required to, indicate as such through self-nomination or nomination by someone else. Separate from any nominations received per this notice, NMFS and/or its federal agency partners may also independently make Commissioner recommendations.

Inter-American Tropical Tuna Commission (IATTC)

IATTC is an intergovernmental organization established under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission. In 2003, IATTC adopted the Convention for the Strengthening of the IATTC Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention). The Antigua Convention entered into force in 2010. The United States acceded to the Antigua Convention on February 24, 2016. IATTC consists of 21 member nations and five cooperating non-member nations and facilitates scientific research into, as well as the conservation and management of, tuna and tuna-like species in the IATTC Convention Area. The IATTC Convention Area is defined as waters of the eastern Pacific Ocean within the area bounded by the west coast of the Americas and by 50° N latitude, 150° W longitude, and 50° S latitude. IATTC maintains a scientific research and fishery monitoring program and regularly assesses the status of tuna, sharks, and billfish stocks in the IATTC Convention Area to determine appropriate catch limits and other measures deemed necessary to promote sustainable fisheries and prevent the overexploitation of these stocks. More information on IATTC can be found at *https://www.iattc.org/.*

As a Party to the Antigua Convention and a member of IATTC, the United States is legally bound to implement decisions of the IATTC. The Tuna Conventions Act (16 U.S.C. 951 *et seq.*) directs the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the U.S. Coast Guard, to promulgate such regulations as may be necessary to carry out the United States' obligations under the Antigua Convention, including recommendations and decisions adopted by the IATTC. This work is carried out by NMFS.

The Tuna Conventions Act (16 U.S.C. 951 *et seq.*) requires that the United States be represented on the IATTC by four U.S. Commissioners. 16 U.S.C. 952(a). U.S. Commissioners are

appointed by the President and must be knowledgeable or experienced concerning highly migratory fish stocks in the eastern tropical Pacific Ocean. Of the U.S. Commissioners:

(1) One shall be an officer or employee of the Department of Commerce; and

(2) Not more than two United States Commissioners may be appointed who reside in a State other than a State whose vessels maintain a substantial fishery in the area of the Convention.

In addition, the Secretary of State, in consultation with the Secretary, may designate from time to time and for periods of time deemed appropriate Alternate U.S. Commissioners to the IATTC. 16 U.S.C. 952(b). Any Alternate U.S. Commissioner may exercise, at any meeting of the IATTC or of the General Advisory Committee or Scientific Advisory Subcommittee, all powers and duties of a U.S. Commissioner in the absence of any appointed U.S. Commissioner for whatever reason. The number of such Alternate U.S. Commissioners that may be designated for any such meeting shall be limited to the number of U.S. Commissioners appointed who will not be present at such meeting.

Commissioners who are not officers or employees of the United States Government are not considered to be Federal employees except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5 and chapter 171 of title 28. 16 U.S.C. 952(c)(1).

In carrying out their official duties, a certain amount of travel to both domestic and international destinations is required. The total number of trips varies from year-to-year but may include up to three trips lasting a week or less and one trip, usually to an international destination, lasting up to two weeks. Necessary travel expenses are paid by the U.S. Department of State as provided under 16 U.S.C. 952(c)(3). Commissioners (or Alternate Commissioners, see 16 U.S.C. 952(b)) receive no compensation for their services. 16 U.S.C. 952(c)(2).

International Commission for the Conservation of Atlantic Tunas (ICCAT)

ICCAT is an intergovernmental organization established under the International Convention for the Conservation of Atlantic Tunas (ICCAT Convention) to provide an effective program of international cooperation in research and conservation in recognition of the unique problems related to the highly migratory nature of tuna and tuna-like species. The ICCAT Convention entered into force in 1969, and the Convention Area includes all waters of the Atlantic Ocean, including the adjacent Seas. In addition to tuna and tuna-like species, ICCAT has adopted measures for sharks and certain other species, such as seabirds and sea turtles, caught in association with ICCAT fisheries. The ICCAT Commission holds an annual meeting in November of each year, which generally runs between 8–10 days. ICCAT also convenes meetings of working groups and other ICCAT subsidiary bodies each year between annual meetings to advance specific issues. More information on ICCAT can be found at *www.iccat.int.*

Atlantic highly migratory species are managed domestically under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.,* and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* ATCA requires the Secretary of Commerce to promulgate such regulations as may be necessary and appropriate to implement ICCAT recommendations, and this work is carried out by NMFS.

Section 971a of ATCA (16 U.S.C. 971 *et seq.*) requires that the United States be represented at ICCAT by not more than three Commissioners. 16 U.S.C. 971a(a)(1). U.S. Commissioners are appointed by and serve at the pleasure of the President. ATCA provides that the term of a Commissioner is 3 years. Non-government Commissioners are not eligible to serve more than two consecutive terms. 16 U.S.C. 971a(a)(3). Of the Commissioners, ATCA at 16 U.S.C. 971a(a)(2) provides that:

(1) Not more than one shall be a salaried employee of any State or political subdivision thereof, or the Federal Government;

(2) One shall be appointed from among individuals with knowledge and experience regarding commercial fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea; and

(3) One shall be appointed from among individuals with knowledge and experience regarding recreational fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea.

Non-government commissioners are not considered to be Federal employees except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5 and chapter 171 of title 28. 16 U.S.C. 971a(a)(1).

In carrying out their official duties, a certain amount of travel to both domestic and international destinations is required. The total number of trips varies from year-to-year but may include up to six trips lasting a week or less and one trip, usually to an international destination, lasting up to two weeks. Necessary travel expenses are paid by the U.S. Department of State as provided under ATCA at 16 U.S.C. 971a(d). Commissioners (or Alternate Commissioners, see 16 U.S.C. 971a(b)) receive no compensation for their services.

International Pacific Halibut Commission (IPHC)

IPHC is a bilateral organization established pursuant to the Convention between Canada and the United States for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Halibut Convention). The Halibut Convention was signed at Ottawa, Ontario, on March 2, 1953, and was amended by a Protocol Amending the Convention signed at Washington, DC, on March 29, 1979. The Halibut Convention's central objective is to develop the stocks of Pacific halibut in waters off the west coasts of Canada and the United States to levels that will permit the optimum yield from the Pacific halibut fishery and to maintain the stocks at those levels. IPHC fulfills this objective in part by recommending Pacific halibut fishery conservation and management measures for approval by the United States and Canada. More information on IPHC can be found at *https://www.iphc.int.*

Pursuant to section 5(b)(1) of the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773c(b)(1)), the Secretary of Commerce adopts such regulations as may be necessary to carry out the purposes and objectives of the Halibut Convention.

Section 3 of the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773a) requires that the United States be represented on IPHC by three U.S. Commissioners. U.S. Commissioners are appointed by and serve at the pleasure of the President for a term not to exceed two years, but are eligible for reappointment. Of the Commissioners:

(1) One must be an official of the National Oceanic and Atmospheric Administration; and

(2) One must be a resident of Alaska that is knowledgeable or experienced concerning the Northern Pacific halibut fishery;

(3) One must be a nonresident of Alaska that is knowledgeable or experienced concerning the Northern Pacific halibut fishery; and

(4) Of the three commissioners, one must also be a voting member of the North Pacific Fishery Management Council.

Commissioners who are not currently Federal employees will not be

considered to be Federal employees except for the purposes of injury compensation or tort claims liability as provided in section 8101 *et seq.* of title 5 and section 2671 *et seq.* of title 28, United States Code.

In carrying out their official duties, a certain amount of travel to both domestic and international destinations is required. The total number of trips varies from year-to-year but may include up to three trips lasting a week or less. Necessary travel expenses are paid by the U.S. Department of State. Commissioners receive no compensation for their services.

Northwest Atlantic Fisheries Organization (NAFO)

NAFO is an intergovernmental fisheries management body established in 1979 by the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (NAFO Convention). The United States acceded to the NAFO Convention in 1995, and has participated actively in NAFO since that time. In 2005, NAFO launched a reform effort to amend the Convention in order bring the Organization more in line with the principles of modern fisheries management. As a result of these efforts, the Amendment to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries entered into force in May 2017. NAFO's Commission is responsible for the management and conservation of the fishery resources in the international waters of the Northwest Atlantic, except salmon, tunas/marlins, whales, and sedentary species such as shellfish. More information on NAFO can be found at *https://www.nafo.int/.*

Pursuant to the Northwest Atlantic Fisheries Convention Act of 1995 (16 U.S.C. 76), the Secretary of Commerce promulgates regulations as may be necessary to carry out the purposes and objectives of the NAFO Convention, including NAFO conservation and management measures.

The Northwest Atlantic Fisheries Convention Act of 1995 requires that the United States be represented at NAFO by not more than three Commissioners. U.S. Commissioners are appointed by and serve at the pleasure of the Secretary of Commerce for a term that may not exceed four years. Non-government Commissioners are not eligible to serve more than two consecutive terms as a Commissioner, but are eligible for reappointment. Each Commissioner must be knowledgeable and experienced concerning the fishery resources to which the NAFO Convention applies. Of the Commissioners:

(1) One, but not more than one, must be an official of the Government;

(2) At least one must be a representative of the commercial fishing industry; and

(3) One must be a voting (non-Government employee) member of the New England Fishery Management Council.

Commissioners who are not currently Federal employees are not considered to be Federal employees except for the purposes of injury compensation or tort claims liability as provided under chapter 81 of title 5 and chapter 171 of title 28.

In carrying out their official duties, a certain amount of travel to both domestic and international destinations is required. The total number of trips varies from year-to-year but may include up to three trips lasting a week or less and one trip, usually to an international destination, lasting up to two weeks. Necessary travel expenses are paid by the U.S. Department of State. Commissioners receive no compensation for their services.

North Atlantic Salmon Conservation Organization (NASCO)

NASCO is an intergovernmental organization established in 1984 by the Convention for the Conservation of Salmon in the North Atlantic Ocean, 1982 (NASCO Convention), with the objective to conserve, restore, enhance and rationally manage Atlantic salmon through international cooperation, taking account of best available scientific information. The NASCO Convention applies to the salmon stocks that migrate beyond areas of fisheries jurisdiction of coastal States of the Atlantic Ocean north of 36 degrees N latitude throughout their migratory range. More information on NASCO can be found at *https://nasco.int/.*

Pursuant to the Atlantic Salmon Convention Act of 1982 (16 U.S.C. 3601), the Secretary of Commerce, in cooperation with the Secretary of the Interior and the Secretary of the department in which the Coast Guard is operating, promulgate such regulations pursuant to section 553 of title 5, United States Code, as may be necessary to carry out the purposes and objectives of the Convention and that title, and to implement regulatory measures that are binding on the United States under the Convention.

The Atlantic Salmon Convention Act of 1982 provides that the United States shall be represented in NASCO by three U.S. Commissioners, appointed by and to serve at the pleasure of the President. Of the three Commissioners:

(1) One must be an official of the U.S. Government; and

(2) Two must be individuals (not officials of the U.S. Government) who are knowledgeable or experienced in the conservation and management of salmon of U.S. origin.

Non-government commissioners are not considered to be Federal employees except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5 and chapter 171 of title 28.

In carrying out their official duties, a modest amount of travel to both domestic and international destinations is required. The total number of trips varies from year-to-year but may include up to three trips lasting a maximum of a few days each and one trip, usually to an international destination, lasting one week. Necessary travel expenses are paid by the U.S. Department of State. Commissioners receive no compensation for their services.

North Pacific Anadromous Fish Commission (NPAFC)

NPAFC is an intergovernmental organization established by the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean (NPAFC Convention). The NPAFC Convention was signed on February 11, 1992, and took effect on February 16, 1993. The objective of the Commission is to promote the conservation of anadromous stocks (Pacific salmon and steelhead trout) in the Convention Area. The Convention Area includes the international waters of the North Pacific Ocean and its adjacent seas north of 33° North beyond the 200-mile zone (exclusive economic zones) of the coastal States. More information on NPAFC can be found at *https://npafc.org/.*

Pursuant to the North Pacific Anadromous Stocks Act of 1992 (16 U.S.C. 5006), the Secretary of Commerce, in consultation with the Secretary of Transportation and the U.S. Commissioners, is responsible for issuing regulations as may be necessary to carry out the purposes and objectives of the Convention and the Act.

The North Pacific Anadromous Stocks Act of 1992 provides that the United States shall be represented on the NPAFC by not more than three U.S. Commissioners, appointed by and to serve at the pleasure of the President for a term not to exceed four years, but are eligible for reappointment. 16 U.S.C. 5003(a). Of the Commissioners:

(1) One must be an official of the U.S. Government;

(2) One must be a resident of the State of Alaska who is knowledgeable or experienced concerning anadromous stocks and ecologically-related species of the North Pacific Ocean; and

(3) One must be a resident of the State of Washington who is knowledgeable or experienced concerning anadromous stocks and ecologically-related species of the North Pacific Ocean.

The U.S. Commissioners, in consultation with an advisory panel, identify and recommend to the NPAFC research needs and priorities for anadromous stocks and ecologically-related species and oversee research programs involving such fisheries, stocks, and species. 16 U.S.C. 5003(c). Anadromous stocks are the stocks of species listed in the Annex to the NPAFC Convention (six species of Pacific salmon and steelhead trout), and ecologically-related species are the living marine species that are associated with anadromous stocks found in the Convention Area, including, but not restricted to, both predators and prey of anadromous fish. 16 U.S.C. 5002(1) & (8).

Non-government commissioners are not considered to be Federal employees except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5 and chapter 171 of title 28. 16 U.S.C. 5003(a).

In carrying out their official duties, a modest amount of travel is required. The total number of trips varies from year-to-year but is typically one trip per year lasting less than a week, usually to an international destination. Necessary travel expenses are paid by the U.S. Department of State. 16 U.S.C. 5003(e). Commissioners receive no compensation for their services. 16 U.S.C. 5003(d).

South Pacific Regional Fisheries Management Organization (SPRFMO)

SPRFMO is an intergovernmental organization established in 2012 by the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (SPRMO Convention). SPRFMO is committed to the long-term conservation and sustainable use of the fishery resources of the South Pacific Ocean and, in so doing, safeguarding the marine ecosystems in which the resources occur. The SPRFMO Convention applies to the high seas of the South Pacific, covering about a fourth of the Earth's high seas areas. Currently, the main commercial resources fished in the SPRFMO Area are Jack mackerel and jumbo flying squid in the Southeast Pacific and, to a much lesser degree, deep-sea species often associated with seamounts in the Southwest Pacific. More information on SPRFMO can be found at *https://www.sprfmo.int/.*

The implementing legislation for the SPRFMO (16 U.S.C. 7801 *et seq.*) provides that the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, may promulgate such regulations as may be necessary and appropriate to carry out the international obligations of the United States under the SPRFMO Convention, including implementation of SPRFMO conservation and management measures. 16 U.S.C. 7804(b).

The SPRFMO legislation also provides that the United States shall be represented in SPRFMO by not more than three U.S. Commissioners, who are appointed by and serve at the pleasure of the President and who are knowledgeable or experienced concerning fishery resources in the South Pacific Ocean. Of the Commissioners:

(1) One must be an officer or employee of the Department of Commerce, Department of State, or the Coast Guard; and

(2) One shall be the chairperson or designee of the Western Pacific Fishery Management Council.

Non-government commissioners are not considered to be Federal employees except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5 and chapter 171 of title 28. 16 U.S.C. 7802(c)(1).

In carrying out their official duties, a modest amount of travel to both domestic and international destinations is required. The total number of trips varies from year-to-year but typically includes one trip per year lasting less than two weeks, usually to an international destination. Necessary travel expenses are paid by the U.S. Department of State as provided under 16 U.S.C. 7802(c)(3). Commissioners (or Alternate Commissioners, see *id.* § 7802(b)) receive no compensation for their services. *Id.* § 7802(c)(2).

Western and Central Pacific Fisheries Commission (WCPFC)

WCPFC is an intergovernmental organization established by the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC Convention) which entered into force on 19 June 2004. The objective of WCPFC is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean. The WCPFC Convention applies to all species of highly migratory fish stocks (defined as all fish stocks of the species listed in Annex I of the 1982 Convention occurring in the Convention Area and such other species of fish as the Commission may determine) within the WCPFC Convention Area, except sauries. Conservation and management measures under the WCPFC Convention are to be applied throughout the range of the stocks, or to specific areas within the WCPFC Convention Area, as determined by WCPFC. More information about WCPFC can be found at *https://www.wcpfc.int/.*

Pursuant to the Western and Central Pacific Fisheries Convention Implementation Act, 2007 (16 U.S.C. 6901 *et seq.*), the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the Secretary of Homeland Security, is authorized to promulgate such regulations as may be necessary to carry out the United States international obligations under the WCPFC Convention, including implementation of WCPFC conservation and management measures.

The Western and Central Pacific Fisheries Convention Implementation Act provides that the United States shall be represented in WCPFC by five U.S. Commissioners, appointed by and serving at the pleasure of the President, who must be knowledgeable or experienced concerning highly migratory fish stocks and commercial fishing in the western and central Pacific Ocean. Of the Commissioners:

(1) One must be an officer or employee of the Department of Commerce;

(2) One must be a Chairman or Member of the Western Pacific Fishery Management Council; and

(3) One must be a Chairman or Member of the Pacific Fishery Management Council.

Non-government commissioners are not considered to be Federal employees except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5 and chapter 171 of title 28.

In carrying out their official duties, a certain amount of travel to both domestic and international destinations is required. The total number of trips varies from year-to-year but may include up to three trips lasting a week or less, usually to an international destination, and one domestic trip for less than one week. Necessary travel expenses are paid by the U.S. Department of State.

Commissioners receive no compensation for their services.

Nomination Process

NMFS is soliciting nominations for non-Federal Commissioner positions listed below. As explained in the Background Section, the purpose of this action is to develop a pool of qualified candidates, who can be considered, as the need arises, for recommendations for U.S. Commissioner vacancies or for designation as Alternate Commissioners. Pursuant to the RFMO statutes described below, there may be ''up to'' a certain number of non-Federal U.S. Commissioners. There is no limit though on the number of nominees that may be submitted for consideration. Successful nominees will be considered for appointment by the appropriate authority and, pending such action by that authority, may receive an interim designation by the Department of State, as needed and appropriate. Separate from any nominations received per this notice, NMFS and/or its federal agency partners may also independently make Commissioner recommendations. Current Commissioners that are interested in being included in the pool of qualified candidates may, but are not required to, indicate as such through self-nomination or nomination by someone else.

- *IATTC:* Up to three U.S. Commissioners who are not an officer or employee of the Department of Commerce. Not more than two U.S. Commissioners may be appointed who reside in a State other than a State whose vessels maintain a substantial fishery in the area of the Convention. Nomination packages for these positions should provide details of the nominee's knowledge and experience relative to highly migratory fish stocks in the eastern tropical Pacific Ocean, as well as current state of residence.
- *ICCAT:* Up to two U.S. Commissioners who are not salaried employees of any State or political subdivision thereof, or the Federal Government. Nomination packages for these positions should provide details of the nominee's knowledge and experience relative to commercial and/or recreational fishing, in particular for tuna, tuna-like species and other highly migratory species, in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea.
- *IPHC:* Up to two U.S. Commissioners who are not officials of NOAA. Nomination packages for these positions should provide details of the nominee's knowledge and experience relative to Pacific halibut, as well as current state of residence.
- *NAFO:* One U.S. Commissioner who is not an official of the Government. Nomination packages for this position should provide details of the nominee's knowledge and experience relative to the fishery resources to which the Convention applies, specifically as it relates to representing the commercial fishing industry.
- *NASCO:* Up to two U.S. Commissioners who are not officials of the U.S. Government. Nomination packages for these positions should provide details of the nominee's knowledge and experience relative to the conservation and management of salmon of U.S. origin.
- *NPAFC:* Up to two U.S. Commissioners who are not officials of the U.S. Government. Nomination packages for these positions should provide details of the nominee's knowledge and experience relative to the anadromous stocks and ecologically-related species of the North Pacific Ocean, as well as current state of residence. Note that to be considered for appointment, individuals must be a resident of the State of Alaska or the State of Washington.
- *SPRFMO:* One U.S. Commissioner who is knowledgeable or experienced concerning fishery resources in the South Pacific Ocean, and who is not an official of the U.S. Government or the selected Commissioner representative of the Western Pacific Fishery Management Council. Nomination packages for this position should provide details of the nominee's knowledge and experience relative to the fishery resources in the South Pacific Ocean.
- *WCPFC:* Up to two U.S. Commissioners who are not officers or employees of the Department of Commerce or the selected Commissioner representative of the Western Pacific Fishery Management Council or Pacific Fishery Management Council. Nomination packages for this position should provide details of the nominee's knowledge and experience relative to highly migratory fish stocks in the Western and Central Pacific Ocean.

Nomination packages submitted to recommend that an individual (not an official of the U.S. Government) be considered for the pool of Commissioner/Alternate Commissioner candidates should note the relevant RFMO(s) for consideration and include a resume or curriculum vitae that documents that individual's qualifications and state of residence. Self-nominations are acceptable. Letters of recommendation/support are useful but not required. Nomination packages will be evaluated by NOAA, in consultation with the Department of State and other federal agency partners as appropriate, on a case-by-case basis by officials who are familiar with the requirements, duties, and responsibilities of the respective positions.

Evaluations will consider the aggregate of an individual's prior experience and knowledge of the specific fisheries concerned, any applicable residency or other legal requirements, and any letters of recommendation provided.

Dated: May 18, 2022.

Alexa Cole,

Director, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service.

[FR Doc. 2022–11159 Filed 5–23–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC023]

Fishing Capacity Reduction Program for the Southeast Alaska Purse Seine Salmon Fishery

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

ACTION: Notice of fee rate adjustment change.

SUMMARY: NMFS issues this notice to inform the public that there will be an increase of the fee rate required to repay the reduction loan financing the Southeast Alaska Purse Seine Salmon Fishing Capacity reduction program. Effective June 1, 2022, NMFS is increasing the Loan B fee rate to 2.5 percent of landed value to ensure timely repayment of the loan. The fee rate for Loan A will remain unchanged at 1 percent of landed value. The increased fee rate is due to the decrease in projected value of the Southeast Alaska Purse Seine Salmon catch for 2022.

DATES: The Southeast Alaska Purse Seine Salmon Fishing Capacity loan program fee rate increase will begin with landings on June 1, 2022. The first due date for fee payments with the increased rate will be July 15, 2022.

ADDRESSES: Send questions about this notice to Michael A. Sturtevant, Program Manager, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: Michael A. Sturtevant, (301) 427–8782.

SUPPLEMENTARY INFORMATION:

Background

The Southeast Alaska Purse Seine Salmon Fishery is a commercial fishery in Alaska State waters and adjacent Federal waters. It encompasses the commercial taking of salmon with purse seine gear and participation is limited to fishermen designated by the Alaska Commercial Fisheries Entry Commission (CFEC).

The Fishing Capacity Reduction Program was established under the Consolidations Act of 2005 (Section 209 of Title II of Division B of Pub. L. 108–447). This Federal law was subsequently amended by Section 121 of Public Law 109–479 (the Magnuson-Stevens Reauthorization Act of 2006) codified at 16 U.S.C. 1801 *et seq*. The authority for the SRA to conduct this program under Alaska law is AS 16.40.250.

Based on these Federal and state measures, the NMFS established regulations in the **Federal Register**, (76 FR 61986; October 6, 2011), to administer and implement the program.

The purpose of the program and this plan is to permanently reduce the number of limited entry fishing permits issued by the Alaska Commercial Fisheries Entry Commission (CFEC) for the Fishery thereby promoting economic efficiency and improving the conservation and management of the Fishery.

Congress authorized a $23.5 million dollar loan to finance a fishing capacity reduction program in the Southeast Alaska Purse Seine Salmon Fishery. NMFS published proposed program regulations on May 23, 2011 (76 FR 29707) and final program regulations on October 6, 2011 (76 FR 61986) to implement the reduction program.

In 2012, NMFS conducted a referendum to determine the remaining fishermen's willingness to repay a $13.1 million fishing capacity reduction loan to remove 64 permits. After a majority of permit holders approved the loan, NMFS disbursed payments to the successful bidders and began collecting fees to repay the loan. Since only $13.1 million was expended from the total loan amount, $10.4 million in funds remained available.

In 2018, the SRA informed NMFS that they wished to access the remaining loan amounts to undertake a second buyback. To implement this next buyback, the SRA, on behalf of the reduction fishery, was required to draft and submit a reduction plan to NMFS. On June 21, 2018, the SRA submitted a reduction plan to access $10.1 million of the remaining $10.4 million in funds to remove 36 permits. NMFS approved the proposed second fishing capacity reduction plan in November 2018.

NMFS published a notice of eligible voters on December 3, 2018 (83 FR 62302) informing the public of the permanent permit holders eligible to vote in the referendum and informing the eligible voters of the referendum voting period.

Purpose

The purpose of this notice is to announce the current fee rates for the reduction fishery in accordance with the framework rule at 50 CFR 600.1013(b). Section 600.1013(b) directs NMFS to recalculate the fee to a rate that will be reasonably necessary to ensure reduction loan repayment within the specified 40-year term.

For the 2022 fishing season, the fee rate for both Loan A and Loan B was one percent of the landed value and any subsequent bonus payment. Loan A is currently 13 years ahead of the scheduled amortization and will remain well ahead so we are leaving the rate at 1 percent of gross value of salmon sold. Loan B is 1.5 years behind the scheduled amortization and currently owes more than the original loan amount. Beginning June 1, 2022, the Loan B fee rate will be increased from 1 percent to 2.5 percent of gross value of salmon sold and is projected to be current at the end of the 2022 season.

Fish buyers may continue to use *Pay.gov* to disburse collected fee deposits at: *http://www.pay.gov/paygov/*. Please visit the NOAA Fisheries website for additional information at: *https://www.fisheries.noaa.gov/alaska/funding-and-financial-services/southeast-alaska-purse-seine-salmon-fishery-buyback-program.*

Notice

The new fee rate for the Southeast Alaska Purse Seine Salmon Fishery will begin on June 1, 2022.

From and after this date, all subsector members paying fees on the Southeast Alaska Purse Seine Salmon Fishery shall begin paying program fees at the revised rate.

Fee collection and submission shall follow previously established methods in § 600.1013 of the framework rule and in the final fee rule published in the **Federal Register** on October 6, 2011 (76 FR 61985).

Authority: 16 U.S.C. 1861 *et seq.;* Pub. L. 108–447.

Dated: May 9, 2022.

Brian T. Pawlak,

Chief Financial Officer/Chief Administrative Officer, Director, Office of Management and Budget, National Marine Fisheries Service.

[FR Doc. 2022–11065 Filed 5–23–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC053]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of hybrid meeting open to the public offering both in-person and virtual options for participation.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a four-day meeting to consider actions affecting the Gulf of Mexico fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will convene Tuesday, June 21 through Thursday, June 23, 2022 at 8 a.m.–5:15 p.m., EDT, and Friday, June 24, 2022 at 8 a.m.–4:30 p.m., EDT.

ADDRESSES:

Meeting address: The meeting will take place at the Crowne Plaza at Bell Tower Shops, located at 13051 Bell Tower Drive, Fort Myers, FL 33907.

Please note, in-person meeting attendees will be expected to follow any current COVID–19 safety protocols as determined by the Council, hotel and the City of Ft. Myers, if any. Such precautions may include masks, room capacity restrictions, and/or social distancing. If you prefer to ''listen in'', you may access the log-on information by visiting our website at *www.gulfcouncil.org.*

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Carrie Simmons, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Tuesday, June 21, 2022; 8 a.m.–5:15 p.m., EDT

The meeting will begin with the Habitat Protection and Restoration Committee reviewing and discussing the

Essential Fish Habitat Generic Amendment, results of the Aquaculture Opportunity Area Atlas of the Gulf of Mexico, and Notice of Intent to Prepare a Programmatic Environmental Impact Statement for Aquaculture Opportunity Areas in the Gulf of Mexico. The committee will receive updates on Ocean Era and Manna Fish Farms Projects in the Gulf of Mexico and American the Beautiful 30 x 30 Council Coordination Committee (CCC) Area-based Management Sub-committee update.

The *Coral* Committee will review the results from the *Coral* RFP: Gulf of Mexico Mesophotic and Deepwater Coral Assessment; and, discuss the Joint *Coral* Advisory Panel (AP) and *Coral* Scientific and Statistical Committees (SSC) Recommendations and Proposed Next Steps.

The *Mackerel* Committee will review and discuss *Coastal Migratory Pelagics* Landings, Final Action Item: Framework Amendment 11: Modifications to the Gulf of Mexico *Migratory Group King Mackerel* Catch Limits, Research Set Aside Presentations on Efforts from the Mid-Atlantic and New England Councils, and Draft Amendment 33: Modifications to the Gulf Migratory Group King Mackerel Sector Allocation.

The *Shrimp* Committee will receive an update on National Marine Fisheries Service (NMFS) Pilot Testing of Cellular Electronic Logbook (ELB) Units on Gulf *Shrimp* Vessels, *Shrimp* Commercial Logbook Reporting Concepts and Improvements, updated Draft Framework Action: Modification of the Vessel Position Data Collection Program for the Gulf of Mexico Shrimp Fishery; and SSC Recommendations.

At approximately 5 p.m. until 5:15 p.m., the Council will convene the Full Council in a Closed Session to finalize the selection of *Coral,* Data Collection, and *Spiny Lobster* Advisory Panel Members.

Wednesday, June 22, 2022; 8 a.m.–5:15 p.m., EDT

The *Reef Fish* Committee will convene to review *Reef Fish* Landings and Individual Fishing Quota (IFQ) Landings and Status of Revised Recreational *Red Snapper* Calibration Ratios. The committee will review Draft Options Amendment 54: Modifications to the *Greater Amberjack* Catch Limits and Sector Allocations, and other Rebuilding Plan Modifications, Draft Emergency Rule to Modify Recreational and Commercial *Greater Amberjack* Fishing Seasons, and Draft Options: Modification of Catch Limits for Gulf of Mexico *Red Snapper.* Following lunch, the committee will receive a presentation and hold a discussion on the Gulf of Mexico *Gag Grouper* Interim Rule, receive an Update on Efforts of the IFQ Focus Group, review of Southeast Fisheries Science Center (SEFSC) Analysis of Historical *Red Grouper* Stock Assessments using Alternative Marine Recreational Information Program Landings Data, discuss *Goliath Grouper* Closure and Federal Catch Limits, and receive a presentation on Return 'Em Right.

The SEDAR Committee will receive a summary report from the May 9, 2022 SEDAR Steering Committee Meeting.

Thursday, June 23, 2022; 8 a.m.–5:15 p.m., EDT

The Data Collection Committee will review Draft Framework Action: Modification to Location Reporting Requirements for For-Hire Vessels, receive update on Southeast For-Hire Integrated Electronic Reporting (SEFHIER) Program, receive presentation on Framework Action to Modify For-Hire Trip Declaration Requirements, review Draft Options Joint Amendment to Require Electronic Reporting for Commercial Logbooks, and receive an overview and demonstration of new SERO-Permits system.

Approximately 11:30 a.m., EDT, the Council will reconvene with a Call to Order, Announcements and Introductions, Presentation of the 2021 Law Enforcement Team of the Year Award, and Adoption of Agenda and Approval of Minutes. The Council will receive presentations on NOAA Fisheries' Equity and Environmental Justice Strategy; update on CCC informal-working group: Equity and Environmental Justice in Fisheries Management, Update from Bureau of Ocean Energy Management (BOEM) on Wind Energy Development in the Gulf of Mexico, and ICCAT Presentation.

The Council will hold public testimony from 2:45 p.m. to 5:15 p.m., EDT on Final Action Items Framework Action: Modification to Location Reporting Requirements for For-Hire Vessels, Final Draft Framework Amendment 11: Modifications to the Gulf of Mexico Migratory Group *King Mackerel* Catch Limits; comments on the Aquaculture Opportunity Areas in the Gulf of Mexico Notice of Intent; and open testimony on other fishery issues or concerns. Public comment may begin earlier than 2:45 p.m. EDT, but will not conclude before that time. Persons wishing to give public testimony in-person must register at the registration kiosk in the meeting room. Persons wishing to give public testimony virtually must sign up via the link on the Council website. Registration for virtual testimony is open at the start of the meeting, Tuesday, June 21, 2022 at 8 a.m., EDT and closes one hour before public testimony begins on Thursday, June 23, 2022 (1:45 p.m., EDT).

Friday, June 24, 2022; 8 a.m.–4:30 p.m., EDT

The Council will receive Committee reports from *Coral,* Habitat Protection and Restoration, *Mackerel, Shrimp, Reef Fish,* Data Collection, Gulf SEDAR Management Committees; and, a Closed Session report. The Council will receive updates from the following supporting agencies: South Atlantic Fishery Management Council; Florida Law Enforcement Efforts; NOAA Office of Law Enforcement (OLE); Gulf States Marine Fisheries Commission; U.S. Coast Guard; U.S. Fish and Wildlife Service; and Department of State.

The Council will discuss any Other Business items.

—Meeting Adjourns

The meeting will be a hybrid meeting; both in-person and virtual participation available. You may register for the webinar to listen-in only by visiting *www.gulfcouncil.org* and click on the Council meeting on the calendar.

The timing and order in which agenda items are addressed may change as required to effectively address the issue, and the latest version along with other meeting materials will be posted on the website as they become available.

Although other non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meeting. Actions will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid or accommodations should be directed to Kathy Pereira, (813) 348–1630, at least 15 days prior to the meeting date.

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

Dated: May 18, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–11071 Filed 5–23–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–T–2022–0017]

USPTO To Accelerate Transition To Issuance of Electronic Trademark Registration Certificates; Issuing Next Certificates on May 24, 2022

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) is accelerating the transition date for issuance of electronic trademark registration certificates to May 24, 2022. On and after that date, the electronic registration certificate will be the official registration certificate. Because of a nationwide shortage of the specialized paper, and a recent vendor disruption, the USPTO will not issue registration certificates between May 10 and May 23, 2022, while the USPTO transitions to this new program. The new program will make the issuance of registration certificates more resilient. After the USPTO begins issuing electronic registration certificates, trademark owners will have the option to order paper ''presentation'' copies. Registrants will also continue to be able to order certified copies of their trademark registrations.

FOR FURTHER INFORMATION CONTACT: Catherine Cain, Office of the Deputy Commissioner for Trademark Examination Policy, USPTO, at 571–272–8946 or *TMFRNotices@uspto.gov.*

SUPPLEMENTARY INFORMATION: The USPTO published a notice in the **Federal Register** on May 2, 2022 (87 FR 25623), notifying the public that it would begin issuing trademark registration certificates electronically via the Trademark Status and Document Retrieval (TSDR) system on June 7, 2022. The USPTO is accelerating the transition date for issuance of electronic trademark registration certificates to May 24, 2022. The new date accelerates the benefits of the electronic certificates, quickly adjusts for a paper vendor disruption that recently presented, and improves the resiliency of the USPTO to issue trademark registrations going forward.

The USPTO will not issue registration certificates between May 10 and May 23, 2022, while it transitions to the new, electronic process. In the course of addressing the issue caused by the paper shortage, the status of some applications was inadvertently changed to registered on May 10. The USPTO corrected the status of those applications to pending on May 11.

As stated in the May 2, 2022 notice, upon implementation of electronic trademark registration certificates, all registration certificates issued by the USPTO will be made under the electronic signature of the Director and with a digital seal, which will authenticate the registration. The USPTO will upload the official registration certificate to the TSDR database, and an electronic notice will be emailed to the trademark owner and all email addresses of record with a link to access the certificate upon issuance. Trademark owners will be able to use the emailed link to view, download, and print a complete copy of the registration certificate at no charge at any time. Trademark owners who file an initial application on or after the implementation date will be able to order presentation copies for $25 per copy through the Trademark Electronic Application System (TEAS). Trademark owners who filed an initial application before the implementation date will be able to order one presentation copy for free. Trademark owners will continue to be able to order certified copies of their trademark registration for a fee. The certified copy certifies the status and title of the registration and includes the signature of an authorized certifying officer.

Katherine K. Vidal,

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

[FR Doc. 2022–11196 Filed 5–23–22; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[OMB Control No. 0651–NEW; Docket No. PTO–C–2022–0018]

Information Collection; Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)

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

ACTION: Notice; request for comment.

SUMMARY: The United States Patent and Trademark Office (USPTO or Agency) as part of its continuing effort to reduce paperwork and respondent burden, is announcing an opportunity for public comment on a new proposed collection of 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, and to allow 60 days for public comment in response to the notice. This notice solicits comments on new collection proposed by the Agency.

DATES: Submit comments on or before: July 25, 2022.

ADDRESSES: Submit comments identified by Information Collection 0651–NEW, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation), by any of the following methods:

- *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.

Mail: Kimberly Hardy, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450. 0651–NEW, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation).

Instructions: Please submit comments only and cite Information Collection 0651–NEW, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation), in all correspondence related to this collection. To confirm receipt of your comment(s), please check *regulations.gov,* approximately 2–3 business days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Charles Thomas, Customer Experience Administrator for Trademarks, and/or Toni Krasnic, Customer Experience Administrator for Patents, via email to *Charles.Thomas1@uspto.gov* and/or *Toni.Krasnic@uspto.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the PRA, (44 U.S.C. 3501–3520) Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''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 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, USPTO is publishing notice of the proposed collection of information set forth in this document.

Whether seeking a loan, Social Security benefits, veteran's benefits, or other services provided by the Federal Government, individuals and businesses expect Government customer services to be efficient and intuitive, just like services from leading private-sector organizations. Yet the 2016 American Consumer Satisfaction Index and the 2017 Forrester Federal Customer Experience Index show that, on average, Government services lag nine percentage points behind the private sector.

A modern, streamlined, and responsive customer experience means: Raising governmentwide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership. To support this, OMB Circular A–11 Section 280 established governmentwide standards for mature customer experience organizations in government and measurement. To enable Federal programs to deliver the experience taxpayers deserve, they must undertake three general categories of activities: Conduct ongoing customer research, gather and share customer feedback, and test services and digital products.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*i.e.,* in person, video, and audio collections), interviews, questionnaires, surveys, and focus groups. USPTO will limit its inquiries to data collections that solicit strictly voluntary opinions or responses. Steps will be taken to ensure anonymity of respondents in each activity covered by this request.

The results of the data collected will be used to improve the delivery of Federal services and programs. It will include the creation of personas, customer journey maps, and reports and summaries of customer feedback data and user insights. It will also provide governmentwide data on customer experience that can be displayed on performance.gov to help build transparency and accountability of Federal programs to the customers they serve.

Method of Collection

USPTO will collect this information by electronic means when possible, as well as by mail, fax, telephone, technical discussions, and in-person interviews. USPTO may also utilize observational techniques to collect this information.

Data

Form Number(s): None.
Type of Review: New.

B. Annual Reporting Burden

Affected Public: Collections will be targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future. For the purposes of this request, ''customers'' are individuals, businesses, and organizations that interact with a Federal Government agency or program, either directly or via a Federal contractor. This could include individuals or households; businesses or other for-profit organizations; not-for-profit institutions; State, local or tribal governments; Federal government; and universities.

Estimated Number of Respondents: 2,001,550.

Estimated Time per Response: Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire or survey may be 3 minutes or up to 1.5 hours to participate in an interview.

Estimated Total Annual Burden Hours: 101,125.

Estimated Total Annual Cost to Public: $2,737,454.

C. Public Comments

USPTO invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and cost) 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. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Kimberly Hardy,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2022–11149 Filed 5–23–22; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Patents External Quality Survey

The United States Patent and Trademark Office (USPTO) 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 USPTO invites comment on this information collection renewal, which helps the USPTO assess the impact of its information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on March 15, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

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

Title: Patents External Quality Survey.

OMB Control Number: 0651–0057.

Needs and Uses: The USPTO's Patents External Quality Survey is an instrument designed to measure opinions about the services that USPTO provides its patent application customers. The results from this voluntary survey will assist the USPTO in guiding improvements and enhancements in the future. The USPTO conducts the Patents External Quality Survey as part of its quality improvement efforts under E.O. 14058, Transforming Federal Customer Experience and Service Delivery to

Rebuild Trust in Government (Dec. 13, 2021). This survey narrows the focus of customer satisfaction to examination quality and uses a longitudinal, rotating panel design to assess changes in customer perceptions and to identify key areas for examiner training and opportunities for improvement. The USPTO surveys patent agents, attorneys, and other individuals from large domestic corporations (including those with 500+ employees), small and medium-size businesses, independent inventors, and universities, and other non-profit research organizations. This survey does not include foreign entities. The USPTO random sample used in this survey is drawn from the Patent Application and Location Management (PALM) database. The sample population is drawn from the top filing firms and entities that have filed five or more patent applications in a 12-month period. This ongoing survey is generally conducted twice a year. The USPTO uses a rotating panel design where participants will take the survey twice in back-to-back survey periods. Half the participants in each survey period are new, completing the survey for the first time, and half are returning to complete the survey for a second time. This design allows a precise measurement of changes in customer experience over time. The Patents External Quality Survey is primarily a web-based survey, although respondents can also complete the survey via paper and mail if they prefer. The content of both versions is identical. Potential respondents are sent either an email or mailed pre-survey letter, depending on noted preferences for contact. At the beginning of each survey period, respondents are provided instructions for accessing and completing the survey electronically. After a specified response period, a survey packet containing a questionnaire, a separate cover letter prepared by the Deputy Commissioner for Patents, and a postage-paid, preaddressed return envelope are mailed to all sample members that have not yet submitted a response. Sampled members receiving a paper survey can still complete the survey electronically if they prefer. Reminder/thank you postcards and telephone calls are used to encourage responses from sample members.

Form Numbers:

• PTO/2325 (Patents External Quality Survey).

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector.

Respondent's Obligation: Voluntary.

Frequency: On occasion.

Estimated Number of Annual Respondents: 1,875 respondents.

Estimated Number of Annual Responses: 3,100 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public between 2 minutes (0.03 hours) and 10 minutes (0.17 hours) to complete. This includes the time to gather the necessary information, answer the survey prompts, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 444 hours.

Estimated Total Annual Respondent Non-Hourly Cost Burden: $0.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce, USPTO information collections currently under review by OMB.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 0651–0057.

Further information can be obtained by:

• *Email: InformationCollection@uspto.gov.* Include ''0651–0057 information request'' in the subject line of the message.

• *Mail:* Kimberly Hardy, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Kimberly Hardy,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2022–11156 Filed 5–23–22; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 9:30 a.m. EDT, Thursday, May 26, 2022.

PLACE: CFTC headquarters office, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.cftc.gov/.*

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

Authority: 5 U.S.C. 552b.

Dated: May 19, 2022.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2022–11211 Filed 5–20–22; 11:15 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0033]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau or CFPB) is requesting to extend the Office of Management and Budget's (OMB's) approval for an existing information collection titled, ''Privacy of Consumer Financial Information (Regulation P).''

DATES: Written comments are encouraged and must be received on or before July 25, 2022 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: PRA_Comments@cfpb.gov.* Include Docket No. CFPB–2022–0033 in the subject line of the email.

• *Mail/Hand Delivery/Courier:* Comment Intake, Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier. Please note that comments submitted after the comment period will not be accepted. 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: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Anthony May, PRA Officer, at (202) 435–7278, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Privacy of Consumer Financial Information (Regulation P).

OMB Control Number: 3170–0010.

Type of Review: Extension of a currently approved information collection.

Affected Public: Private sector: businesses or other for-profits.

Estimated Number of Respondents: 462,760.

Estimated Total Annual Burden Hours: 312,916.

Abstract: Section 502 of the Gramm-Leach-Bliley Act (GLBA) (Pub. L. 106–102) generally prohibits a financial institution from sharing nonpublic personal information about a consumer with nonaffiliated third parties unless the institution satisfies various disclosure requirements (*e.g.,* provision of initial privacy notices, annual notices, notices of revisions to the institution's privacy policy and opt-out notices) and the consumer has not elected to opt out of the information sharing. The Bureau promulgated Regulation P (12 CFR 1016) to implement the GLBA notice requirements and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau'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 summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2022–11146 Filed 5–23–22; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0030]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (CFPB or Bureau) requests the extension of the Office of Management and Budget's (OMB's) approval of the existing information collection titled, ''Consumer Complaint Intake System Company Portal Boarding Form,'' approved under OMB Control Number 3170–0054.

DATES: Written comments are encouraged and must be received on or before June 23, 2022 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.* 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: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Anthony May, Paperwork Reduction Act Officer, at (202) 841–0544, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Consumer Complaint Intake System Company Portal Boarding Form.

OMB Control Number: 3170–0054.

Type of Review: Extension of a currently approved information collection.

Affected Public: Private sector.

Estimated Number of Respondents: 400.

Estimated Total Annual Burden Hours: 85.

Abstract: Section 1013(b)(3)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, requires the Bureau to ''facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services.'' [1] In furtherance of its statutory mandates related to consumer complaints, the Bureau utilizes a Consumer Complaint Intake System Company Portal Boarding Form (Boarding Form) to sign up companies for access to the secure, web-based Company Portal (Company Portal). The Company Portal allows companies to view and respond to complaints submitted to the Bureau, supports the efficient routing of consumer complaints to companies, and enables a timely and secure response by companies to the Bureau and consumers.[2]

Request for Comments: The Bureau published a 60-day **Federal Register** notice on 1/28/2022 (87 FR 4570) under Docket Number: CFPB–2022–0005. The Bureau is soliciting comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau'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

[1] Codified at 12 U.S.C. 5493(b)(3)(A). *See also* Dodd-Frank Act, section 1034 (discussing responses to consumer complaints), codified at 12 U.S.C. 5534; section 1021(c)(2) (noting that one of the Bureau's primary functions is ''collecting, investigating, and responding to consumer complaints''), codified at 12 U.S.C. 5511(c)(2).

[2] In addition to the Boarding Form for companies, the Bureau utilizes separate OMB-approved forms to board government agencies and congressional offices onto their own distinct portals to access certain complaint information through OMB Control Number 3170–0057 (Consumer Response Government and Congressional Boarding Forms; expires 6/30/2022).

notice will be submitted to 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. 2022–11147 Filed 5–23–22; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Consumer Advisory Board Meeting

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Consumer Advisory Board (CAB) of the Consumer Financial Protection Bureau (CFPB or Bureau). The notice also describes the functions of the advisory board.

DATES: The meeting date is Wednesday, June 8, 2022, from approximately 1:00 p.m. to 5:00 p.m. eastern daylight time. This meeting will be held virtually and is open to the general public. Members of the public will receive the agenda and dial-in information when they RSVP.

FOR FURTHER INFORMATION CONTACT: Kim George, Outreach and Engagement Associate, Section for Advisory Board and Councils, Office of Stakeholder Management, at 202–450–8617, or email: *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 3 of the Charter of the CAB states that: The purpose of the CAB is outlined in section 1014(a) of the Dodd-Frank Act, which states that the CAB shall ''advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws'' and ''provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.''

To carry out the CAB's purpose, the scope of its activities shall include providing information, analysis, and recommendations to the Bureau. The CAB will generally serve as a vehicle for trends and themes in the consumer finance marketplace for the Bureau. Its objectives will include identifying the impact on consumers and other market participants of new, emerging, and changing products, practices, or services.

II. Agenda

The CAB will discuss broad policy matters related to the CFPB's Unified Regulatory Agenda and general scope of authority.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten (10) business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. The CFPB will strive to provide but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CAB members for consideration. Individuals who wish to join this meeting must RSVP via this link *https://surveys.consumerfinance.gov/jfe/form/SV_dhAMed6IGaQocC2* by noon, June 7, 2022. Members of the public must RSVP by the due date.

III. Availability

The CAB's agenda will be made available to the public on Tuesday, June 7, 2022, via *consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and summary of this meeting will be available after the meeting on the CFPB's website *consumerfinance.gov.*

Jocelyn Sutton,

Deputy Chief of Staff, Consumer Financial Protection Bureau.

[FR Doc. 2022–11115 Filed 5–23–22; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0029]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (CFPB or Bureau) requests the extension of the Office of Management and Budget's (OMB's) approval of the existing information collection titled, ''Registration of Mortgage Loan Originators (Regulation G),'' approved under OMB Control Number 3170–0005.

DATES: Written comments are encouraged and must be received on or before June 23, 2022 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.* 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: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Anthony May, Paperwork Reduction Act Officer, at (202) 841–0544, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Registration of Mortgage Loan Originators (Regulation G).

OMB Control Number: 3170–0005.

Type of review: Extension of a currently approved information collection.

Affected Public: Businesses and other for-profit institutions.

Estimated Number of Respondents: 261,638.

Estimated Total Annual Burden Hours: 249,628.

Abstract: Regulation G (12 CFR part 1007 *et seq.*) implements the Secure and Fair Enforcement for Mortgage Licensing Act (the S.A.F.E. Act, 12 U.S.C. 5101 *et seq.*) which contains the Federal registration requirement with respect to any covered financial institutions and their employees who act as residential mortgage loan originators (MLOs). Regulation G

requires covered institutions to register with the Nationwide Mortgage Licensing System and Registry, to obtain a unique identifier, to maintain this registration, and to disclose to consumers the unique identifier. Regulation G also requires the covered financial institutions employing these MLOs to adopt and to follow written policies and procedures ensuring their employees comply with these requirements and disclose the unique identifiers of their MLOs.

Request for Comments: The Bureau published a 60-day **Federal Register** notice on 2/8/2022 (87 FR 7162) under Docket Number: CFPB–2022–0010. The Bureau is soliciting comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau'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 submitted to 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. 2022–11148 Filed 5–23–22; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0028]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau or CFPB) is requesting to extend the Office of Management and Budget's (OMB's) approval for an existing information collection titled, ''Consumer Response Intake Form.''

DATES: Written comments are encouraged and must be received on or before July 25, 2022 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: PRA_Comments@cfpb.gov.* Include Docket No. CFPB–2022–0028 in the subject line of the email.
- *Mail/Hand Delivery/Courier:* Comment Intake, Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier. Please note that comments submitted after the comment period will not be accepted. 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: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Anthony May, PRA Officer, at (202) 435–7278, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Consumer Response Intake Form.

OMB Control Number: 3170–0011.

Type of Review: Revision of a currently approved information collection.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 2,150,000.

Estimated Total Annual Burden Hours: 415,000.

Abstract: The Consumer Response Intake Form is designed to aid consumers in the submission of complaints, inquiries, and feedback and to help the Bureau fulfill its statutory requirements. Consumers (also referred to as respondents) will be able to complete and submit information through the Intake Form electronically on the Bureau's website. Alternatively, respondents may request that the Bureau mail a paper copy of the Intake Form and then mail it back to the Bureau or call to submit a complaint by telephone. The questions within the Intake Form prompt respondents for a description of, and key facts about, the complaint at issue, the desired resolution, contact and account information, information about the company they are submitting a complaint about, and previous action taken to attempt to resolve the complaint.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau'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 summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2022–11141 Filed 5–23–22; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0032]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau or CFPB) is requesting to extend the Office of Management and Budget's (OMB's) approval for an existing information collection titled, ''Equal Credit Opportunity Act (Regulation B).''

DATES: Written comments are encouraged and must be received on or before July 25, 2022 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information

collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: PRA_Comments@cfpb.gov.* Include Docket No. CFPB–2022–0032 in the subject line of the email.
- *Mail/Hand Delivery/Courier:* Comment Intake, Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier. Please note that comments submitted after the comment period will not be accepted. 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: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Anthony May, PRA Officer, at (202) 435–7278, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Equal Credit Opportunity Act (Regulation B).

OMB Control Number: 3170–0013.

Type of Review: Extension of a currently approved information collection.

Affected Public: Private sector: businesses or other for-profits.

Estimated Number of Respondents: 82,666,000.

Estimated Total Annual Burden Hours: 1,220,992.

Abstract: The Equal Credit Opportunity Act (ECOA) was enacted to ensure that credit is made available to all creditworthy applicants without discrimination on the basis of sex, marital status, race, color, religion, national origin, age, or other prohibited bases under the ECOA. The ECOA allows for creditors to collect information for self-testing against these criteria, while not allowing creditors to use this information in making credit decisions of applicants. For certain mortgage applications, the ECOA requires creditors to ask for some of the prohibited information for monitoring purposes. Additionally, for certain mortgage applications, creditors are required to send a copy of any appraisal or written valuation used in the application process to the applicant in a timely fashion.

The ECOA also prescribes creditors must inform applicants of decisions made on credit applications. Particularly where creditors make adverse actions on credit applications or existing accounts, creditors must inform consumers as to why the adverse action was taken such that credit applicants can challenge errors or learn how to become more creditworthy. Creditors must retain all application information for 25 months including notices that they sent, and any information related to adverse actions. The ECOA requires creditors who furnish applicant information to a consumer reporting agency to reflect participation of the applicant's spouse if the spouse is permitted to use or is contractually liable on the account.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau'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 summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2022–11142 Filed 5–23–22; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0031]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (CFPB or Bureau) requests the extension of the Office of Management and Budget's (OMB's) approval of the existing information collection titled, ''Consumer Response Government and Congressional Portal Boarding Forms,'' approved under OMB Control Number 3170–0057.

DATES: Written comments are encouraged and must be received on or before June 23, 2022 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.* 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: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Anthony May, Paperwork Reduction Act Officer, at (202) 841–0544, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Consumer Response Government and Congressional Portal Boarding Forms.

OMB Control Number: 3170–0057.

Type of Review: Extension of a currently approved information collection.

Affected Public: State, Local, and Tribal Governments; Federal Government.

Estimated Number of Respondents: 60.

Estimated Total Annual Burden Hours: 14.

Abstract: Section 1013(b)(3)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act) requires the Bureau to ''facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or

services.'' [1] The Act also requires the Bureau to ''share consumer complaint information with prudential regulators, the Federal Trade Commission, other Federal agencies, and State agencies.'' [2] To facilitate the collection of complaints, the Bureau accepts consumer complaints submitted by members of Congress on behalf of their constituents with the consumer's express written authorization for the release of their personal information. In furtherance of its statutory mandates related to consumer complaints, the Bureau uses Government and Congressional Portal Boarding Forms (*i.e.,* Boarding Forms) to register users for access to secure, web-based portals. The Bureau has developed separate portals for congressional users and other government users as part of its secure web portal offerings (the Government Portal and the Congressional Portal, respectively).[3]

Through the Government Portal, government users can view consumer complaint information in a user-friendly format that allows easy review of complaints currently active in the Bureau process, complaints referred to a prudential Federal regulator, and other closed/archived complaints.

Through the Congressional Portal, members of Congress and authorized congressional office staff can view data associated with consumer complaints they submit on behalf of their constituents with the consumer's express written authorization for the release of their personal information. The Congressional Portal only displays information about complaints submitted by the individual congressional office.

Request for Comments: The Bureau published a 60-day **Federal Register** notice on 1/28/2022 (87 FR 4569) under Docket Number: CFPB–2022–0006. The Bureau is soliciting comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau'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 submitted to 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. 2022–11145 Filed 5–23–22; 8:45 am]

BILLING CODE 4810–AM–P

[1] Codified at 12 U.S.C. 5493(b)(3)(A).

[2] Dodd-Frank Act section 1013(b)(3)(D), codified at 12 U.S.C. 5493(b)(3)(D).

[3] In addition to the boarding forms for congressional and government users, the Bureau utilizes a separate OMB-approved form to board companies onto their own distinct portal to access complaints submitted against them, through OMB Control Number 3170–0054 (Consumer Complaint Intake System Company Portal Boarding Form Information Collection System).

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2022–0017]

Notice of Availability: Voluntary Standards Evaluation Under the Portable Fuel Container Safety Act of 2020

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice of availability.

SUMMARY: The Consumer Product Safety Commission (Commission or CPSC) is announcing the availability of a draft document titled, ''Voluntary Standards Evaluation Under the Portable Fuel Container Safety Act of 2020.''

DATES: Submit comments by June 23, 2022.

ADDRESSES: You can submit comments, identified by Docket No. CPSC–2022–0017, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. CPSC does not accept comments submitted by electronic mail (email), except through *https://www.regulations.gov,* and as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/hand delivery/courier/confidential Written Submissions: Submit comments by mail, hand delivery, or courier to: Division of the Secretariat, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit through this website: Confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2022–0017, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Andrew Lock, Fire Protection Engineer, Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301) 987–2099; email: *alock@cpsc.gov.*

SUPPLEMENTARY INFORMATION: The Portable Fuel Container Safety Act of 2020 (PFCSA) requires the Commission, not later than June 27, 2023, to promulgate a final rule to require flame mitigation devices in portable fuel containers that impede the propagation of flame into the container. 15 U.S.C. 2056d(b)(1).[1] The PFCSA states, however, that the Commission is not required to promulgate a final rule if the Commission determines that the requirements for an exception relating to voluntary standards are met. 15 U.S.C. 2056d(b)(3)(A). Specifically, the Commission may rely on voluntary standards instead of the required rulemaking for a class of portable fuel containers within the scope of the Act if the following requirements are met:

- There is a voluntary standard for flame mitigation devices for those containers that impedes the propagation of flame into the container;
- The voluntary standard is or will be in effect not later than June 27, 2022; and
- The voluntary standard is developed by ASTM International or such other standard development organization that the Commission determines to have met the intent of the PFCSA.

15 U.S.C. 2056d(b)(3)(A).

[1] The Commission voted 4–0 to approve this notice.

If the Commission makes such a determination with respect to any voluntary standard, then the requirements of such voluntary standard shall be treated as a consumer product safety rule 180 days after publication of the Commission's determination in the **Federal Register**. 15 U.S.C. 2056d(b)(4).

The CPSC staff draft document, ''Voluntary Standards Evaluation Under the Portable Fuel Container Safety Act of 2020,'' [2] provides staff's initial assessment and recommendations to the Commission regarding whether the relevant voluntary standards qualify for the exception from the rulemaking requirement in the PFCSA. The draft document is available on the Commission's website at: *https://www.cpsc.gov/s3fs-public/2022-Fire-Safety-of-Portable-Fuel-Containers-Memo.pdf?VersionId=K_Tk.uklDYtld1o45_OHMHnqeHdrYCME* and from the Commission's Division of the Secretariat at the location listed in the **ADDRESSES** section of this notice.

The Commission invites comment on the draft document, ''Voluntary Standards Evaluation Under the Portable Fuel Container Safety Act of 2020,'' and whether the Commission should determine that the voluntary standards discussed in that document meet the requirements for the exception from rulemaking in 15 U.S.C. 2056d(b)(3)(A). Comments should be submitted by June 23, 2022. Information on how to submit comments can be found in the **ADDRESSES** section of this notice.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2022–11094 Filed 5–23–22; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Policy, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Policy Board (DPB) will take place.

DATES: Closed to the public, Tuesday, June 7, 2022, from 9:00 a.m. to 5:00 p.m. and Wednesday, June 8, 2022 from 8:30 a.m. to 11:30 a.m.

ADDRESSES: The closed meeting will be held at The Pentagon, 2000 Defense Pentagon, Washington, DC 20301–2000.

FOR FURTHER INFORMATION CONTACT: Ms. Stacee Bako, (703) 571–9234 (voice), 703–697–8606 (facsimile), *osd.pentagon.rsrcmgmt.list.ousd-policy-defense-board-mbx@mail.mil* (email). Mailing address is 2000 Defense Pentagon, Washington, DC 20301–2000.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., App.), the Government in the Sunshine Act (''the Sunshine Act'') (5 U.S.C. 552b), and Title 41 Code of Federal Regulations (CFR), Sections 102–3.140 and 102–3.150.

Purpose of the Meeting: To obtain, review, and evaluate classified information related to the DPB's mission to advise on (a) issues central to strategic DoD planning; (b) policy implications of U.S. force structure and modernization on DoD's ability to execute U.S. defense strategy; (c) U.S. regional defense policies; and (d) other defense policy topics of special interest to the DoD, as determined by the Secretary of Defense, the Deputy Secretary of Defense, or the Under Secretary of Defense for Policy.

Agenda: On June 7, 2022, and June 8, 2022, the DPB will received classified briefings and hold classified discussions on the Department of Defense actions with regard to the war in Ukraine. The board will be addressed by the Secretary of Defense, the Deputy Secretary of Defense, and the Undersecretary of Defense for Policy. The board will receive classified briefings on (1) implementation of the National Defense Strategy and integrated deterrence; (2) a current intelligence briefing on Ukraine; (3) a discussion on the Ukrainian security environment; (4) a budget priority briefing and (5) discussions on the briefings in a classified session with the Secretary, and the Under Secretary of Defense.

Meeting Accessibility: In accordance with section 10(d) of the FACA and 41 CFR 102–3.155, the DoD has determined that this meeting shall be closed to the public. The Under Secretary of Defense (Policy), in consultation with the DoD FACA Attorney, has determined in writing that this meeting be closed to the public because the discussions fall under the purview of Section 552b(c)(1) of the Sunshine Act and are so inextricably intertwined with unclassified material that they cannot reasonably be segregated into separate discussions without disclosing classified material.

Written Statements: In accordance with Section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140(c), the public or interested organizations may submit written statements to the membership of the DPB at any time regarding its mission or in response to the stated agenda of a planned meeting. Written statements should be submitted to the DPB's Designated Federal Officer (DFO), which is listed in this notice or can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.* Written statements that do not pertain to a scheduled meeting of the DPB may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The DFO will review all submitted written statements and provide copies to all members.

Dated: May 18, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–11088 Filed 5–23–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–HA–0058]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Health Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the

[2] This CPSC staff document has not been reviewed by, and does not necessarily reflect the views of, the Comission.

burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 25, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Health Agency Uniform Business Office, 8111 Gatehouse Road, Suite #221 Falls Church, VA 22042–5101, DeLisa Prater, or call 703–275–6380.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Third Party Collection Program (Insurance Information); DD Form 2569; OMB Control Number 0720–0055.

Needs and Uses: The DoD is authorized to collect ''reasonable charges'' from third party payers for the cost of inpatient and outpatient services rendered at military treatment facilities (MTFs) to military retirees, all dependents, and other eligible beneficiaries who have private health insurance. The DoD may also collect the cost of trauma or other medical care provided from civilians (or their insurers), and/or the average cost of health care provided to beneficiaries at DoD MTFs from other federal agencies. For DoD to perform such collections, eligible beneficiaries may elect to provide DoD with other health insurance information. For civilian non-beneficiary and interagency patients, DD Form 2569 is necessary and serves as an assignment of benefits, approval to submit claims to payers on behalf of the patient, and authorizes the release of medical information. This form is available to third-party payers upon request.

The collection of personal information from individuals of the public for use in medical services is authorized by Title 10 U.S.C. 1095, ''Health Care Services Incurred on Behalf of Covered Beneficiaries: Collection from Third-Party Payers'' Title 32 CFR 220, ''Collection From Third Party Payers of Reasonable Charges for Healthcare Services,'' Title 10 U.S.C. 1079b(a), ''Procedures for Charging Fees for Care Provided to Civilians; Retention and Use of Fees Collected,'' and Title 10 U.S.C. 1085, ''Medical and Dental Care from Another Executive Department: Reimbursement.''

Affected Public: Individuals or households.

Annual Burden Hours: 386,500.

Number of Respondents: 3,865,000.

Responses per Respondent: 1.5.

Annual Responses: 5,797,500.

Average Burden per Response: 4 minutes.

Frequency: On occasion.

Dated: May 17, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–11028 Filed 5–23–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Reestablishment of Department of Defense Federal Advisory Committees—Air University Board of Visitors

AGENCY: Department of Defense (DoD).

ACTION: Reestablishment of Federal Advisory Committee.

SUMMARY: The DoD is publishing this notice to announce that it is reestablishing the Air University Board of Visitors (AU BoV).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, DoD Advisory Committee Management Officer, 703–692–5952.

SUPPLEMENTARY INFORMATION: The AU BoV is being reestablished in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix) and 41 CFR 102–3.60 through 102–3.70. The charter and contact information for the AU BoV's Designated Federal Officer (DFO) are found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.*

The AU BoV provides the Secretary of Defense and Deputy Secretary of Defense (''the DoD Appointing Authority''), through the Secretary of the Air Force, with independent advice and recommendations on matters pertaining to the Air University (AU) educational, doctrinal, and research policies and activities specifically on matters pertaining to (a) the progress of the educational programs and the support activities of the AU; (b) the published statement of purpose, institutional policies, and financial resources of the AU; and (c) the educational effectiveness quality of student learning, administrative and educational support services, and teaching, research, and public service of the AU.

The AU BoV is composed of no more than 15 members who shall recommend appropriate actions to the DoD Appointing Authority, through the Secretary of the Air Force, who may act upon the AU BoV's advice and recommendations in accordance with DoD policy and procedures.

Individual members are appointed by the DoD Appointing Authority in accordance with DoD policy and procedures, and shall serve a term of service of one-to-four years with annual renewals. The DoD Appointing Authority shall appoint one member of the AU BoV as Chair of the AU BoV, and that person shall serve a term of service of one-to-two years with annual renewal. No member, unless approved according to DoD policy and procedures, may serve more than two consecutive terms of service on the AU BoV, or serve on more than two DoD Federal advisory committees at one time.

AU BoV members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, are appointed as experts or consultants, pursuant to 5 U.S.C. 3109, to serve as special government employee members. AU BoV members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services are appointed pursuant to 41 CFR 102–3.130(a), to serve as regular government employee members.

All AU BoV members are appointed to provide advice based on their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official AU BoV-related travel and per diem, members serve without compensation.

The public or interested organizations may submit written statements about the AU BoV's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the AU BoV. All written statements shall be submitted to the DFO for the AU BoV, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: May 18, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–11075 Filed 5–23–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Record of Decision for the Final Environmental Impact Statement for Testing and Training Activities in the Patuxent River Complex

AGENCY: Department of the Navy (DoN), Department of Defense (DoD).

ACTION: Notice of availability.

SUMMARY: The United States Department of the Navy, after carefully weighing the strategic, operational, and environmental consequences of the Proposed Action (Patuxent River Complex Final Environmental Impact Statement published in the **Federal Register** on March 25, 2022), announces its decision to conduct testing and training as identified in Alternative 2, the Navy's Preferred Alternative, of the Final Environmental Impact Statement (EIS) for Testing and Training Activities in the Patuxent River Complex (PRC).

SUPPLEMENTARY INFORMATION: Implementation of Alternative 2 will enable the Navy and other U.S. military services to meet their respective missions. The Navy's mission, under Title 10 United States Code (U.S.C.) section 8062, is to maintain, train, and equip combat-ready military forces capable of winning wars, deterring aggression, and maintaining freedom of the seas. The Navy will continue to implement the full suite of mitigation measures detailed in Table 3.10–1 (Impact Avoidance and Minimization Measures) of the PRC Final EIS to avoid or reduce potential environmental impacts during testing and training activities. The complete text of the Record of Decision (ROD) for the PRC Final EIS is available on the project website at *www.prceis.com,* along with the March 2022 PRC Final EIS and supporting documents. Single copies of the ROD are available upon request by contacting: Naval Facilities Engineering Systems Command Atlantic, Attention: Code EV21JB, 6506 Hampton Boulevard, Norfolk, VA 23508.

J.M. Pike,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2022–10743 Filed 5–23–22; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0069]

Agency Information Collection Activities; Comment Request; Indian Education Professional Development Grants Program: GPRA and Service Payback Data Collection

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before July 25, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0069. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those 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 PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208B, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Angela Hernandez-Marshall, (202) 987–0202.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), 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. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education 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: Indian Education Professional Development Grants Program: GPRA and Service Payback Data Collection.

OMB Control Number: 1810–0698.

Type of Review: Extension without change of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Individuals or Households.

Total Estimated Number of Annual Responses: 2,326.

Total Estimated Number of Annual Burden Hours: 3,004.

Abstract: The Indian Education Professional Development program, authorized under title VI, part A of the Elementary and Secondary Education Act of 1965, as amended (ESEA), is designed to increase the number of, provide training to, and improve the skills of American Indian or Alaska Natives serving as teachers and school administrators in local educational agencies that serve a high proportion of American Indian or Alaska Native students.

Section 7122(h) of the ESEA (20 U.S.C. 7442(h)) requires that individuals

who receive financial assistance through the Indian Education Professional Development program subsequently complete a service obligation equivalent to the amount of time for which the participant received financial assistance. Participants who do not satisfy the requirements of the regulations must repay all or a pro-rated part of the cost of assistance, in accordance with 20 U.S.C. 7442(h) and 34 CFR 263.9(a)(3). The regulations in part 263 implement requirements governing, among other things, the service obligation and reporting requirements of the participants in the Indian Education Professional Development program, and repayment of financial assistance by these participants. In order for the Federal Government to ensure that the goals of the program are achieved, certain data collection, recordkeeping, and documentation are necessary.

In addition, GPRA requires Federal agencies to establish performance measures for all programs, and the Department has established performance measures for the Indian Education Professional Development program. Data collection from participants who have received financial assistance under the Indian Education Professional Development program is a necessary element of the Department's effort to evaluate progress on these measures.

The Department tracks participants who are receiving or have previously received support through the Indian Education Professional Development program. Participants must sign a payback agreement that includes contact information. Additionally, the Department receives information about participants from institutions of higher education (IHEs) and other eligible grantees when participants are no longer receiving assistance through the Indian Education Professional Development program. When the performance period is complete, the participant data are collected from the grantee and from the participants.

Dated: May 19, 2022.

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. 2022–11106 Filed 5–23–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0072]

Agency Information Collection Activities; Comment Request; National Center for Information and Technical Support for Postsecondary Students With Disabilities (NCITSPSD) Program Database

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before July 25, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0072. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those 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 PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Shedita Alston, 202–453–7090.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), 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. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Center for Information and Technical Support for Postsecondary Students with Disabilities (NCITSPSD) Program Database.

OMB Control Number: 1840–0841.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 4,583.

Total Estimated Number of Annual Burden Hours: 13,749.

Abstract: In 2021, a federal discretionary grant was awarded via the National Center for Information and Technical Support for Postsecondary Students with Disabilities Program (NCITSPSD) to the National Center for College Students with Disabilities (NCCSD) at the University of Minnesota and is authorized by Congress in the Higher Education Opportunity Act of 2008 (777.4). The NCITSPSD program grant was originally awarded in 2015 to the Association on Higher Education and Disability (AHEAD). The NCCSD College Disability Resource Database (CeDar) is designed to address a gap in information about services and accessibility for college students with disabilities, who make up 11% of the undergraduate population. Existing general information about colleges is available in the U.S. Department of Education's on-line College Navigator and College Affordability and Transparency Center, but the only information about students with disabilities in these databases is the percentage of students registered with

campus disability services office. At this time, this is the only database that provides systemic collection of information about campus-level, disability-related services, access, and activities at colleges and universities in the United States. The NCCSD survey asks all U.S. campuses to provide basic information about disability services, accessibility of campuses, and disability-related activities that may affect inclusion and the campus climate. The data is available to the public in an accessible and searchable database to assist prospective college students and their families in making informed decisions during the college search process. Because the database is public, researchers and policy makers are able to utilize the data to gather information about disability and higher education in systemic ways.

Dated: May 19, 2022.

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. 2022–11144 Filed 5–23–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0071]

Agency Information Collection Activities; Comment Request; Financial Report for the Endowment Challenge Grant Program and Institutional Service Endowment Activities

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before July 25, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0071. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those 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 PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beverly Baker, 202–453–6162.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), 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. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education 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: Financial Report for the Endowment Challenge Grant Program and Institutional Service Endowment Activities.

OMB Control Number: 1840–0564.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 2,500.

Total Estimated Number of Annual Burden Hours: 3,125.

Abstract: This financial reporting form will be utilized for Title III Part A, Title III Part B and Title V Program Endowment Activities and Title III Part C Endowment Challenge Grant Program. The purpose of this Financial Report is to have the grantees report annually the kinds of investments that have been made, the income earned and spent, and whether any part of the Endowment Fund Corpus has been spent. This information allows us to give technical assistance and determine whether the grantee has complied with the statutory and regulatory investment requirements.

Dated: May 19, 2022.

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. 2022–11143 Filed 5–23–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Molybdenum-99 Stakeholders Meeting

AGENCY: National Nuclear Security Administration (NNSA), Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces an NNSA Molybdenum-99 (Mo-99) Stakeholders Meeting. This meeting will be held in a hybrid format.

DATES: Wednesday, June 22, 2022, 8:30 a.m.–5:30 p.m.; Thursday, June 23, 2022, 8:30 a.m.–5:30 p.m.

ADDRESSES: The meeting will be held in a hybrid format. Attendees can attend virtually via webcast using Zoom. Instructions for Zoom, as well as any updates to meeting times or agenda, can be found on the Mo-99 Stakeholders Meeting website at *https://mo99.ne.anl.gov/2022stakeholders/.* Attendees can also join in-person at the Fairfield Inn & Suites Chicago Downtown/River North, located at 60 West Illinois Street, Chicago, IL 60654. In-person attendance requires registration and is subject to conference room space limits, as described in the ''Public Participation'' section.

FOR FURTHER INFORMATION CONTACT: Max Postman, Office of Conversion, *OfficeofConversion@nnsa.doe.gov* or (202) 586–9114.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

The American Medical Isotopes Production Act of 2012 (AMIPA) (Subtitle F, Title XXXI of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–139)), enacted on January 2, 2013, directs the Secretary of Energy to carry out a technology-neutral program to support the domestic production of the medical isotope Molybdenum-99 (Mo-99) without the use of highly enriched uranium. As part of this program, AMIPA requires DOE to develop a program plan and annually update the program plan through public workshops. NNSA implements this requirement through the Mo-99 Stakeholders Meeting.

Tentative Agenda

- U.S. Government Mo-99 Program and Regulatory Updates
- Mo-99 Producer Updates
- U.S. Mo-99 Supply Status—Industry Perspectives
- Open Discussion and Q&A
- Tours of Molybdenum-99 Production Projects (In-Person Only)

Public Participation

The meeting is open to the public. It will be held strictly following COVID–19 precautionary measures. To provide a safe meeting environment, seating may be limited; attendees can request registration for in-person attendance via *https://mo99.ne.anl.gov/2022stakeholders/* no later than 4:00 p.m. ET on Thursday, June 9, 2022. If the number of in-person registrants exceeds the available space, NNSA will inform the affected registrants of the need to attend virtually rather than in-person. NNSA welcomes the attendance of the public at the Mo-99 Stakeholders Meeting and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please include that information in your online registration submission.

Signing Authority

This document of the Department of Energy was signed on May 19, 2022, by Joan Dix, Deputy Director, Office of Conversion, National Nuclear Security Administration, Office of Defense Nuclear Nonproliferation, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 19, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–11140 Filed 5–23–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–1888–000]

AE–ESS NWS 1, 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 AE–ESS NWS 1, 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 June 7, 2022.

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* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: May 18, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11168 Filed 5–23–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–1884–000]

Sanford ESS, 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 Sanford ESS, 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 June 7, 2022.

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* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: May 18, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11165 Filed 5–23–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–1885–000]

South Portland ESS, 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 South Portland ESS, 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 June 7, 2022.

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* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: May 18, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11164 Filed 5–23–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–161–000]

Gulf South Pipeline Company, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Index 130 MS River Replacement Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document, that will discuss the environmental impacts of the Index 130 MS River Replacement Project (Project), involving the replacement of its existing pipelines under the Mississippi River by Gulf South Pipeline Company, LLC (Gulf South) in Ascension Parish, Louisiana. The purpose of the Project is to accommodate the Mississippi River Ship Channel Deepening Project planned by the U.S. Army Corps of Engineers, in partnership with the Louisiana Department of Transportation and Development. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to

as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the NEPA Process and Environmental Document section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on June 17, 2022. Comments may be submitted in written form. Further details on how to submit comments are provided in the Public Participation section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on April 8, 2022, you will need to file those comments in Docket No. CP22–161–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Gulf South provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas Questions or Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is also on the Commission's website (*www.ferc.gov*) under the link to FERC Online. 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; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP22–162–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Proposed Project

To accommodate the Mississippi River Ship Channel Deepening Project, Gulf South proposes to replace via horizontal directional drill its MS River Crossing consisting of three 20-inch-diameter pipelines with approximately 5,750 feet of two 30-inch-diameter pipelines under the Mississippi River and install auxiliary and appurtenant equipment. Gulf South requests authorization to abandon three segments of the 20-inch-diameter MS River Crossing pipeline by removal (combined total of approx. 9,455 feet) and the remaining pipeline in place (combined total of approx. 7,380 feet). Gulf South also proposes to reconfigure its existing mainline valve yards on the west and east banks of the Mississippi River—the Modeste Valve Site and Sugar Bowl Pig Trap/Valve Site, respectively. Where Index 804 connects to the Index 130 and Index 130L, the reconfiguration will require expanding Index 804 by approximately 730 feet of 6-inch-diameter pipeline to the new tie-in location, and the existing Sugar Bowl Pig Trap/Valve site will be removed.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the Project will require the use of 185.52 acres of land, resulting in both temporary and permanent impacts. Operational impacts (11.55 acres) will be associated with the new permanent easement, two new mainline valve sites, and new permanent access roads. No areas within the new permanent right-of-way would require routine vegetation mowing by Gulf South during operation; therefore, following completion of construction, a total of 180.50 acres will

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

be restored to pre-construction conditions.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- air quality and noise;
- reliability and safety;
- socioeconomics
- environmental justice

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a Notice of Schedule for the Preparation of an Environmental Assessment will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a Notice of Intent to Prepare an EIS/Notice of Schedule will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary [2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP22–161–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: May 18, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11166 Filed 5–23–22; 8:45 am]

BILLING CODE 6717–01–P

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Section 1501.8.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC22–66–000.

Applicants: Archaea Infrastructure, LLC, Ingenco Wholesale Power, L.L.C., Collegiate Clean Energy, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of INGENCO Wholesale Power, L.L.C., et al.

Filed Date: 5/17/22.

Accession Number: 20220517–5206.

Comment Date: 5 p.m. ET 6/7/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–123–000.

Applicants: Shakes Solar, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Shakes Solar, LLC.

Filed Date: 5/17/22.

Accession Number: 20220517–5193.

Comment Date: 5 p.m. ET 6/7/22.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL21–77–000.

Applicants: Tenaska Clear Creek Wind, LLC v. Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits Revised Results of the Restudy of the Tenaska Clear Creek Wind Project in Response to the December 16 Order.

Filed Date: 5/13/22.

Accession Number: 20220513–5192.

Comment Date: 5 p.m. ET 6/3/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–1821–004.

Applicants: Panda Stonewall LLC.

Description: Refund Report: Potomac Energy Center, LLC submits tariff filing per 35.19a(b): Refund Report to be effective N/A.

Filed Date: 5/18/22.

Accession Number: 20220518–5128.

Comment Date: 5 p.m. ET 6/8/22.

Docket Numbers: ER21–2526–003.

Applicants: New York Independent System Operator, Inc.

Description: Compliance filing: NYISO Compliance Filing Errata re: Order 676–I NAESB/WEQ Standards to be effective 6/2/2022.

Filed Date: 5/18/22.

Accession Number: 20220518–5097.

Comment Date: 5 p.m. ET 6/8/22.

Docket Numbers: ER22–1447–001.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

Description: Tariff Amendment: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.17(b): 2022–05–18_SA 2685 Ameren-SIPC Adams Road Proj Spec 2 to be effective 5/18/2022.

Filed Date: 5/18/22.

Accession Number: 20220518–5110.

Comment Date: 5 p.m. ET 6/8/22.

Docket Numbers: ER22–1896–000.

Applicants: Consolidated Edison Company of New York, Inc.

Description: § 205(d) Rate Filing: NYPA Filing Phase I NEM 5–17–2022 to be effective 5/17/2022.

Filed Date: 5/17/22.

Accession Number: 20220517–5177.

Comment Date: 5 p.m. ET 6/7/22.

Docket Numbers: ER22–1897–000.

Applicants: Black Hills Colorado Electric, LLC.

Description: § 205(d) Rate Filing: Certificate of Concurrence for Transmission Interconnection Agreement to be effective 5/18/2022.

Filed Date: 5/17/22.

Accession Number: 20220517–5185.

Comment Date: 5 p.m. ET 6/7/22.

Docket Numbers: ER22–1898–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA No. 6447; Queue No. AE2–046 to be effective 4/19/2022.

Filed Date: 5/18/22.

Accession Number: 20220518–5074.

Comment Date: 5 p.m. ET 6/8/22.

Docket Numbers: ER22–1899–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA SA No. 6470; Queue No. AG1–198 to be effective 4/19/2022.

Filed Date: 5/18/22.

Accession Number: 20220518–5092.

Comment Date: 5 p.m. ET 6/8/22.

Docket Numbers: ER22–1900–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: ISA, SA No. 5361 and CSA, SA 5362; Queue No. AB2–099/AE2–346 to be effective 4/19/2022.

Filed Date: 5/18/22.

Accession Number: 20220518–5138.

Comment Date: 5 p.m. ET 6/8/22.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES22–33–000.

Applicants: Southwest Power Pool, Inc.

Description: Supplement to Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Southwest Power Pool, Inc.

Filed Date: 4/28/22.

Accession Number: 20220428–5443.

Comment Date: 5 p.m. ET 5/25/22.

Docket Numbers: ES22–47–000.

Applicants: Indianapolis Power & Light Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Indianapolis Power & Light Company.

Filed Date: 5/18/22.

Accession Number: 20220518–5106.

Comment Date: 5 p.m. ET 6/8/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 18, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–11167 Filed 5–23–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2019–0540; FRL–9774–01–OLEM]

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); Notice of Grant Funding Guidance for FY 2022 State and Tribal Response Program With Funding Provided by the Bipartisan Infrastructure Investment and Jobs Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, authorizes a noncompetitive grant program to establish or enhance state and tribal response programs. Generally, these response programs address the assessment, cleanup, and redevelopment of brownfields and other sites with actual or perceived contamination. Due to the passage of the Bipartisan Infrastructure Investment and Jobs Act (''Infrastructure Law'') in

November 2021, EPA is now issuing this notice of a FY 2022 Funding Guidance to provide information and instruction to states and tribes requesting FY 2022 Section 128(a) funding provided by the Infrastructure Law. EPA anticipates that it may allocate approximately $57.9 million in FY 2022 Section 128(a) Infrastructure Law funds.

DATES: Requests for FY 2022 Section 128(a) Infrastructure Law funding will be accepted from March 30, 2022–June 3, 2022, and should be sent to the EPA Regional Office contact listed in Table 1.

FOR FURTHER INFORMATION CONTACT: Melissa Papasavvas, Office of Brownfields and Land Revitalization, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number (202) 566–0435, or the appropriate Regional EPA Brownfields contacts identified in Table 1.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be affected by this action if you administer a State or Tribal response program that oversees assessment and cleanup activities at brownfield sites across the country. Note: The CERCLA definition of ''State'' includes US Territories and the District of Columbia (CERCLA section 101(27)).

B. How can I get copies of the grant funding guidance and other related information?

1. Docket. The docket for this action, identified by docket identification (ID) number EPA–HQ–OLEM–2019–0540, is available online at *https://www.regulations.gov.*

2. EPA Website. To access the FY22 section 128(a) grant funding guidance on EPA's website, please go to *https://www.epa.gov/brownfields/funding-guidance-state-and-tribal-response-programs-fiscal-year-2022-bipartisan* or *https://www.epa.gov/system/files/documents/2022-03/final-fy22-128a-infrastructure-law-funding-guidance.pdf.*

II. Authority

CERCLA section 128(a) (42 U.S.C. 9628(a)) authorizes a noncompetitive grant program to ''establish or enhance'' state and tribal response programs.

III. Background

1. General. CERCLA section 128(a) authorizes a noncompetitive grant program to establish or enhance state and tribal response programs. These section 128(a) response program grants are funded with Categorical State and Tribal Assistance Grant (STAG) appropriations and awarded in the form of a cooperative agreement, which is a type of assistance agreement that is used when there is substantial federal involvement with the recipient during the performance of an activity or project. Section 128(a) cooperative agreements are awarded and administered by EPA regional offices.

The Bipartisan Infrastructure Investment and Jobs Act (Infrastructure Law), signed in November 2021, invested additional funds to carry out section 128(a). Due to the passage of the Infrastructure Law, EPA is now issuing this Funding Guidance to provide information and instruction to states and tribes requesting FY 2022 Section 128(a) funding provided by the Infrastructure Law.

This funding is intended for those states and tribes that have the required management and administrative capacity within their government to administer a federal grant. The primary goal of this funding is to ensure that state and tribal response programs include, or are taking reasonable steps to include, certain elements of an environmental response program and that the program establishes and maintains a public record of sites addressed. Subject to the availability of funds, EPA regional personnel will provide technical assistance to states and tribes as they apply for and carry out section 128(a) cooperative agreements.

2. Catalogue of Federal Domestic Assistance (CFDA) and EPA Funding Opportunity Number (FON). The CFDA entry for the section 128(a) State and Tribal Response Program cooperative agreements is 66.817. The FON for FY 2022 section 128(a) funds is EPA–CEP–02. Section 128(a) Infrastructure funds under this funding guidance are NOT eligible to be included in state and tribal Performance Partnership Grants under 40 CFR part 35 subparts A and B.

3. Application period. Requests for funding should be sent to the appropriate Regional EPA contact and will be accepted from March 30, 2022 through June 3, 2022. Requests EPA Regional offices receive after June 3, 2022, will not be considered for FY 2022 Infrastructure funding. States or tribes that do not submit the request in the appropriate manner may forfeit their ability to receive funds. First time requestors are strongly encouraged to contact their respective Regional EPA Brownfields contacts, identified in Table 1, prior to submitting their funding request.

Requests submitted by the June 3, 2022, request deadline are preliminary; final cooperative agreement work plans and budgets will be negotiated with the EPA regional offices once final funding allocation determinations are made. For more information, see the funding guidance and FAQs at *https://www.epa.gov/brownfields/funding-guidance-state-and-tribal-response-programs-fiscal-year-2022-bipartisan.*

TABLE 1—REGIONAL STATE AND TRIBAL BROWNFIELDS CONTACTS

Region	State	Tribal
1—CT, ME, MA, NH, RI, VT	AmyJean McKeown, 5 Post Office Square, Suite 100 (OSRR07–2), Boston, MA 02109–3912, Phone (617) 918–1248, Fax (617) 918–1294, *mckeown.amyjean@epa.gov.*	AmyJean McKeown, 5 Post Office Square, Suite 100 (OSRR07–2), Boston, MA 02109–3912, Phone (617) 918–1248, Fax (617) 918–1294, *mckeown.amyjean@epa.gov.*
2—NJ, NY, PR, VI	Terry Wesley, 290 Broadway, 25th Floor, New York, NY 10007–1866, Phone (212) 637–5027, *wesley.terry@epa.gov.*	Terry Wesley, 290 Broadway, 25th Floor, New York, NY 10007–1866, Phone (212) 637–5027, *wesley.terry@epa.gov.*
3—DE, DC, MD, PA, VA, WV	Mike Taurino, 1650 Arch Street (3HS51), Philadelphia, PA 19103, Phone (215) 814–3371, Fax (215) 814–3274, *taurino.michael@epa.gov.*	Mike Taurino, 1650 Arch Street (3HS51), Philadelphia, PA 19103, Phone (215) 814–3371, Fax (215) 814–3274, *taurino.michael@epa.gov.*
4—AL, FL, GA, KY, MS, NC, SC, TN	Cindy Nolan, 61 Forsyth Street SW, 10th Fl. (9T25), Atlanta, GA 30303–8960, Phone (404) 562–8425, Fax (404) 562–8788, *nolan.cindyj@epa.gov.*	Cindy Nolan, 61 Forsyth Street SW, 10th Fl. (9T25), Atlanta, GA 30303–8909, Phone (404) 562–8425, Fax (404) 562–8788, *nolan.cindyj@epa.gov.*

TABLE 1—REGIONAL STATE AND TRIBAL BROWNFIELDS CONTACTS—Continued

Region	State	Tribal
5—IL, IN, MI, MN, OH, WI	Keary Cragan, 77 West Jackson Boulevard (SB–5J), Chicago, IL 60604–3507, Phone (312) 353–5669, Fax (312) 692–2161, *cragan.keary@epa.gov.*	Rosita Clarke, 77 West Jackson Boulevard (SB–5J), Chicago, IL 60604–3507, Phone (312) 886–7251, Fax (312) 697–2075, *clarke.rosita@epa.gov.*
6—AR, LA, NM, OK, TX	Ana Esquivel, 1201 Elm Street, Suite 500, Dallas, Texas 75270–2102, Phone (214) 665–3163, Fax (214) 665–6660, *esquivel.ana@epa.gov.*	Elizabeth Reyes, 1201 Elm Street, Suite 500, Dallas, Texas 75270–2102, Phone (214) 665–2194, Fax (214) 665–6660, *reyes.elizabeth@epa.gov.*
7—IA, KS, MO, NE	Susan Klein, 11201 Renner Boulevard (LCRD/BSPR), Lenexa, KS 66219, Phone (913) 551–7786, *klein.susan@epa.gov.*	Jennifer Morris, 11201 Renner Boulevard (LCRD/BSPR), Lenexa, KS 66219, Phone (913) 551–7341, *morris.jennifer@epa.gov.*
8—CO, MT, ND, SD, UT, WY	Christina Wilson, 1595 Wynkoop Street (8LCR–BR), Denver, CO 80202–1129, Phone (303) 312–6706, *wilson.christina@epa.gov.*	Melisa Devincenzi, 1595 Wynkoop Street (8LCR–BR), Denver, CO 80202–1129, Phone (303) 312–6377, *devincenzi.melisa@epa.gov.*
9—AZ, CA, HI, NV, AS, GU, MP	Jose Garcia, Jr., 600 Wilshire Blvd., Suite 1460, Los Angeles, CA 90017, Phone (213) 244–1811, Fax (213) 244–1850, *garcia.jose@epa.gov.*	Jose Garcia, Jr., 600 Wilshire Blvd., Suite 1460, Los Angeles, CA 90017, Phone (213) 244–1811, Fax (213) 244–1850, *garcia.jose@epa.gov.*
10—AK, ID, OR, WA	Madison Sanders-Curry, 1200 Sixth Ave., Suite 155 (mail code 15–H04), Seattle, WA 98101, Phone (206 553–1889, Fax 206 553–8581, *sanders-curry.madison@epa.gov.*	Madison Sanders-Curry, 1200 Sixth Ave., Suite 155 (mail code 15–H04), Seattle, WA 98101, Phone (206) 553–1889, Fax (206) 553–8581, *sanders-curry.madison@epa.gov.*

(Authority: 42 U.S.C. 9628(a))

Dated: April 21, 2022.

David R. Lloyd,

Director, Office of Brownfields and Land Revitalization.

[FR Doc. 2022–11069 Filed 5–23–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 88210]

Deletion of Item From May 19, 2022 Open Meeting

May 17, 2022.

The following item was released by the Commission on May 17, 2022 and deleted from the list of items scheduled for consideration at the Thursday, May 19, 2022, Open Meeting. The item was previously listed in the Commission's Sunshine Notice on Thursday, May 12, 2022.

5	ENFORCEMENT	TITLE: Enforcement Bureau Action. SUMMARY: The Commission will consider an enforcement action.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2022–11087 Filed 5–23–22; 8:45 am]

BILLING CODE

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 extend for three years, without revision, the Recordkeeping Provisions Associated with the Interagency Statement on Complex Structured Finance Activities (FR 4022; OMB No. 7100–0311).

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, Washington, DC 20551, (202) 452–3829.

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, 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/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Collection title: Recordkeeping Provisions Associated with the Interagency Statement on Complex Structured Finance Activities.

Collection identifier: FR 4022.

OMB control number: 7100–0311.

Frequency: Annual.

Respondents: State member banks, bank holding companies (other than foreign banking organizations), savings and loan holding companies (SLHCs), and U.S. branches and agencies of foreign banks.

Estimated number of respondents: 18.

Estimated average hours per response: 10.

Estimated annual burden hours: 180.

General description of collection: The Interagency Statement on Sound Practices Concerning Elevated Risk Complex Structured Finance Activities (the Statement) [1] states that certain financial institutions should establish and maintain written policies and procedures for identifying, evaluating, assessing, documenting, and controlling risks associated with complex structured finance transactions (CSFTs) and should retain certain documents related to elevated risk CSFTs, which are a subcategory of CSFTs. The FR 4022 covers these information collections for financial institutions that are subject to the Statement and that are supervised by the Board.

Legal authorization and confidentiality: The Board's recordkeeping guidance associated with the Statement relates to information that the Board is authorized to collect under the Federal Reserve Act (with respect to state member banks),[2] under the Bank Holding Company Act (with respect to bank holding companies),[3] under the Home Owners' Loan Act (with respect to SLHCs),[4] and under the International Banking Act (with respect to U.S. branches and agencies of foreign banks).[5] The FR 4022 recordkeeping provisions are voluntary.

Any policies, procedures, or other records voluntarily created based on the Statement would be maintained at the financial institution that created them. The Freedom of Information Act (FOIA) would be implicated only if the Board obtained such records as part of the examination or supervision of a financial institution, in which case the records may be protected from disclosure under FOIA exemption 8, which protects information contained in ''examination, operating, or condition reports'' obtained in the bank supervisory process.[6] Information provided on the FR 4022 may also be exempt from disclosure pursuant to FOIA exemption 4 if it is nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent.[7]

Current actions: On January 25, 2022, the Board published a notice in the **Federal Register** (87 FR 3809) requesting public comment for 60 days on the extension, without revision, of the FR 4022. The comment period for this notice expired on March 28, 2022. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, May 17, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–11093 Filed 5–23–22; 8:45 am]

BILLING CODE 6210–01–P

[1] See *https://www.federalregister.gov/documents/2007/01/11/07-55/interagency-statement-on-sound-practices-concerning-elevated-risk-complex-structured-finance.*

[2] 12 U.S.C. 248(a).

[3] 12 U.S.C. 1844(c).

[4] 12 U.S.C. 1467a(b) and 1467a(g).

[5] 12 U.S.C. 3105(c) and 3108(a).

[6] 5 U.S.C. 552(b)(8).

[7] 5 U.S.C. 552(b)(4).

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 extend for three years, without revision, the Notice Claiming Status as an Exempt Transfer Agent (FR 4013; OMB No. 7100–0137).

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, Washington, DC 20551, (202) 452–3829.

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, 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/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Collection title: Notice Claiming Status as an Exempt Transfer Agent.

Collection identifier: FR 4013.

OMB control number: 7100–0137.

Frequency: On occasion.

Respondents: Board-regulated transfer agents.

Estimated number of respondents: Exemption notice: 1; exemption disqualification notice: 1.

Estimated average hours per response: Exemption notice: 2; exemption disqualification notice: 2.

Estimated annual burden hours: Exemption notice: 2; exemption disqualification notice: 2.

General description of collection: Transfer agents, which are institutions that provide securities transfer, registration, monitoring, and other specified services on behalf of securities issuers,[1] are generally subject to certain Securities and Exchange Commission (SEC) regulations. However, a transfer agent that is regulated by and registered with the Board (a Board-regulated transfer agent) may request an exemption from those regulations if it transfers and processes a low volume of securities (a low-volume transfer agent). A transfer agent is Board-regulated if it is a state member bank or a subsidiary thereof, a bank holding company, or a savings and loan holding company. A Board-regulated transfer agent may request an exemption from the SEC regulations by filing with the Board a notice certifying that it qualifies as a low-volume transfer agent. In addition, a Board-regulated low-volume transfer agent that no longer meets the requirements of being a low-volume transfer agent must notify the Board of that fact.

Legal authorization and confidentiality: The FR 4013 is authorized pursuant to sections 2, 17(a)(3), 17A(c), and 23(a) of the Exchange Act,[2] which, among other things, authorize the Board to promulgate regulations and establish recordkeeping and reporting requirements with respect to Board-regulated transfer agents.[3]

The exemption notice is mandatory for Board-registered transfer agents seeking the exemption. The obligation

[1] See 15 U.S.C. 78c(a)(25) (defining ''transfer agent'').

[2] 15 U.S.C. 78b, 78q(a)(3), 78q–1(c), and 78w(a).

[3] Additionally, the Board also has the authority to require reports from bank holding companies (12 U.S.C. 1844(c)), savings and loan holding companies (12 U.S.C. 1467a(b) and (g)), and state member banks (12 U.S.C. 248(a) and 324).

to respond for the exemption notice, therefore, is required to obtain a benefit. The exemption disqualification notice is mandatory for a Board-regulated transfer agent that no longer qualifies for the exemption.

The information collected in the FR 4013 regarding a Board-regulated transfer agent's volume of transactions is public information through the filing and publication of the transfer agent's Form TA–2 with the SEC. Therefore, individual respondent data collected by the FR 4013 are not confidential.

Current actions: On January 25, 2022, the Board published a notice in the **Federal Register** (87 FR 3807) requesting public comment for 60 days on the extension, without revision, of the FR 4013. The comment period for this notice expired on March 28, 2022. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, May 17, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–11092 Filed 5–23–22; 8:45 am]

BILLING CODE 6210–01–P

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 extend for three years, without revision, the Recordkeeping and Disclosure Requirements Associated with Regulation II (FR II; OMB No. 7100–0349).

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, Washington, DC 20551, (202) 452–3829.

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, 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/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Report title: Recordkeeping and Disclosure Requirements Associated with Regulation II.

Agency form number: FR II.

OMB control number: 7100–0349.

Frequency: On occasion, annually.

Respondents: Debit card issuers and payment card networks.

Estimated number of respondents: Implement policies and procedures, 1; Review and update policies and procedures, 527; General recordkeeping, 527; Annual notification and change in status, 527.

Estimated average hours per response: Implement policies and procedures, 160; Review and update policies and procedures, 40; General recordkeeping, 1; Annual notification and change in status, 1.

Estimated annual burden hours: Implement policies and procedures, 160; Review and update policies and procedures, 21,080; General recordkeeping, 527; Annual notification and change in status, 527.

General description of report: Regulation II—Debit Card Interchange Fees and Routing (12 CFR part 235) implements standards for assessing whether interchange transaction fees for electronic debit transactions are reasonable and proportional to the cost incurred by the issuer with respect to the transaction, and establishes rules for payment card transactions as required by section 920(a) of the Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693o–2(a)).

Section 235.4(b)(1) requires that, in order to be eligible to receive or charge the fraud-prevention adjustment, an issuer that is subject to Regulation II's interchange fee standards (a ''covered issuer'') must develop and implement policies and procedures reasonably designed to take effective steps to reduce the occurrence of, and costs to all parties from, fraudulent electronic debit transactions, including through the development and implementation of cost-effective fraud-prevention technology. Section 235.4(b)(2) describes the specific requirements that a covered issuer's fraud-prevention policies and procedures must address. Section 235.4(b)(3) requires that a covered issuer must review its fraud-prevention policies and procedures, and their implementation, at least annually, and update them as necessary. Section 235.4(c) requires that, to be eligible to receive or charge a fraud-prevention adjustment, a covered issuer must annually notify its payment card networks that it complies with the standards under section 235.4(b). Section 235.4(d) requires that, no later than 10 days after a covered issuer determines or receives a notification from the appropriate agency under section 235.9 that the covered issuer is substantially non-compliant with the standards set forth in section 235.4(b), a covered issuer must notify its payment card networks that it is no longer eligible to receive or charge a fraud-prevention adjustment. The covered issuer must stop receiving and charging the fraud-prevention adjustment within 30 days after providing such notification to its payment card networks.

Section 235.8(c)(1) requires that any debit card issuer subject to Regulation II (*i.e.,* not just covered issuers) shall retain evidence of compliance with the requirements in Regulation II for a period of not less than five years after the end of the calendar year in which the electronic debit transaction occurred. In addition, section 235.8(c)(2) requires that, where any person subject to Regulation II (*e.g.,* an issuer or payment card network) receives actual notice that it is subject to an investigation by an enforcement agency, such person must retain the records until final disposition of the matter. Compliance with this general recordkeeping requirement involves retaining records to demonstrate fulfillment of the other requirements in Regulation II.

Legal authorization and confidentiality: The Recordkeeping and Disclosure Requirements Associated with Regulation II are authorized by section 920(a)(3) of the EFTA.[1] The fraud-prevention and disclosure requirements are additionally

[1] 15 U.S.C. 1693*o*–2(a)(3) (authorizing the Board to prescribe regulations regarding interchange transaction fees and require issuers or payment card networks to provide to the Board such information as deemed necessary).

authorized by section 920(a)(5) of the EFTA.[2] Regulation II's general recordkeeping requirement for issuers is mandatory. Regulation II's fraud-prevention recordkeeping requirements and disclosure requirements are required to obtain a benefit.

The Recordkeeping and Disclosure Requirements Associated with Regulation II are generally not submitted to the Board or to any of the federal financial regulatory agencies. In the event that the Board obtains such information, it may be kept confidential under exemption 4 of the Freedom of Information Act (FOIA) to the extent that it contains commercial or financial information both customarily and actually treated as private.[3] If such information is obtained through the examination or enforcement process, it may be kept confidential under exemption 8 of the FOIA.[4]

Current actions: On December 3, 2021, the Board published a notice in the **Federal Register** (86 FR 68667) requesting public comment for 60 days on the extension, without revision, of the Recordkeeping and Disclosure Requirements Associated with Regulation II. The comment period for this notice expired on February 1, 2022. The Board received two comments.

Detailed Discussion of Public Comments

The first comment letter was from trade associations representing debit card issuers; these commenters supported the proposal to extend for three years, without revision, the Recordkeeping and Disclosure Requirements Associated with Regulation II. The second comment letter was from trade associations representing merchants; these commenters did not provide comments related to the Recordkeeping and Disclosure Requirements Associated with Regulation II. Both comment letters addressed substantive issues pertaining to Regulation II that were unrelated to the regulation's information collections.

Board of Governors of the Federal Reserve System, May 17, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–11095 Filed 5–23–22; 8:45 am]

BILLING CODE 6210–01–P

[2] 15 U.S.C. 1693*o*–2(a)(5) (permitting the Board to allow for the fraud-prevention adjustment and condition it upon compliance with fraud-related standards promulgated by the Board).

[3] 5 U.S.C. 552(b)(4).

[4] 5 U.S.C. 552(b)(8).

FEDERAL RESERVE SYSTEM

Privacy Act of 1974; System of Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, notice is given that the Board of Governors of the Federal Reserve System (Board) proposes to modify an existing system of records, entitled BGFRS–30, ''FRB—Academic Assistance Program Files'' to reflect the outsourcing of Academic Assistance program administration. BGFRS–30 includes applications for academic assistance and related documents in addition to documents relating to requests for exceptions to the Academic Assistance Policy.

DATES: Comments must be received on or before June 23, 2022. This modified system of records will become effective June 23, 2022, without further notice, unless comments dictate otherwise.

The Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, requires a 30-day period prior to publication in the **Federal Register** in which to review the system and to provide any comments to the agency. The public is then given a 30-day period in which to comment, in accordance with 5 U.S.C. 552a(e)(4) and (11).

ADDRESSES: You may submit comments, identified by *BGFRS–30 ''FRB—Academic Assistance Program Files,''* 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.* Include SORN name and number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *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 will be made available on the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Public comments may also be viewed electronically and in-person in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. during federal business weekdays.

FOR FURTHER INFORMATION CONTACT: David B. Husband, Senior Counsel, (202) 530–6270, or *david.b.husband@frb.gov;* Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunication relay services.

SUPPLEMENTARY INFORMATION: The Board is primarily modifying BGFRS–30, ''FRB—Academic Assistance Program Files'' to reflect the outsourcing of Academic Assistance program administration to a managed service provider, Bright Horizons EdAssist, which replaces the manual process previously used by participants. The new service allows program participants, among other actions, to submit and receive approval for requests for academic assistance; add and drop classes; submit grades; request exceptions or waivers; and upload supporting documents. Requests for exceptions to the Academic Assistance Policy, however, will be reviewed and approved by the People, Strategy, & Operations Function through the Board's Service Now Customer Relationship Manager portal rather than by the plan administrator.

Accordingly, the Board is updating the system manager and the system location. The Board is also taking this opportunity to update the record retention, record source categories, categories of records in the system, the policies for record storage, and the administrative, technical, and physical safeguards for the system. In addition, the Board is also updating the ''Routine Uses'' section to incorporate a link to the Board's general routine uses. The Board, however, is not amending or establishing any new routine uses.

The Board is also making technical changes to BGFRS–30 consistent with the template laid out in OMB Circular No. A–108. Accordingly, the Board has made technical corrections and non-substantive language revisions to the following categories: ''Policies and Practices for Storage of Records,'' ''Policies and Practices for Retrieval of Records,'' ''Policies and Practices for Retention and Disposal of Records,'' ''Administrative, Technical and Physical Safeguards,'' ''Record Access Procedures,'' ''Contesting Record Procedures,'' and ''Notification Procedures.'' The Board has also created the following new fields: ''Security Classification'' and ''History.''

SYSTEM NAME AND NUMBER:

BGFRS–30 ''FRB—Academic Assistance Program Files''.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Bright Horizons Family Solutions LLC, 200 Talcott Avenue, Watertown, MA 02472 and Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. The files related to academic assistance will be electronically stored and maintained by the plan administrator, Bright Horizons EdAssist. Additional files related to the review and approval of exception requests to the Academic Assistance Policy are electronically stored and maintained by the People, Strategy, & Operations Function of the Division of Management. Supporting documentation may also be maintained by the employing division. Historical academic assistance files will not be stored by the plan administrator but will be stored by the Board on a secured server for the appropriate retention period with access limited to Board staff with a need to know.

SYSTEM MANAGER(S):

Ethel Bulluck—Learning and Development Manager, People, Strategy & Operations, Division of Management, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551, (202) 452–3749, or *ethel.g.bulluck@frb.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 10 and 11 of the Federal Reserve Act (12 U.S.C. 244 and 248).

PURPOSE(S) OF THE SYSTEM:

These records are collected and maintained to assist the Board in its personnel management and in providing training and educational opportunities to its employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present Board employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains requests for academic assistance, including documents relating to all courses applied for, completed, and reimbursed; descriptions of course work; documents relating to requests for exceptions to the Academic Assistance Policy; evidence of successful/non-successful completion; and payment documentation for tuition, textbooks, and related fees.

RECORD SOURCE CATEGORIES:

Information is provided by the individual to whom the record pertains.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

General routine uses A, B, C, D, F, G, H, I, and J apply to this system. These general routine uses are located at *https://www.federalreserve.gov/files/SORN-page-general-routine-uses-of-board-systems-of-records.pdf* and are published in the **Federal Register** at 83 FR 43872 at 43873–74 (August 28, 2018).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records are stored by the plan administrator on a secure server with access limited to Bright Horizons EdAssist and Board staff with a need to know. Electronic records related to exception requests to the Academic Assistance Policy are stored on a secure server with access limited to Board staff with a need to know. Historical academic assistance files will not be stored by the plan administrator but will be stored by the Board on a secured server for the appropriate retention period with access limited to Board staff with a need to know.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records can be retrieved by the names of the individuals on whom they are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The retention for these records is currently under review. Until review is completed, these records will not be destroyed.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Historical paper records are located in a secured locked room and electronic files are stored on secure servers. The system has the ability to track individual user actions within the system. The audit and accountability controls are based on NIST and Board standards which, in turn, are based on applicable laws and regulations. The controls assist in detecting security violations and performance or other issues in the system. Access to the system is restricted to authorized users within Bright Horizons EdAssist or the Board who require access for official business purposes. Users are classified into different roles and common access and usage rights are established for each role. User roles are used to delineate between the different types of access requirements such that users are restricted to data that is required in the performance of their duties. Periodic assessments and reviews are conducted to determine whether users still require access, have the appropriate role, and whether there have been any unauthorized changes.

RECORD ACCESS PROCEDURES:

The Privacy Act allows individuals the right to access records maintained about them in a Board system of records. Your request for access must: (1) Contain a statement that the request is made pursuant to the Privacy Act of 1974; (2) provide either the name of the Board system of records expected to contain the record requested or a concise description of the system of records; (3) provide the information necessary to verify your identity; and (4) provide any other information that may assist in the rapid identification of the record you seek.

Current or former Board employees may make a request for access by contacting the Board office that maintains the record. The Board handles all Privacy Act requests as both a Privacy Act request and as a Freedom of Information Act request. The Board does not charge fees to a requestor seeking to access or amend his/her Privacy Act records.

You may submit your Privacy Act request to the—Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

You may also submit your Privacy Act request electronically by filling out the required information at: *https://foia.federalreserve.gov/.*

CONTESTING RECORD PROCEDURES:

The Privacy Act allows individuals to seek amendment of information that is erroneous, irrelevant, untimely, or incomplete and is maintained in a system of records that pertains to them. To request an amendment to your record, you should clearly mark the request as a ''Privacy Act Amendment Request.'' You have the burden of proof for demonstrating the appropriateness of the requested amendment and you must provide relevant and convincing evidence in support of your request.

Your request for amendment must: (1) Provide the name of the specific Board system of records containing the record you seek to amend; (2) identify the specific portion of the record you seek to amend; (3) describe the nature of and reasons for each requested amendment; (4) explain why you believe the record is not accurate, relevant, timely, or

complete; and (5) unless you have already done so in a related Privacy Act request for access or amendment, provide the necessary information to verify your identity.

NOTIFICATION PROCEDURES:

Same as ''Access procedures'' above. You may also follow this procedure in order to request an accounting of previous disclosures of records pertaining to you as provided for by 5 U.S.C. 552a(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

This SORN was previously published in the **Federal Register** at 73 FR 24984 at 25007 (May 6, 2008). The SORN was also amended to incorporate two new routine uses required by OMB at 83 FR 43872 (August 28, 2018).

Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2022–11131 Filed 5–23–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than June 7, 2022.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Donata Russell Ross, H. Jerome Russell, Jr., and Michael B. Russell, all of Atlanta, Georgia;* to become members of a group acting in concert to acquire voting shares of Citizens Bancshares Corporation, and thereby indirectly acquire voting shares of Citizens Trust Bank, both of Atlanta, Georgia.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–11077 Filed 5–23–22; 8:45 am]

BILLING CODE P

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 extend for three years, without revision, the Notice of Proposed Declaration of Dividend (FR 1583; OMB No. 7100–0339).

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, Washington, DC 20551, (202) 452–3829.

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, 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/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Collection title: Notice of Proposed Declaration of Dividend.

Collection identifier: FR 1583.

OMB control number: 7100–0339.

Frequency: Event-generated.

Respondents: Savings association subsidiaries of savings and loan holding companies (SLHCs).

Estimated number of respondents: 180.

Estimated average hours per response: 0.25.

Estimated annual burden hours: 90.

General description of collection: A savings association subsidiary of an SLHC must provide prior notice of the proposed declaration of a dividend by filing form FR 1583, whether electronically or by hard copy, with the appropriate Reserve Bank. The FR 1583 requires information regarding the date of the filing and the nature and amount of the proposed dividend, as well as the names and signatures of the executive officer and secretary of the savings association that is providing the notice. The FR 1583 notice may include a schedule proposing dividends over a period specified by the notificant, not to exceed 12 months.

Legal authorization and confidentiality: The FR 1583 is authorized by Section 10(f) of the Home Owners' Loan Act (HOLA).[1] Section 10(f) of HOLA provides that every subsidiary savings association of an SLHC shall give the Board at least 30 days' advance notice of the proposed declaration by its directors of any dividend on its guaranty, permanent, or other nonwithdrawable stock. Additionally, Section 10(b) of HOLA authorizes the Board to require SLHCs to file ''such reports as may be required by the Board.'' [2] The FR 1583 is mandatory.

Individual respondents may request confidential treatment for information submitted on the FR 1583 in accordance with the Board's Rules Regarding

[1] 12 U.S.C. 1467a(f).

[2] 12 U.S.C. 1467a(b). *See* 12 U.S.C. 1467a(g).

Availability of Information,[3] and such requests will be reviewed on a case-by-case basis. Information submitted on the FR 1583 may be related to the SLHC's business operations, such as terms and sources of the funding for dividends and pro forma balance sheets. To the extent that this information constitutes nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, it may be kept confidential under exemption 4 of the Freedom of Information Act.[4]

Current actions: On January 28, 2022, the Board published a notice in the **Federal Register** (87 FR 4595) requesting public comment for 60 days on the extension, without revision, of the FR 1583. The comment period for this notice expired on March 29, 2022. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, May 17, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–11097 Filed 5–23–22; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

Public Meeting: Proposal by The Toronto-Dominion Bank, TD Group US Holdings LLC, and TD Bank US Holding Company To Acquire First Horizon Corporation and for First Horizon Bank To Merge With and Into TD Bank, National Association

AGENCY: Office of the Comptroller of the Currency (OCC) and Board of Governors of the Federal Reserve System (Board).

ACTION: Notice of public meeting.

SUMMARY: A virtual public meeting will be held regarding the proposals by *The Toronto-Dominion Bank, Toronto, Ontario, Canada, TD Group US Holdings LLC, Wilmington, Delaware,* and TD Bank US Holding Company, Cherry Hill, New Jersey, to acquire First Horizon Corporation and thereby indirectly acquire First Horizon Bank, both of Memphis, Tennessee, pursuant to the Bank Holding Company Act; and for First Horizon Bank to merge with and into TD Bank, National Association (TD Bank), Wilmington, Delaware, pursuant to the Bank Merger Act. The purpose of the meeting is to collect information related to factors the Board and OCC consider when making determinations under the Bank Holding Company Act and the Bank Merger Act.

DATES: The meeting date is August 18, 2022, from 9:00 a.m. to 5:00 p.m. Eastern Daylight Time (EDT). Members of the public seeking to make oral comments during the virtual meeting must register by 12:00 p.m. EDT on July 28, 2022, to be placed on a list of registered commenters and receive specific instructions for participation. Members of the public seeking to watch the virtual meeting (but not provide oral comments) must register any time prior to 11:59 p.m. EDT on August 17, 2022.

FOR FURTHER INFORMATION CONTACT: *OCC:* Jason Almonte, Director for Large Bank Licensing, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219, via email at *jason.almonte@occ.treas.gov,* or via telephone at (917) 344–3405. *Federal Reserve:* James W. Corkery, Assistant Vice President, Federal Reserve Bank of Philadelphia, Ten Independence Mall, Philadelphia, Pennsylvania 19106, via email at: *comments.applications@phil.frb.org,* or via telephone at 215–574–6416. For users who have hearing or speech impairments, please call 711 from any telephone, anywhere in the United States.

SUPPLEMENTARY INFORMATION:

I. Background and Public Meeting Notice

On March 21, 2022, TD Bank applied to the OCC to merge First Horizon Bank with and into TD Bank pursuant to section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) (Bank Application). On March 22, 2022, the Board received an application from *The Toronto-Dominion Bank, TD Group US Holdings LLC,* and TD Bank US Holding Company, to acquire First Horizon Corporation, parent of First Horizon Bank, pursuant to the Bank Holding Company Act (12 U.S.C. 1841 *et seq.*) (Holding Company Application). The OCC and Board (agencies) hereby announce that a public meeting on the applications will be held, as described below.

II. Purpose and Procedures

The public meeting will be held virtually. A virtual meeting will help protect the health and safety of all participants in light of the continuing occurrence of COVID–19 cases. The virtual format also will expand public access to the proceedings for both viewers and those who testify, and it will reduce travel and related costs associated with attending in-person proceedings.

The purpose of the public meeting is to collect information relating to the factors that the agencies consider under the applicable statutes in acting on the applications. These factors include the effects of the proposal on the convenience and needs of the communities to be served by the combined organization; the insured depository institutions' performance under the Community Reinvestment Act; the impact of the proposal on competition in the relevant markets; the effects of the proposal on the stability of the U.S. banking or financial system; the financial and managerial resources and future prospects of the companies and banks involved in the proposal; and the effectiveness of the companies and banks in combatting money laundering activities. Witnesses may present oral testimony in support of the proposed transactions, in opposition to the proposed transactions, or without taking a position in support or opposition.

Testimony at the public meeting will be presented virtually to a panel consisting of Presiding Officers and other panel members appointed by the Presiding Officers. The Presiding Officers will have the authority and discretion to ensure that the meeting proceeds in a fair and orderly manner. The rules for taking evidence in an administrative proceeding will not apply to the public meeting. In general, the role of the panel members will be to listen to the oral testimony. The panelists may ask questions of those who testify; however, the questions generally will be limited to seeking clarification of statements made. Panel members may question witnesses, but no cross-examination of witnesses will be permitted. The public meeting will be transcribed, and the transcript will be posted on the respective public websites of the Board and OCC and the Board.[1]

Information for Persons Wishing To Testify

All persons wishing to testify at the public meeting must submit a written request to testify no later than 12:00 p.m. EDT on July 28, 2022, through the OCC's website at: *https://occ.gov/topics/charters-and-licensing/public-comment/business-combination-or-merger-applications-comments.html,* which will be updated to provide a link to a

[3] 12 CFR 261.17.

[4] 5 U.S.C. 552(b)(4).

[1] Materials related to the applications are available on the OCC's website at *https://occ.gov/topics/charters-and-licensing/public-comment/business-combination-or-merger-applications-comments.html* and the Board's website at *https://www.federalreserve.gov/foia/td-group-first-horizon-application-related-materials.htm.*

registration website by June 8, 2022. The OCC will provide the Board with a copy of each request to testify.

The online registration site will collect the following information from persons requesting to testify: (i) The name, city and state, telephone number, organization (if applicable), and email address of the person testifying; (ii) a brief statement of the nature of the expected testimony (including whether the testimony will support, oppose, or neither support nor oppose the proposed transactions); and (iii) the identification of any special needs, such as translation services, or disabilities requiring assistance. Translators or interpreters will be provided to the extent available if a need for such services is noted in the request to testify.

Those wishing to submit a written version of their oral testimony may, but need not, file the written submission with the Presiding Officers via email to both *LargeBanks@occ.treas.gov* and *comments.applications@phil.frb.org* before the meeting begins, or within three business days after the date of the meeting, and the subject line of the email should state ''PUBLIC MEETING.''

Persons who wish to testify must be able to access the online meeting platform using a computer, tablet, smart phone, or similar mobile device and have a video camera on their computer or mobile device. Persons who have registered to testify will be contacted by agency staff prior to the meeting and provided with specific instructions on participation (*e.g.,* how to connect to the online meeting), as well as an opportunity to attend a technical session on how to connect to audio and video for the meeting.

Information for Persons Watching or Listening to the Meeting Without Testifying

Persons interested in watching the meeting (but not testifying) must register by submitting their name and email address through the OCC's website at: *https://occ.gov/topics/charters-and-licensing/public-comment/business-combination-or-merger-applications-comments.html,* which will be updated to provide a link to a registration website by June 8, 2022. Registrants will be provided information on accessing the online meeting platform.

Persons who wish to listen to the meeting (but not watch it or testify) need not register online and may access audio of the meeting using a call-in number that will be available on August 17, 2022, on the registration website at: *https://occ.gov/topics/charters-and-licensing/public-comment/business-combination-or-merger-applications-comments.html*. Persons attending via telephone will only be able to listen to the meeting audio, and all phone lines will be placed on mute to minimize disruption. Persons listening to the public meeting via telephone will not be able to provide testimony and will not have the ability to view the speakers or any other information that may be shown on screen during the meeting.

Transcript of the Meeting

The agencies anticipate that a transcript of the meeting will be posted on each agency's respective public website. An audio or video recording of the meeting will not be retained by the agencies. No presentation materials will be permitted to be used during the public meeting due to technical considerations associated with a virtual format.[2]

Meeting Procedures

The Presiding Officers will prepare a schedule for persons wishing to testify and establish the order of presentation. To ensure an opportunity for all interested commenters to present their views, the Presiding Officers may limit the time for providing oral comments and may establish other procedures related to the conduct of the public meeting as appropriate. For instance, each person may be permitted up to three minutes to testify. In order to verify the identity of persons scheduled to testify at the virtual public meeting, individuals who register to testify will be required to join a virtual waiting room in advance of the public meeting, where they must present a valid, government-issued photo identification using the video conference feature. Individuals who register to testify will be contacted by email to schedule their identity verification sessions. The Presiding Officers may extend the end time of the meeting beyond 5:00 p.m. EDT, if additional time is needed to accommodate demonstrated public interest.

Reasonable Accommodations

Persons who wish to request reasonable accommodations should submit a request through the OCC's website at: *https://occ.gov/topics/charters-and-licensing/public-comment/business-combination-or-merger-applications-comments.html,* which will be updated to provide a link to a registration website by June 8, 2022; or, by calling Jason Bouleris, Program Analyst in the OCC's Community Affairs Division, at (202) 649–6382. Requests should be made no later than 12:00 p.m. EDT on July 28, 2022. Requests submitted after this time may not be possible to accommodate. Requests should include a detailed description of the accommodation needed and a way for agency staff to contact the requester if more information is needed regarding the request.

Extension of the Comment Period

The Board is extending the comment period on the Holding Company Application, and the OCC is extending the comment period on the Bank Application, through 5:00 p.m. EDT on August 23, 2022.

Written comments regarding the Holding Company Application may be submitted to the Federal Reserve Bank of Philadelphia, James W. Corkery, Assistant Vice President, Ten Independence Mall, Philadelphia, Pennsylvania 19106, or electronically to *comments.applications@phil.frb.org;* or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001. In general, all written comments will be made available on the Board's website at *https://www.federalreserve.gov/foia/td-group-first-horizon-application-related-materials.htm* as submitted, and will not be edited to remove any confidential, contact, or other identifying information.

Written comments on the Bank Application may be submitted to Jason Almonte, Director for Large Bank Licensing at *LargeBanks@occ.treas.gov* or at 340 Madison Avenue, Fifth Floor, New York, New York 10173. Written comments will be made available on OCC's website at *https://www.occ.gov/topics/charters-and-licensing/public-comment/business-combination-or-merger-applications-comments.html*. In general, the OCC will publish each comment without change, including any business or personal information, name and address, email addresses, and phone numbers. Comments received, including attachments and other supporting material, are part of the public record and subject to public disclosure. Do not enclose any information in a comment or supporting material that is confidential or inappropriate for public disclosure.

Privacy Note

The OCC will make the public record of the Bank Application, including all comments received, the written copy of

[2] The agencies will review written materials submitted through the comment submission process and, as described below, written comments relating to the application will be posted to the agencies' respective public websites.

a person's oral testimony at the public meeting (if a written copy is provided to the agencies), and the transcript of the public meeting, available on the OCC's public website at: *https://occ.gov/topics/charters-and-licensing/public-comment/business-combination-or-merger-applications-comments.html*. The Board will make the public record of the Holding Company Application, including all comments received, the written copy of a person's oral testimony at the public meeting (if a written copy is provided to the agencies), and the transcript of the public meeting, available on the Board's public website at: *https://www.federalreserve.gov/foia/td-group-first-horizon-application-related-materials.htm*. Persons submitting comments and/or testimony are reminded to include only information that they wish to make available to the public.

Michael J. Hsu,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

[FR Doc. 2022–11068 Filed 5–23–22; 8:45 am]

BILLING CODE 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 Disclosure Requirements and Recordkeeping Requirements Associated with Regulation CC (FR CC; OMB No. 7100–0235).

DATES: Comments must be submitted on or before July 25, 2022.

ADDRESSES: You may submit comments, identified by FR CC, 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.* 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. 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, Washington, DC 20551, (202) 452–3829.

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, and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* 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: Disclosure Requirements and Recordkeeping Requirements Associated with Regulation CC.

Collection identifier: FR CC.

OMB control number: 7100–0235.

Frequency: Event-generated.

Respondents: State member banks and uninsured state branches and agencies of foreign banks.

Estimated number of respondents: Bank burden: 686 (except for Changes in policy, 100); Consumer burden: 17,150.

Estimated average hours per response: Specific availability policy disclosures and initial disclosures, 0.02; Longer delays on a case-by-case basis—Notice in specific policy disclosure, 0.05; Notice of exceptions, 0.05; Locations where employees accept consumer deposits and ATMs, 0.25; Quinquennial

inflation adjustments for disclosures, 8; Annual notice of new ATMs, 5; Changes in policy, 20; Notification of quinquennial inflation adjustments (annualized), 4; Notice of nonpayment on paying bank, 0.02; Notification to customer, 0.02; Expedited recredit for consumers, 0.25; Expedited recredit for banks, 0.25; Consumer awareness, 0.02; Expedited recredit claim notice, 0.25.

Estimated annual burden hours: Specific availability policy disclosures and initial disclosures, 6,860; Longer delays on a case-by-case basis—Notice in specific policy disclosure, 24,010; Notice of exceptions, 68,600; Locations where employees accept consumer deposits and ATMs, 172; Quinquennial inflation adjustments for disclosures, 5,488; Annual notice of new ATMs, 3,430; Changes in policy, 4,000; Notification of quinquennial inflation adjustments (annualized), 2,744; Notice of nonpayment on paying bank, 480; Notification to customer, 5,076; Expedited recredit for consumers, 6,003; Expedited recredit for banks, 2,573; Consumer awareness, 4,116; Expedited recredit claim notice, 4,288.

General description of collection: Regulation CC—Availability of Funds and Collection of Checks (12 CFR 229), which implements the Expedited Funds Availability Act of 1987 (EFA Act) [1] and the Check Clearing for the 21st Century Act of 2003 (Check 21 Act),[2] requires banks [3] to make funds deposited in transaction accounts available within specified time periods, disclose their availability policies to customers, and begin accruing interest on such deposits promptly. The disclosures are intended to alert customers that their ability to use deposited funds may be delayed, prevent unintentional (and potentially costly) overdrafts, and allow customers to compare the policies of different banks before deciding at which bank to deposit funds. Regulation CC also requires notice to the depositary bank and to a customer of nonpayment of a check. Model disclosure forms, clauses, and notices are appended to the regulation to ease compliance.

Legal authorization and confidentiality: Section 609 of the EFA Act, as amended by section 1086 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[4] states that, ''the Board, jointly with the Director of the Bureau of Consumer Financial Protection, shall prescribe regulations—(1) to carry out the provisions of this chapter; (2) to prevent the circumvention or evasion of such provisions; and (3) to facilitate compliance with such provisions.'' Additionally, section 15 of the Check 21 Act [5] authorizes the Board to ''prescribe such regulations as the Board determines to be necessary to implement, prevent circumvention or evasion of, or facilitate compliance with the provisions of this chapter.'' The Board is therefore authorized by these statutory provisions to promulgate the disclosure and recordkeeping requirements contained in Regulation CC. The disclosure and recordkeeping requirements in Regulation CC are mandatory. The information that Regulation CC requires of consumers who are making an expedited recredit claim is required to obtain a benefit.

Because records required by Regulation CC are maintained at each banking organization, the Freedom of Information Act (FOIA) would only be implicated if the Board obtained such records as part of the examination or supervision of a banking organization. In the event the records are obtained by the Board as part of an examination or supervision of a financial institution, this information may be considered confidential pursuant to exemption 8 of the FOIA, which protects information contained in ''examination, operating, or condition reports'' obtained in the bank supervisory process.[6]

Consultation outside the agency: Pursuant to sections 1086 and 1100H of the Dodd-Frank Act, the Board and the Consumer Financial Protection Bureau (CFPB) assumed joint rulemaking authority with respect to subpart B of Regulation CC. Given this joint authority, the Board has communicated with the CFPB regarding this information collection.

Board of Governors of the Federal Reserve System, May 17, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–11091 Filed 5–23–22; 8:45 am]

BILLING CODE 6210–01–P

[1] See 12 U.S.C. 4001 *et seq.*

[2] See 12 U.S.C. 5001 *et seq.*

[3] For purposes of Regulation CC, banks are commercial banks, savings associations, credit unions, and U.S. branches and agencies of foreign banks.

[4] 12 U.S.C. 4008.

[5] 12 U.S.C. 5014.

[6] 5 U.S.C. 552(b)(8).

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

Public Meeting: Proposal by Bank of Montreal and BMO Financial Corp. To Acquire BancWest Holding Inc. and Bank of the West, and for Bank of the West To Merge With and Into BMO Harris Bank National Association

AGENCY: Board of Governors of the Federal Reserve System (Board) and Office of the Comptroller of the Currency (OCC).

ACTION: Notice of public meeting.

SUMMARY: A virtual public meeting will be held regarding the proposals by Bank of Montreal, Montreal, Quebec, Canada and BMO Financial Corp., Wilmington, Delaware, to acquire BancWest Holding Inc. and thereby indirectly acquire Bank of the West, both of San Francisco, California, pursuant to the Bank Holding Company Act; and for Bank of the West, San Francisco, California, to merge with and into BMO Harris Bank National Association, Chicago, Illinois, pursuant to the Bank Merger Act. The purpose of the meeting is to collect information related to factors the Board and OCC consider when making determinations under the Bank Holding Company Act and the Bank Merger Act.

DATES: The meeting date is July 14, 2022, from 11:00 a.m. to 7:00 p.m. Eastern Daylight Time (EDT). Members of the public seeking to make oral comments during the virtual meeting must register by 12:00 p.m. EDT on June 23, 2022, to be placed on a list of registered commenters and receive specific instructions for participation. Members of the public seeking to watch the virtual meeting (but not provide oral comments) must register any time prior to 11:59 p.m. EDT on July 13, 2022.

FOR FURTHER INFORMATION CONTACT:

OCC: Jason Almonte, Director for Large Bank Licensing, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219, via email at *jason.almonte@occ.treas.gov,* or via telephone at (917) 344–3405.

Federal Reserve: Colette A. Fried, Assistant Vice President, Federal Reserve Bank of Chicago, 230 South LaSalle Street, Chicago, Illinois 60604, via email at *colette.a.fried@chi.frb.org,* or via telephone at 312–322–6846, or Lisa Smith, Lead Examiner—Mergers and Acquisitions, Federal Reserve Bank of Chicago, 230 South LaSalle Street, Chicago, Illinois 60604, via email at *lisa.a.smith@chi.frb.org,* or via

telephone at (515) 241–1477. For users who have hearing or speech impairments, please call 711 from any telephone, anywhere in the United States.

SUPPLEMENTARY INFORMATION:

I. Background and Public Meeting Notice

On January 17, 2022, BMO Harris Bank National Association, Chicago, Illinois (BMO Harris Bank), applied to the OCC to merge Bank of the West, San Francisco, California with and into BMO Harris Bank pursuant to section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) (Bank Application). That same day, the Board received an application from Bank of Montreal, Montreal, Canada, and BMO Financial Corp., Wilmington, Delaware, to acquire BancWest Holding Inc., San Francisco, California, parent of Bank of the West, pursuant to the Bank Holding Company Act (12 U.S.C. 1841 e*t seq.*) (Holding Company Application). The Board and OCC (agencies) hereby announce that a public meeting on the applications will be held, as described below.

II. Purpose and Procedures

The public meeting will be held virtually. A virtual meeting will help protect the health and safety of all participants in light of the continuing occurrence of COVID–19 cases. The virtual format also will expand public access to the proceedings for both viewers and those who testify, and it will reduce travel and related costs associated with attending in-person proceedings.

The purpose of the public meeting is to collect information relating to the factors that the agencies consider under the applicable statutes in acting on the applications. These factors include the effects of the proposal on the convenience and needs of the communities to be served by the combined organization; the insured depository institutions' performance under the Community Reinvestment Act; the impact of the proposal on competition in the relevant markets; the effects of the proposal on the stability of the U.S. banking or financial system; the financial and managerial resources and future prospects of the companies and banks involved in the proposal; and the effectiveness of the companies and banks in combatting money laundering activities. Witnesses may present oral testimony in support of the proposed transactions, in opposition to the proposed transactions, or without taking a position in support or opposition.

Testimony at the public meeting will be presented virtually to a panel consisting of Presiding Officers and other panel members appointed by the Presiding Officers. The Presiding Officers will have the authority and discretion to ensure that the meeting proceeds in a fair and orderly manner. The rules for taking evidence in an administrative proceeding will not apply to the public meeting. In general, the role of the panel members will be to listen to the oral testimony. The panelists may ask questions of those who testify; however, the questions generally will be limited to seeking clarification of statements made. Panel members may question witnesses, but no cross-examination of witnesses will be permitted. The public meeting will be transcribed, and the transcript will be posted on the respective public websites of the Board and the OCC.[1]

Information for Persons Wishing To Testify

All persons wishing to testify at the public meeting must submit a written request to testify no later than 12:00 p.m. EDT on June 23, 2022, through the online registration website available at: *https://www.federalreserve.gov/foia/bank-of-montreal-bank-of-the-west-application-materials.htm.* The Board will provide the OCC with a copy of each request to testify.

The online registration site will collect the following information from persons requesting to testify: (i) The name, city and state, telephone number, organization (if applicable), and email address of the person testifying; (ii) a brief statement of the nature of the expected testimony (including whether the testimony will support, oppose, or neither support nor oppose the proposed transactions); and (iii) the identification of any special needs, such as translation services, or disabilities requiring assistance. Translators or interpreters will be provided to the extent available if a need for such services is noted in the request to testify.

Those wishing to submit a written version of their oral testimony may, but need not, file the written submission with the Presiding Officers via email to both *comments.applications@chi.frb.org* and to *LargeBanks@occ.treas.gov* before the meeting begins, or within three business days after the date of the meeting, and the subject line of the email should state ''PUBLIC MEETING.''

Persons who wish to testify must be able to access the online meeting platform using a computer, tablet, smart phone, or similar mobile device and have a video camera on their computer or mobile device. Persons who have registered to testify will be contacted by agency staff prior to the meeting and provided with specific instructions on participation (*e.g.,* how to connect to the online meeting), as well as an opportunity to attend a technical session on how to connect to audio and video for the meeting.

Information for Persons Watching or Listening to the Meeting Without Testifying

Persons interested in watching the meeting (but not testifying) must register by submitting their name and email address through the online registration web page at *https://www.federalreserve.gov/foia/bank-of-montreal-bank-of-the-west-application-materials.htm.* Registrants will be provided information on accessing the online meeting platform.

Persons who wish to listen to the meeting (but not watch it or testify) need not register online and may access audio of the meeting using a call-in number that will be available on July 13, 2022, on the registration web page at: *https://www.federalreserve.gov/foia/bank-of-montreal-bank-of-the-west-application-materials.htm.* Persons attending via telephone will only be able to listen to the meeting audio, and all phone lines will be placed on mute to minimize disruption. Persons listening to the public meeting via telephone will not be able to provide testimony and will not have the ability to view the speakers or any other information that may be shown on screen during the meeting.

Transcript of the Meeting

The agencies anticipate that a transcript of the meeting will be posted on each agency's respective public website. An audio or video recording of the meeting will not be retained by the agencies. No presentation materials will be permitted to be used during the public meeting due to technical considerations associated with a virtual format.[2]

[1] Materials related to the applications are available on the Board's website at *https://www.federalreserve.gov/foia/bank-of-montreal-bank-of-the-west-application-materials.htm* and the OCC's website at *https://occ.gov/topics/charters-and-licensing/public-comment/business-combination-or-merger-applications-comments.html.*

[2] The agencies will review written materials submitted through the comment submission process and, as described below, written comments relating to the application will be posted to the agencies' respective public websites.

Meeting Procedures

The Presiding Officers will prepare a schedule for persons wishing to testify and establish the order of presentation. To ensure an opportunity for all interested commenters to present their views, the Presiding Officers may limit the time for providing oral comments and may establish other procedures related to the conduct of the public meeting as appropriate. For instance, each person may be permitted up to three minutes to testify. In order to verify the identity of persons scheduled to testify at the virtual public meeting, individuals who register to testify will be required to join a virtual waiting room in advance of the public meeting, where they must present a valid, government-issued photo identification using the video conference feature. Individuals who register to testify will be contacted by email to schedule their identity verification sessions. The Presiding Officers may extend the end time of the meeting beyond 7:00 p.m. EDT, if additional time is needed to accommodate demonstrated public interest.

Reasonable Accommodations

Persons who wish to request reasonable accommodations should submit a request through the online registration website at *https://www.federalreserve.gov/foia/bank-of-montreal-bank-of-the-west-application-materials.htm,* or by calling Jason Bouleris, Program Analyst in the OCC's Community Affairs Division, at (202) 649–6382. Requests should be made no later than 12:00 p.m. EDT on June 23, 2022. Requests submitted after this time may not be possible to accommodate. Requests should include a detailed description of the accommodation needed and a way for agency staff to contact the requester if more information is needed regarding the request.

Extension of the Comment Period

The Board is extending the comment period on the Holding Company Application, and the OCC is extending the comment period on the Bank Application, through 5:00 p.m. EDT on July 19, 2022.

Written comments regarding the Holding Company Application may be submitted to the Federal Reserve Bank of Chicago, Colette A. Fried, Assistant Vice President, 230 South LaSalle Street, Chicago, Illinois 60604, or electronically to *comments.applications@chi.frb.org;* or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001. In general, all written comments will be made available on the Board's website at *https://www.federalreserve.gov/foia/bank-of-montreal-bank-of-the-west-application-materials.htm* as submitted, and will not be edited to remove any confidential, contact, or other identifying information.

Written comments on the Bank Application may be submitted to Jason Almonte, Director for Large Bank Licensing at *LargeBanks@occ.treas.gov* or at 340 Madison Avenue, Fifth Floor, New York, New York 10173. Written comments will be made available on OCC's website at *https://www.occ.gov/topics/charters-and-licensing/public-comment/business-combination-or-merger-applications-comments.html.* In general, the OCC will publish each comment without change, including any business or personal information, name and address, email addresses, and phone numbers. Comments received, including attachments and other supporting material, are part of the public record and subject to public disclosure. Do not enclose any information in a comment or supporting material that is confidential or inappropriate for public disclosure.

Privacy Note

The Board will make the public record of the Holding Company Application, including all comments received, the written copy of a person's oral testimony at the public meeting (if a written copy is provided to the agencies), and the transcript of the public meeting, available on the Board's public website at: *https://www.federalreserve.gov/foia/bank-of-montreal-bank-of-the-west-application-materials.htm.* The OCC will make the public record of the Bank Application, including all comments received, the written copy of a person's oral testimony at the public meeting (if a written copy is provided to the agencies), and the transcript of the public meeting, available on the OCC's public website at: *https://occ.gov/topics/charters-and-licensing/public-comment/business-combination-or-merger-applications-comments.html.* Persons submitting comments and/or testimony are reminded to include only information that they wish to make available to the public.

Michael J. Hsu,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

[FR Doc. 2022–11070 Filed 5–23–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0307]

Recommendations To Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt-Jakob Disease by Blood and Blood Components; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a final guidance entitled ''Recommendations to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt-Jakob Disease by Blood and Blood Components.'' The guidance document provides blood establishments that collect blood and blood components with recommendations intended to reduce the possible risk of transmission of Creutzfeldt-Jakob disease (CJD) and variant Creutzfeldt-Jakob disease (vCJD) by blood and blood components. The recommendations in the guidance apply to the collection of Whole Blood and blood components intended for transfusion or for use in further manufacturing, including Source Plasma. The guidance removes the recommendations to defer indefinitely blood donors for geographic risk of possible exposure to bovine spongiform encephalopathy for time spent in the United Kingdom (U.K.) from 1980 to 1996 and for time spent in France and Ireland from 1980 to 2001, and receipt of a blood transfusion in the U.K., France, and Ireland from 1980 to the present. The guidance also provides recommendations for requalification of individuals previously deferred for these geographic risk factors, provided they meet all other eligibility requirements. The guidance announced in this notice supersedes the guidance

of the same title dated April 2020 and updated August 2020 (2020 guidance).

DATES: The Agency is soliciting public comment, but is implementing this guidance immediately, because the Agency has determined that prior public participation is not feasible or appropriate. The announcement of the guidance is published in the **Federal Register** on May 24, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2012–D–0307 for ''Recommendations to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt-Jakob Disease by Blood and Blood Components.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Tami Belouin, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Recommendations to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt-Jakob Disease by Blood and Blood Components.'' The guidance document provides blood establishments that collect blood and blood components with recommendations intended to reduce the possible risk of transmission of Creutzfeldt-Jakob disease (CJD) and variant Creutzfeldt-Jakob disease (vCJD) by blood and blood components. The recommendations in the guidance apply to the collection of Whole Blood and blood components intended for transfusion or for use in further manufacturing, including Source Plasma. The guidance removes the recommendations in the 2020 guidance to defer indefinitely blood donors for: (1) Geographic risk of possible exposure to bovine spongiform encephalopathy for time spent in the U.K. from 1980 to 1996 and for time spent in France and Ireland from 1980 to 2001, and (2) receipt of a blood transfusion in the U.K., France, and Ireland from 1980 to present. The guidance also provides recommendations for requalification of individuals previously deferred for these geographic risk factors, provided they meet all other eligibility requirements. The guidance announced in this notice supersedes the final guidance of the same title dated April 2020 and updated August 2020. In the **Federal Register** of June 17, 2020 (85 FR 36593), FDA announced the availability of the final guidance of the same title dated April 2020. The guidance was updated in August 2020.

The recommendations on reducing the possible risk of transmission of CJD are unchanged from the 2020 guidance. The guidance changes the geographic deferral recommendations for vCJD risk based on new information in the risk assessments published by U.K.'s Advisory Committee on the Safety of Blood, Tissues and Organs and

Medicines and Healthcare Products Regulatory Agency. These risk assessment models, which FDA has independently evaluated, demonstrate that, in the U.K., the current risk of vCJD transmission by blood and blood components would expose transfusion recipients to no or minimal additional risk of vCJD in the future, and, for blood components that are leukocyte reduced, the possible risk is even further reduced. FDA has determined that the recommendations will simplify the donor screening process and increase the number of eligible donors while maintaining the safety of blood and blood components.

FDA is issuing this guidance for immediate implementation in accordance with § 10.115(g)(2) (21 CFR 10.115(g)(2)) without initially seeking prior comment, because the Agency has determined that prior public participation is not feasible or appropriate (see § 10.115(g)(2) and section 701(h)(1)(C)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(h)(1)(C)(i))). Specifically, we are not seeking prior comment because the revised recommendations present a less burdensome policy for reducing the risk of transmission of CJD and vCJD by blood and blood components that is consistent with public health, and we expect that the revised recommendations will increase the availability of blood and blood components while maintaining the safety of blood and blood components.

This guidance is being issued consistent with FDA's good guidance practices regulation (§ 10.115). The guidance represents the current thinking of FDA on ''Recommendations to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt-Jakob Disease by Blood and Blood Components.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR 601.12 have been approved under OMB control number 0910–0338; the collections of information in 21 CFR parts 610 and 630 have been approved under OMB control number 0910–0116.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents*, or *https://www.regulations.gov*.

Dated: May 18, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–11119 Filed 5–23–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0150]

Revocation of Authorization of Emergency Use of an In Vitro Diagnostic Device for Detection and/or Diagnosis of COVID–19; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the Emergency Use Authorization (EUA) (the Authorization) issued to Clinical Research Sequencing Platform (CRSP), LLC at the Broad Institute of MIT and Harvard (Broad Institute) for the CRSP SARS–CoV–2 Real-time Reverse Transcriptase (RT)-PCR Diagnostic Assay. FDA revoked this Authorization under the Federal Food, Drug, and Cosmetic Act (FD&C Act). The revocation, which includes an explanation of the reasons for revocation, is reprinted in this document.

DATES: The Authorization for the CRSP SARS–CoV–2 Real-time Reverse Transcriptase (RT)-PCR Diagnostic Assay is revoked as of May 5, 2022.

ADDRESSES: Submit a written request for a single copy of the revocation to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the revocation may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revocation.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Ross, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993–0002, 240–402–8155 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) as amended by the Project BioShield Act of 2004 (Pub. L. 108–276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5) allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. On July 8, 2020, FDA issued an EUA to the Broad Institute for the CRSP SARS–CoV–2 Real-time Reverse Transcriptase (RT)-PCR Diagnostic Assay, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on November 20, 2020 (85 FR 74346), as required by section 564(h)(1) of the FD&C Act. Subsequent updates to the Authorization were made available on FDA's website. The authorization of a device for emergency use under section 564 of the FD&C Act may, pursuant to section 564(g)(2) of the FD&C Act, be revoked when the criteria under section 564(c) of the FD&C Act for issuance of such authorization are no longer met (section 564(g)(2)(B) of the FD&C Act), or other circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the FD&C Act).

II. EUA Revocation Request

In a request received by FDA on April 4, 2022, Broad Institute requested revocation of, and on May 5, 2022, FDA revoked, the Authorization for the CRSP SARS–CoV–2 Real-time Reverse Transcriptase (RT)-PCR Diagnostic Assay. Because the Broad Institute notified FDA that it has decided to discontinue use of the CRSP SARS–CoV–2 Real-time Reverse Transcriptase (RT)-PCR Diagnostic Assay and requested FDA revoke the EUA for the CRSP SARS–CoV–2 Real-time Reverse Transcriptase (RT)-PCR Diagnostic Assay, FDA has determined that it is

appropriate to protect the public health or safety to revoke this Authorization.

III. Electronic Access

An electronic version of this document and the full text of the revocation is available on the internet at *https://www.regulations.gov/.*

IV. The Revocation

Having concluded that the criteria for revocation of the Authorization under section 564(g)(2)(C) of the FD&C Act are met, FDA has revoked the EUA of Broad Institute for the CRSP SARS–CoV–2 Real-time Reverse Transcriptase (RT)-PCR Diagnostic Assay. The revocation in its entirety follows and provides an explanation of the reasons for revocation, as required by section 564(h)(1) of the FD&C Act.

BILLING CODE 4164–01–P

U.S. FOOD & DRUG ADMINISTRATION

May 5, 2022

Chuck Kolifrath
Associate Director, Regulatory Affairs, Genomics Platform
Broad Institute of MIT and Harvard
320 Charles Street
Cambridge, MA 02141
Re: Revocation of EUA200147

Dear Mr. Kolifrath:

This letter is in response to the request from Clinical Research Sequencing Platform (CRSP), LLC at the Broad Institute of MIT and Harvard ("Broad Institute of MIT and Harvard") received on April 4, 2022, that the U.S. Food and Drug Administration (FDA) revoke the EUA for the CRSP SARS-CoV-2 Real-time Reverse Transcriptase (RT)-PCR Diagnostic Assay issued on July 8, 2020, re-issued on October 23, 2020, December 18, 2020, and June 10, 2021, and amended on August 30, 2020, and September 23, 2021. The Broad Institute of MIT and Harvard indicated that it is no longer conducting testing under this EUA.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because the Broad Institute of MIT and Harvard has notified FDA that it has decided to discontinue use of the CRSP SARS-CoV-2 Real-time Reverse Transcriptase (RT)-PCR Diagnostic Assay and requested FDA revoke the EUA for the CRSP SARS-CoV-2 Real-time Reverse Transcriptase (RT)-PCR Diagnostic Assay, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA200147 for the CRSP SARS-CoV-2 Real-time Reverse Transcriptase (RT)-PCR Diagnostic Assay, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the CRSP SARS-CoV-2 Real-time Reverse Transcriptase (RT)-PCR Diagnostic Assay is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Jacqueline A. O'Shaughnessy, Ph.D.
Acting Chief Scientist
Food and Drug Administration

Cc: Niall J. Lennon, Ph.D., Institute Scientist and Sr. Director, Clinical Research Sequencing Platform (CRSP), LLC at the Broad Institute of MIT and Harvard

Dated: May 17, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–11122 Filed 5–23–22; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2002–D–0362]

Blood Pressure and Pulse Donor Eligibility Requirements: Compliance Policy; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance entitled ''Blood Pressure and Pulse Donor Eligibility Requirements: Compliance Policy; Draft Guidance for Industry.'' The draft guidance document addresses certain regulatory requirements for determining donor eligibility that apply to blood establishments that collect blood and blood components for transfusion or for further manufacturing use, including Source Plasma. In a final rule dated May 22, 2015, FDA amended the regulations applicable to blood establishments for determining donor eligibility and testing blood and blood components. The revised requirements were implemented in order to assure the safety of the blood supply and to protect donor health.

DATES: The announcement of the guidance is published in the **Federal Register** on May 24, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–D–0362 for ''Blood Pressure and Pulse Donor Eligibility Requirements: Compliance Policy; Draft Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Myrna Hanna, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Blood Pressure and Pulse Donor Eligibility Requirements: Compliance Policy; Draft Guidance for Industry.'' The draft guidance document addresses certain regulatory requirements for determining donor eligibility that apply to blood establishments that collection blood components for transfusion or for further manufacturing use, including Source Plasma. In the final rule dated May 22, 2015 (80 FR 29841) entitled ''Requirements for Blood and Blood Components Intended for Transfusion or for Further Manufacturing Use,'' FDA amended the regulations applicable to blood establishments for determining donor eligibility and testing blood and

blood components. The revised requirements were implemented in order to assure the safety of the blood supply and to protect donor health. The final rule became effective on May 23, 2016.

FDA has developed the guidance in response to feedback from blood establishments regarding the donor eligibility requirements for blood pressure and pulse in 21 CFR 630.10 and the corresponding requirements for medical supervision in 21 CFR 630.5. The guidance describes the circumstances in which FDA does not intend to take regulatory action for a blood establishment's failure to comply with certain regulations for determining the eligibility of blood donors with blood pressure or pulse measurements outside of the specified limits.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Blood Pressure and Pulse Donor Eligibility Requirements: Compliance Policy.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338; the collections of information in 21 CFR parts 606 and 630 have been approved under OMB control number 0910–0116.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents*, or *https://www.regulations.gov.*

Dated: May 18, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–11118 Filed 5–23–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0744]

Antibacterial Therapies for Patients With an Unmet Medical Need for the Treatment of Serious Bacterial Diseases—Questions and Answers (Revision 1); Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Antibacterial Therapies for Patients With an Unmet Medical Need for the Treatment of Serious Bacterial Diseases—Questions and Answers (Revision 1).'' The purpose of this draft guidance is to assist sponsors in the clinical development of new antibacterial drugs, and it provides updates to the options for development programs, given the availability of some new therapeutic options. This draft guidance will provide necessary updates to the final guidance entitled ''Antibacterial Therapies for Patients With an Unmet Medical Need for the Treatment of Serious Bacterial Diseases'' published on August 2, 2017.

DATES: Submit either electronic or written comments on the draft guidance by July 25, 2022 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2013–D–0744 for ''Antibacterial Therapies for Patients With an Unmet Medical Need for the Treatment of Serious Bacterial Diseases—Questions and Answers (Revision 1).'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this

information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Peter Kim, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–0741.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Antibacterial Therapies for Patients With an Unmet Medical Need for the Treatment of Serious Bacterial Diseases—Questions and Answers (Revision 1).'' This draft guidance will provide necessary updates to the final guidance entitled ''Antibacterial Therapies for Patients With an Unmet Medical Need for the Treatment of Serious Bacterial Diseases'' published on August 2, 2017 (82 FR 35973).

The purpose of this draft guidance is to assist sponsors in the clinical development of new antibacterial drugs. Specifically, the draft guidance explains FDA's current thinking about possible development programs and clinical trial designs for antibacterial drugs to treat serious bacterial diseases in patients with an unmet medical need. Since the 2017 final guidance was issued, there have been some new drug approvals that have activity against certain drug-resistant organisms. Therefore, it is now possible to conduct noninferiority (NI) trials that include subjects with infections caused by certain drug-resistant organisms because an effective active control can be provided. In addition to clarifying edits, more detail was provided for the currently used NI trial designs that may be used with a wider NI margin, including cases in which the trial population is enriched for subjects with infections caused by certain drug-resistant organisms.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Antibacterial Therapies for Patients With an Unmet Medical Need for the Treatment of Serious Bacterial Diseases'' and will replace the guidance with that name issued in 2017. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 312 have been approved under OMB control numbers 0910–0014. The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338. The collections of information in 21 CFR 201.56 and 201.57 have been approved under OMB control number 0910–0572.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: May 17, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–11117 Filed 5–23–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0279]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before June 23, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 0990–0279–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Department of Health and Human Services (HHS) Registration of an Institutional Review Board Form.

Type of Collection: Reinstatement without change.

OMB No.: 0990–0279.

Abstract: The Office of the Assistant Secretary for Health, Office for Human Research Protections is requesting reinstatement of the Office of Management and Budget (OMB) No. 0990–0279, Department of Health and Human Services (HHS) Institutional Review Board (IRB) Registration Form, with no changes, for a three-year period. That form was previously approved by OMB on February 4, 2019 and expired on February 28, 2022. The purpose of the IRB Registration Form is to provide a simplified procedure for: (1) Institutions engaged in research conducted or supported by HHS to satisfy the HHS regulations for the protection of human subjects at 45 CFR 46.103(b) and 45 CFR 46.107 as promulgated in 1991 (56 FR 28012, 28022) and amended on June 23, 2005 (70 FR 36325), and 45 CFR 46, subpart E, Registration of Institutional Review Boards; and, (2) IRBs, in the United States (US), to satisfy the FDA IRB regulations at 21 CFR 56.106.

Likely Respondents: Institutions or organizations operating IRBs that review human subjects research conducted or supported by HHS; or, in the case of FDA's requirements, each IRB in the United States that reviews clinical investigations regulated by FDA under sections 505(i) or 520(g) of the Federal Food, Drug and Cosmetic Act; and each IRB in the United States that reviews clinical investigations that are intended to support applications for research or marketing permits for FDA-regulated products.

ANNUALIZED BURDEN HOUR TABLE

IRB registration form	Number of respondents	Number of responses per respondent	Average burden per response	Total burden hours
Update and Renew Registration	5,650	2	30/60	5,650
Initial and Update Registration	350	2	45/60	525
Total				6,175

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2022–11064 Filed 5–23–22; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Member SEP.

Date: June 16, 2022.

Time: 10:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Ana Olariu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Boulevard, Room 3208, MSC 9529, Rockville, MD 20852, 301–496–9223, *Ana.Olariu@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; HEAL Biomarker review meeting.

Date: June 21, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Abhignya Subedi, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Boulevard, Room 3208, MSC 9529, Rockville, MD 20852, 301–496–9223, *abhi.subedi@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; HEAL Initiative: Pain Therapeutics Development [Small Molecules and Biologics].

Date: June 21, 2022.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Boulevard, Room 3208, MSC 9529, Rockville, MD 20852, 301–435–6033, *rajarams@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders B Study Section.

Date: June 23–24, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Joel A. Saydoff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Boulevard, Room 3205, MSC 9529, Rockville, MD 20852, 301–496–9223, *joel.saydoff@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 18, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–11054 Filed 5–23–22; 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 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Program Project.

Date: July 8, 2022.

Time: 11:00 a.m. to 4:00 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, Scientific Review Branch, National Institutes of Health, National Institute on Aging, Bethesda, MD 20814, (301) 827–3101, *dario.dieguez@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 19, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–11161 Filed 5–23–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Implementation Cooperative Agreement (U01 Clinical Trial Required).

Date: June 21, 2022.

Time: 11:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G76, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Marci Scidmore, Ph.D., Scientific Review Officer, Scientific Review Program, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G76, Rockville, MD 20852, (240) 627–3255, *marci.scidmore@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 18, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–11052 Filed 5–23–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Systems Biology for Infectious Diseases (SysBioID) (U19 Clinical Trials Not Allowed).

Date: June 21–July 6, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G13B, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Yong Gao, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G13B, Rockville, MD 20852, (240) 669–5048, *gaoL2@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 18, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–11051 Filed 5–23–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2005–21866]

Extension of Agency Information Collection Activity Under OMB Review: Enhanced Security Procedures at Ronald Reagan Washington National Airport

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0035, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). TSA requires general aviation (GA) aircraft operators who wish to fly into or out of Ronald Reagan Washington National Airport (DCA) to designate a security coordinator and adopt the DCA Access Standard Security Program (DASSP). The collection also involves obtaining information for Armed Security Officers (ASOs).

DATES: Send your comments by June 23, 2022. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' and by using the find function.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on February 17, 2022, 87 FR 9080.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Enhanced Security Procedures at Ronald Reagan Washington National Airport.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0035.

Forms(s): DASSP Aircraft Operator Application Form and Fixed Based Operator Application Form; and TSA Forms 3411 through 3416.

Affected Public: GA aircraft operators and passengers, ASOs, flight crewmembers, fixed base operators, and gateway airport operators.

Abstract: TSA is requesting an extension of this information collection. In accordance with 49 CFR part 1562, subpart B, TSA requires GA aircraft operators who wish to fly into or out of DCA to designate a security coordinator and adopt the DASSP. Once aircraft operators have complied with the DASSP requirements, they must request a slot reservation from the Federal Aviation Administration and request authorization from TSA for each flight into and out of DCA. This information collection is approved under OMB control number 1652–0033, TSA Airspace Waiver Applications.

As part of the DASSP requirements, individuals designated as security coordinators, ASOs, and flight crewmembers assigned to duty on a GA aircraft flying into and out of DCA must submit fingerprints for a Criminal History Records Check (CHRC). In addition, GA aircraft operators must also maintain CHRC records of all employees and authorized representatives for whom a CHRC has been completed.

Under the Armed Security Officer Program (ASOP), DASSP approved entities can nominate candidates through an online nomination form. This form includes submitting various application materials to TSA, including fingerprints, so that TSA can vet the candidates for suitability for the ASOP. As part of TSA's vetting process, TSA conducts a law enforcement employment verification check and CHRC. TSA then adjudicates the application and issues a final determination of eligibility. All qualified applicants must then successfully complete a TSA-approved training course.

Number of Respondents: 160.

Estimated Annual Burden Hours: An estimated 174 hours annually.

Dated: May 18, 2022.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2022–11049 Filed 5–23–22; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–ES–2022–N026; FXES11130500000–223–FF05E00000]

Endangered Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive any written comments on or before June 23, 2022.

ADDRESSES: Use one of the following methods to request documents or submit comments. Requests and comments should specify the applicant name and application number (*e.g.,* PER0001234):

- *Email: permitsR5ES@fws.gov.*
- *U.S. Mail:* Abby Gelb, Ecological Services, U.S. Fish and Wildlife Service, 300 Westgate Center Dr., Hadley, MA 01035.

FOR FURTHER INFORMATION CONTACT: Abby Gelb, 413–253–8212 (phone), or *permitsR5ES@fws.gov* (email). 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: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species, unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

We invite local, State, and Federal agencies; Tribes; and the public to comment on the following applications.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
PER0039068	Kirk Environmental, LLP, Beaver, WV.	Candy darter (*Etheostoma osburni*).	West Virginia	Presence/probable absence survey via electroshock.	Capture, harm	New.
PER0042004	Justin DeVault, Fairmont, WV.	Rusty patched bumble bee (*Bombus affinis*).	Maryland, Ohio, Pennsylvania, Virginia, West Virginia.	Presence/probable absence survey.	Capture, harass	New.
PER0042281	Ernest Smith, Worthington, WV.	Rusty patched bumble bee (*Bombus affinis*).	Maryland, Ohio, Pennsylvania, Virginia, West Virginia.	Presence/probable absence survey.	Capture, harass	New.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Glenn S. Smith,

Acting Manager, Division of Endangered Species, Ecological Services, Northeast Region.

[FR Doc. 2022–11053 Filed 5–23–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX22EE000101000; OMB Control Number 1028–0115]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Doug D. Nebert National Spatial Data Infrastructure (NSDI) Champion of the Year Award

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the U.S. Geological Survey (USGS) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before June 23, 2022.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's (OMB) Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to USGS, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0115 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Rich Frazier, Federal Geographic Data Committee, by email at *fgdc@fgdc.gov,* or by telephone at 703–648–5733. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.* 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. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA of 1995, we provide the general public and other Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on March 23, 2022, 87 FR, 16479. No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other 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 may ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: Nominations for Doug D. Nebert National Spatial Data Infrastructure (NSDI) Champion of the Year Award are accepted from public- or private-sector individuals, teams, and organizations, and professional societies in the United States. Nomination packages include three sections: (A) Cover Sheet, (B) Summary Statement, and (C) Supplemental Materials. The cover sheet includes professional contact information. The Summary Statement is limited to two pages and describes the nominee's achievements in the development of an outstanding, innovative, and operational tool, application, or service capability that directly supports the spatial data infrastructures. Nominations may include up to 10 pages of supplemental

information such as resume, publications list, and/or letters of endorsement. The award consists of a citation and plaque, which are presented to the recipient at an appropriate public forum by the FGDC Chair. The name of the recipient is also inscribed on a permanent plaque, which is displayed by the FGDC.

The Doug D. Nebert National Spatial Data Infrastructure (NSDI) Champion of the Year Award honors a respected colleague, technical visionary, and recognized U.S. national leader in the establishment of spatial data infrastructures that significantly enhance the understanding of our physical and cultural world. The award is sponsored by the Federal Geographic Data Committee (FGDC) and its purpose is to recognize an individual or a team representing Federal, State, Tribal, regional, and (or) local government, academia, or non-profit and professional organization that has developed an outstanding, innovative, and operational tool, application, or service capability used by multiple organizations that furthers the vision of the NSDI.

Title of Collection: Doug D. Nebert National Spatial Data Infrastructure (NSDI) Champion of the Year Award.

OMB Control Number: 1028–0115.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State, local, and tribal governments; private sector, academia, and non-profit organizations.

Total Estimated Number of Annual Respondents: 10.

Total Estimated Number of Annual Responses: 10.

Estimated Completion Time per Response: 10 Hours.

Total Estimated Number of Annual Burden Hours: 100.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Total Estimated Annual Non-hour Burden Cost: $0.

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 authority for this action is the PRA of 1995 (44 U.S.C. 3501, *et seq.*).

Kenneth Shaffer,

Deputy Executive Director, Federal Geographic Data Committee, USGS Core Science Systems Mission Area.

[FR Doc. 2022–11105 Filed 5–23–22; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[223.LLAK941200.L14400000.ET0000; AA–82857]

Notice of Application for Extension of Public Land Order No. 7555 and Opportunity for Public Meeting; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service (USFS) has filed an application with the Bureau of Land Management (BLM) requesting that the Secretary of the Interior extend Public Land Order (PLO) No. 7555 for an additional 20-year term. PLO No. 7555 withdrew 2,998 acres of National Forest System lands from location and entry under the United States mining laws, for protection of the Russian River and Upper Russian Lake Recreation Corridor near Cooper Landing, Alaska. This notice advises the public of an opportunity to comment on this application for a withdrawal extension and to request a public meeting.

DATES: Comments and requests for a public meeting regarding this withdrawal application must be received by August 22, 2022.

ADDRESSES: Comments and public meeting requests should be sent to the Alaska State Director, BLM Alaska State Office, 222 West Seventh Avenue, No. 13, Anchorage, Alaska 99513–7504 or by email at *blm_ak_state_director@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Chelsea Kreiner, BLM Alaska State Office, (907) 271–4205, email *ckreiner@blm.gov,* or you may contact the BLM office at the address above. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 7–1–1 (TTY, TDD, or Tele Braille) 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. The relay service is available 24 hours a day, 7 days a week. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The withdrawal established by PLO No. 7555 (68 FR 7387, (2003)), incorporated herein by reference, will expire February 12, 2023. The USFS has filed an application requesting the Secretary extend PLO No. 7555 for an additional 20-year term. The purpose of the withdrawal extension is to continue recreational utilization and protection of the Russian River watershed near Cooper Landing, Alaska.

A complete description of the lands requested, along with all other records pertaining to the extension, can be examined in the BLM Alaska State Office at the address shown above.

The use of a rights-of-way, interagency, or cooperative agreement would not adequately constrain non-discretionary uses that may result in disturbance of the lands embraced within the Russian River and Upper Russian Lake Recreation Corridor.

There are no suitable alternative sites as the described lands contain the resource values to be protected.

No additional water rights will be needed to fulfill the purpose of the requested withdrawal.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with this withdrawal extension. All interested parties who desire a public meeting for the purpose of being heard on this withdrawal extension application must submit a written request to the Alaska State Director, BLM Alaska State Office at the address in the **ADDRESSES** section, within August 22, 2022 of this notice. Upon determination by the authorized officer that a public meeting will be held, the BLM will publish a notice of the date, time, and place in the **Federal Register** and local newspapers, and will post on the BLM website at *www.blm.gov/alaska* at least 30 days before the scheduled date of the meeting.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The withdrawal extension application will be processed in accordance with the regulations set-forth in 43 CFR 2310.4 and subject to Section 810 of the Alaska National Interest Lands Conservation Act, (16 U.S.C. 3120).

(Authority: 43 CFR 2310.4)

Thomas Heinlein,

Acting Alaska State Director.

[FR Doc. 2022–11104 Filed 5–23–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033901; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Robert S. Peabody Museum of Archaeology, Andover, MA; Correction; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Robert S. Peabody Institute of Archaeology (formerly the Robert S. Peabody Museum of Archaeology) has further corrected an inventory of human remains and associated funerary objects originally published in a Notice of Inventory Completion in the **Federal Register** on September 13, 2005, and subsequently corrected in a Notice of Inventory Completion Correction published in the **Federal Register** on December 21, 2018. This notice further corrects the number of associated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Robert S. Peabody Institute of Archaeology. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Robert S. Peabody Institute of Archaeology at the address in this notice by June 23, 2022.

FOR FURTHER INFORMATION CONTACT: Ryan Wheeler, Robert S. Peabody Institute of Archaeology, Phillips Academy, 180 Main Street, Andover, MA 01810, telephone (978) 749–4490, email *rwheeler@andover.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the Robert S. Peabody Institute of Archaeology, Andover, MA. The human remains and associated funerary objects were removed from the Etowah site, Bartow County, GA and Little Egypt site, Murray County, GA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice further corrects the number of associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** (70 FR 54075–54076, September 13, 2005) and initially corrected in a Notice of Inventory Completion Correction in the **Federal Register** (83 FR 65726–65727, December 21, 2018). In June 2021, the Rochester Museum & Science Center in Rochester, NY, transferred control of human remains and associated funerary objects to the Robert S. Peabody Institute of Archaeology to aid in the repatriation of ancestral remains and belongings from Etowah. These human remains and associated belongings had been removed by Warren K. Moorehead between 1925 and 1928 and given to the Rochester Museum & Science Center in 1931. The updated counts and descriptions of the associated funerary objects reflect this transfer. Two additional items are counted among the associated funerary objects in this correction notice—one that was recently identified and one that had been stolen from the Peabody Institute and has been returned. Transfer of control of all the items listed in this correction notice has not occurred.

Correction

In the **Federal Register** (83 FR 65726, December 21, 2018), column 3, paragraph 1, sentence 2, under the heading ''Correction'' is corrected by substituting the following sentence:

Between 1925 and 1928, human remains representing a minimum of 95 individuals were removed from the Etowah site, Bartow County, GA, by Warren King Moorehead of the Robert S. Peabody Institute of Archaeology.

In the **Federal Register** (83 FR 65726, December 21, 2018), column 3, paragraph 2, sentence 2, under the heading ''Correction'' is corrected by substituting the following sentence:

The 24,826 associated funerary objects are 34 animal bone fragments and fragment lots; one dog burial; one basketry fragment with clay matrix lot; three burnt clay, ceramic sherds, and animal bones in lot; one ceramic bead; two ceramic elbow pipes; two ceramic basket- or canoe-shaped pipe; one ceramic pipe; one ceramic handle; 22 ceramic sherds; nine ceramic vessels; one lot of charcoal and soil; one concretion; two fragments of a copper axe with wooden handle; one copper covered wooden top knot, serpent shaped; two copper disks; 680 copper fragments, including wood fragments, copper bilobed arrow ornament, mica, adhered shell beads, textile and matting fragments, animal bone; 90 copper headdress, hair ornaments and fragments; 69 copper repousse plates and fragments; three fragments of daub and fire-hardened soil; 175 freshwater pearl beads; 56 freshwater periwinkle shells; seven freshwater shells and fragments; one fur fragment with copper staining; four galena crystals; one bear canine; one kaolin core with copper; one lot of kaolin, bark, animal bone fragments, mica, soil, and ceramic sherds; four large flint bifaces or swords; 11 chipped stone projectile points; one ground stone tool fragment; three leather fragments; one limestone spatulate celt; one lump of mineral ore; 108 matting fragments, including copper stained matting, textiles, and adhered shell beads; 83 mica fragments, some with copper stained matrix; 405 miscellaneous shells and small shells; 12 modified animal bone fragments; one quartz preform; 22,528 shell beads, including divers sizes and shapes (round, ovoid, tubular, disc, barrel, elongated, irregular), as well as mixed lots of shell beads, freshwater pearl beads, Olivella and Marginella shell beads, soil matrix, ceramic sherds, as well as copper stained shell beads, and fragments of deteriorated beads; two rough shell disks; 13 shell gorgets and gorget fragments; 166 small stones; three soil samples; 10 pieces of wood and animal bone mixed with soil in lot; five stone celts and fragments; five stone discoidals; 10 textile fragments, including some mixed lots with wood, copper fragments, and shell beads; nine tortoise shell strips or bands; one unmodified horse conch shell; six whelk shell cup fragments; 22 whelk shell fragments; one shell dipper; two whelk shell columella ornaments and fragments; 237 wood fragments, and mixed lots of wood with copper staining, mica, and soil; one worked stone fragment; two large Atlantic cockle shells; and one ''puffball'' fungus.

In the **Federal Register** (70 FR 54076, September 13, 2005), column 2, paragraph 1, sentence 1 is corrected by substituting the following sentence:

Officials of the Robert S. Peabody Institute of Archaeology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 105 individuals of Native American ancestry.

In the **Federal Register** (83 FR 65727, December 21, 2018), column 1, paragraph 3 is corrected by substituting the following sentence:

Officials of the Robert S. Peabody Institute of Archaeology have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 24,869 objects 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 a death rite or ceremony.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Ryan Wheeler, Robert S. Peabody Institute of Archaeology, Phillips Academy, 180 Main Street, Andover, MA 01810, telephone (978) 749–4490, email *rwheeler@andover.edu,* by June 23, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Alabama-Quassarte Tribal Town; Kialegee Tribal Town; Poarch Band of Creek Indians [*previously* listed as Poarch Band of Creeks]; The Muscogee (Creek) Nation; and the Thlopthlocco Tribal Town (hereafter referred to as ''The Tribes'') may proceed.

The Robert S. Peabody Institute of Archaeology is responsible for notifying The Tribes that this notice has been published.

Dated: May 4, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–11080 Filed 5–23–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Control Number 1010–0006; Docket ID: BOEM–2017–0016]

Agency Information Collection Activities; Leasing of Sulfur or Oil and Gas in the Outer Continental Shelf

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Ocean Energy Management (BOEM) is proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments, which must be received by BOEM on or before July 25, 2022.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to the BOEM Information Collection Clearance Officer, Anna Atkinson, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166; or by email to *anna.atkinson@boem.gov.* Please reference Office of Management and Budget (OMB) Control Number 1010–0006 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Anna Atkinson by email at *anna.atkinson@boem.gov* or by telephone at 703–787–1025. 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 of 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 and its related documents by searching the docket number BOEM–2017–0016 at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, BOEM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps BOEM assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BOEM's information collection requirements and provide the requested data in the desired format.

BOEM is soliciting comments on the proposed ICR described below. BOEM is especially interested in public comments addressing the following issues: (1) Is the collection necessary to the proper functions of BOEM; (2) what can BOEM do to ensure that this information is processed and used in a timely manner; (3) is the burden estimate accurate; (4) how might BOEM enhance the quality, utility, and clarity of the information to be collected; and (5) how might BOEM minimize the burden of this collection on the respondents, including minimizing the burden through the use of information technology?

Comments submitted in response to this notice are a matter of public record. BOEM will include or summarize each comment in its ICR to OMB for approval of this information collection. You should be aware that your entire comment—including your address, phone number, email address, or other personally identifiable information included in your comment—may be made publicly available. You may request that BOEM withhold from disclosure your personally identifiable information. Your request must identify any information contained in your comment that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You also must briefly describe any possible harmful consequences of disclosure of that information, such as embarrassment, injury, or other harm. While you can ask in your comment that your personally identifiable information be withheld from public disclosure, BOEM cannot guarantee that it will be able to do so under the law.

BOEM protects proprietary information in accordance with the Freedom of Information Act (5 U.S.C. 552), the Department of the Interior's (DOI) implementing regulations (43 CFR part 2), and BOEM's regulations at 30 CFR parts 550 and 552 promulgated pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1352(c)).

Title of Collection: Leasing of Sulfur or Oil and Gas in the Outer Continental Shelf (30 CFR part 550, part 556, and part 560).

Abstract: This ICR concerns the paperwork requirements in the regulations under 30 CFR part 550, part 556, and part 560 and the related notices to lessees and operators (NTL). This ICR also concerns the use of forms to process bonds, transfer interest in leases, and file relinquishments.

The OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS and all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs; balance orderly energy resource development with protection of human, marine, and coastal environments; ensure the public a fair return on the resources of the OCS; and preserve and maintain free enterprise competition. Also, the Energy Policy and Conservation Act of 1975 prohibits certain lease bidding arrangements (42 U.S.C. 6213(c)).

OMB Control Number: 1010–0006.

Form Number:

- BOEM–0150, ''Assignment of Record Title Interest in Federal OCS Oil and Gas Lease'';
- BOEM–0151, ''Assignment of Operating Rights Interest in Federal OCS Oil and Gas Lease'';
- BOEM–0152, ''Relinquishment of Federal OCS Oil and Gas Lease'';

• BOEM–2028, ''Outer Continental Shelf (OCS) Mineral Lessee's or Operator's Bond'';
• BOEM–2028A, ''Outer Continental Shelf (OCS) Mineral Lessee's or Operator's Supplemental Bond''; and
• BOEM–2030, ''Outer Continental Shelf (OCS) Pipeline Right-of-Way Grant Bond''.

Type of Review: Revision of a currently approved information collection.

Respondents/Affected Public: Federal oil, gas, or sulfur lessees and operators.

Total Estimated Number of Annual Responses: 21,826 responses.

Total Estimated Number of Annual Burden Hours: 21,935 hours.

Respondent's Obligation: Mandatory or required to obtain or retain a benefit.

Frequency of Collection: On occasion or annual.

Total Estimated Annual Non-Hour Burden Cost: $766,053.

Estimated Reporting and Recordkeeping Hour Burden: We expect the burden estimate for the renewal will be 21,935 hours with 21,826 responses, which reflects an increase of 2,881 hours and 11,628 responses. One hour of the increase accounts for Alaska's surety bond submission (30 CFR 550.1011), which was not previously included in the annual burden hours. The remaining increase of 2,880 annual burden hours accounts for submissions of documents under 30 CFR 556.715 and 556.808. Under the current 1010–0006, BOEM accounted for the burden hours to file the requisite fees but did not account for the burden hours to submit the requisite documents.

The following table details the individual components and respective burden hour estimates of this ICR.

BURDEN BREAKDOWN

30 CFR part 550, subpart J	Reporting requirement *	Hour burden	Average number of annual responses	Annual burden hours
		Non-hour cost burdens		
550.1011(a)	Provide surety bond (Form BOEM–2030) and required information.	Gulf of Mexico 0.25 ..	52	13
		Pacific 3.5	3	11
		Alaska 1	1	1
30 CFR 550, Subpart J, Total			56	25
30 CFR part 556, and NTLs	Reporting requirement *	Hour burden	Average number of annual responses	Annual burden hours
		Non-hour cost burdens		
Subpart A				
104(b)	Submit confidentiality agreement	0.25	500	125
106	Cost recovery and service fees; confirmation receipt	Cost recovery and service fees and associated documentation are covered under individual requirements throughout part.**		0
107	Submit required documentation electronically through BOEM-approved system; comply with filing specifications, as directed by notice in the **Federal Register** in accordance with 30 CFR 560.500.	Burden covered in 30 CFR 560.500.		0
107	File seals, documents, statements, signatures, etc., to establish legal status of all future submissions (paper or electronic).	10 min.	400	67
Subtotal			900	192
Subpart B				
201–204	Submit nominations, suggestions, comments, and information in response to requests for information or comments, draft or proposed 5-year leasing program, etc., including information from States and local governments, Federal agencies, industry, and others.	Not considered an information collection (IC) as defined in 5 CFR 1320.3(h)(4).		0
202–204	Submit nominations & specific information requested in draft proposed 5-year leasing program, from States and local governments.	4	69	276
Subtotal			69	276
Subpart C				
301; 302	Submit response & specific information requested in requests for industry interest and calls for information and nominations, etc., on areas proposed for leasing; including information from States and local governments.	Not considered IC as defined in 5 CFR 1320.3(h)(4).		0
302(d)	Request summary of interest (nonproprietary information) for calls for information and requests for interest, etc.	1	5	5
305; 306	States or local governments submit comments, recommendations, other responses on size, timing, or location of proposed lease sale. Request extension; enter agreement.	4	25	100
Subtotal			30	105

30 CFR part 556, and NTLs	Reporting requirement *	Hour burden	Average number of annual responses	Annual burden hours
		Non-hour cost burdens		
	Subpart D			
400–402; 405	Establish file for qualification; submit evidence and certification for lessee and bidder qualification. Provide updates; obtain BOEM approval & qualification number.	2	107	214
403(c)	Request hearing on disqualification	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
403; 404	Notify BOEM if you or your principals are excluded, disqualified, or convicted of a crime—Federal non-procurement debarment and suspension requirements; request exception; enter transaction.	1.5	50	75
405	Notify BOEM of all mergers, name changes, or change of business.	Requirement not considered IC under 5 CFR 1320.3(h)(1).		0
Subtotal			157	289
	Subpart E			
500; 501	Submit bids, deposits, and required information, including GDIS & maps; in manner specified. Make data available to BOEM.	5	2,000	10,000
500(e); 517	Request reconsideration of bid decision	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
501(e)	Apply for reimbursement	Burden covered in OMB Control Number 1010–0048, 30 CFR 551.		0
511(b); 517	Submit appeal of listing on restricted joint bidders list; appeal bid decision.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
513; 514	File statement and detailed report of production. Make documents available to BOEM.	2	100	200
515	Request exemption from bidding restrictions; submit appropriate information.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
516	File agreement on determination of lessee following BOEM's notice of tie bid.	3.5	2	7
520; 521; 600(c)	Execute lease (includes submission of evidence of authorized agent, completion of steps leading to lease execution, and request adjusted effective date of lease); submit required data and rental.	1	852	852
520(b)	Provide acceptable bond for payment of a deferred bonus	0.25	1	1
Subtotal			2,955	11,060
	Subparts F, G, H			
700–716	File application and required information for assignment or transfer of record title or any other lease interest (Form BOEM–0150) (includes sale, sublease, segregation exchange, transfer); request effective date and confidentiality; provide notifications.**	1	1,414	1,414
		$198 fee × 1,414 forms = $279,972		
715(a); 808(a)	File required instruments creating or transferring working interests, etc., for record purposes.**	1	2,369	2,369
		$29 fee × 2,369 filings = $68,701		
715(b); 808(b)	Submit ''non-required'' documents, for record purposes that respondents want BOEM to file with the lease document. *(Accepted on behalf of lessees as a service; BOEM does not require nor need them.)*	.25	11,518	2,880
		$29 fee × 11,518 filings = $334,022		
800–810	File application and required information for assignment or transfer of operating interest (Form BOEM- 0151) (includes sale, sublease, segregation exchange, severance, transfer); request effective date; provide notifications.**	1	421	421
		$198 fee × 421 forms = $83,358		
Subtotal			15,722	7,084

30 CFR part 556, and NTLs	Reporting requirement *	Hour burden	Average number of annual responses	Annual burden hours
		Non-hour cost burdens		
			$766,053	
	Subpart I			
900(a)–(e); 901; 902; 903(a)	Submit form for OCS mineral lessee's and operator's bond (Form BOEM–2028); execute bond.	0.33	135	45
900(c), (d), (f), (g); 901(c), (d), (f); 902(e).	Demonstrate financial worth and ability to carry out present and future financial obligations, request approval of another form of security, or request reduction in amount of supplemental bond required on BOEM-approved forms. Monitor and submit required information.	3.5	166	581
900(e); 901; 902; 903(a)	Submit form for OCS mineral lessee's and operator's supplemental plugging & abandonment bond (Form BOEM–2028A); execute bond.	0.25	141	35
900(f), (g)	Submit authority for Regional Director to sell Treasury or alternate type of securities.	2	12	24
901	Submit exploration plan, development and production plan, development operations coordination document.	IC burden covered in separate approved collection for 1010–0151, 30 CFR part 550, subpart B.		0
901(f)	Submit oral/written comment on adjusted bond amount and information.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
903(b)	Notify BOEM of any lapse in bond coverage and action filed alleging lessee, surety, or guarantor is insolvent or bankrupt.	1	4	4
904	Provide plan and instructions to fund lease-specific abandonment account and related information; request approval to withdraw funds.	12	2	24
905	Provide third-party guarantee, indemnity agreement, financial and required information, related notices, reports, and annual update; notify BOEM if guarantor becomes unqualified.	19	46	874
905(d)(3); 906	Provide notice of and request approval to terminate period of liability, cancel bond, or other security; provide required information.	0.5	378	189
907(c)(2)	Provide information to demonstrate lease will be brought into compliance.	16	5	80
Subtotal			889	1,856
	Subpart K			
1101	Request relinquishment (Form BOEM–0152) of lease; submit required information.	1	247	247
1102	Request additional time to bring lease into compliance	1	1	1
1102(c)	Comment on cancellation	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
Subtotal			248	248
30 CFR 556 Total			9,452	18,230
			$766,053 Non-Hour Cost Burdens	
30 CFR part 560	Reporting requirement *	Hour burden	Average number of annual responses	Annual burden hours
560.224(a)	Request BOEM to reconsider field assignment of a lease	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
560.500	Submit required documentation electronically through BOEM-approved system; comply with filing specifications, as directed by notice in the **Federal Register** (e.g., bonding info.)	1	800	800
30 CFR 560 Total			800	800
Total Reporting for Collection			21,826	21,935
			$766,053 Non-Hour Cost Burdens	

* In the future, BOEM may require electronic filing of certain submissions.
** Cost recovery/service fees.

—For requests of approval for various operations or submission of plans or applications, the burdens are included with other OMB-approved collections: For BOEM, 30 CFR part 550 (subpart A, Control Number 1010–0114; subpart B, Control Number 1010–0151); and for BSEE, 30 CFR part 250 (subpart A, Control Number 1014–0022; subpart D, Control Number 1014–0018).
—All submission for designation of operator (Form BOEM–1123) under 30 CFR parts 550, 556, and 560 are captured in OMB Control Number 1010–0114.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Peter Meffert,

Acting Chief, Office of Regulations.

[FR Doc. 2022–11074 Filed 5–23–22; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1194 (Advisory Opinion Proceeding)]

Certain High-Density Fiber Optic Equipment and Components Thereof; Institution of an Advisory Opinion Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute an advisory opinion proceeding as requested by Panduit Corporation (''Panduit''). The Commission has also determined to refer this matter to the Chief Administrative Law Judge (''CALJ'') for assignment to an administrative law judge (''ALJ'') for appropriate proceedings and an initial advisory opinion (''IAO''). The IAO is to be issued at the earliest practicable time, preferably within 120 days from the date of institution, but no later than 7 months after institution.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2392. 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.* 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 on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying investigation on March 24, 2020, based on a complaint filed on behalf of Corning Optical Communications LLC (''Corning'') of Charlotte, North Carolina. 85 FR 16653–54 (Mar. 24, 2020). The complaint, as supplemented, alleged violations of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain high-density fiber optic equipment and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 9,020,320 (the '' '320 patent''), 10,444,456 (the '' '456 patent''), 10,120,153 (the '' '153 patent''), 8,712,206 (the '' '206 patent''), and 10,094,996 (''the '996 patent''). *Id.* The '996 patent was subsequently terminated from the investigation. *See* Order No. 11 (July 29, 2020), *unreviewed by* Comm'n Notice (Aug. 13, 2020). The Commission's notice of investigation named thirteen respondents including, among others, Panduit of Tinley, Illinois; FS.com Inc. (''FS'') of New Castle, Delaware; Leviton Manufacturing Co., Inc. (''Leviton'') of Melville, New York; Panduit of Tinley, Illinois; and The LAN Wirewerks Research Laboratories Inc. d/b/a Wirewerks of Quebec, Canada; and The Siemon Company (''Siemon'') of Watertown, Connecticut (collectively, ''Respondents''). *See* Comm'n Op. at 3–5 (Aug. 23, 2021). The remaining respondents were either found in default pursuant to Commission Rule 210.16, or terminated from the investigation based on withdrawal of the allegations in the complaint or a settlement agreement. *Id.* The notice of investigation also named the Office of Unfair Import Investigations (''OUII'') as a party. *Id.* at 4.

On March 23, 2021, the ALJ issued a final initial determination (''ID'') finding a violation of section 337 with respect to claims 1 and 3 of the '320 patent; claims 11, 12, 14–16, 19, 21, 27, and 28 of the '456 patent; claims 9, 16, 23, and 26 of the '153 patent; and claims 22 and 23 of the '206 patent (collectively, ''Asserted Patents'').

On May 24, 2021, the Commission determined to review the final ID in part. 86 FR 28890–93 (May 28, 2021). On August 3, 2021, the Commission determined that Corning established a violation of section 337 with respect to claims 1 and 3 of the '320 patent; claims 11, 12, 14–16, 19, 21, 27, and 28 of the '456 patent; claims 9, 16, 23, and 26 of the '153 patent; and claims 22 and 23 of the '206 patent. 86 FR 43564–66 (Aug. 9, 2021). Among other findings, the Commission affirmed with modifications the ID's finding that Panduit induced infringement of the asserted claims of the '320, '456, and '153 patents but not the '206 patent. As a remedy, the Commission determined to issue a general exclusion order (''GEO'') and cease and desist orders (''CDOs''), including one directed to Panduit.

On November 24, 2021, Corning filed a complaint requesting that the Commission institute an enforcement proceeding under Commission Rule 210.75 to investigate alleged violations of the GEO and CDO by Panduit. On December 28, 2021, the Commission determined to institute an enforcement proceeding to determine whether violations of the GEO and CDO have occurred and to determine what, if any, enforcement measures are appropriate. Panduit and OUII were named as parties. The Commission referred the enforcement proceeding to the Chief ALJ for designation of a presiding ALJ to conduct any necessary proceedings, issue an Enforcement Initial Determination, and make a recommendation on appropriate enforcement measures, if any.

On November 29, 2021, Panduit, Siemon, and FS filed a notice of appeal with the U.S. Court of Appeals for the Federal Circuit seeking review of the Commission's determination. The appeal (Docket No. 2022–1228) was docketed on December 7, 2021.

On April 18, 2022, Panduit filed the subject request for an advisory opinion that three new fiber optic equipment designs that it developed do not infringe any asserted claims of the Asserted Patents and are therefore not covered by the GEO and CDO issued in this investigation. Panduit's new designs include: (1) A patch panel design with a density of 192 fiber optic connections in a 1U space; (2) a patch panel design with a density of 144 fiber optic connections in a 1U space; and (3) a new enclosure design with a density of 192 fiber optic connections in a 1U space (collectively, ''New Designs''). On April 28, 2022, Corning and OUII filed responses to Panduit's request.

Having reviewed Panduit's request and the supporting documents, the

Commission has determined to institute an advisory opinion proceeding to ascertain whether Panduit's New Designs infringe claims 1 and 3 of the '320 patent; claims 11, 12, 14–16, 19, 21, 27, and 28 of the '456 patent; claims 9, 16, 23, and 26 of the '153 patent; and claims 22 and 23 of the '206 patent, and are covered by the remedial orders issued in this investigation. The Commission has further determined to refer the matter to the CALJ for assignment to an ALJ for appropriate proceedings and the issuance of an IAO at the earliest practicable time, preferably within 120 days of institution but no later than 7 months after institution. The ALJ shall set a target date at two months following the date of issuance of the IAO. The target date may be extended for good cause shown. The following entities are named as parties to the proceeding: (1) Panduit; (2) Corning; and (3) OUII.

The Commission vote for this determination took place on May 18, 2022.

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: May 18, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–11078 Filed 5–23–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1314]

Certain Computer Network Security Equipment and Systems, Related Software, Components Thereof, and Products Containing Same; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 19, 2022, under section 337 of the Tariff Act of 1930, as amended, on behalf of Centripetal Networks, Inc. of Reston, Virginia. A supplement to the complaint was filed on April 29, 2022. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain computer network security equipment and systems, related software, components thereof, and products containing same by reason of the infringement of certain claims of U.S. Patent No. 9,264,370 (''the '370 patent''); U.S. Patent No. 10,193,917 (''the '917 patent''); and U.S. Patent No. 10,284,526 (''the '526 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2021).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 18, 2022, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 22–27, 42–48, and 63 of the '370 patent; claims 1, 5, 11, 15, and 20 of the '917 patent; and claims 1–3, 6, 11–13, and 16 of the '526 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''network traffic monitoring and security enforcement computer equipment, as well as related network analysis software components thereof, and products containing the same'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Centripetal Networks, Inc., 1875 Explorer Street, Suite 900, Reston, VA 20190.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Keysight Technologies, Inc., 1400 Fountaingrove Parkway, Santa Rosa, CA 95403–1738.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice

and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 18, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–11079 Filed 5–23–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under The Clean Air Act

On May 17, 2022, the Department of Justice lodged a proposed consent decree with the United States District Court for the Western District of Pennsylvania in the lawsuit entitled *United States and Allegheny County Health Department* v. *United States Steel Corporation,* Civil Action No. 2:22–cv–00729–CRE.

The United States and the Allegheny County Health Department jointly filed this lawsuit under the Clean Air Act against United States Steel Corporation, alleging violations at the Edgar Thomson steel mill in Allegheny County, Pennsylvania. The complaint seeks injunctive relief and civil penalties for exceedances of visible emissions opacity standards, as well as violations of requirements to minimize fugitive emissions, maintain and operate equipment to minimize emissions, and comply with the facility's operations and maintenance plan. The consent decree requires the defendant to perform injunctive relief to address the violations and pay a $1,500,000 civil penalty. The civil penalty will be split evenly between the United States and the Allegheny County Health Department, which will use its portion of the civil penalty to fund a multimodal trail connection for communities near the facility.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and Allegheny County Health Department* v. *United States Steel Corporation,* D.J. Ref. No. 90–5–2–1–12083. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. 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 $38.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–11114 Filed 5–23–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number: 1103–0117]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; Extension of a Currently Approved Collection; Departmental Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Department of Justice.

ACTION: 60 Day notice.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, Department of Justice will be submitting a Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' to OMB for approval under the Paperwork Reduction Act (PRA).

DATES: The purpose of this notice is to allow 60 days for public comment until July 25, 2022.

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 Melody Braswell, Department Clearance Officer, *melody.braswell2@usdoj.gov;* or the DOJ Clearance Officer at 202–307–0890.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate 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.

Overview of This Collection

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful

information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Below we provide the Department of Justice's projected average estimates for the next three years:

Current Action: Extension.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of Activities: 42.

Average Number of Respondents per Activity: 51,500.

Annual Responses: 309,000.

Frequency of Response: Once per request.

Average Minutes per Response: 30 min.

Burden Hours: 99,847.

Federal Government Cost: $176,925.

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 Office of Management and Budget control number.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405B, Washington, DC 20530.

Dated: May 19, 2022.

Melody D. Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022–11139 Filed 5–23–22; 8:45 am]

BILLING CODE 4410–ML–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Short-Time Compensation Grants

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before June 23, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Subtitle D of the Middle Class Tax Relief and Job Creation Act (MCTRJC) contains Short-Time Compensation (STC) Program, also known as the ''Layoff Prevention Act of 2012.'' The statute covers grants the Federal Government provide to states to implement or enhance an STC program and/or to promote and enroll employers in the program. ETA has principal oversight responsibility for monitoring the STC grants awarded to state workforce agencies (SWAs). As part of the monitoring process, SWAs submit a quarterly progress report (QPR), which notes the SWA's status of completing the STC grant activities. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 13, 2021 (86 FR 70869).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Short-Time Compensation Grants.

OMB Control Number: 1205–0499.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 19.

Total Estimated Number of Responses: 140.

Total Estimated Annual Time Burden: 140 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: May 18, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–11101 Filed 5–23–22; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Representative Fee Request

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-sponsored information collection request (ICR) to the Office of

Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before June 23, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA). Individuals filing for compensation benefits with OWCP may be represented by an attorney or other representative. The representative is entitled to request a fee for services under FECA. The fee must be approved by the OWCP before any demand for payment can be made by the representative. This information collection request sets forth the criteria for the information, which must be presented by the respondent in order to have the fee approved by the OWCP. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 2, 2022 (87 FR 11737).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OWCP.

Title of Collection: Representative Fee Request.

OMB Control Number: 1240–0049.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 4,035.

Total Estimated Number of Responses: 4,035.

Total Estimated Annual Time Burden: 2,018 hours.

Total Estimated Annual Other Costs Burden: $985.00.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2022–11100 Filed 5–23–22; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Statement of Expenditures and Financial Adjustments of Federal Funds for Unemployment Compensation for Federal Employees and Ex-Service Members

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before June 23, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Social Security Act, Section 303(a)(6), authorizes this information collection. The ETA 191 report submitted quarterly by each State Workforce Agency (SWA) shows the amount of benefits that should be charged to each Federal employing agency. ETA's Office of Unemployment Insurance uses this information to aggregate the SWA quarterly charges and submit one official bill to each Federal agency being charged. Federal agencies then reimburse the Federal Employees Compensation Account maintained by the U.S. Department of the Treasury. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 21, 2021 (86 FR 52500).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs

receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Statement of Expenditures and Financial Adjustments of Federal Funds for Unemployment Compensation for Federal Employees and Ex-Service Members.

OMB Control Number: 1205–0162.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 212.

Total Estimated Annual Time Burden: 1,272 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: May 18, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–11099 Filed 5–23–22; 8:45 am]

BILLING CODE 4510–FW–P

OFFICE OF MANAGEMENT AND BUDGET

Discount Rates for Cost-Effectiveness Analysis of Federal Programs

AGENCY: Office of Management and Budget.

ACTION: Revisions to Appendix C of OMB Circular A–94.

SUMMARY: The Office of Management and Budget (OMB) revised Circular A–94 in 1992. With that action, OMB specified certain discount rates to be updated annually when the interest rate and inflation assumptions used to prepare the Budget of the United States Government were changed. These updated discount rates are found in Appendix C of the revised Circular and are to be used for cost-effectiveness analysis, including lease-purchase analysis, as specified in the revised Circular. These rates do not apply to regulatory analysis.

The revised Circular can be accessed at *https://www.whitehouse.gov/wp-content/uploads/2022/05/Appendix-C.pdf.*

DATES: The revised discount rates will be in effect through December 2022.

FOR FURTHER INFORMATION CONTACT: Rachel Hernández, Office of Economic Policy, Office of Management and Budget, (202) 395–3585.

Danny Yagan,

Associate Director for Economic Policy, Office of Management and Budget.

[FR Doc. 2022–11085 Filed 5–23–22; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Thursday, May 26, 2022.

PLACE: Due to the COVID–19 Pandemic, the meeting will be open to the public via live webcast only. Visit the agency's homepage (*www.ncua.gov*) and access the provided webcast link.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: 1. Board Briefing, Share Insurance Fund Quarterly Report.

CONTACT PERSON FOR MORE INFORMATION: Melane Conyers-Ausbrooks, Secretary of the Board, Telephone: 703–518–6304.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2022–11217 Filed 5–20–22; 11:15 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

National Council on the Arts 207th Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that a meeting of the National Council on the Arts will be held open to the public by videoconference or teleconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for meeting time and date. The meeting is Eastern time and the ending time is approximate.

ADDRESSES: The National Endowment for the Arts, Constitution Center, 400 Seventh Street SW, Washington, DC 20560. This meeting will be held by videoconference or teleconference. Please see *arts.gov* for the most up-to-date information.

FOR FURTHER INFORMATION CONTACT: Elizabeth Auclair, Office of Public Affairs, National Endowment for the Arts, Washington, DC 20506, at 202/682–5744.

SUPPLEMENTARY INFORMATION: If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b, and in accordance with the March 11, 2022 determination of the Chairman. Additionally, discussion concerning purely personal information about individuals, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, to Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact Beth Bienvenu, Office of Accessibility, National Endowment for the Arts, at 202/682–5532 or *accessibility@arts.gov,* at least seven (7) days prior to the meeting.

The upcoming meeting is: National Council on the Arts 207rd Meeting.

This meeting will be held by videoconference or teleconference.

Date and time: June 23, 2022; 3:15 p.m. to 4:15 p.m.

There will be opening remarks and voting on recommendations for grant funding and rejection, followed by updates from the NEA Chair.

Register in advance for this webinar: *https://arts.zoomgov.com/webinar/register/WN_0mF43qy_QKOKwfxpcehbmA.*

Dated: May 19, 2022.

Daniel Beattie,

Director, National Endowment for the Arts.

[FR Doc. 2022–11135 Filed 5–23–22; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 44 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Daniel Beattie, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *beattied@arts.gov,* or call 202/682–5688.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of March 11, 2022, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The upcoming meetings are:

Media (*review of applications*): This meeting will be closed.

Date and time: June 1, 2022; 11:30 a.m. to 1:30 p.m.

Media (*review of applications*): This meeting will be closed.

Date and time: June 1, 2022; 2:30 p.m. to 4:30 p.m.

Media (*review of applications*): This meeting will be closed.

Date and time: June 2, 2022; 11:30 a.m. to 1:30 p.m.

Media (*review of applications*): This meeting will be closed.

Date and time: June 2, 2022; 2:30 p.m. to 4:30 p.m.

Pilot Equity Initiative (*review of applications*): This meeting will be closed.

Date and time: June 13, 2022; 2:30 p.m. to 4:30 p.m.

Arts Education (*review of applications*): This meeting will be closed.

Date and time: June 14, 2022; 1:30 p.m. to 3:30 p.m.

Artist Communities (*review of applications*): This meeting will be closed.

Date and time: June 14, 2022; 2:00 p.m. to 4:00 p.m.

Artist Communities (*review of applications*): This meeting will be closed.

Date and time: June 15, 2022; 2:00 p.m. to 4:00 p.m.

Design (*review of applications*): This meeting will be closed.

Date and time: June 15, 2022; 11:30 a.m. to 1:30 p.m.

Design (*review of applications*): This meeting will be closed.

Date and time: June 15, 2022; 2:30 p.m. to 4:30 p.m.

Arts Education (*review of applications*): This meeting will be closed.

Date and time: June 16, 2022; 1:30 p.m. to 3:30 p.m.

Opera (*review of applications*): This meeting will be closed.

Date and time: June 16, 2022; 12:00 p.m. to 2:00 p.m.

Opera (*review of applications*): This meeting will be closed.

Date and time: June 16, 2022; 3:00 p.m. to 5:00 p.m.

Design (*review of applications*): This meeting will be closed.

Date and time: June 16, 2022; 2:30 p.m. to 4:30 p.m.

Locals (*review of applications*): This meeting will be closed.

Date and time: June 21, 2022; 1:00 p.m. to 3:00 p.m.

Locals (*review of applications*): This meeting will be closed.

Date and time: June 21, 2022; 3:30 p.m. to 5:30 p.m.

Dance (*review of applications*): This meeting will be closed.

Date and time: June 21, 2022; 12:00 p.m. to 2:00 p.m.

Dance (*review of applications*): This meeting will be closed.

Date and time: June 21, 2022; 3:00 p.m. to 5:00 p.m.

Visual Arts (*review of applications*): This meeting will be closed.

Date and time: June 21, 2022; 11:30 a.m. to 1:30 p.m.

Visual Arts (*review of applications*): This meeting will be closed.

Date and time: June 21, 2022; 2:30 p.m. to 4:30 p.m.

Music (*review of applications*): This meeting will be closed.

Date and time: June 22, 2022; 12:00 p.m. to 2:00 p.m.

Music (*review of applications*): This meeting will be closed.

Date and time: June 22, 2022; 3:00 p.m. to 5:00 p.m.

Visual Arts (*review of applications*): This meeting will be closed.

Date and time: June 22, 2022; 11:30 a.m. to 1:30 p.m.

Dance (*review of applications*): This meeting will be closed.

Date and time: June 23, 2022; 12:00 p.m. to 2:00 p.m.

Dance (*review of applications*): This meeting will be closed.

Date and time: June 23, 2022; 3:00 p.m. to 5:00 p.m.

Visual Arts (*review of applications*): This meeting will be closed.

Date and time: June 23, 2022; 11:00 a.m. to 1:00 p.m.

Dance (*review of applications*): This meeting will be closed.

Date and time: June 24, 2022; 12:00 p.m. to 2:00 p.m.

Dance (*review of applications*): This meeting will be closed.

Date and time: June 24, 2022; 3:00 p.m. to 5:00 p.m.

Presenting and Multidisciplinary Works (*review of applications*): This meeting will be closed.

Date and time: June 27, 2022; 2:00 p.m. to 4:00 p.m.

Dance (*review of applications*): This meeting will be closed.

Date and time: June 27, 2022; 12:00 p.m. to 3:00 p.m.

Arts Education (*review of applications*): This meeting will be closed.

Date and time: June 28, 2022; 1:30 p.m. to 3:30 p.m.

Presenting and Multidisciplinary Works (*review of applications*): This meeting will be closed.

Date and time: June 28, 2022; 2:00 p.m. to 4:00 p.m.

Music (*review of applications*): This meeting will be closed.

Date and time: June 28, 2022; 12:00 p.m. to 2:00 p.m.

Music (*review of applications*): This meeting will be closed.

Date and time: June 28, 2022; 3:00 p.m. to 5:00 p.m.

Research Grants in the Arts (*review of applications*): This meeting will be closed.

Date and time: June 28, 2022; 11:00 a.m. to 1:00 p.m.

Presenting and Multidisciplinary Works (*review of applications*): This meeting will be closed.

Date and time: June 29, 2022; 2:00 p.m. to 4:00 p.m.

Music (*review of applications*): This meeting will be closed.

Date and time: June 29, 2022; 12:00 p.m. to 2:00 p.m.

Research Grants in the Arts (*review of applications*): This meeting will be closed.

Date and time: June 29, 2022; 11:00 a.m. to 1:00 p.m.

Research Grants in the Arts (*review of applications*): This meeting will be closed.

Date and time: June 29, 2022; 2:00 p.m. to 4:00 p.m.

Presenting and Multidisciplinary Works (*review of applications*): This meeting will be closed.

Date and time: June 30, 2022; 2:00 p.m. to 4:00 p.m.

Research Labs (*review of applications*): This meeting will be closed.

Date and time: June 30, 2022; 1:00 p.m. to 3:00 p.m.

Dated: May 19, 2022.

Daniel Beattie,

Director, National Endowment for the Arts.

[FR Doc. 2022–11134 Filed 5–23–22; 8:45 am]

BILLING CODE 7537–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–93, OMB Control No. 3235–0087]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 15Bc3–1 and Form MDSW—Withdrawal from Registration of Municipal Securities Dealers

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 existing collection of information provided for in Rule 15Bc3–1 (17 CFR 15Bc3–1) and Form MSDW (17 CFR 249.1110) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 15Bc3–1 provides that a notice of withdrawal from registration with the Commission as a bank municipal securities dealer must be filed on Form MSDW. The Commission uses the information submitted on Form MSDW in determining whether it is in the public interest to permit a bank municipal securities dealer to withdraw its registration. This information is also important to the municipal securities dealer's customers and to the public, because it provides, among other things, the name and address of a person to contact regarding any of the municipal securities dealer's unfinished business.

Based upon past submissions of two filings in 2019, zero filings in 2020, zero filings in 2021, and zero filings so far in 2022, the Commission estimates that approximately one respondent will use Form MSDW annually, with a total hour burden for all respondents of approximately 1 hour per year (0.5 hours rounded up to 1 hour). This estimate is based on the Commission staff's experience in administering the form. The form is available from the Commission, and can usually be completed by checking appropriate boxes and writing the name and address of the bank municipal securities dealer, and the name and address of the person who has or will have custody of the bank municipal securities dealer's books and records. The staff estimates that the average internal compliance cost per hour is approximately $406.[1] Therefore, the estimated total annual internal cost of compliance is approximately $203 per year (0.5 hours/year × $406/hour = $203/year).

Rule 15Bc3–1 does not contain an explicit recordkeeping requirement, but the instructions for filing Form MSDW state that an exact copy should be retained by the registrant. Providing the information on the application is mandatory in order to withdraw from registration with the Commission as a bank municipal securities dealer. The information contained in the notice will not be kept confidential.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by July 25, 2022.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

[1] The estimate of $406 per hour is for a compliance attorney, based on the Securities Industry and Financial Markets Association's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

Dated: May 18, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11072 Filed 5–23–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–338, OMB Control No. 3235–0376]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Schedule 14D–1F

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Schedule 14D–1F (17 CFR 240.14d–102) is a form that may be used by any person (the ''bidder'') making a cash tender or exchange offer for securities of any issuer (the ''target'') incorporated or organized under the laws of Canada or any Canadian province or territory that is a foreign private issuer, where less than 40% of the outstanding class of the target's securities that is the subject of the offer is held by U.S. holders. Schedule 14D–1F is designed to facilitate cross-border transactions in the securities of Canadian issuers. The information required to be filed with the Commission provides security holders with material information regarding the bidder as well as the transaction so that they may make informed investment decisions. Schedule 14D–1F takes approximately 2 hours per response to prepare and is filed by approximately 2 respondents annually for a total reporting burden of 4 hours (2 hours per response × 2 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the

information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by July 25, 2022.

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 control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 18, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11073 Filed 5–23–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34588; File No. 812–15168]

Stone Point Credit Corporation, et al.

May 18, 2022.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: Stone Point Credit Corporation, Stone Point Credit Adviser LLC, Stone Point Capital LLC, SPC Capital Markets LLC, SPC Financing Company LLC, SPC Opportunities Fund, L.P., SPC Opportunities Parallel Fund, L.P., SPC Opportunities Feeder Fund, L.P., SPC Opportunities Parallel Feeder Fund, L.P., SPC Opps Professionals Fund, L.P., SPC Wilson Point, L.P., SPC Opps Wilson Point, L.P., Overland Point, L.P., SPC Opps Overland Point, L.P., SPC Oyster Point, L.P., SPC Pacific Point, L.P., SPC Pacific Point II, L.P., SPC Pacific Point-A, L.P., SPC Pacific Point II-A, L.P., SPC Opps Fund Holdings I, L.P., SPC Opps Fund Holdings II, L.P., SPC Opps 1903 Holdings LLC, Almond Point, L.P. and SPC Opps Holdings S.a.R.L.

FILING DATES: The application was filed on October 1, 2020, and amended on February 11, 2021, July 6, 2021, and May 5, 2022.

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 *Secretarys-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 June 13, 2022, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the SEC's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: William J. Bielefeld, Esq. at *William.Bielefeld@dechert.com.*

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, or Kaitlin C. Bottock, 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' third amended and restated application, dated May 5, 2022, 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 *http://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.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11086 Filed 5–23–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94940; File No. SR–Phlx–2022–21]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Nasdaq Amended and Restated Certificate of Incorporation

May 18, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 6, 2022, Nasdaq PHLX LLC (''Phlx'' 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Amended and Restated Certificate of Incorporation (''Certificate'') of its parent corporation, Nasdaq, Inc. (''Nasdaq'' or the ''Company''), to increase Nasdaq's authorized share capital.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Nasdaq Certificate [3] to increase the total number of authorized shares of Nasdaq common stock, par value $0.01 per share (''Common Stock''). Specifically, the Exchange proposes to amend Article Fourth, Section A such that the total number of shares of Stock (*i.e.,* capital stock) that Nasdaq is authorized to issue would be increased from 330,000,000 to 930,000,000 shares, and the portion of that total constituting Common Stock would be changed from 300,000,000 to 900,000,000 shares. As amended, Article Fourth, Section A of the Certificate would provide:

> The total number of shares of Stock which Nasdaq shall have the authority to issue is Nine Hundred Thirty Million (930,000,000), consisting of Thirty Million (30,000,000) shares of Preferred Stock, par value $.01 per share (hereinafter referred to as ''Preferred Stock''), and Nine Hundred Million (900,000,000) shares of Common Stock, par value $.01 per share (hereinafter referred to as ''Common Stock'').[4]

As noted above, the proposed amendments to the Certificate were approved by the Nasdaq Board of Directors (''Nasdaq Board'') on March 23, 2022. The proposed amendments to the Certificate would be effective when filed with the Secretary of State of Delaware, which would not occur until approval of the amendments by the stockholders of Nasdaq is obtained at the 2022 Annual Meeting of the Stockholders on June 22, 2022 and until this proposed rule change becomes effective and operative.

The trading price of Nasdaq's Common Stock has risen significantly over the past several years. Since Nasdaq first became a publicly traded company in 2002, the total number of authorized shares of Common Stock has remained constant at 300,000,000 shares. However, over the last five years, the trading price of Nasdaq's Common Stock has increased by approximately 162%.[5] As the trading price of Nasdaq's Common Stock has risen, the Nasdaq Board has carefully evaluated the effect of the trading price of the Common Stock on the liquidity and marketability of the Common Stock. The Nasdaq Board believes that this price appreciation may be affecting the liquidity of the Common Stock, making it more difficult to efficiently trade and potentially less attractive to certain investors. Accordingly, the Nasdaq Board approved pursuing a 3-for-1 stock split by way of a stock dividend, pursuant to which the holders of record of shares of Common Stock would receive, by way of a dividend, two shares of Common Stock for each share of Common Stock held by such holder (the ''Stock Dividend''). The Nasdaq Board's approval of the Stock Dividend was contingent upon this proposed rule change becoming effective and operative, and Nasdaq stockholder approval of the proposed amendments to the Certificate.

The number of shares of Common Stock proposed to be issued in the Stock Dividend exceeds Nasdaq's authorized but unissued shares of Common Stock. The proposed rule change would increase Nasdaq's authorized shares of Common Stock and shares of capital stock sufficient to allow Nasdaq to effectuate the Stock Dividend.

The proposed changes would not otherwise alter the Certificate, including the limitations on voting and ownership set forth in Article Fourth, Section C of the Certificate that generally provides no person who beneficially owns shares of common stock or preferred stock of Nasdaq in excess of 5% of the then-outstanding securities generally entitled to vote may vote the shares in excess of 5%. This limitation mitigates the potential for any Nasdaq shareholder to exercise undue control over the operations of Nasdaq's self-regulatory subsidiaries, and facilitates the self-regulatory subsidiaries' and the Commission's ability to carry out their regulatory obligations under the Act.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(1) of the Act,[7] in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposal to increase Nasdaq's authorized shares of Common Stock and shares of capital stock sufficient to allow Nasdaq to effectuate the Stock Dividend would not impact the Exchange's ability to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act. In particular, the proposed changes would not alter the limitations on voting and ownership set forth in Article Fourth, Section C of the Certificate, and so the proposed changes would not enable a person to exercise undue control over the operations of Nasdaq's self-regulatory subsidiaries or to restrict the ability of the Commission or the Exchange to effectively carry out their regulatory oversight responsibilities under the Act.

The Exchange also believes that the proposal is consistent with Section 6(b)(5) of the Act [8] because it would not impact the Exchange's governance or regulatory structure, which would continue to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule 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 by increasing Nasdaq's authorized shares of Common Stock and shares of capital stock sufficient to allow Nasdaq to effectuate the Stock Dividend, the proposed rule change will facilitate broader ownership of Nasdaq.

The Exchange also notes that the proposed rule change is substantially similar to a prior proposal by Intercontinental Exchange, Inc. (''ICE''), which is the holding company for three national securities exchanges, including the New York Stock Exchange. The ICE proposal amended ICE's Certificate of

[3] Nasdaq owns 100% of the equity interest in the Exchange. The Exchange's affiliates, Boston Stock Exchange Clearing Corporation, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, The Nasdaq Stock Market LLC, and Stock Clearing Corporation of Philadelphia will each concurrently submit substantially the same rule filings to propose the changes described herein.

[4] Nasdaq currently has no Preferred Stock outstanding.

[5] The price of one share of Common Stock on March 31, 2017 was $69.45 and the closing market price of one share of Common Stock on April 1, 2022 was $181.92 as reported on the Nasdaq Stock Market.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(1).

[8] 15 U.S.C. 78f(b)(5).

Incorporation to effectuate a similar stock split as proposed by the Exchange herein.[9] As such, the Exchange does not believe that its proposal raises any new or novel issues not already considered by the Commission.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the proposed rule change relates solely to the number of authorized shares of Common Stock and shares of capital stock of the Company and not to the operations of the Exchange, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

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.

[9] In particular, the ICE proposal increased ICE's total number of authorized shares of ICE common stock in order to effectuate a 5-for-1 stock split by way of a stock dividend. *See* Securities Exchange Act Release No. 78992 (September 29, 2016), 81 FR 69092 (October 5, 2016) (SR–NYSE–2016–57, SR–NYSEArca–2016–119, and SR–NYSEMKT–2016–80) (hereinafter, ''ICE Approval'').

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2022–21 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–Phlx–2022–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2022–21 and should be submitted on or before June 14, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11060 Filed 5–23–22; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94939; File No. SR–MIAX–2022–21]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delay Implementation of an Amendment to Rule 518, Complex Orders, To Permit Legging Through the Simple Market

May 18, 2022.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 11, 2022, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to delay implementation of the change to allow a component of a complex order[3] that legs into the Simple Order Book[4] to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''complex order'' is any order involving the concurrent purchase and/or sale of two or more different options 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) and for the purposes of executing a particular investment strategy. Mini-options may only be part of a complex order that includes other mini-options. Only those complex orders in the classes designated by the Exchange and communicated to Members via Regulatory Circular with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis and communicated to Members via Regulatory Circular, are eligible for processing. *See* Exchange Rule 518(a)(5).

[4] The ''Simple Order Book'' is the Exchange's regular electronic book of orders and quotes. *See* Exchange Rule 518(a)(15).

execute at a price that is outside the NBBO.[5]

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, 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

On October 22, 2019, the Exchange filed a proposed rule change to amend subsection (c)(2)(iii) of Exchange Rule 518, Complex Orders, to remove the provision which provides that a component of a complex order that legs into the Simple Order Book may not execute at a price that is outside the NBBO.[6] The proposed rule change indicated that the Exchange would announce the implementation date of the proposed rule change by Regulatory Circular to be published no later than 90 days following the operative date of the proposed rule. The implementation date will be no later than 90 days following the issuance of the Regulatory Circular. The Exchange delayed the implementation of this functionality until the second quarter of 2022.[7] The Exchange now proposes to delay the implementation of this functionality until the fourth quarter of 2022.

The Exchange proposes this delay in order to allow the Exchange to complete its reprioritization of its software delivery and release schedule as a result of a shift in priorities due to the impact the coronavirus pandemic has had on Exchange operations. The Exchange will issue a Regulatory Circular notifying market participants at least 45 days prior to implementing this functionality.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] 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 mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest by allowing the Exchange additional time to plan and implement the proposed functionality.

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's proposal to delay the implementation of the proposed functionality does not impose an undue burden on competition. Delaying the implementation will simply allow the Exchange additional time to properly plan and implement the proposed functionality.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition as the delay will apply equally to all Members of the Exchange.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition as the proposal is to delay the implementation of approved functionality which affects MIAX Members only and does not impact intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2022–21 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–MIAX–2022–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the

[5] The term ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from the appropriate Securities Information Processor (''SIP''). *See* Exchange Rule 518(a)(14).

[6] *See* Securities Exchange Release No. 87440 (November 1, 2019), 84 FR 60117 (November 7, 2019) (SR–MIAX–2019–45).

[7] *See* Securities Exchange Release No. 92090 (June 2, 2021), 85 FR 77321 (June 8, 2021) (SR–MIAX–2021–22).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 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.

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2022–21, and should be submitted on or before June 14, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11063 Filed 5–23–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94942; File No. SR–FINRA–2022–012]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 13000 Series (Code of Arbitration Procedure for Industry Disputes) To Align the Code With the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021

May 18, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 13, 2022, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Exchange Act,[3] which renders the proposed rule change effective upon receipt of this filing by the Commission. 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

FINRA is proposing to amend the Code of Arbitration Procedure for Industry Disputes (''Code'') to align the Code with the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 (''Act''). The proposed rule change would also make a conforming amendment to FINRA Rule 2263.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

Background

The Act was signed into law on March 3, 2022, and took effect immediately.[4] The Act amends Title 9 of the Federal Arbitration Act[5] by providing in relevant part:

Notwithstanding any other provision of this title, at the election of the person alleging conduct constituting a sexual harassment dispute or sexual assault dispute, or the named representative of a class or in a collective action alleging such conduct, no predispute arbitration agreement or predispute joint-action waiver shall be valid or enforceable with respect to a case which is filed under Federal, Tribal, or State law and relates to the sexual assault dispute or the sexual harassment dispute.

The Act prohibits mandatory arbitration of sexual assault and sexual harassment claims by permitting persons alleging conduct constituting a sexual assault dispute or sexual harassment dispute to elect not to enforce predispute arbitration agreements in cases that relate to those disputes.[6] However, the Act does not prohibit parties from agreeing to arbitrate such claims after a dispute has arisen.[7]

FINRA Rule 13201 relates to the arbitration at FINRA Dispute Resolution Services' (''DRS'') forum of statutory employment discrimination claims (''SD claims'').[8] Specifically, FINRA Rule 13201(a) provides that ''[an SD claim] is not required to be arbitrated under the Code. Such a claim may be arbitrated only if the parties have agreed to arbitrate it either before or after the dispute arose.'' Although FINRA rules do not require arbitration of SD claims under the Code, in practice, employment agreements may require

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, Public Law 117–90, 136 Stat. 26 (2022). The Act applies with respect to any dispute or claim that arises or accrues on or after the date of enactment of the Act.

[5] 9 U.S.C. 2.

[6] The Act also permits persons alleging conduct constituting a sexual assault dispute or sexual harassment dispute to elect not to enforce predispute joint-action waivers in cases that relate to those disputes. The Act defines ''predispute joint-action waiver'' as an agreement that ''would prohibit, or waive the right of, one of the parties to the agreement to participate in a joint, class, or collective action in a judicial, arbitral, administrative, or other forum, concerning a dispute that has not yet arisen at the time of the making of the agreement.'' *See supra* note 4. FINRA rules are consistent with this provision of the Act because FINRA rules provide that class action and statutory collective action claims may not be arbitrated under the Code. *See* FINRA Rule 13204.

[7] *See* H.R. Rep. No. 117–234, at 18 (2022) (''The Committee states that pursuant to clause 3(c)(4) of House Rule XIII, H.R. 4445 improves access to justice for survivors of sexual assault and harassment by allowing these parties to elect arbitration after a dispute has arisen''). The applicability of the Act to an agreement to arbitrate and the validity and enforceability of an agreement to which the Act applies shall be determined by a court, rather than an arbitrator, irrespective of whether the party resisting arbitration challenges the arbitration agreement specifically or in conjunction with other terms of the contract containing such agreement, and irrespective of whether the agreement purports to delegate such determinations to an arbitrator. *See supra* note 4.

[8] FINRA Rule 13100(bb) provides that ''[t]he term 'statutory employment discrimination claim' means a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute.'' FINRA rules do not explicitly address the treatment of sexual assault claims.

associated persons to arbitrate such claims.

In light of the changes set forth in the Act, FINRA is proposing amendments to its rules to align the rules to the Act and make other conforming changes.[9]

Proposed Amendments to FINRA Rule 13100

FINRA is proposing to amend FINRA Rule 13100 to add definitions of ''sexual assault claim'' and ''sexual harassment claim'' that are consistent with the definitions of ''sexual assault dispute'' and ''sexual harassment dispute'' in the Act.[10] Specifically, proposed FINRA Rule 13100(aa) would provide that ''[t]he term 'sexual assault claim' means a claim involving a nonconsensual sexual act or sexual contact, as such terms are defined in section 2246 of title 18 of the United States Code or similar applicable Tribal or State law, including when the victim lacks capacity to consent.'' In addition, proposed FINRA Rule 13100(bb) would provide that ''[t]he term 'sexual harassment claim' means a claim relating to conduct that is alleged to constitute sexual harassment under applicable Federal, Tribal, or State law.'' [11]

Proposed Amendments to FINRA Rule 13201

FINRA is proposing to amend FINRA Rule 13201 to align it with the Act by adding new paragraph (c) to provide that a party alleging a sexual assault or sexual harassment claim that has agreed to arbitrate before the dispute arose may elect post dispute not to arbitrate the claim under the Code.[12] Proposed paragraph (c) would also provide that the claim may be arbitrated if the parties agreed to arbitrate it after the dispute arose. Further, paragraph (c) would provide that sexual assault and sexual harassment claims would be administered in the forum under FINRA Rule 13802, which establishes the procedural requirements for administering SD claims in DRS's arbitration forum today.[13]

Proposed Amendments to FINRA Rule 13803

FINRA is proposing amendments to FINRA Rule 13803 to ensure that sexual assault and sexual harassment claims are administered consistently with how SD claims are currently administered in DRS's arbitration forum.[14] Under the current framework, sexual harassment and sexual assault claims would be administered under FINRA Rule 13803 to the extent such claims constitute SD claims. The proposed rule change would add the terms ''sexual assault claim'' and ''sexual harassment claim'' to the title of FINRA Rule 13803 and throughout the rule to make explicit that it applies to the coordination of sexual assault and sexual harassment claims filed in court and other related claims that may be filed at DRS's arbitration forum.[15]

Proposed Amendments to FINRA Rule 2263

FINRA is proposing a conforming amendment to FINRA Rule 2263 to incorporate the language in proposed FINRA Rule 13201(c) into the written statement a member firm must provide to an associated person regarding the predispute arbitration clause in Form U4. Thus, firms would be required to disclose to the associated person that a party alleging a sexual assault or sexual harassment claim that has agreed to arbitrate before the dispute arose may elect post dispute not to arbitrate such a claim under the Code, and that such a claim may be arbitrated if the parties have agreed to arbitrate it after the dispute arose.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing. The operative date will be the date of the filing of the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,[16] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change serves to align FINRA rules with the Act, which prohibits mandatory arbitration of sexual assault and sexual harassment claims. The proposed rule change would create parity between FINRA rules and the Act as to the circumstances under which sexual assault and sexual harassment claims may be arbitrated at DRS's forum. The proposed conforming amendments would also make clear that when such claims are arbitrated at DRS's forum, they will be processed like SD claims. Thus, the proposed rule change will enable DRS to continue to administer a fair dispute resolution forum and meet its investor protection goals in a manner consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change aligns FINRA rules with other requirements to which firms are subject and would not have additional economic impacts on firms or associated persons.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[9] The proposed rule change would apply to all members, including members that are funding portals or have elected to be treated as capital acquisition brokers (''CABs''), given that the funding portal and CAB rule sets incorporate the impacted FINRA rules by reference.

[10] Under FINRA Rule 13100(e), ''[t]he term 'claim' means an allegation or request for relief.'' Under FINRA Rule 13100(n), ''[t]he term 'dispute' means a dispute, claim or controversy. A dispute may consist of one or more claims.''

[11] The proposed rule change would also remove the reference to ''sexual harassment'' from the definition of SD claim in FINRA Rule 13100(bb). *See supra* note 8.

[12] The proposed rule change would also amend the title of FINRA Rule 13201 to clarify that the rule applies to sexual assault claims and sexual harassment claims.

[13] FINRA Rule 13802 sets forth requirements as to the number of arbitrators on the panel, the composition of the panel, the filing fee, the relief available, and the availability of attorneys' fees. FINRA is proposing to amend FINRA Rule 13802 to add the terms ''sexual assault claim'' and ''sexual harassment claim'' to the title and throughout the rule to clarify that it also applies to these types of claims.

[14] Under FINRA Rule 13803, if an associated person files an SD claim in court and asserts related claims in DRS's arbitration forum, a respondent who is named in both proceedings may bring a motion to compel the related arbitration claims to the same court proceeding. If the respondent does so, the respondent must assert all related claims it has against the associated person in the same court proceeding. FINRA Rule 13803 also permits the respondent to compel arbitration of related claims that are subject to mandatory arbitration. This provision applies where the respondent has not exercised its option to combine all claims in court.

[15] Similarly, FINRA proposes to add the terms ''sexual assault claim'' and ''sexual harassment claim'' to other rules in the Code that reference SD claims to ensure that sexual assault and sexual harassment claims are administered consistently with how SD claims are currently administered in DRS's arbitration forum. *See* FINRA Rules 13402 (Composition of Arbitration Panels in Cases Not Involving a Statutory Discrimination Claim), 13510 (Depositions); Part VIII (Simplified Arbitration; Default Proceedings; Statutory Employment Discrimination Claims; and Injunctive Relief).

[16] 15 U.S.C. 78*o*–3(b)(6).

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 Exchange Act [17] and Rule 19b–4(f)(6) thereunder.[18]

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 Exchange 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 Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2022–012 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–FINRA–2022–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2022–012 and should be submitted on or before June 14, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11062 Filed 5–23–22; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94941; File No. SR–NASDAQ–2022–015]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Exempt Non-Convertible Bonds Listed Under Rule 5702 From Certain Corporate Governance Requirements

May 18, 2022.

I. Introduction

On February 4, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to exempt non-convertible bonds listed under Rule 5702 from certain corporate governance requirements.[3] The proposed rule change was published for comment in the **Federal Register** on February 23, 2022.[4] On March 18, 2022, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] The Commission received no comment letters regarding the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

Generally, Nasdaq proposes to exempt issuers listing non-convertible bonds under Rule 5702 from certain corporate governance requirements.[7] Specifically, Nasdaq proposes to amend Nasdaq Rule 5702 [8] to exempt these issuers from the requirements relating to Review of Related Party Transactions (Nasdaq Rule 5630),[9] Shareholder Approval (Nasdaq Rule 5635),[10] and Voting Rights (Nasdaq Rule 5640).[11] According to Nasdaq, it is appropriate to exempt these issuers from governance requirements because the interests of bond holders are protected contractually through the trust indenture, and therefore, ''holders of non-convertible bonds do not expect to have governance rights the way equity investors may.'' [12]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 94265 (February 16, 2022), 87 FR 10265 (February 23, 2022) (''Notice'').

[4] *Id.*

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 94471 (March 18, 2022), 87 FR 16778 (March 24, 2022). The Commission designated May 24, 2022, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[7] Under proposed Rule 5702(d), if an issuer also lists its common stock, voting preferred stock, or their equivalent on Nasdaq, the corporate governance requirements under the Nasdaq 5600 Rule Series would apply. See Notice, *supra* note 3, n. 8.

[8] Rule 5702 contains the initial and continued listing standards for non-convertible bonds, as well as disclosure requirements for companies that list non-convertible bonds.

[9] Rule 5630 requires certain companies to conduct an appropriate review and oversight of all related party transactions for potential conflict of interest situations on an ongoing basis.

[10] Rule 5635 sets forth the circumstances under which shareholder approval is required prior to an issuance of securities in connection with: (i) The acquisition of the stock or assets of another company; (ii) equity-based compensation of officers, directors, employees, or consultants; (iii) a change of control; and (iv) transactions other than public offerings.

[11] Rule 5640 states that voting rights of existing shareholders of publicly traded common stock registered under Section 12 of the Act cannot be disparately reduced or restricted through any corporate action or issuance.

[12] *See* Notice, *supra* note 3, at 10266.

In addition, Nasdaq proposes to consolidate under Nasdaq Rule 5702 other exemptions currently applicable to such issuers pursuant to Nasdaq Rules 5605(f)(4), 5606(c), and 5616(a)(6)(A).[13]

III. Proceedings To Determine Whether To Approve or Disapprove SR–NASDAQ–2022–015 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[14] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as stated below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[15] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the consistency of the proposal with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[16] Specifically, the Commission solicits comments on the sufficiency of the Exchange's justification for exempting non-convertible bonds listed under Rule 5702 from certain corporate governance requirements enumerated above. As stated above, the Exchange justifies the proposed rule change on the assertion that ''holders of non-convertible bonds do not expect to have governance rights the way equity investors may.'' Do commenters agree that holders of non-convertible bonds do not expect that Nasdaq Rules pertaining to Review of Related Party Transactions, Shareholder Approval, and Voting Rights to apply to their bond holdings? And even if there is no such expectations, would non-convertible bond holders benefit from any of these provisions?

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change.'' [17] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[18] and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[19]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(5), or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[20] any request for an opportunity to make an oral presentation.[21]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by June 14, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by June 28, 2022. Commission may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2022–015 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–2022–015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal

[13] Rule 5615(a)(6)(A) exempts certain non-convertible bond issuers from the requirements relating to Independent Directors (as set forth in Rule 5605(b)), Compensation Committees (as set forth in Rule 5605(d)), Director Nominations (as set forth in Rule 5605(e)), Codes of Conduct (as set forth in Rule 5610), Meetings of Shareholders (as set forth in Rule 5620(a)), and Audit Committees (as set forth in Rule 5605(c), except for the applicable requirements Commission Rule 10A–3). Rules 5605(f)(4) and Rule 5606(c) exempts certain non-convertible bond issuers from the requirements related to Diverse Board Representation (as set forth in Rule 5605(f)) and Board Diversity Disclosure (as set forth in Rule 5606), respectively.

[14] 15 U.S.C. 78s(b)(2)(B).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 15 U.S.C. 78f(b)(5).

[17] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[18] *See id.*

[19] *See id.*

[20] 17 CFR 240.19b–4.

[21] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2022–015, and should be submitted on or before June 14, 2022. Rebuttal comments should be submitted by June 28, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11066 Filed 5–23–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94938; File No. SR–OCC–2022–005]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Proposed Rule Change by the Options Clearing Corporation Concerning Revisions to OCC's Partial Tear-Up Rules

May 18, 2022.

I. Introduction

On March 22, 2022, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2022–005 (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder to amend OCC's rules regarding OCC's payment obligations and the allocation of losses related to the use of Partial Tear-Up (defined below) as a recovery tool.[3] The Proposed Rule Change was published for public comment in the **Federal Register** on April 7, 2022.[4] The Commission received one comment regarding the Proposed Rule Change.[5] This order approves the Proposed Rule Change.

II. Background [6]

As a covered clearing agency, OCC is required to establish policies and procedures reasonably designed to manage its credit exposures and liquidity risk.[7] However, a Clearing Member default may result in losses or shortfalls that exceed OCC's routine risk managemet tools. To address such credit losses or liquidity shortfalls, OCC has established tools to to re-establish a matched book and to allocate uncovered losses following the default of a Clearing Member.[8] One such tool, ''Partial Tear-Up,'' is a process designed to return OCC to a matched book by extinguishing positions that remain open after OCC has attempted one or more auctions.[9] OCC Rule 1111(e) sets forth the process for determining and terminating Partial Tear-Up positions.

When it initially proposed Rule 1111(e) in 2018, OCC noted that the Partial Tear-Up process would be initiated only if OCC determined that potential losses from remaining positions of the defaulting member would exceed OCC's financial resources.[10] OCC further stated that, in order for OCC to maintain its ability to meet obligations to non-defaulting members, the process was designed to be initiated in advance of exhausting OCC's financial resources.[11] OCC also acknowledged that the process may be used to allocate losses if OCC's resources are insufficient to pay the Partial Tear-Up Price.[12] Rule 1111(e)(iii) currently provides that when the Partial Tear-Up process is used to allocate losses, each Clearing Member will receive a pro rata payment based on OCC's remaining resources and an unsecured claim against OCC for the difference between the pro rata amount received and the Partial Tear-Up Price.

An unsecured claim issued pursuant to Rule 1111(e) provides a mechanism for OCC to compensate Clearing Members that receive a pro rata payment, when warranted by particular circumstances (*e.g.,* when funds are subsequently recovered from a defaulted Clearing Member or the estate of the defaulted Clearing Member). However, OCC Rules do not currently describe a specific payment obligation for these claims. OCC states that the Proposed Rule Change is intended to provide clarity regarding the nature of the claim issued following a Partial Tear-Up. More specifically, the revisions to Rule 1111(e) would add the following details about the claim: (i) A Clearing Member receiving a pro rata payment following a Partial Tear-Up will have a claim for the value of the difference between the pro rata amount received and the Partial Tear-Up Price; and (ii) such a claim shall be an unsecured claim on any recovery from a suspended or defaulted Clearing Member (or from the estate of a suspended or defaulted Clearing Member). OCC believes that clarifying the nature of the claim arising out of Rule 1111(e) would, in turn, clarify that such claims would not provide a basis for Clearing Members to trigger the close-out netting process under Article VI, Section 27 of OCC's By-Laws.[13]

In proposing to adopt Partial Tear-Up as a recovery tool, OCC proposed a mechanism for re-allocating losses for non-defaulting Clearing Members arising out of Partial Tear-Up.[14] OCC Rule 1111(g) currently provides OCC's Board of Directors (the ''Board'') with discretionary authority to levy a special charge against remaining non-defaulting Clearing Members for the purpose of re-allocating the losses, costs, and fees imposed on holders of torn-up positions. Currently, Rule 1111 does not impose any *ex ante* limit on the amount of any discretionary special charge that could be levied by the Board. Following the adoption of OCC Rule 1111, OCC received a letter from the Futures Industry Association (''FIA'') requesting that OCC limit the amount of the Rule 1111(g) Board-levied special charge to the amount of a Clearing Member's required contribution to the Clearing Fund.[15] Upon consideration of this request, OCC proposes to amend Rule 1111(g) to cap the amount of the special charge levied under the rule to the amount of the Clearing Member's required contribution to the Clearing Fund at the time of the special charge.

[22] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, 87 FR at 20495.

[4] Securities Exchange Act Release No. 94583 (Apr. 1, 2022), 87 FR 20495 (Apr. 7, 2022) (File No. SR–OCC–2022–005) (''Notice of Filing'').

[5] The comment on the Proposed Rule Change is available at *https://www.sec.gov/comments/sr-occ-2022-005/srocc2022005.htm.*

[6] Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, available at *https://www.theocc.com/about/publications/bylaws.jsp.*

[7] *See generally,* 17 CFR 240.17Ad–22(e)(4) and (e)(7).

[8] Securities Exchange Act Release No. 83916 (Aug. 23, 2018), 83 FR 44076 (Aug. 29, 2018) (File No. SR–OCC–2017–020).

[9] *See supra* note 8, 83 FR at 44079.

[10] Securities Exchange Act Release No. 82351 (Dec. 19, 2017), 82 FR 61107, 61111 (Dec. 26, 2017) (File No. SR–OCC–2017–020).

[11] *Id.*

[12] *Id.*

[13] OCC By-Laws Art. VI, Section 27(a)(i), regarding default or insolvency of OCC, requires OCC to notify various stakeholders if OCC fails to comply with an undisputed obligation to pay money or deliver property to a Clearing Member for a period of thirty days from the date that OCC receives notice from the Clearing Member of the past due obligation. *See* Notice of Filing *supra* note 4, 87 FR at 20495.

[14] Securities Exchange Act Release No. 82351 (Dec. 19, 2017), 82 FR 61107, 61112 (Dec. 26, 2017) (File No. SR–OCC–2017–020).

[15] The letter OCC received from the FIA has been provided as Exhibit 3A to File No. SR–OCC–2022–005.

According to OCC, the purpose of this change is to provide Clearing Members with a firm *ex ante* limit that would improve their ability to measure, monitor and manage their potential exposure to OCC.[16]

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.[17] After carefully considering the Proposed Rule Change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Exchange Act [18] as described in detail below.

A. Consistency With Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that a clearing agency's rules are designed, in general, to protect investors and the public interest.[19] Based on its review of the record, and for the reasons described below, the Commission believes that the proposed changes to Rule 1111(e) and (g) are consistent with being organized to protect investors and the public interest.

With the proposed revisions to Rule 1111(e), OCC codifies critical details about the nature of a Clearing Member's claim resulting from the Partial Tear-Up process, including the specific value of the claim (*e.g.,* the value of the difference between the pro rata amount received and the Partial Tear-Up Price) and the source of funds that the claim would draw upon (*e.g.,* an unsecured claim on any recovery from a suspended or defaulted Clearing Member, or from the estate of a suspended or defaulted Clearing Member). These details provide Clearing Members with material information regarding their potential claims, and provide greater visibility to Clearimg Members on how open claims from the partial tear-up process would be honored. In particular, the revisions remove any ambiguity that could cause Clearing Members to believe that OCC would default if it fails to pay an unsecured claim issued by a Clearing Member as a result of the Partial Tear-Up process, because revised Rule 1111(e) would place appropriate responsibility for the unsecured claim on the suspended or defaulted Clearing Member. As such, the Commission believes that these revisions to Rule 1111(e) are consistent with being organized to protect investors and the public interest.

With the proposed revisions to Rule 1111(g), OCC codifies a specific limit to the amount of special charge that the Board would potentially levy on each non-defaulting Clearing Member. This revision indicates to non-defaulting Clearing Members that such special charges are not unlimited in nature, and provides non-defaulting Clearing Members with the assurance to manage and monitor their potential exposures to OCC with fewer concerns on whether or not they could cover their exposures successfully. As such, the Commission believes that these revisions to Rule 1111(e) are also consistent with the protection of investors and the public interest.

In response to the Notice of Filing,[20] the Commission received a comment opposing the proposal on the basis that it would increase investor risk by shifting the responsibility of covering default-related liability from OCC to individual investors.[21] The Commission disagrees with this assertion, as the Proposed Rule Change provides further information to Clearing Members on the nature and amount of Partial Tear-Up claims. In particular, the Proposed Rule Change indicates that unsecured claims issued by a Clearing Member as a result of the Partial Tear-Up process are the responsibility of the defaulted or suspended Clearing Member, thus removing the risk of an unintended OCC wind-down due to Clearing Members initiating a close-out netting under Article XI, Section 27 of OCC's By-Laws. The Proposed Rule Change also provides further information to non-defaulting Clearing Members on the nature and amount of Board-levied special charges. As such, the revisions would in fact support the goals of the Partial Tear-Up process, which are to account for the exposures of non-defaulting Clearing Members and place responsibility on suspended or defaulted Clearing Members where due—the opposite of what the comment is asserting.

The Commission believes, therefore, that the proposal to revise Rule 1111(e) and (g) is consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.[22]

B. Consistency With Rule 17Ad–22(e)(23) Under the Exchange Act

Rule 17Ad–22(e)(23)(ii) under the Exchange Act requires that a clearing agency must establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.[23] Based on its review of the record, and for the reasons described below, the Commission believes that the proposed changes to Rule 1111(e) and (g) are consistent with the requirements of Rule 17Ad–22(e)(23)(ii).

By revising Rule 1111(e) to codify critical details on the nature of a Clearing Member's claim resulting from the Partial Tear-Up process, including the specific value of the claim (*e.g.,* the value of the difference between the pro rata amount received and the Partial Tear-Up Price) and the source of funds that the claim would be against (*e.g.,* an unsecured claim on any recovery from a suspended or defaulted Clearing Member, or from the estate of a suspended or defaulted Clearing Member), OCC provides critical information that Clearing Members may use to better evaluate the nature and amount of their claims resulting from the Partial Tear-Up process. Similarly, the 1111(g) revisions codify a specific limit to the amount of special charge that the Board would potentially levy on each non-defaulting Clearing Member. Non-defaulting Clearing Members may use this additional information to better evaluate the nature and amount of the special charges. As such, the Commission believes that the Rule 1111(e) and (g) revisions are consistent with providing sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs incurred with participation in the covered clearing agency.

The Commission believes, therefore, that the proposal to revise Rule 1111(e) and (g) is consistent with the requirements of Rule 17Ad–22(e)(23)(ii) under the Exchange Act.[24]

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[16] *See* Notice of Filing *supra* note 4, 87 FR at 20495.

[17] 15 U.S.C. 78s(b)(2)(C).

[18] 15 U.S.C. 78q–1(b)(3)(F).

[19] 15 U.S.C. 78q–1(b)(3)(F).

[20] *See* Notice of Filing *supra* note 4, 87 FR at 20495.

[21] The comment on the Proposed Rule Change is available at *https://www.sec.gov/comments/sr-occ-2022-005/srocc2022005.htm.*

[22] 15 U.S.C. 78q–1(b)(3)(F).

[23] 17 CFR 240.17Ad–22(e)(23)(ii).

[24] *Id.*

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act [25] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[26] that the Proposed Rule Change (SR–OCC–2022–005) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–11061 Filed 5–23–22; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before July 25, 2022.

ADDRESSES: Send all comments to, Roman Ivey, Program Analyst, Office of Policy Planning and Liaison, Small Business Administration, at *roman.ivey@sba.gov,* (202) 401–1420.

FOR FURTHER INFORMATION CONTACT: Roman Ivey, Program Analyst, Office of Policy Planning and Liaison, Small Business Administration, at *roman.ivey@sba.gov,* (202) 401–1420.

SUPPLEMENTARY INFORMATION: Small business concerns (SBCs) that are awarded set-aside or sole source contracts are limited in their ability to subcontract to other than small business concerns by the limitation on subcontracting (LOS) clauses set forth in their contracts. To help determine whether theses SBCs are in compliance with any LOS clauses, Contracting Officers may require the SBCs to submit information evidencing their compliance.

OMB Control Number: 3245–0400.

Title: ''Limitations on Subcontracting Reporting''.

Description of Respondents: Small business concerns.

Form Number: N/A.

Annual Responses: 18,500.

Annual Burden: 18,500.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2022–11076 Filed 5–23–22; 8:45 am]

BILLING CODE 8026–09–P

SOCIAL SECURITY ADMINISTRATION

[Docket No SSA–2022–0022]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes one new collection and revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Comments: *https://www.reginfo.gov/public/do/PRAMain.* Submit your comments online referencing Docket ID Number [SSA–2022–0022].

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov,* Or you may submit your comments online through *https://www.reginfo.gov/public/do/PRAMain,* referencing Docket ID Number [SSA–2022–0022].

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than July 25, 2022. Individuals can obtain copies of the collection instrument by writing to the above email address.

Enterprise Scheduling System (ESS)—0960–NEW. The Enterprise Scheduling System (ESS) will provide a better respondent and employee experience. The first ESS release is specific to allowing self-scheduling for enumeration services. ESS subsequent releases will expand services for other appointment needs. Through ESS respondent self-scheduling and technician scheduling, SSA will collect specific information about respondents (*e.g.,* respondent: Name, address, zip code, telephone number, and email address). In addition, we ask the respondent to consent to receive optional electronic messaging or opt out; electronic message preference (email/text), if respondents provide consent; language preferences (English/Spanish); respondent's preferred office to receive service; and appointment (day and time preference) to schedule an in-office appointment to process a request for an original SSN or replacement Social Security card. In addition, we will ask respondents scheduling their initial appointment through a technician to create a one-time passcode to securely allow online updates to their appointment. The technician will document the one-time passcode with the respondent's other appointment preferences. Respondents will use ESS to complete required screens and fields to select a date and time for an appointment at an SSA field office (FO) to provide the proofs necessary to obtain a replacement or original SSN card. Respondents can complete the online collection themselves. If respondents encounter issues with ESS, they may contact SSA by phone to complete scheduling the appointment through a technician. We will integrate ESS with VIPr Mobile check-in functions, so ESS respondents will have the option to check-in for their appointment using Mobile check-in on their personal device, instead of checking in at the kiosk. Using VIPr, SSA employees can request walk-in visitors and individuals with appointments to come into the office. The respondents are individuals looking to schedule their own SSA visit using ESS.

Type of Request: Request for a new information collection.

[25] In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
ESS—Internet	3,000,000	1	3	150,000	* $19.86		*** $2,979,000
ESS—Technician	150,000	1	3	7,500	* 19.86	** 19	*** 1,092,300
Totals	3,150,000			157,500			*** 4,071,300

* We based this figure by averaging both the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).
** We based this figure on the average FY 2022 wait times for Teleservice Centers, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than June 23, 2022. Individuals can obtain copies of these OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. Certificate of Responsibility for Welfare and Care of Child Not in Applicant's Custody—20 CFR 404.330, 404.339–404.341 and 404.348–404.349—0960–0019. SSA uses Form SSA–781 to determine if non-custodial parents who file for spouse, mother's, father's, or surviving divorced mother's or father's benefits based on having a child in their care, meet the child-in-care requirements. The child-in-care provision requires claimants to have an entitled child under age 16 or disabled in their care. The respondents are applicants for spouse's, mother's, father's, or surviving divorced mother's or father's Social Security benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSA–781	390	1	5	33	* $28.01	** 21	*** $4,762

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).
** We based this figure by averaging the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. Child Relationship Statement—20 CFR 404.355 and 404.731—0960–0116. To help determine a child's entitlement to Social Security benefits, SSA uses criteria under Section 216(h)(3) of the Social Security Act (Act), deemed child provision. SSA may deem a child to an insured individual if: (1) The insured individual presents SSA with satisfactory evidence of parenthood, and was living with or contributing to the child's support at certain specified times; or (2) the insured individual: (a) Acknowledged the child in writing; (b) was court decreed as the child's parent; or (c) was court ordered to support the child. To obtain this information, SSA uses Form SSA–2519, Child Relationship Statement. The respondents are people with knowledge of the relationship between certain individuals filing for Social Security benefits and their alleged biological children.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSA–2519	4,981	1	15	1,245	* $28.01	** 21	*** $83,694

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).
** We based this figure by averaging the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

3. Pre-1957 Military Service Federal Benefit Questionnaire—20 CFR 404.1301–404.1371—0960–0120. SSA may grant gratuitous military wage credits for active military or naval service (under certain conditions) during the period September 16, 1940 through December 31, 1956, if no other Federal agency (other than the Veterans Administration) credited the service for benefit eligibility or computation purposes. We use Form SSA–2512 to collect specific information about other Federal, military, or civilian benefits the wage earner may receive when the applicant indicates both pre-1957 military service and the receipt of a Federal benefit. SSA uses the data in the claims adjudication process to grant gratuitous military wage credits when applicable, and to solicit sufficient

information to determine eligibility. Respondents are applicants for Social Security benefits on a record where the wage earner claims pre-1957 military service.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–2512	5,000	1	10	833	* $28.01	** 24	*** $79,352

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).
** We based this figure on the average FY 2022 wait times for field offices, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

4. Authorization for the Social Security Administration to Obtain Account Records from a Financial Institution—20 CFR 416.200, 416.203, 416.207, 404.508, and 416.553—0960–0293. SSA collects and verifies financial information from individuals applying for Title II and Title XVI waiver determinations, as well as those who apply for, or currently receive (in the case of redetermination), Supplemental Security Income (SSI) payments. We require the financial information from these applicants to: (1) Determine the eligibility of the applicant or recipient for SSI benefits; or (2) determine if a request to waive a Social Security overpayment defeats the purpose of the Act. If the Title II and Title XVI waiver applicants, or the SSI claimants provide incomplete, unavailable, or seemingly altered records, SSA contacts their financial institutions to verify the existence, ownership, and value of accounts owned. Financial institutions need individuals to sign Form SSA–4641, or work with SSA staff to complete one of SSA's electronic applications, e4641 or the Access to Financial Institutions (AFI) screens, to authorize the individual's financial institution to disclose records to SSA. The respondents are Title II and Title XVI recipients applying for waivers, or SSI applicants, recipients, and their deemors to determine SSI eligibility.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) ***	Average wait time in field office (minutes) ****	Total annual opportunity cost (dollars) *****
Individuals (Paper and Internet) *	** 1,565,000	1	4	104,333	*** $19.86	**** 24	***** $14,504,413
Financial Institutions (Paper SSA-4641)	90,000	1	6	9,000	*** 19.86		***** 178,740
Financial Institutions (Internet e4641 or AFI)	14,575,000	1	2	485,833	*** 19.86		***** 9,648,643
Totals	16,230,000			599,166			***** 24,331,796

* This includes individuals completing the form to provide their authorization for purposes of determining SSI eligibility *as well as* individuals providing their authorization for purposes of a waiver determination.
** This likely is an overestimate because individuals providing their authorization for purposes of a waiver determination may, alternatively, provide their authorization using another form, the SSA–632, but we do not have readily-available MI on how many individuals use that form instead of the SSA–4641.
*** We based this figure by averaging both the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).
**** We based this figure on the average FY 2022 wait times for field offices, based on SSA's current management information data.
***** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

5. Vocational Rehabilitation Provider Claim—20 CFR 404.2101(a), 404.2108(b), 404.2117(c)(1)&(2), 404.2121(a), 416.2208(b), 416.2217(c)(1)&(2), 416.2201(a), and 416.2221(a)—0960–0310. State vocational rehabilitation (VR) agencies submit Form SSA–199 to SSA to obtain reimbursement of costs incurred for providing VR services. SSA requires state VR agencies to submit reimbursement claims for the following categories: (1) Claiming reimbursement for VR services provided; (2) certifying adherence to cost containment policies and procedures; and (3) preparing causality statements. The respondents provide the information requested through a web-based Secure Ticket Portal, in lieu of submitting forms. This Portal allows VRs to retrieve reports, and enter and submit information electronically, minimizing the use of the paper form to SSA for consideration and approval of the claim for reimbursement of costs incurred for SSA beneficiaries. SSA uses the information on the SSA–199, along with the written documentation, to determine whether, and how much, to pay State VR agencies under SSA's VR program. Respondents are State VR agencies offering vocational and employment services to Social Security and SSI recipients.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
a. Claiming Reimbursement on SSA–199—20 CFR 404.2108(b) & 416.2208(b)	77	303	23,331	23	8,944	* $16.02	** $143,283

Modality of completion	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
b. Certifying Adherence to Cost Containment Policy and Procedures—20 CFR 404.2117(c)(1)&(2), 416.2217(c)(1)&(2) & 34 CFR 361	77	1	77	60	77	* 16.02	** 1,234
c. Preparing Causality Statements—20 CFR 404.2121(a), 404.2101(a), 416.2201(a), & 416.2221(a)	77	2.5	193	100	322	* 16.02	** 5,158
Totals	231				9,343		** 149,675

* We based this figure on the average Healthcare Support Occupations, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes310000.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

6. Request for Change in Time/Place of Disability Hearing—20 CFR 404.914(c)(2) and 416.1414(c)(2)—0960–0348. At the request of the claimants or their representatives, SSA schedules evidentiary hearings at the reconsideration level for claimants of Title II benefits or Title XVI payments when we deny their claims for disability. When claimants or their representatives find they are unable to attend the scheduled hearing, they complete Form SSA–769 to request a change in time or place of the hearing. SSA uses the information from the form as a basis for granting or denying requests for changes and for rescheduling disability hearings. Respondents are claimants or their representatives who wish to request a change in the time or place of their hearing.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–769	41,440	1	8	5,525	* $19.86	** $109,727

* We based this figure by averaging both the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

7. Notice Regarding Substitution of Party Upon Death of Claimant—Reconsideration of Disability Cessation—20 CFR 404.907–404.921 and 416.1407–416.1421—0960–0351. When a claimant dies before we make a determination on that person's request for reconsideration of a disability cessation, SSA seeks a qualified substitute party to pursue the appeal. If SSA locates a qualified substitute party, the agency uses Form SSA–770 to collect information about whether to pursue or withdraw the reconsideration request. We use this information as the basis for the decision to continue or discontinue with the appeals process. Respondents are substitute applicants who are pursuing a reconsideration request for a deceased claimant.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–770	384	1	5	32	* $28.01	** $896

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

8. Appointment of Representative—20 CFR 404.1707, 404.1720, 408.1101, 416.1507, and 416.1520—0960–0527. Individuals claiming rights or benefits under the Act must notify SSA in writing when they appoint an individual to represent them in dealing with SSA. In addition, as part of SSA's regulations, SSA requires representatives who are not attorneys to sign the written notice of appointment. SSA does not require attorneys acting as representatives to sign the notice of appointment. Respondents can use Form SSA–1696, or the submittable electronic version, e1696, to appoint a representative to handle their claim before SSA and name their principal representative, and their selected representative(s) can use the SSA–1696 or e1696 to indicate whether they will charge a fee, and to show their eligibility for direct fee payment. In addition, representatives also use the SSA–1696 or e1696 to inform SSA of their disbarment; suspension from a court or bar in which they previously admitted to practice; or their disqualification from participating in or appearing before a Federal program or

agency. SSA uses the information on the SSA–1696 or e1696 to document the appointment of the representative, and we recognize the individual named in the notice of appointment the claimant signed and filed at an SSA office, or through our submittable portal, as the claimant's representative. We also use this form to collect the representative's business affiliation and employment identification number. In addition, respondents use the SSA–1696–SUP1 to revoke their appointment of a representative, and representatives use the SSA–1696–SUP2 to withdraw their acceptance of the appointment. SSA uses the information on the SSA–1696–SUP1 and SSA–1696–SUP2 to document the revocation and withdrawal of a representative. Respondents are applicants for, or recipients of, Social Security disability benefits (SSDI); SSI payments; or anyone pursuing a benefit or invoking a right under SSA programs, who are notifying SSA they have appointed someone to represent them in their dealings with SSA; any non-attorney representatives who need to sign the form; as well as individuals revoking their appointment of representative, and their representatives' withdrawal of their acceptance of an appointment.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–1696; e1696	1,100,000	1	12	220,000	*$73.86	**$16,249,200
SSA–1696–SUP1	5,505	1	5	459	*11.70	**5,370
SSA–1696–SUP2	254,825	1	5	21,235	*73.86	**1,568,417
Totals	1,360,330			241,694		**17,822,987

*We based these figures on average Legal Service lawyer's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes231011.htm*) and the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf*).

**This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

9. Work Incentives Planning and Assistance Program—0960–0629. As part of SSA's strategy to assist SSDI beneficiaries and SSI recipients who wish to return to work and achieve self-sufficiency, SSA established the Work Incentives Planning and Assistance (WIPA) program. This community based, work incentive, planning and assistance project collects identifying claimant information via project sites and community work incentives coordinators (CWIC). SSA uses this information to ensure proper management of the project, with particular emphasis on administration, budgeting, and training. SSA uses Form SSA–4565 (WIPA Intake Information) to collect data from SSDI beneficiaries and SSI recipients on background employment, training, benefits, and work incentives. CWIC use Form SSA–4566 (WIPA Notes) to create a case note to record actions taken for a beneficiary. CWIC will use the WIPA Star System which is a new management and reporting system that allows the CWIC to: (1) Provide SSA with information provided on Form SSA–4565, and additional information on beneficiaries served under the WIPA program; (2) to manage their case notes for beneficiaries; and (3) to collect additional information not collected on Forms SSA–4565 and SSA–4566 which allows SSA to monitor WIPA grantee's performance and progress. The respondents are SSDI beneficiaries, SSI recipients, community project sites, and community work incentives coordinators.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Annual burden (hours)	Hourly cost amount (dollars) *	Opportunity cost (dollars) **
SSA–4565	32,000	1	25	13,333	*$16.29	**$217,195
SSA–4566	360	890	2	10,680	*16.29	**173,977
WIPA STAR System	720	1,869	20	448,560	*16.29	**7,307,042
Totals	33,080			472,573		**7,698,214

*We based this figure on the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf*); and the average Office and Administrative Support hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes430000.htm*).

**This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

10. Internet Direct Deposit Application—31 CFR 210—0960–0634. SSA requires all applicants and recipients of Social Security Old Age, Survivors, and Disability Insurance (OASDI) benefits, or SSI payments to receive these benefits and payments via direct deposit, at a financial institution. SSA receives Direct Deposit/Electronic Funds Transfer (DD/EFT) enrollment information from OASDI beneficiaries and SSI recipients to facilitate DD/EFT of their funds, with their chosen financial institution. We also use this information when an enrolled individual wishes to change their DD/EFT information. For the convenience of the respondents, we collect this information through several modalities, including an internet application, in-office or telephone interviews, and our automated telephone system. In addition to using the direct deposit information to enable DD/EFT of funds to the recipient's chosen financial institution, we also use the information through our Direct Deposit Fraud Indicator, to ensure the correct recipient receives the funds. Respondents are OASDI beneficiaries and SSI recipients requesting that we enroll them in the Direct Deposit program, or change their direct deposit banking information.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
Internet DD	683,397	1	10	113,900	* $19.86	** $2,262,054
Non-Electronic Services (FO, 800#–ePath, SSI Claims System, SPS, MACADE, POS, RPS)	2,557,048	1	12	511,410	* 19.86	** 10,156,603
Direct Deposit Fraud Indicator	30,531	1	2	1,018	* 19.86	** 20,217
Totals	3,270,976			626,328		** 12,438,874

* We based this figure by averaging both the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** This figure does not represent actual costs that SSA is imposing on claimants of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

11. International Direct Deposit—31 CFR 210—0960–0686. SSA's International Direct Deposit (IDD) Program allows beneficiaries living abroad to receive their payments via direct deposit to an account at a financial institution outside the United States. SSA uses Form SSA–1199–(Country) to enroll Title II beneficiaries residing abroad in IDD, and to obtain the direct deposit information for foreign accounts. Routing account number information varies slightly for each foreign country, so we use a variation of the Treasury Department's Form SF–1199A for each country. The respondents are Social Security beneficiaries residing abroad who want SSA to deposit their Title II benefit payments directly to a foreign financial institution.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–1199–(Country)	449,274	1	5	37,440	* $28.01	** $1,048,694

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

12. Request for Reinstatement (Title XVI)—20 CFR 416.999–416.999d—0960–0744. SSA uses Form SSA–372 to: (1) Inform previously entitled beneficiaries of the expedited reinstatement (EXR) requirements of SSI payments under Title XVI of the Act; and (2) document their requests for EXR. SSA requires this application for reinstatement of benefits for respondents to obtain SSI disability payments for EXR. When an SSA claims representative learns of individuals whose medical conditions no longer permit them to perform substantial gainful activity as defined in the Act, the claims representative gives the form to the previously entitled individuals (or mails it to those who request EXR over the phone). SSA employees collect this information whenever an individual files for EXR benefits. The respondents are applicants for EXR of SSI disability payments.

Type of Request: Revision of an OMB approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–372	2,000	1	5	167	$11.70	** 24	*** $11,314

* We based this figure on the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf*).

** We based this figure on the average FY 2022 wait time for teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on claimants of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Dated: May 19, 2022.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2022–11124 Filed 5–23–22; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 11734]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Raphael—The Power of Renaissance Images: The Dresden Tapestries and Their Impact'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Raphael—The Power of Renaissance Images: The Dresden Tapestries and Their Impact'' at the Columbus Museum of Art, Columbus, Ohio, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the

national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–11154 Filed 5–23–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 11749]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Just Above Midtown: 1974 to the Present'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Just Above Midtown: 1974 to the Present'' at The Museum of Modern Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–11157 Filed 5–23–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Release of Land Affecting Federal Grant Assurance Obligations at Reno-Stead Airport, Reno, Washoe County, Nevada

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of request to release airport land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal and invites public comment to change a portion of the airport from aeronautical use to non-aeronautical use at the Reno-Stead Airport (RTS), Reno, Washoe County, Nevada. The proposal consists of approximately 178.5 acres at the southwest end of the RTS property between Army Aviation Drive and Rail Spur Road at the airport property line.

DATES: Comments must be received on or before June 23, 2022.

ADDRESSES: Comments on the request may be mailed or delivered to the FAA at the following address: Mr. Mike N. Williams, Manager, Phoenix Airports District Office, Federal Aviation Administration, 3800 N Central Ave., Suite 1025, 10th Floor, Phoenix, Arizona 85012. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Daren Griffin, President/CEO, Reno-Tahoe Airport Authority, P.O. Box 12490, Reno, Nevada 89510–2490.

SUPPLEMENTARY INFORMATION: The land was originally acquired by the City of Reno through the Federal Property and Administrative Services Act of 1947 and the Surplus Property Act of 1944, by the Administrator of General Services on December 19, 1966, with corrected Quitclaim Deeds on August 29, 1967 and August 14, 1968. The land was transferred to the Washoe County Airport Authority by the City of Reno on June 25, 1979. The land will be released from aeronautical obligations for a future non-aeronautical use. Such use of the land represents a compatible land use that will not interfere with the airport or its operation, thereby protecting the interests of civil aviation. The airport will be compensated for the fair market value of the use of the land.

In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 10–181 (Apr. 5, 2000; 114 Stat. 75), this notice must be published in the **Federal Register** 30 days before the DOT Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements.

Issued in El Segundo, California, on May 18, 2022.

Brian Q. Armstrong,

Manager, Safety and Standards Branch, Airports Division, Western-Pacific Region.

[FR Doc. 2022–11083 Filed 5–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2021–0237]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Aviation Maintenance Technician Schools

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves Aviation Maintenance Technician School (AMTS) applicants and certificate holders. The information to be collected will be used to ensure AMTS applicants and certificate holders meet the regulatory requirements prior to being certificated, and on an ongoing basis following FAA certification.

DATES: Written comments should be submitted by June 23, 2022.

ADDRESSES: Written comments and recommendations for the proposed

information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Tanya Glines by email at: *Tanya.glines@faa.gov;* phone: 202–380–5896.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0040.

Title: Aviation Maintenance Technician Schools.

Form Numbers: FAA Form 8610–6.

Type of Review: This is a renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 15, 2022 (87 FR 14610). This information collection summarizes burden under 14 CFR part 147 regulations to be issued in accordance with Section 135 of the Aircraft Certification, Safety, and Accountability Act in Public Law 116–260, the Consolidated Appropriations Act of 2021.

The collection of information includes both reporting and recordkeeping requirements related to AMTS. All AMTS applicants must submit an application and a description of their facilities, curriculum basis, and instructor requirements. Additionally the applicant must submit any other information necessary to demonstrate compliance with the requirements of part 147. All applicants must establish a curriculum that aligns with the mechanic airman certification standards and that will ensure students are prepared to take the requisite FAA tests for a mechanic certificate and rating(s). Applicants that do not hold accreditation by an accrediting organization recognized by the Department of Education, must develop a Quality Control System and have it approved by the FAA.

Certificated AMTS must notify the FAA of locations, which are in addition to the school's primary location, where the AMTS will conduct training under part 147. All AMTS must maintain and utilize the curriculum designed to continually align with the mechanic airman certifications standards. AMTS must issue authenticated documentation that shows when a student graduated from the part 147 curriculum. This documentation can be used by an applicant for a mechanic certificate towards eligibility to take the FAA written tests. AMTS have the option to issue an authenticated document when a student completes only the General course content of the AMTS curriculum, which would allow the student to take the FAA General written test prior to completing the entire AMTS curriculum. AMTS with an FAA-Approved Quality Control System must maintain the records the AMTS describes, for the timeframes the AMTS prescribes in its Quality Control System.

The information collected is provided to the certificate holder/applicant's appropriate FAA Flight Standards office in order to allow the FAA to determine compliance with the part 147 requirements for obtaining and or retaining an FAA air agency certificate. For applicants, when all part 147 requirements have been met, an FAA air agency certificate is issued, with the appropriate ratings. For FAA certificated AMTS, the FAA uses the information collected to determine if the AMTS provides appropriate training at each location of the AMTS, meets quality control system requirements, and ensures that AMTS students receive an appropriate document showing the student is eligible to take the FAA tests to obtain a mechanic certificate.

Respondents: Approximately 10 AMTS applicants, and 182 FAA-certificated AMTS respond to this collection annually.

Frequency: AMTS applicants respond one time, prior to certification. FAA-certificated AMTS respond occasionally after certification, and have ongoing recordkeeping requirements.

Estimated Average Burden per Response: 19 hours/response on average.

Estimated Total Annual Burden: 11,438 hours/year.

Issued in Washington, DC, on May 19, 2022.

Tanya A. Glines,

Aviation Safety Inspector, Office of Safety Standards, Aircraft Maintenance Division, Airman Section.

[FR Doc. 2022–11136 Filed 5–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Release of Land Affecting Federal Grant Assurance Obligations at Pinal Airpark, Marana, Pinal County, Arizona

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of request to release airport obligations.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal and invites public comment to change a portion of the airport from aeronautical to non-aeronautical use at the Pinal Airpark (MZJ), Marana, Pinal County, Arizona. The proposal consists of approximately 477.53 acres more or less of airport land, located on airport property, east and north of Pinal Airpark Rd.

DATES: Comments must be received on or before June 23, 2022.

ADDRESSES: Comments on the request may be mailed or delivered to the FAA at the following address: Mr. Mike N. Williams, Manager, Phoenix Airports District Office, Federal Aviation Administration, 3800 N Central Ave., Suite 1025, 10th Floor, Phoenix, Arizona 85012. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Mr. Jim Petty, Airport Economic Development Director, Pinal Airpark, 31 N Pinal St., Building A, Florence, AZ 85132.

SUPPLEMENTARY INFORMATION: The land was originally acquired by Pinal County through Reorganization Plan One of 1947, and the Surplus Property Act of 1944, by the War Assets Administrator, on June 17, 1948. The land will be released from aeronautical obligations for a future non-aeronautical use. Such use of the land represents a compatible land use that will not interfere with the airport or its operation, thereby protecting the interests of civil aviation. The airport will be compensated for the fair market value of the use of the land.

In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 106–181 (Apr. 5, 2000; 114 Stat. 75), this notice must be published in the **Federal Register** 30 days before the DOT Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements.

Issued in El Segundo, California, on May 18, 2022.

Brian Q. Armstrong,

Manager, Safety and Standards Branch, Airports Division, Western-Pacific Region.

[FR Doc. 2022–11082 Filed 5–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

United States Merchant Marine Academy Advisory Council

AGENCY: Maritime Administration, U.S. Department of Transportation.

ACTION: Notice to extend the time to apply for or nominate members to the United States Merchant Marine Academy Advisory Council.

SUMMARY: The Maritime Administration (MARAD) is extending the time period in which to apply for or nominate membership to the United States Merchant Marine Academy Advisory Council (Council). The Council will provide advice and recommendations to the Secretary of Transportation, MARAD, and the United States Merchant Marine Academy (Academy) on matters related to the Academy.

DATES: Applicant or nominator submissions should be received by June 14, 2022. Submissions received after this date will be considered as practicable.

ADDRESSES: Applicant or nominator submissions must be made electronically (by email) to the email address listed in the **FOR FURTHER INFORMATION CONTACT** section. The subject line should state ''USMMA Advisory Council Member Nomination.''

FOR FURTHER INFORMATION CONTACT: Mr. Jack Kammerer, Designated Federal Officer, Executive Director, Maritime Administration at *Jack.Kammerer@dot.gov* or 202–366–2805.

SUPPLEMENTARY INFORMATION:

I. Background

The Council is an advisory committee established pursuant to the National Defense Authorization Act of Fiscal Year 2022, Public Law 117–81, section 3501(c), codified at 46 U.S.C. 51323, and in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The Council, through the Maritime Administrator, will provide the Secretary with advice and recommendations on the issues identified in the National Academy of Public Administration's *Comprehensive Assessment of the U.S. Merchant Marine Academy* November 2021 report. The advice and recommendations will relate to the morale, discipline, social climate, curriculum, instruction, physical equipment, fiscal affairs, academic methods, administrative policies, infrastructure needs, and other matters relating to the Academy.

Under its charter, the Council is comprised of no fewer than 8 members, but not more than 14 members, appointed by the Secretary for terms of up to two years, and appointed from among individuals with diverse backgrounds and expertise that will allow them to contribute balanced points of view and ideas regarding improving the Academy. Appointees may include individuals who are specially qualified to represent the interests and opinions of: Academia and higher education administration; Academy graduates; Members of the armed forces; Shipping and labor; Experts in the field of sexual assault and sexual harassment prevention and response; Experts in the field of workplace diversity, equity, and inclusion; and Experts in capital improvement planning.

Council members serve without pay. Members may be entitled to reimbursement of expenses related to per diem and travel when attending Council meetings, as authorized under 5 U.S.C. 5703 and 41 CFR part 301. The Council will meet as often as needed to fulfill its mission, but typically four times each fiscal year to address its objectives and duties. The Council will aim to meet in person at least once each fiscal year with additional meetings held via teleconference.

II. Nomination Process

Members of the Council are appointed by the Secretary for two-year terms. The selection and appointment process for Council members is designed to ensure continuity of membership, and to afford the Secretary the advisory input of the most capable, diverse, and novel perspectives that the country has to offer.

Individuals interested in serving on the Council are invited to apply for consideration for appointment. There is no application form; however, applicants/nominators should submit the following information:

(1) Contact Information for the applicant/nominee, consisting of:

a. Name
b. Title
c. Organization or Affiliation
d. Address
e. City, State, Zip Code
f. Telephone number
g. Email address

(2) Statement of interest if the applicant/nominee believes it would be helpful to consideration of their appointment to the council, limited to 250 words on why the applicant/nominee wants to serve on the Council and the unique perspectives and experiences the applicant/nominee brings to the Council;

(3) A current resume and category of interest of the applicant/nominee is required;

(4) An affirmative statement that the applicant/nominee is not a Federally registered lobbyist seeking to serve on the committee in their individual capacity and the identity of the interests they intend to represent, if appointed as a member of the Council; and

(5) Optional letters of support.

All non-federal members must also complete a background investigation.

The Department of Transportation does not discriminate in employment on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or other non-merit factors. The Department strives to achieve a diverse candidate pool for all its recruitment actions.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–11133 Filed 5–23–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[DOT–OST–2022–0056]

U.S. DOT FY22 Safe Streets and Roads for All Funding

AGENCY: Office of the Secretary of Transportation, U.S. Department of Transportation (DOT).

ACTION: Notice of Funding Opportunity (NOFO).

SUMMARY: The purpose of this notice is to solicit applications for the Fiscal Year

2022 (FY22) NOFO for the Safe Streets and Roads for All (SS4A) discretionary grant program. SS4A funds will be awarded on a competitive basis to support infrastructure, behavioral, and operational initiatives that prevent death and serious injury on roads and streets involving all roadway users, including: Pedestrians; bicyclists; public transportation, personal conveyance, and micromobility users; motorists; and commercial vehicle operators.

DATES: Applications must be submitted by 5:00 p.m. EDT on Thursday, September 15, 2022. Late applications will not be accepted.

ADDRESSES: Applications must be submitted through *www.Grants.gov.* Only applicants who comply with all submission requirements described in this notice and submit applications through *www.Grants.gov* on or before the application deadline will be eligible for award.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice, please contact the Office of the Secretary via email at *SS4A@dot.gov,* or call Paul Teicher at (202) 366–4114. A TDD is available for individuals who are deaf or hard of hearing at 202–366–3993. In addition, DOT will periodically post answers to common questions and requests for clarifications on the Department's website at *https://www.transportation.gov/SS4A.*

SUPPLEMENTARY INFORMATION: Each section of this notice contains information and instructions relevant to the application process for SS4A grants, and all applicants should read this notice in its entirety so that they have the information they need to submit eligible and competitive applications.

Table of Contents

Definitions

Term	Definition
Applicant's Jurisdiction(s)	The U.S. Census tracts where the applicant operates or performs their safety responsibilities. If an applicant is seeking funding for multiple jurisdictions, all of the relevant Census tracts for the jurisdictions covered by the application should be included.
Complete Streets	Standards or policies that ensure the safe and adequate accommodation of all users of the transportation system, including pedestrians, bicyclists, personal conveyance and micromobility users, public transportation users, children, older individuals, individuals with disabilities, motorists, and freight vehicles.[1]
Comprehensive Safety Action Plan	A comprehensive safety action plan (referred to as Action Plan) is aimed at preventing roadway fatalities and serious injuries in a locality, Tribe, or region. This can either be a plan developed with an Action Plan Grant, or a previously developed plan that is substantially similar and meets the eligibility requirements (*e.g.*, a Vision Zero plan or similar plan).
Equity	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, Indigenous and Native Americans, 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.
High Injury Network	Identifies the highest concentrations of traffic crashes resulting in serious injuries and fatalities within a given roadway network or jurisdiction.
Micromobility	Any small, low-speed, human- or electric-powered transportation device, including bicycles, scooters, electric-assist bicycles, electric scooters (e-scooters), and other small, lightweight, wheeled conveyances.[2]
Personal Conveyance	A personal conveyance is a device, other than a transport device, used by a pedestrian for personal mobility assistance or recreation. These devices can be motorized or human powered, but not propelled by pedaling.[3]
Political Subdivision of a State	A unit of government created under the authority of State law. This includes cities, towns, counties, special districts, certain transit agencies, and similar units of local government. A transit district, authority, or public benefit corporation is eligible if it was created under State law, including transit authorities operated by political subdivisions of a State.
Rural	For the purposes of this NOFO, jurisdictions outside an Urbanized Area (UA) or located within Urbanized Areas with populations fewer than 200,000 will be considered rural. Lists of UAs are available on the U.S. Census Bureau website at *http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/.*
Safe System Approach	A guiding principle to address the safety of all road users. It involves a paradigm shift to improve safety culture, increase collaboration across all safety stakeholders, and refocus transportation system design and operation on anticipating human mistakes and lessening impact forces to reduce crash severity and save lives.[4] [5]

[1] The definition is based on the ''Moving to a Complete Streets Design Model: A Report to Congress on Opportunities and Challenges,'' *https://highways.dot.gov/newsroom/federal-highway-administration-details-efforts-advance-complete-streets-design-model.*

[2] Source: FHWA, Public Roads Magazine Spring 2021 ''Micromobility: A Travel Innovation.'' Publication Number: FHWA–HRT–21–003.

[3] *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813251,* see page 127 for the full definition as defined in the 2020 FARS/CRSS Coding and Validation Manual.

[4] See: *https://www.transportation.gov/NRSS/SafeSystem.*

[5] Safety culture can be defined as the shared values, actions, and behaviors that demonstrate a commitment to safety over competing goals and demands.

Term	Definition
Underserved Community	An underserved community as defined for this NOFO is consistent with the Office of Management and Budget's Interim Guidance for the Justice40 Initiative and the Historically Disadvantaged Community designation, which includes: • U.S. Census tracts identified in this table: *https://datahub.transportation.gov/stories/s/tsyd-k6ij*; • Any Tribal land; or • Any territory or possession of the United States.

A. Program Description

1. Overview

Section 24112 of the Infrastructure Investment and Jobs Act (Pub. L. 117–58, November 15, 2021; also referred to as the ''Bipartisan Infrastructure Law'' or ''BIL'') authorized and appropriated $1 billion to be awarded by the Department of Transportation for FY 2022 for the SS4A grant program. This NOFO solicits applications for activities to be funded under the SS4A grant program. The FY22 funding will be implemented, as appropriate and consistent with law, in alignment with the priorities in Executive Order 14052, Implementation of the Infrastructure Investment and Jobs Act (86 FR 64355).[6]

The purpose of SS4A grants is to improve roadway safety by significantly reducing or eliminating roadway fatalities and serious injuries through safety action plan development and implementation focused on all users, including pedestrians, bicyclists, public transportation users, motorists, personal conveyance and micromobility users, and commercial vehicle operators. The program provides funding to develop the tools to help strengthen a community's approach to roadway safety and save lives and is designed to meet the needs of diverse local, Tribal, and regional communities that differ dramatically in size, location, and experience administering Federal funding.

2. Grant Types and Deliverables

The SS4A program provides funding for two types of grants: Action Plan Grants (for comprehensive safety action plans) and Implementation Grants. Action Plan Grants are used to develop, complete, or supplement a comprehensive safety action plan. To apply for an Implementation Grant, an eligible applicant must have a qualifying Action Plan. Implementation Grants are available to implement strategies or projects that are consistent with an existing Action Plan. Applicants for Implementation Grants can self-certify that they have in place one or more plans that together are substantially similar to and meet the eligibility requirements for an Action Plan.

i. Action Plan Grants

An Action Plan is the foundation of the SS4A grant program. Action Plan Grants provide Federal funds to eligible applicants to develop or complete an Action Plan. Action Plan Grants may also fund supplemental Action Plan activities. The goal of an Action Plan is to develop a holistic, well-defined strategy to prevent roadway fatalities and serious injuries in a locality, Tribe, or region. Further information on eligibility requirements is in Section C.

The primary deliverable for an Action Plan Grant is a publicly available Action Plan. For the purposes of the SS4A grant program, an Action Plan includes the components in Table 1. DOT considers the process of developing an Action Plan to be critical for success, and the components reflect a process-oriented set of activities.

TABLE 1—ACTION PLAN COMPONENTS

Component	Description
Leadership Commitment and Goal Setting.	An official public commitment (*e.g.*, resolution, policy, ordinance, etc.) by a high-ranking official and/or governing body (*e.g.*, Mayor, City Council, Tribal Council, MPO Policy Board, etc.) to an eventual goal of zero roadway fatalities and serious injuries. The commitment must include a goal and timeline for eliminating roadway fatalities and serious injuries achieved through one, or both, of the following: (1) the target date for achieving zero roadway fatalities and serious injuries, OR (2) an ambitious percentage reduction of roadway fatalities and serious injuries by a specific date with an eventual goal of eliminating roadway fatalities and serious injuries.
Planning Structure	A committee, task force, implementation group, or similar body charged with oversight of the Action Plan development, implementation, and monitoring.
Safety Analysis	Analysis of existing conditions and historical trends that provides a baseline level of crashes involving fatalities and serious injuries across a jurisdiction, locality, Tribe, or region. Includes an analysis of locations where there are crashes and the severity of the crashes, as well as contributing factors and crash types by relevant road users (motorists, people walking, transit users, etc.). Analysis of systemic and specific safety needs is also performed, as needed (*e.g.*, high-risk road features, specific safety needs of relevant road users, public health approaches, analysis of the built environment, demographic, and structural issues, etc.). To the extent practical, the analysis should include all roadways within the jurisdiction, without regard for ownership. Based on the analysis performed, a geospatial identification of higher-risk locations is developed (a High-Injury Network or equivalent).
Engagement and Collaboration	Robust engagement with the public and relevant stakeholders, including the private sector and community groups, that allows for both community representation and feedback. Information received from engagement and collaboration is analyzed and incorporated into the Action Plan. Overlapping jurisdictions are included in the process. Plans and processes are coordinated and aligned with other governmental plans and planning processes to the extent practical.

[6] The priorities of Executive Order 14052, Implementation of the Infrastructure Investments and Jobs Act are: To invest efficiently and equitably, promote the competitiveness of the U.S. economy, improve job opportunities by focusing on high labor standards and equal employment opportunity, strengthen infrastructure resilience to hazards including climate change, and to effectively coordinate with State, local, Tribal, and territorial government partners.

TABLE 1—ACTION PLAN COMPONENTS—Continued

Component	Description
Equity Considerations	Plan development using inclusive and representative processes. Underserved communities are identified through data and other analyses in collaboration with appropriate partners.[7] Analysis includes both population characteristics and initial equity impact assessments of the proposed projects and strategies.
Policy and Process Changes	Assessment of current policies, plans, guidelines, and/or standards (*e.g.*, manuals) to identify opportunities to improve how processes prioritize transportation safety. The Action Plan discusses implementation through the adoption of revised or new policies, guidelines, and/or standards, as appropriate.
Strategy and Project Selections	Identification of a comprehensive set of projects and strategies, shaped by data, the best available evidence and noteworthy practices, as well as stakeholder input and equity considerations, that will address the safety problems described in the Action Plan. These strategies and countermeasures focus on a Safe System Approach, effective interventions, and consider multidisciplinary activities. To the extent practical, data limitations are identified and mitigated. Once identified, the list of projects and strategies is prioritized in a list that provides time ranges for when the strategies and countermeasures will be deployed (*e.g.*, short-, mid-, and long-term timeframes). The list should include specific projects and strategies, or descriptions of programs of projects and strategies, and explains prioritization criteria used. The list should contain interventions focused on infrastructure, behavioral, and/or operational safety.
Progress and Transparency	Method to measure progress over time after an Action Plan is developed or updated, including outcome data. Means to ensure ongoing transparency is established with residents and other relevant stakeholders. Must include, at a minimum, annual public and accessible reporting on progress toward reducing roadway fatalities and serious injuries, and public posting of the Action Plan online.

(a) Supplemental Action Plan Activities

Supplemental action plan activities support or enhance an existing Action Plan. To fund supplemental Action Plan activities through the SS4A program, an applicant must have an existing Action Plan, or a plan that is substantially similar and meets the eligibility requirements for having an existing plan. The plan components may be contained within several documents. Table 2 in Section C is a Self-Certification Eligibility Worksheet with instructions to determine whether an existing plan meets the eligibility requirements. Supplemental action plan activities could include, but are not limited to: A second round of analysis; expanded data collection and evaluation using integrated data; testing action plan concepts before project and strategy implementation; feasibility studies using quick-build strategies that inform permanent projects in the future (*e.g.,* paint, plastic bollards, etc.); follow-up stakeholder engagement and collaboration; targeted equity assessments; progress report development; and complementary planning efforts such as speed management plans, accessibility and transition plans, racial and health equity plans, and lighting management plans. Additional information on supplemental action plan activities is located at *https://www.transportation.gov/SS4A.*

Applicants that have an existing plan that is substantially similar to and meets the eligibility requirements of an Action Plan may alternatively choose to fund supplemental Action Plan activities through an application for an Implementation Grant rather than an Action Plan Grant. See Section A.2.ii below.

ii. Implementation Grants

Implementation Grants fund projects and strategies identified in an Action Plan that address roadway safety problems. Implementation Grants may also fund associated planning and design and supplemental Action Plan activities in support of an existing Action Plan. DOT encourages Implementation Grant applicants to include supplemental Action Plan activities in their application to further improve and update existing plans. Applicants must have an existing Action Plan to apply for Implementation Grants or have an existing plan that is substantially similar and meets the eligibility requirements of an Action Plan. If applicants do not have an existing Action Plan, they should apply for Action Plan Grants and *NOT* Implementation Grants. The plan components may be contained within several documents. Table 2 in Section C is a Self-Certification Eligibility Worksheet with instructions to determine eligibility to apply for an Implementation Grant. Additional information on eligibility requirements and eligible activities is in Section C below.

3. SS4A Grant Priorities

This section discusses priorities specific to SS4A and those related to the Department's overall mission, which are reflected in the selection criteria and NOFO requirements. Successful grant applications will demonstrate engagement with a variety of public and private stakeholders and seek to adopt innovative technologies and strategies to:

- Promote safety;
- Employ low-cost, high-impact strategies that can improve safety over a wider geographic area;
- Ensure equitable investment in the safety needs of underserved communities, which includes both underserved urban and rural communities;
- Incorporate evidence-based projects and strategies; and
- Align with the Department's mission and with priorities such as equity, climate and sustainability, quality job creation, and economic strength and global competitiveness.

The Department seeks to award Action Plan Grants based on safety impact, equity, and other safety considerations. For Implementation Grants, DOT seeks to make awards to projects and strategies that save lives and reduce roadway fatalities and serious injuries; incorporate equity, engagement, and collaboration into how projects and strategies are executed; use effective practices and strategies; consider climate change, sustainability, and economic competitiveness in project and strategy implementation; and will be able to complete the full scope of funded projects and strategies within five years after the establishment

[7] An underserved community as defined for this NOFO is consistent with the Office of Management and Budget's Interim Guidance for the Justice40 Initiative (*https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf*) and the Historically Disadvantaged Community designation, which includes U.S. Census tracts identified in this table *https://datahub.transportation.gov/stories/s/tsyd-k6ij*; any Tribal land; or any territory or possession of the United States.

of a grant agreement. Section D provides more information on the specific measures an application should demonstrate to support these goals.

The SS4A grant program aligns with both Departmental and Biden-Harris Administration activities and priorities. The National Roadway Safety Strategy (NRSS, issued January 27, 2022) commits the Department to respond to the current crisis in roadway fatalities by ''taking substantial, comprehensive action to significantly reduce serious and fatal injuries on the Nation's roadways,'' in pursuit of the goal of achieving zero roadway deaths.[8] DOT recognizes that zero is the only acceptable number of deaths on our roads, and achieving that is our long-term safety goal. The outcomes that are anticipated from the SS4A program also support the FY 2022–2026 DOT Strategic Plan and the accompanying safety performance goals such as a medium-term goal of a two-thirds reduction in roadway fatalities by 2040.[9]

As part of the NRSS, the Department adopted the Safe System Approach as a guiding principle to advance roadway safety. The Safe System Approach addresses the safety of all road users. It involves a paradigm shift to improve safety culture, increase collaboration across all safety stakeholders, and refocus transportation system design and operation on anticipating human mistakes and lessening impact forces to reduce crash severity and save lives. For more information on the Safe System Approach, see the NRSS.

DOT encourages communities to adopt and implement Complete Streets policies that prioritize the safety of all users in transportation network planning, design, construction, and operations.[10] A full transition to a Complete Streets design model requires leadership, identification and elimination of barriers, and development of new policies, rules, and procedures to prioritize safety. A Complete Street includes, but is not limited to: Sidewalks, curb ramps, bike lanes (or wide paved shoulders), special bus lanes, accessible public transportation stops, safe and accommodating crossing options, median islands, pedestrian signals, curb extensions, narrower travel lanes, and roundabouts.[11] Recipients of Federal financial assistance are required to ensure the accessibility of pedestrian facilities in the public right-of-way. See Section F.2 of this NOFO for program requirements.

The NOFO aligns with and considers Departmental policy priorities that have a nexus to roadway safety and grant funding. As part of the Department's implementation of Executive Order 14008, Tackling the Climate Crisis at Home and Abroad (86 FR 7619), the Department seeks to fund applications that, to the extent possible, target at least 40 percent of benefits towards low-income and underserved communities. DOT also seeks to award funds under the SS4A grant program that proactively address equity and barriers to opportunity, or redress prior inequities and barriers to opportunity. DOT supports the policies in Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (86 FR 7009), to pursue a comprehensive approach to advancing equity for all, including people of color, rural communities, and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. An important area for DOT's focus is the disproportionate, adverse safety impacts that affect certain groups on our roadways, particularly people walking and biking in underserved communities. See Section F.2.i of this NOFO for equity-related program requirements.

As part of the United States' commitment to a whole-of-government approach to reaching net-zero emissions economy-wide by 2050 and a 50–52 percent reduction in emissions from 2005 levels by 2030, BIL and its associated transportation funding programs permit historic investments to improve the resilience of transportation infrastructure, helping States and communities prepare for hazards such as wildfires, floods, storms, and droughts exacerbated by climate change. DOT's goal is to encourage the advancement of projects and strategies that address climate change and sustainability. To enable this, the Department encourages applicants to consider climate change and sustainability throughout the planning and project development process, including the extent to which projects and strategies under the SS4A grant program align with the President's greenhouse gas reduction, climate resilience, and environmental justice commitments.

The Department intends to use the SS4A grant program to support the creation of good-paying jobs with the free and fair choice to join a union, and the incorporation of strong labor standards and workforce programs, in particular registered apprenticeships, joint labor-management programs, or other high-quality workforce training programs, including high-quality pre-apprenticeships tied to registered apprenticeships, in project planning stages and program delivery. Grant applications that incorporate such considerations support a strong economy and labor market.

Consistent with the Department's Rural Opportunities to Use Transportation for Economic Success (ROUTES) initiative, the Department seeks to award funding to rural applications that address disproportionately high fatality rates in rural communities. For applicants seeking to use innovative technologies and strategies, the Department's Innovation Principles serve as a guide to ensure innovations reduce deaths and serious injuries while committing to the highest standards of safety across technologies.[12]

B. Federal Award Information

1. Total Funding Available

The BIL established the SS4A program with $5,000,000,000 in advanced appropriations in Division J, including $1,000,000,000 for FY 2022. Therefore, this Notice makes available up to $1 billion for FY 2022 grants under the SS4A program. Refer to Section D for greater detail on additional funding considerations and Section D.5 for funding restrictions.

2. Availability of Funds

Grant funding obligation occurs when a selected applicant and DOT enter into a written grant agreement after the applicant has satisfied applicable administrative requirements. Unless authorized by DOT in writing after DOT's announcement of FY 2022 SS4A grant awards, any costs incurred prior to DOT's obligation of funds for activities (''pre-award costs'') are ineligible for reimbursement. All FY 2022 SS4A funds must be expended within five years after the grant agreement is executed and DOT obligates the funds.

3. Award Size and Anticipated Quantity

In FY 2022, DOT expects to award hundreds of Action Plan Grants, and up to one hundred Implementation Grants. The Department reserves the right to make more, or fewer, awards. DOT reserves the discretion to alter minimum and maximum award sizes upon

[8] *https://www.transportation.gov/NRSS.*

[9] *https://www.transportation.gov/dot-strategic-plan.*

[10] Complete Streets are defined in the Definitions table at the beginning of the document.

[11] More information on Complete Streets can be found at *https://highways.dot.gov/complete-streets.*

[12] *https://www.transportation.gov/priorities/innovation/us-dot-innovation-principles.* Released January 6, 2022.

receiving the full pool of applications and assessing the needs of the program in relation to the SS4A grant priorities in Section A.3.

i. Action Plan Grants

For Action Plan Grants, award amounts will be based on estimated costs, with an expected minimum of $200,000 for all applicants, an expected maximum of $1,000,000 for a political subdivision of a State or a federally recognized Tribal government, and an expected maximum of $5,000,000 for a metropolitan planning organization (MPO) or a joint application comprised of a multijurisdictional group of entities that is regional in scope (*e.g.,* a multijurisdictional group of counties, a council of governments and cities within the same region, etc.). The Department will consider applications with funding requests under the expected minimum award amount. DOT reserves the right to make Action Grant awards less than the total amount requested by the applicant.

Joint applications that engage multiple jurisdictions in the same region are encouraged, in order to ensure collaboration across multiple jurisdictions and leverage the expertise of agencies with established financial relationships with DOT and knowledge of Federal grant administration requirements. Applicants may propose development of a single Action Plan covering all jurisdictions, or several plans for individual jurisdictions, administered by the leading agency.

ii. Implementation Plan Grants

For Implementation Grants, DOT expects the minimum award will be $5,000,000 and the maximum award will be $30,000,000 for political subdivisions of a State. For applicants who are federally recognized Tribal governments or applicants in rural areas, DOT expects the minimum award will be $3,000,000 and the maximum award will be $30,000,000. For an MPO or a joint application comprised of a multijurisdictional group of entities that is regional in scope, the expected maximum award will be $50,000,000. For the purposes of the SS4A grant program award size minimum, rural is defined as an area outside an Urbanized Area (UA) or located within a UA with a population of fewer than 200,000.[13] DOT reserves the right to make Implementation Grant awards less than the total amount requested by the applicant.

4. Start Dates and Period of Performance

DOT expects to obligate SS4A award funding via a signed grant agreement between the Department and the recipient, as flexibly and expeditiously as possible, within 12 months after awards have been announced. Applicants who have never received Federal funding from DOT before are encouraged to partner with eligible applicants within the same region, such as an MPO, that have established financial relationships with DOT and knowledge of Federal grant administration requirements. While States are not eligible applicants and cannot be a co-applicant, eligible applicants are encouraged to separately partner with States and other entities experienced with administering Federal grants, outside of the SS4A grant award process, to ensure effective administration of a grant award. The expected period of performance for Action Plan Grant agreements is between 12 and 24 months. The period of performance for Implementation Grant agreements may not exceed five years.

Because award recipients under this program may be first-time recipients of Federal funding, DOT is committed to implementing the program as flexibly as permitted by statute and to providing assistance to help award recipients through the process of securing a grant agreement and delivering both Action Plan activities and Implementation Grant projects and strategies.

5. Data Collection Requirements

Under the BIL, the Department shall post on a publicly available website best practices and lessons learned for preventing roadway fatalities and serious injuries pursuant to strategies or interventions implemented under SS4A. Additionally, DOT shall evaluate and incorporate, as appropriate, the effectiveness of strategies and interventions implemented under the SS4A grant program.[14] The Department intends to measure safety outcomes through a combination of grant agreement activities and data collections, DOT data collections already underway, and program evaluations separate from the individual grant agreements in accordance with Section F.3.iii. The grant data-collection requirements reflect the need to build evidence of noteworthy strategies and what works. The Department expects to use the data and outcome information collected as part of the SS4A in evaluations focused on before and after studies.

All award recipients shall submit a report that describes:

- The costs of each eligible project and strategy carried out using the grant;
- The roadway safety outcomes and any additional benefits (*e.g.,* increased walking, biking, or transit use without a commensurate increase in crashes, etc.) that each such project and strategy has generated, as—
  - Identified in the grant application; and
  - Measured by data, to the maximum extent practicable; and
- The lessons learned and any recommendations relating to future projects or strategies to prevent death and serious injury on roads and streets.

All recipients must provide aggregated annual crash data on serious injuries and fatalities for the duration of the period of performance for the jurisdiction or jurisdictions for which funds were awarded. These data will provide the information for metrics on changes in serious injuries and fatalities over time. Implementation Grant recipients must also provide crash data on serious injury and fatalities in the locations where projects and strategies are implemented, which are expected to include crash characteristics and contributing factor information associated with the safety problems being addressed. Data that measure outcomes for the specific safety problems addressed are required and could include, but are not limited to, aggregated information by road user, safety issue, and demographic characteristics such as race and gender. For Implementation Grants that undertake projects and strategies to foster applied research and experimentation to inform project and strategy effectiveness, additional data collection requirements will be negotiated with the applicant before a grant agreement is established. Federally recognized Tribal governments receiving grants may request alternative data collection requirements during grant agreement formulation, as appropriate. This information will be gathered on a quarterly basis in a Performance Progress Report (SF–PPR).[15]

[13] Current lists of Urbanized Areas are available on the U.S. Census Bureau website at *http://www2.census.gov/geo/maps/dc10map/uauc_refmap/ua/*. For the purposes of the SS4A program, Urbanized Areas with populations fewer than 200,000 will be considered rural.

[14] BIL specifically cites *Countermeasures That Work: A Highway Safety Countermeasure Guide for State Highway Safety Offices, Ninth Edition* or any successor document, but DOT also is to consider applied research focused on infrastructure and operational projects and strategies.

[15] *https://www.sbir.gov/sites/default/files/SF%20PPR.pdf.*

To fulfill the data collection requirements and in accordance with the U.S. DOT Public Access Plan, award recipients must consider, budget for, and implement appropriate data management, for data and information outputs acquired or generated during the course of the grant.[16] [17] Applicants are expected to account for data and performance reporting in their budget submission.

C. Eligibility Information

1. Eligible Applicants

Eligible applicants for SS4A grants are (1) a metropolitan planning organization (MPO); (2) a political subdivision of a State or territory; (3) a federally recognized Tribal government; and (4) a multijurisdictional group of entities described in any of the aforementioned three types of entities. A multijurisdictional group of entities described in (4) should identify a lead applicant as the primary point of contact. For the purposes of this NOFO, a political subdivision of a State under (2), above, is defined as a unit of government under the authority of State law. This includes cities, towns, counties, special districts, and similar units of local government. A transit district, authority, or public benefit corporation is eligible if it was created under State law, including transit authorities operated by political subdivisions of a State. States are not eligible applicants, but DOT encourages applicants to coordinate with State entities, as appropriate.

Eligible MPOs, transit agencies, and multijurisdictional groups of entities with a regional scope are encouraged to support subdivisions of a State such as cities, towns, and counties with smaller populations within their region. The Department strongly encourages such joint applications for Action Plan Grants, and for applicants who have never received Federal funding and can jointly apply with entities experienced executing DOT grants.

An eligible applicant for Implementation Grants must also meet at least one of these conditions: (1) Have ownership and/or maintenance responsibilities over a roadway network; (2) have safety responsibilities that affect roadways; or (3) have agreement from the agency that has ownership and/or maintenance responsibilities for the roadway within the applicant's jurisdiction. For the purposes of this NOFO, an applicant's jurisdiction is defined as the U.S. Census tracts where the applicant operates or performs their safety responsibilities.

2. Cost Sharing or Matching

The Federal share of a SS4A grant may not exceed 80 percent of total eligible activity costs. Recipients are required to contribute a local matching share of no less than 20 percent of eligible activity costs. All matching funds must be from non-Federal sources. In accordance with 2 CFR 200.306, grant recipients may use in-kind or cash contributions toward local match requirements so long as those contributions meet the requirements under 2 CFR 200.306(b). Matching funds may include funding from the applicant, or other SS4A-eligible non-Federal sources partnering with the applicant, which could include, but is not limited to, funds from the State. Any in-kind contributions used to fulfill the cost-share requirement for Action Plan and Implementation Grants must: Be in accordance with the cost principles in 2 CFR 200 subpart E; include documented evidence of completion within the period of performance; and support the execution of the eligible activities in Section C.4.

SS4A funds will reimburse recipients only after a grant agreement has been executed, allowable expenses are incurred, and valid requests for reimbursement are submitted. Grant agreements are expected to be administered on a reimbursement basis, and at the Department's discretion alternative funding arrangements may be established on a case-by-case basis.

3. Grant Eligibility Requirements

If an applicant is eligible for both an Action Plan Grant and an Implementation Grant, the applicant may only apply for an Action Plan Grant *or* an Implementation Grant, not both. An eligible applicant may only submit one application to the funding opportunity. Action Plan Grant funding recipients are not precluded from applying for Implementation Grants in future funding rounds.

i. Action Plan Grant Eligibility Requirements

The Action Plan Grant eligibility requirements are contingent on whether an applicant is requesting funds to develop or complete an Action Plan, or if the applicant is requesting funds for supplemental action plan activities. Applicants may not apply to develop or complete an Action Plan *and* fund supplemental action plan activities in the current round of funding.

(a) Eligibility Requirements To Develop or Complete an Action Plan

Any applicant that meets the eligibility requirements may apply for an Action Plan Grant to develop or complete an Action Plan. Applicants with an existing Action Plan may also apply to develop a new Action Plan.

(b) Eligibility Requirements for Supplemental Action Plan Activities

Applicants for Action Plan Grants to fund supplemental action plan activities must either have an established Action Plan with all components described in Table 1 in Section A, or an existing plan that is substantially similar and meets the eligibility requirements. Table 2 below provides instructions to determine eligibility for applicants that have a substantially similar plan. The components required for an established plan to be substantially similar to an Action Plan may be found in multiple plans. State-level action plans (*e.g.,* a Strategic Highway Safety Plan required in 23 U.S. Code (U.S.C.) § 148, State Highway Safety Plans required in 23 U.S.C. 402, etc.) or Public Transportation Agency Safety Plans in 49 U.S.C. 5329 cannot be used as an established plan. It is recommended that applicants include this eligibility worksheet as part of their narrative submission. If this Self-Certification Eligibility Worksheet is not used, applicants must describe how their established plan is substantially similar to an Action Plan as part of the Narrative, based on the criteria in Table 2 below.

[16] *https://doi.org/10.21949/1520559.*

[17] United States. Department of Transportation. (2022) *DOT Public Access* [Home page]. *https://doi.org/10.21949/1503647.*

TABLE 2—SELF-CERTIFICATION ELIGIBILITY WORKSHEET

Worksheet instructions: The purpose of the worksheet is to determine whether an applicant's existing plan is substantially similar to an Action Plan, or not. For each question below, answer yes or no. For each yes, cite the specific page in your existing Action Plan or other plan/plans that corroborate your response, provide supporting documentation, or provide other evidence. Refer to Table 1 for further details on each component. *Note:* The term Action Plan is used in this worksheet; it covers either a stand-alone Action Plan or components of other plans that combined comprise an Action Plan.

Instructions to affirm eligibility: Based on the questions in this eligibility worksheet, an applicant is eligible to apply for an Action Plan Grant that funds supplemental action plan activities, or an Implementation Grant, if the following two conditions are met:

- Questions 3, 7, and 9 are answered ''yes.'' If Question 3, 7, or 9 is answered ''no,'' the plan is not substantially similar and ineligible to apply for Action Plan funds specifically for a supplemental action plan activity, nor an Implementation Grant.
- At least four of the six remaining Questions are answered ''yes'' (Questions 1, 2, 4, 5, 6, or 8).

If both conditions are met, an applicant has a substantially similar plan.

Question	Response, document and page No.
1. Are both of the following true: • Did a high-ranking official and/or governing body in the jurisdiction publicly commit to an eventual goal of zero roadway fatalities and serious injuries? • Did the commitment include either setting a target date to reach zero, OR setting one or more targets to achieve significant declines in roadway fatalities and serious injuries by a specific date? 2. To develop the Action Plan, was a committee, task force, implementation group, or similar body established and charged with the plan's development, implementation, and monitoring? 3. Does the Action Plan include all of the following? • Analysis of existing conditions and historical trends to baseline the level of crashes involving fatalities and serious injuries across a jurisdiction, locality, Tribe, or region; • Analysis of the location(s) where there are crashes, the severity, as well as contributing factors and crash types; • Analysis of systemic and specific safety needs is also performed, as needed (e.g., high risk road features, specific safety needs of relevant road users; and • A geospatial identification (geographic or locational data using maps) of higher risk locations. 4. Did the Action Plan development include all of the following activities? • Engagement with the public and relevant stakeholders, including the private sector and community groups; • Incorporation of information received from the engagement and collaboration into the plan; and • Coordination that included inter- and intra- governmental cooperation and collaboration, as appropriate 5. Did the Action Plan development include all of the following? • Considerations of equity using inclusive and representative processes; • The identification of underserved communities through data; and • Equity analysis, in collaboration with appropriate partners, focused on initial equity impact assessments of the proposed projects and strategies, and population characteristics 6. Are both of the following true? • The plan development included an assessment of current policies, plans, guidelines, and/or standards to identify opportunities to improve how processes prioritize safety; and • The plan discusses implementation through the adoption of revised or new policies, guidelines, and/or standards. 7. Does the plan identify a comprehensive set of projects and strategies to address the safety problems identified in the Action Plan, time ranges when the strategies and projects will be deployed, and explain project prioritization criteria? 8. Does the plan include all of the following? • A description of how progress will be measured over time that includes, at a minimum, outcome data • The plan is posted publicly online. 9. Was the plan finalized and/or last updated between 2017 and 2022?	

ii. Implementation Grant Eligibility Requirements

To apply for an Implementation Grant, the applicant must certify that they have an existing plan which is substantially similar to an Action Plan. The plan or plans should be uploaded as an attachment to your application. Use Table 2, Self-Certification Eligibility Worksheet, from the previous section to determine eligibility. The existing plan must be focused, at least in part, on the roadway network within the applicant's jurisdiction. The components required for an existing plan to be substantially similar to an Action Plan may be found in multiple plans. State-level action plans (*e.g.,* a Strategic Highway Safety Plan required in 23 U.S.C. 148, State Highway Safety Plans required in 23 U.S.C. 402, Commercial Vehicle Safety Plans required in 49 U.S.C. 31102, etc.) as well as Public Transportation Agency Safety Plans in 49 U.S.C. 5329 cannot be used as an established plan to apply for an Implementation Grant.

4. Eligible Activities and Costs

i. Eligible Activities

Broadly, eligible activity costs must comply with the cost principles set forth in with 2 CFR, Subpart E (*i.e.,* 2 CFR 200.403 and § 200.405). DOT reserves the right to make cost eligibility determinations on a case-by-case basis. Eligible activities for grant funding include the following three elements:

- (A) Developing a comprehensive safety action plan or Action Plan (*i.e.,* the activities outlined in Section A.2.i in Table 1 and the list of supplemental Action Plan activities);
- (B) conducting planning, design, and development activities for projects and strategies identified in an Action Plan; and
- (C) carrying out projects and strategies identified in an Action Plan.

For Action Plan Grants, eligible activities and costs only include those that directly assist in the development of the Action Plan, element (A), and/or supplemental action plan activities in support of an existing Action Plan or plans.

For Implementation Grants, activities *must* include element (C) ''carrying out projects and strategies identified in an Action Plan,'' and *may* include element (B) ''conducting planning, design, and development activities for projects and

strategies identified in an Action Plan'' and/or element (A) ''supplemental action plan activities in support of an existing Action Plan.'' Projects and strategies identified in element (C) must be either infrastructure, behavioral, or operational activities identified in the Action Plan, and must be directly related to addressing the safety problem(s) identified in the application and Action Plan. Examples of eligible Implementation Grant activities are listed on the SS4A website located at *www.transportation.gov/SS4A.* The following activities are *not* eligible for element (C) ''projects and strategies'' funding:

- Projects and strategies whose primary purpose is not roadway safety.
- Projects and strategies exclusively focused on non-roadway modes of transportation, including air, rail, marine, and pipeline. Roadway intersections with other modes of transportation (*e.g.,* at-grade highway rail crossings, etc.) are eligible activities.
- Capital projects to construct new roadways used for motor vehicles. New roadways exclusively for non-motorists is an eligible activity if the primary purpose is safety-related.
- Infrastructure projects primarily intended to expand capacity to improve Levels of Service for motorists on an existing roadway, such as the creation of additional lanes.
- Maintenance activities for an existing roadway primarily to maintain a state of good repair. However, roadway modifications on an existing roadway in support of specific safety-related projects identified in an Action Plan are eligible activities.
- Development or implementation of a public transportation agency safety plan (PTASP) required by 49 U.S.C. 5329. However, a PTASP that identifies and addresses risks to pedestrians, bicyclists, personal conveyance and micromobility users, transit riders, and others may inform Action Plan development.

All projects and strategies must have equity—the consistent, fair, just, and impartial treatment of all people—at their foundation. This includes traffic enforcement strategies. As part of the Safe System Approach adopted in the USDOT's National Roadway Safety Strategy, any activities related to compliance or enforcement efforts to make our roads safer should affirmatively improve equity outcomes as part of a comprehensive approach to achieve zero roadway fatalities and serious injuries. The SS4A program can be used to support safety projects and strategies that address serious safety violations of drivers (*e.g.,* speeding, alcohol and drug-impaired driving, etc.), so long as the proposed strategies are data-driven and demonstrate a process in alignment with goals around community policing and in accordance with Federal civil rights laws and regulations.[18]

Funds may not be used, either directly or indirectly, to support or oppose union organizing.

ii. Project and Strategy Location

For Implementation Grants, applications must identify the problems to be addressed, the relevant geographic locations, and the projects and strategies they plan to implement, based on their Action Plan or established plan. This should include specific intervention types to the extent practicable. To provide flexibility in the implementation of projects and strategies that involve systemic safety strategies or bundling of similar countermeasures, an applicant may wait to specify specific site locations and designs for the projects and strategies as part of executing the grant agreement, if necessary, upon approval of the Department and so long as the identified site locations and designs remain consistent with the intent of the award.

D. Application and Submission Information

1. Address To Request Application Package

All grant application materials can be accessed at *grants.gov.* Applicants must submit their applications via grants.gov under the Notice of Funding Opportunity Number cited herein. Potential applicants may also request paper copies of materials at:

Telephone: (202) 366–4114.

Mail: U.S. Department of Transportation, 1200 New Jersey Avenue SE, W84–322, Washington, DC 20590.

2. Content and Form of Application Submission

The Action Plan Grant and Implementation Grant have different application submission and supporting document requirements.

i. Action Plan Grant Application Submissions

All Action Plan Grant applications must submit the following Standard Forms (SFs):

- Application for Federal Assistance (SF–424)
- Budget Information for Non-Construction Programs (SF–424A)
- Assurances for Non-Construction Programs (SF–424B)
- Disclosure of Lobbying Activities (SF–LLL)

In addition to the SFs above, the applicant must provide: (a) Key Information; (b) Narrative; (c) Self-Certification Eligibility Worksheet, if applying for action plan supplemental activities; (d) Map; and (e) Budget. While it is not required to conform to the recommended templates below, it is strongly encouraged to provide the information using the specific structure provided in this NOFO.

(a) Key Information Table

Lead Applicant	
If Multijurisdictional, additional eligible entities jointly applying	
Total jurisdiction population	
Count of motor-vehicle-involved roadway fatalities from 2016 to 2020	
Fatality rate	

[18] For one such example see *https://cops.usdoj.gov/RIC/Publications/cops-p157-pub.pdf.*

Population in Underserved Communities	
States(s) in which projects and strategies are located	
Costs by State (if project spans more than one State)	

Instructions for (a):

- The lead applicant is the primary jurisdiction, and the lead eligible entity applying for the grant.
- If the application is multijurisdictional, list additional eligible entities within the multijurisdictional group of entities. If a single applicant, mark as not applicable.
- Total jurisdiction population is based on 2020 U.S. Census data and includes the total population of all Census tracts where the applicant operates or performs their safety responsibilities.
- The count of roadway fatalities from 2016 to 2020 in the jurisdiction based on DOT's Fatality Analysis Reporting System (FARS) data, an alternative traffic fatality dataset, or a comparable data set with roadway fatality information.[19] This should be a number. Cite the source, if using a dataset different from FARS, with a link to the data if publicly available.
- The fatality rate, calculated using the average from the total count of fatalities from 2016 to 2020 based on FARS data, an alternative traffic fatality dataset, or a comparable data set with roadway fatality information, which is divided by the population of the applicant's jurisdiction based on 2020 U.S. Census population data. This should be a number. Cite the source, if using a dataset different from FARS.
- Check one of the three available boxes to the right of the column with the three Action Plan types: New Action Plan; Action Plan completion; or supplemental action plan activities.
- The population in underserved communities should be a percentage obtained by dividing the population living in Census tracts with an Underserved Community designation divided by the total population living in the jurisdiction.[20] For multi-jurisdictional groups, provide this information for each jurisdiction in the group.
- Note the State(s) of the applicants. If a federally recognized Tribal government, mark as not applicable.
- Allocate funding request amounts by State based on where the funds are expected to be spent. If the projects and strategies are located in only one State, put the full funding request amount.

(c) Narrative

In narrative form, the applicant should respond to the Action Plan Grant selection criteria described in Section E.1.i to affirm whether the applicant has considered certain activities that will enhance the implementation of an Action Plan once developed or updated. The narrative must be no longer than 300 words.

(d) Self-Certification Eligibility Worksheet

If applying for Action Plan Grant funding supplemental action plan activities, attach the filled out Table 2 Self-Certification Eligibility Worksheet. If applying to develop or complete an Action Plan, do not include Table 2.

(e) Map

The applicant must submit a map that shows the location of the jurisdiction and highlights the roadway network under the applicant's jurisdiction. The permissible formats include: Map web link (*e.g.,* Google, Bing, etc.), PDF, image file, vector file, or shapefile.

(f) Budget

Applicants are required to provide a brief budget summary and a high-level overview of estimated activity costs, as organized by all major cost elements. The budget only includes costs associated with the eligible activity (A) developing a comprehensive safety action plan and may include supplemental action plan activities. Funding sources should be grouped into two categories: SS4A Funding Federal share, and non-Federal share funds. The costs or value of in-kind matches should also be provided. This budget should not include any previously incurred expenses, or costs to be incurred before the time of award. DOT requires applicants use SF–424A to provide this information.

ii. Implementation Grant Application Submissions

Implementation Grant applications must submit the following Standard Forms (SFs):

- Application for Federal Assistance (SF–424)
- Budget Information for Construction Programs (SF–424C)
- Assurances for Construction Programs (SF–424D)
- Disclosure of Lobbying Activities (SF–LLL)

In addition to the SFs above, the applicant must provide: (a) Key Information; (b) Narrative; (c) Self-Certification Eligibility Worksheet; and (d) Budget. While it is not required to conform to the recommended template in the Key Information Table below, it is strongly encouraged to provide the information using the specific structure provided in this NOFO.

(a) Key Information Table

Application Name	
Lead Applicant	
If Multijurisdictional, additional eligible entities jointly applying	

[19] *https://www.nhtsa.gov/research-data/fatality-analysis-reporting-system-fars.* To query the FARS data see *https://cdan.dot.gov/query.* To query the FARS data see *https://cdan.dot.gov/query.* For the Census data visit *https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files.html.*

[20] *https://datahub.transportation.gov/stories/s/tsyd-k6ij.*

Roadway safety responsibility: Ownership and/or maintenance responsibilities over a roadway network	
Safety responsibilities that affect roadways	
Have an agreement from the agency that has ownership and/or maintenance responsibilities for the roadway within the applicant's jurisdiction	
Population in Underserved Communities	
States(s) in which activities are located	
Costs by State	
Funds to Underserved Communities	
Cost total for eligible activity (A) supplemental action plan activities in support of an existing Action Plan	
Cost total for eligible activity (B) conducting planning, design, and development activities for projects and strategies identified in an Action Plan	
Cost total for eligible activity (C) carrying out projects and strategies identified in an Action Plan	
Action Plan or Established Plan Link	

Instructions for (a):

• Provide a grant application name to accompany the grant application.

• The lead applicant is the primary jurisdiction, and the lead eligible entity applying for the grant.

• If the application is multijurisdictional, list additional eligible entities within the multijurisdictional group of entities. If a single applicant, leave blank.

• The roadway safety responsibility response should check one of the three answers to meet eligibility conditions.

• The population in Underserved Community Census Tracts should be a percentage number obtained by dividing the population living in Underserved Community Census tracts within the jurisdiction divided by the total population living in the jurisdiction.

• Identify State(s) in which the applicant is located in. If a federally recognized Tribal government, leave blank.

• The total amount of funds to underserved communities is the amount of spent in, and provide safety benefits to, locations in census tracts designated as underserved communities.

• For each State, allocate funding request amounts divided up by State based on where the funds are expected to be spent. If the applicant is located in in only one State, put the full funding request amount only.

• Provide a weblink to the plan that serves as the Action Plan or established plan that is substantially similar. This may be attached as a supporting PDF document instead; if so please write ''See Supporting Documents.''

(b) Narrative

The Department recommends that the narrative follows the outline below to address the program requirements and assist evaluators in locating relevant information. The narrative may not exceed 10 pages in length, excluding cover pages and the table of contents. Key information, the Self-Certification Eligibility Worksheet, and Budget sections do not count towards the 10-page limit. Appendices may include documents supporting assertions or conclusions made in the 10-page narrative and also do not count towards the 10-page limit. If possible, website links to supporting documentation should be provided rather than copies of these supporting materials. If supporting documents are submitted, applicants should clearly identify within the narrative the relevance of each supporting document.

I. Overview	See D.2.ii.b.I.
II. Location	See D.2.ii.b.II.
III. Response to Selection Criteria.	See D.2.ii.b.III and Section E.1.ii.
IV. Project Readiness	See D.2.ii.b.IV.

I. Overview

This section should provide an introduction, describe the safety context, jurisdiction, and any high-level background information that would be useful to understand the rest of the application.

II. Location

This section of the application should describe the jurisdiction's location, the jurisdiction's High-Injury Network or equivalent geospatial identification (geographic or locational data using maps) of higher risk locations, and potential locations and corridors of the projects and strategies. Note that the applicant is not required to provide

exact locations for each project or strategy; rather, the application should identify which geographic locations are under consideration for projects and strategies to be implemented and what analysis will be used in a final determination.

III. Response to Selection Criteria

This section should respond to the criteria for evaluation and selection in Section E.1.ii of this Notice and include compelling narrative to highlight how the application aligns with criteria #1 Safety Impact; #2 Equity, Engagement, and Collaboration; #3 Effective Practices and Strategies; and #4 Climate Change and Sustainability, and Economic Competitiveness. Note, criterion #1 Safety Impact assesses ''implementation cost'' information, which will be described in SF–424C and the (d) Budget of the narrative and does not need to be duplicated in this portion of the narrative.

The applicant must respond to each of the four criteria. Applicants are not required to follow a specific format, but the organization provided, which addresses each criterion separately, promotes a clear discussion that assists evaluators. To minimize redundant information in the application, the Department encourages applicants to cross-reference from this section of their application to relevant substantive information in other sections of the application. To the extent practical, DOT encourages applicants to use and reference existing content from their Action Plan/established plan(s) to demonstrate their comprehensive, evidence-based approach to improving safety.

IV. Project Readiness

The applicant must provide information to demonstrate the applicant's ability to substantially execute and complete the full scope of work in the application proposal within five years of when the grant is executed, with a particular focus on design and construction, as well as environmental, permitting, and approval processes. Applicants should indicate if they will be seeking permission to use roadway design standards that are different from those generally applied by the State in which the project is located. As part of this portion of the narrative, the applicant must include a detailed activity schedule that identifies all major project and strategy milestones. Examples of such milestones include: State and local planning approvals; start and completion of National Environmental Policy Act and other Federal environmental reviews and approvals including permitting; design completion; right of way acquisition; approval of plans, specifications, and estimates; procurement; State and local approvals; public involvement; partnership and implementation agreements; and construction. Environmental review documentation should describe in detail known project impacts, and possible mitigation for those impacts. When a project results in impacts, it is expected an award recipient will take steps to engage the public. For additional guidance and resources, visit *www.transportation.gov/SS4A.*

(c) Self-Certification Eligibility Worksheet

Attach a completed Table 2: Self-Certification Eligibility Worksheet.

(d) Budget

This section of the application should describe the budget for the SS4A proposal. Applicants are required to provide a brief budget summary and provide a high-level overview of estimated activity costs, as organized by all major cost elements. The budget should provide itemized estimates of the costs of the proposed projects and strategies at the individual component level. This includes capital costs for infrastructure safety improvements and costs associated with behavioral and operational safety projects and strategies. The section should also distinguish between the three eligible activity areas: (A) Supplementing action plan activities in support of an existing Action Plan; (B) conducting planning, design, and development activities for projects and strategies identified in an Action Plan; and (C) carrying out projects and strategies identified in an Action Plan.

Funding sources should be grouped into two categories: SS4A funding Federal share, and non-Federal share funds. Estimated costs or value of in-kind matches should also be provided. The budget should show how each source of funds will be spent. This budget should not include any previously incurred expenses, or costs to be incurred before the time of award and obligation because these expenses are not eligible for reimbursement or cost-sharing. If non-Federal share funds or in-kind contributions are from entities who are not the applicant, include commitment letters or evidence of allocated cost share as a supporting document. DOT requires applicants use form SF–424C, and the applicant must also provide the information in Table 3 below.

TABLE 3—SUPPLEMENTAL ESTIMATED BUDGET

Subtotal Budget for (A) supplemental action plan activities	$0.00
Itemized Estimated Costs of the (A) supplemental action plan activities	
Item #1	$0.00
Item #2	$0.00
Subtotal Budget for (B) conducting planning, design, and development activities	$0.00
Itemized Estimated Costs of the (B) planning, design, and development activities	
Item #1	$0.00
Item #2	$0.00
Item #3	$0.00
Subtotal Budget for (C) carrying out projects and strategies	$0.00
Itemized Estimated Costs of the (C) proposed projects and strategies	
Item #1	$0.00
Item #2	$0.00

TABLE 3—SUPPLEMENTAL ESTIMATED BUDGET—Continued

Item #3	$0.00
Item #4	$0.00
Subtotal Funds to Underserved Communities	$0.00

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant is required to: (i) Be registered in SAM (*https://sam.gov/content/home*) before submitting its application; (ii) provide a valid unique entity identifier in its application; and (iii) continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. DOT may not make a Federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time DOT is ready to make an award, DOT may determine that the applicant is not qualified to receive an award and use that determination as a basis for making an award to another applicant.

4. Submission Dates and Times

Applications must be submitted by 5:00 p.m. EDT on Thursday, September 15, 2022.

5. Funding Restrictions

Per BIL requirements, not more than 15 percent of the funds made available to carry out the SS4A program in FY22 may be awarded to eligible applicants in a single State.[21] In addition, 40 percent of the total FY22 funds made available must be for developing and updating a comprehensive safety action plan, or supplemental action plan activities.

6. Other Submission Requirements

The format of the Section D.2 application submission should be in PDF format, with font size no less than 12-point Times New Roman, margins a minimum of 1 inch on all sides, and include page numbers.

The complete application must be submitted via grants.gov. In the event of system problems or the applicant experiences technical difficulties, contact grants.gov technical support via telephone at 1–800–518–4726 or email at *support@grants.gov.*

[21] Funding for Tribal lands will be treated as their own State and will not count toward a State's 15% limit.

E. Application Review Information

1. Selection Criteria

This section specifies the criteria DOT will use to evaluate and select applications for SS4A grant awards. The Department will review merit criteria for all applications. Each of the two grant types to be made available through the SS4A grant program, Action Plan Grant and Implementation Grant, will have its own set of application review and selection criteria.

i. Action Plan Grant Selection Criteria

For Action Plan Grants, the Department will use three evaluation criteria. The Department will evaluate quantitative data in two selection criteria areas: #1 Safety Impact; and #2 Equity. The Department will also assess the narrative for #3 Additional Safety Considerations. Costs will also be considered.

Selection Criterion #1: Safety Impact. The activities are in jurisdictions that will likely support a significant reduction or elimination of roadway fatalities and serious injuries involving various road users, including pedestrians, bicyclists, public transportation users, personal conveyance and micromobility users, motorists, and commercial operators, within the timeframe proposed by the applicant. The Department will assess safety impact using two quantitative ratings:

- The count of roadway fatalities from 2016 to 2020 based on DOT's FARS data, an alternative traffic crash dataset, or a comparable data set with roadway fatality information.[22]
- The fatality rate, which is calculating using the average from the total count of fatalities from 2016 to 2020 (based on FARS data or an alternative traffic crash dataset) divided by the 2020 population of the applicant's jurisdiction based on 2020 U.S. Census population data.

Selection Criterion #2: Equity. The activities will ensure equitable investment in the safety needs of underserved communities in preventing roadway fatalities and injuries, including rural communities. The Department will assess the equity criterion using one quantitative rating:

[22] *https://cdan.dot.gov/query.*

- The percentage of the population in the applicant's jurisdiction that resides in an Underserved Community Census tract.[23] Population of a Census tract, either a tract that is Underserved Community or not, must be based on 2020 U.S. Census population data.

Selection Criterion #3: Additional Safety Considerations. The Department will assess whether the applicant has considered any of the following in the development of the Action Plan:

- Employ low-cost, high-impact strategies that can improve safety over a wider geographical area;
- Engage with a variety of public and private stakeholders (*e.g.,* inclusive community engagement, community benefit agreements, etc.);
- Seek to adopt innovative technologies or strategies to promote safety and equity; and
- Include evidence-based projects or strategies.

The applicant must address these considerations in narrative form.

Additional Consideration: Budget Costs

The Department will assess the extent to which the budget and costs to perform the activities required to execute the Action Plan Grant are reasonable based on 2 CFR 200.404.

ii. Implementation Grant Selection Criteria

Implementation Grants have four merit criteria: #1 Safety Impact; #2 Equity, Engagement, and Collaboration; #3 Effective Practices and Strategies; and #4 Climate Change and Economic Competitiveness. Two additional considerations will also be used in the selection process: Project Readiness, and Funds to Underserved Communities. The response to each criterion, to the extent practicable, should be aligned with the applicant's Action Plan. Below describes the specific content the applicant should respond to for each of these criteria.

Selection Criterion #1: Safety Impact. DOT will assess whether the proposal is likely to: Significantly reduce or eliminate roadway fatalities and serious injuries; employ low-cost, high-impact strategies over a wide geographic area; and include evidence-based projects and strategies. Safety impact is the most

[23] *https://usdot.maps.arcgis.com/apps/dashboards/d6f90dfcc8b44525b04c7ce748a3674a.*

important criterion and will be weighed more heavily in the review and selection process. The Department will assess the applicant's description of the safety problem, safety impact assessment, and costs as part of the Safety Impact criterion:

- Description of the safety problem. DOT will assess the extent to which:
  - The safety problem is described, including historical trends, fatal and serious injury crash locations, contributing factors, and crash types by category of road user.
  - Crashes and/or crash risk are displayed in a High-Injury Network, hot spot analysis, or similar geospatial risk visualization.
  - Safety risk is summarized from risk models, hazard analysis, the identification of high-risk roadway features, road safety audits/assessments, and/or other proactive safety analyses.
- Safety impact assessment. DOT will assess the extent to which projects and strategies:
  - Align with and address the identified safety problems.
  - Are supported by evidence to significantly reduce or eliminate roadway fatalities and serious injuries involving various road users, including pedestrians, bicyclists, public transportation users, personal conveyance and micromobility users, motorists, and commercial vehicle operators.
  - Use low-cost, high-impact strategies and projects that can improve safety over a wider geographical area.
  - Measure safety impact through models, studies, reports, proven noteworthy practices, Crash Modification Factors (CMF), and other information on project and strategy effectiveness.
  - Include a multi-disciplinary, systemic approach that relies on redundancies to reduce safety risks.
  - Will have safety benefits that persist over time.
- Implementation Costs. DOT will assess the extent to which projects and strategies are itemized and summarized, including capital costs for infrastructure, behavioral, and operational safety improvements.

Selection Criterion #2: Equity, Engagement, and Collaboration. This criterion supports the legislative requirements to assess the extent to which the application ensures the equitable investment in the safety needs of underserved communities, and demonstrates engagement with a variety of public and private stakeholders. The response to this criterion should focus on equity, engagement, and collaboration in relation to the implementation of the projects and strategies. DOT will assess the extent to which projects and strategies:

- Ensure equitable investment in underserved communities in preventing roadway fatalities and serious injuries, including rural communities.
- Are designed to decrease existing disparities identified through equity analysis.
- Consider key population groups (*e.g.,* people in underserved communities, children, seniors, Black, Latino, Indigenous and Native Americans, Asian Americans and Pacific Islanders, other persons of color, persons with disabilities, persons who live in rural areas, and persons otherwise adversely affected by persistent poverty or inequality) to ensure the impact to these groups is understood and addressed.
- Include equity analysis, both quantitative and qualitative, and stakeholder engagement in underserved communities as part of the development and implementation process.
- Include meaningful engagement with the public, including public involvement for underserved communities, community benefit agreements, and relevant stakeholders such as private sector and community groups, as part of implementation.
- Leverage partnerships within their jurisdiction, with other government entities, non-governmental organizations, the private sector, academic institutions, and/or other relevant stakeholders to achieve safety benefits while preventing unintended consequences for persons living in the jurisdiction.
- Inform representatives from areas impacted on implementation progress and meaningfully engage over time to evaluate the impact of projects and strategies on persons living in the jurisdiction.
- Align with the equity analysis performed as part of the development of an existing Action Plan.

Selection Criterion #3: Effective Practices and Strategies. DOT will assess the extent to which the application employs low-cost, high-impact strategies that can improve safety over a wide geographical area, includes evidence-based projects or strategies that improve safety, and seeks to adopt innovative technologies or strategies to promote safety and equity. The response to this criterion needs to address, at a minimum, one of the four effective practices and strategies from the list below, which includes: Create a safer community; Safe System Approach; Complete Streets; and innovative practices and technologies. If the applicant responds to more than one of the four options, the option that is rated highest in the review process will be used for the rating of this criterion.

- Create a safer community. DOT will assess the extent to which the projects and strategies:
  - Establish basic, evidence-based roadway safety infrastructure features, including but not limited to sidewalks and separated bicycle lanes.
  - Improve safety for all road users along a roadway network using proposed Public-Rights-of-Way Accessibility Guidelines (PROWAG).[24]
  - Use evidence-based, proven, and effective safety countermeasures to significantly improve existing roadways.[25]
  - Use evidence-based Countermeasures that Work with four or five stars to address persistent behavioral safety issues and consider equity in their implementation.[26]
  - Apply systemic safety practices that involve widely implemented improvements based on high-risk roadway features correlated with particular severe crash types.
- Safe System Approach. DOT will assess the extent to which the projects and strategies:
  - Encompass at least two of the five safety elements in the National Roadway Safety Strategy (Safer People, Safer Roads, Safer Speeds, Safer Vehicles, and Post-Crash Care). This may include a mix of infrastructure, behavioral, and operational safety projects and strategies.
  - Create a transportation system that accounts for and mitigates human mistakes.
  - Incorporate data-driven design features that are human-centric, limit kinetic energy, and are selected based on the physical limits of people's crash tolerances before injury or death occurs.
  - Support actions and activities identified in the Department's National Roadway Safety Strategy that are evidence-based.
- Complete Streets. DOT will assess the extent to which the projects and strategies:
  - Account for the safety of all road users in their implementation through evidence-based activities.
  - Are supported by an existing Complete Streets Policy that prioritizes safety in standard agency procedures and guidance or other roadway safety policies that have eliminated barriers to

[24] *https://www.access-board.gov/prowag/.*

[25] *https://safety.fhwa.dot.gov/provencountermeasures/.*

[26] *https://www.nhtsa.gov/sites/nhtsa.gov/files/2021-09/Countermeasures-10th_080621_v5_tag.pdf.*

prioritizing the safety of all users, or includes supplemental planning activities to achieve this. Consider the management of the right of way using a data-driven approach (*e.g.,* delivery access, features that promote biking and micromobility, electric vehicle charging infrastructure, etc.).

○ Improve accessibility and multimodal networks for people outside of a motor vehicle, including people who are walking, biking, rolling, public transit users, and have disabilities.

○ Incorporate the proposed PROWAG, and any actions in an established the American with Disabilities Act Transition Plan to correct barriers to individuals with disabilities.

• Innovative practices and technologies. DOT will assess the extent to which the projects and strategies:

○ Incorporate practices that promote efficiency within the planning and road management lifecycle (*e.g.,* dig once, etc.).

○ Integrate additional data beyond roadway and crash information to inform implementation and location, such as data on the built environment.

○ Foster applied, data-driven research and experimentation to inform project and strategy effectiveness, including but not limited to participation in a sanctioned Manual on Uniform Traffic Control Devices experimentation, research to inform Proven Safety Countermeasures or Countermeasures that Work, and/or research that measures the effectiveness of multidisciplinary activities.

○ Adopt innovative technologies or practices to promote safety and equity. These could include infrastructure, behavioral, operational, or vehicular safety-focused approaches.

Selection Criterion #4: Climate Change and Sustainability, and Economic Competitiveness. This program's focus on equity and safety are also advanced by considerations of how applications address climate and sustainability considerations, as well as whether applications support economic competitiveness. DOT will assess the extent to which the projects and strategies use safety strategies to support the Departmental strategic goals of climate change and sustainability, and economic strength and global competitiveness, and the extent to which the proposal is expected to:

• Reduce motor vehicle-related pollution such as air pollution and greenhouse gas emissions.

• Increase safety of lower-carbon travel modes such as transit and active transportation.

• Incorporate lower-carbon pavement and construction materials.

• Support fiscally responsible land use and transportation efficient design that reduces greenhouse gas emissions.

• Includes storm water management practices and incorporates other climate resilience measures or feature, including but not limited to nature-based solutions that improve built and/or natural environment while enhancing resilience.

• Lead to increased economic or business activity due to enhanced safety features for all road users.

• Increase mobility and expand connectivity for all road users to jobs and business opportunities, including people in underserved communities.

• Improve multimodal transportation systems that incorporate affordable transportation options such as public transit and micromobility.

• Demonstrate a plan or credible planning activities and project delivery actions to advance quality jobs, workforce programs, including partnerships with labor unions, training providers, education institutions, and hiring policies that promote workforce inclusion.

• Result in high-quality job creation by supporting good-paying jobs with a free and fair choice to join a union, incorporate strong labor standards (*e.g.,* wages and benefits at or above prevailing; use of project labor agreements, registered apprenticeship programs, pre-apprenticeships tied to registered apprenticeships, etc.), and/or provide workforce opportunities for historically underrepresented groups (*e.g.,* workforce development program, etc.).

Additional Consideration: Project Readiness

Applications rated as ''Highly Recommended'' or ''Recommended'' based on the selection Criteria 1 through 4 will be reviewed for Project Readiness, which will be a consideration for application selection. Project Readiness focuses on the extent to which the applicant will be able to substantially execute and complete the full scope of work in the Implementation Grant application within five (5) years of when the grant is executed. This includes information related to required design and construction standards, as well as environmental, permitting, and approval processes. DOT will evaluate the extent to which the application:

• Documents all applicable local, State, and Federal requirements.

• Includes information on activity schedule, required permits and approvals, the National Environmental Policy Act (NEPA) class of action and status, State Transportation Improvement Program (STIP) and Transportation Improvement Program (TIP) status, public involvement, right-of-way acquisition plans, procurement schedules, multi-party agreements, utility relocation plans and risk and mitigation strategies, as appropriate.

• Is reasonably expected to begin any construction-related projects in a timely manner consistent with all applicable local, State, and Federal requirements.

Additional Consideration: Funds to Underserved Communities

The percentage of Implementation Grant funds that will be spent in, and provide safety benefits to, locations in census tracts designated as underserved communities as defined by this NOFO will be considered as part of application selection.[27] DOT will use this information in support of the legislative requirement to ensure equitable investment in the safety needs of underserved communities in preventing roadway fatalities and injuries. Higher percentages of funding to underserved communities will be generally viewed favorably by DOT, and the Department encourages applicants to leverage project and strategy activities to the extent practical and in alignment with the safety problems identified in an Action Plan.

2. Review and Selection Process

This section addresses the BIL requirement to describe the methodology for evaluation in the NOFO, including how applications will be rated according to selection criteria and considerations, and how those criteria and considerations will be used to assign an overall rating. The SS4A grant program review and selection process consists of eligibility reviews, merit criteria review, and Senior Review. The Secretary makes the final selections.

i. Action Plan Grant Review and Selection Process

The process for the application plan review is described below:

• Teams of Department and contractor support staff review all applications to determine eligibility based on the eligibility information in Section C.

[27] An underserved community as defined for this NOFO is consistent with the Office of Management and Budget's Interim Guidance for the Justice40 Initiative and the Historically Disadvantaged Community designation, which includes: U.S. Census tracts identified in this table *https://datahub.transportation.gov/stories/s/tsyd-k6ij;* any Tribal land; or any territory or possession of the United States.

- Eligible Action Plan applications received by the deadline will be reviewed for their merit based on the selection criteria in Section E.1.i.
- Applications are scored numerically based on Merit Criteria #1 Safety Impact and #2 Equity Criteria.
- The #3 Additional Safety Considerations criterion narrative will be reviewed and assessed as either ''qualified,'' meaning the application addresses the criterion at least in part, or ''not qualified,'' meaning the application does not address the criterion. Applications that do not address the #3 Additional Safety Considerations and are deemed ''not qualified'' will not be considered.
- Action Plan Grant applications to develop or complete a new Action Plan will be noted and prioritized for funding.
- In order to ensure that final selections will meet the statutory requirement that no more than 15 percent of program funds may be awarded to eligible applicants in one State, applications will have their State location denoted. Tribal awards are not counted towards this 15 percent maximum.
- The Teams will examine the locations of the applicants to identify if multiple applicants requested funding for the same jurisdiction. DOT reserves the right to request applicants with duplicative funding requests consolidate their efforts as one multijurisdictional group prior to receiving an award, and may decline to fund duplicative applications irrespective of their individual merits.

ii. Implementation Grant Review and Selection Process

(a) Overall Selection Process and Ratings

Teams of Department and contractor support staff review all applications to determine whether they are eligible applicants based on the eligibility information in Section C. All eligible Implementation Grant applications received by the deadline will be reviewed and receive ratings for each of these criteria: #1 Safety Impact; #2 Equity, Engagement, and Collaboration; #3 Effective Practices and Strategies; #4 Climate Change and Sustainability, and Economic Competitiveness. Based on the criteria ratings, an overall application rating of ''Highly Recommended,'' ''Recommended,'' ''Acceptable,'' or ''Not Recommended'' will be assigned. Criterion #1, Safety Impact, will be weighted most heavily.

OVERALL ''HIGHLY RECOMMENDED'' APPLICATION RATING SCENARIOS

Selection criteria	Scenario (a) criteria rating	Scenario (b) criteria rating
#1 Safety Impact	High	Medium.
#2 Equity, Engagement, and Collaboration	Medium or High	High.
#3 Effective Practices and Strategies	Medium or High	High.
#4 Climate Change Sustainability, and Economic Competitiveness	Low, Medium, or High	High.
Overall Rating	Highly Recommended	Highly Recommended.

OVERALL ''RECOMMENDED'' RATING SCENARIOS

Selection criteria	Scenario (c) criteria rating	Scenario (d) criteria rating
#1 Safety impact	High	Medium.
#2 Equity, Engagement, and Collaboration	At least one Low	One Medium and One High or Two Medium.
#3 Effective Practices and Strategies		
#4 Climate Change and Sustainability, and Economic Competitiveness.	Low, Medium, or High	Low, Medium, or High.
Overall Rating	Recommended	Recommended.

OVERALL ''ACCEPTABLE'' AND ''NOT RECOMMENDED'' RATING SCENARIOS

Selection criteria	Scenario (e) criteria rating	Scenario (f) criteria rating
#1 Safety Impact	Low	Any are determined Non-Responsive.
#2 Equity, Engagement, and Collaboration	Low, Medium, or High.	
#3 Effective Practices and Strategies		
#4 Climate Change and Sustainability, and Economic Competitiveness.	Low, Medium, or High.	
Overall Rating	Acceptable	Not Recommended.

(b) Safety Impact Criterion Rating Methodology

For the #1 Safety Impact criterion, the Department will assess three subcomponents to determine a result in an overall rating of ''high,'' ''medium,'' and ''low,'' or ''non-responsive.'' The three subcomponents are: the description of the safety problem; the safety impact assessment; and the implementation costs.

The description of the safety problem sub-rating will use the guidelines below:

	High	Medium	Low	Non-responsive
Rating scale	The narrative and supporting information demonstrate the proposal is addressing a substantial safety problem. The narrative is well-articulated and is strongly supported by data and analysis.	The narrative and supporting information demonstrate the proposal is addressing an existing safety problem. Narrative articulates the description, is generally supporting by data and analysis.	The narrative and supporting information demonstrate the proposal is addressing a safety problem more minor in scope. The narrative is not well-articulated, and the supporting data and analysis are limited.	The narrative and supporting information do not address a safety problem.

The safety impact assessment sub-rating will use the guidelines below:

	High	Medium	Low	Non-responsive
Rating scale	The projects and strategies have strong potential to address the safety problem. The projects and strategies proposed are highly effective, based on evidence, use a systemic approach, and have benefits that persist over time.	The projects and strategies address the safety problem. Most of the projects and strategies proposed are effective measures, based on evidence, use a systemic approach, and have benefits that persist over time.	The projects and strategies address the safety problem to a limited degree. Some or none of the projects and strategies proposed are effective measures, based on evidence, use a systemic approach, or have benefits that persist over time.	The projects and strategies do not address the safety problem.

The implementation costs sub-rating will use the guidelines below:

	High	Medium	Low	Non-responsive
Rating Scale	The costs for the implementation of the projects and strategies are clearly articulated and summarized. Future costs are well-described. The quantity and quality of the projects and strategies in relation to the cost amounts strongly indicate the costs are reasonable.	The costs for the implementation of the projects and strategies are summarized. Future costs are described. The quantity and quality of the projects and strategies in relation to the cost amounts seem to indicate the costs are reasonable.	The costs for the implementation of the projects and strategies are not well-articulated or missing key details. Future costs are minimally or not described. Based on the limited quantity and/or quality of the projects and strategies in relation to the cost amounts, the cost reasonableness is uncertain.	Cost information is not provided.

The three sub-ratings for the #1 Safety Criterion (the description of the safety problem; the safety impact assessment; and the implementation costs) will be combined and scored using the following rating system to determine if the overall rating for the Safety Criterion is ''High,'' ''Medium,'' ''Low,'' or ''Non-Responsive.''

Safety criterion sub-rating scores	Overall safety criterion rating
At least two ''high'', no ''low'', no ''non-responsive''	High.
No ''low'', no ''non-responsive,'' or does not meet the High criterion	Medium.
No ''high'', at least one ''low'', no ''non-responsive,'' or does not meet the Medium criterion	Low.
Any ''non-responsive''	Non-Responsive.

(c) Other Criteria Rating Methodology

For the merit criteria #2 Equity, Engagement, and Collaboration, #3 Effective Practices and Strategies, and #4 Climate Change and Economic Competitiveness, the Department will consider whether the application narrative is clear, direct, responsive to the selection criterion focus areas, and logical, which will result in a rating of ''high, ''medium,'' ''low,'' or ''non-responsive.''

	High	Medium	Low	Non-responsive
Rating Scale	The application is substantively responsive to the criteria, with clear, direct, and logical narrative.	The application is moderately responsive to the criteria, with mostly clear, direct, and logical narrative.	The application is minimally responsive to the criteria and is somewhat addressed in the narrative.	The narrative indicates the proposal is counter to the criteria, or does not contain sufficient information.

''Highly Recommended'' and ''Recommended'' applications will receive a Project Readiness evaluation, as described below. The reviewers will use the application materials outlined in Section D to assess the applicant's Project Readiness and will provide a rating of either ''Very Likely,'' ''Likely,'' or ''Unlikely.''

	Very likely	Likely	Unlikely
Rating Scale	Based on the information provided in the application and the proposed scope of the projects and strategies, it is very likely the applicant can complete all projects and strategies within a five-year time horizon.	Based on the information provided in the application and the proposed scope of the projects and strategies, it is probable the applicant can complete all projects and strategies within a five-year time horizon.	Based on the information provided in the application and the proposed scope of the projects and strategies, it is uncertain whether the applicant can complete all projects and strategies within a five-year time horizon.

iii. Senior Review Team Phase

(a) Action Plan Grant Senior Review Team Phase

For the Action Plan Grants, the Secretary will set thresholds for each of the three quantitative criteria ratings based on their distribution, the number of applicants, and the availability of funds. Eligible applicants who meet or exceed the threshold in any of the three criteria will be offered Action Plan Grant award funding. A composite rating of the three criteria will not be made, and each criterion will be considered separately. Based on the overall application pool, available funding, and legislative requirements, the Secretary reserves the discretion to set the threshold(s) most advantageous to the U.S. Government's interest. The Secretary will consult with a Senior Review Team (SRT) to make the threshold determinations. Additionally, the Secretary may choose to prioritize Action Plan Grants that are developing or completing an Action Plan over Action Plan Grant applications focused on supplemental action plan activities because an Action Plan is a prerequisite to applying for Implementation Grants in future NOFOs.

(b) Implementation Grant Senior Review Team Phase

Once every Implementation Grant application has been assigned an overall rating based on the methodology above, all ''Highly Recommended'' applications will be included in a list of Applications for Consideration. The SRT will review whether the list of ''Highly Recommended'' applications is sufficient to ensure that no more than 15 percent of the FY 2022 funds made available are awarded to eligible applicants in a single State. ''Recommended'' applications may be added to the proposed list of Applications for Consideration until a sufficient number of applications are on the list to ensure that all the legislative requirements can be met and funding would be fully awarded. ''Recommended'' applications with a ''High'' Safety Impact Criterion rating will be prioritized and considered first. If that produces an insufficient list, ''Recommended'' applications with a ''Medium'' Safety Impact Criterion rating and a ''High'' rating for the Equity, Engagement, and Collaboration Criterion will also be considered. The SRT will also review all ''Highly Recommended'' applications that received an ''Unlikely'' project readiness rating, and either remove those applicants from the Applications for Consideration, OR recommend a reduced scope to minimize the risk the applicant will not complete the scope of work within five years of the grant agreement execution.

Additionally, to ensure the funding awards align to the extent practicable to the program goal of equitable investment in the safety needs of underserved communities, the SRT may review ''Recommended'' applications and set a threshold based on the percentage of funds that will be spent in, and provide safety benefits to, locations within underserved communities. Any ''Recommended'' applications at or above that threshold will be included in the proposed list of Applications for Consideration.

For each grant type, the SRT will present the list of Applications for Consideration to the Secretary, either collectively or through a representative of the SRT. The SRT may advise the Secretary on any application on the list of Applications for Consideration, including options for reduced awards, and the Secretary makes final selections. The Secretary's selections identify the applications that best address program requirements and are most worthy of funding.

3. Additional Information

Prior to entering into a grant agreement, each selected applicant will be subject to a risk assessment as required by 2 CFR 200.206. The Department must review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)). An applicant may review information in FAPIIS and comment on any information about itself that a Federal awarding agency previously entered. The Department will consider comments by the applicant, in addition to the other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants.

Because award recipients under this program may be first-time recipients of Federal funding, DOT is committed to implementing the program as flexibly as permitted by statute and to providing assistance to help award recipients through the process of securing a grant agreement and delivering both Action Plan activities and Implementation Grant projects and strategies. Award recipients are encouraged to identify any needs for assistance in delivering the Implementation Grant projects and strategies so that DOT can provide directly, or through a third party, sufficient support and technical

assistance to mitigate potential execution risks.

F. Federal Award Administration Information

1. Federal Award Notices

Following the evaluation outlined in Section E, the Secretary will announce awarded applications by posting a list of selected recipients at *www.transportation.gov/SS4A.* The posting of the list of selected award recipients will not constitute an authorization to begin performance. Following the announcement, the Department will contact the point of contact listed in the SF–424 to initiate negotiation of a grant agreement.

2. Administrative and National Policy Requirements

i. Equity and Barriers to Opportunity

Each applicant selected for SS4A grant funding must demonstrate effort to improve equity and reduce barriers to opportunity as described in Section A. Award recipients that have not sufficiently addressed equity and barriers to opportunity in their planning, as determined by the Department, will be required to do so before receiving funds, consistent with Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (86 FR 7009).[28]

ii. Labor and Workforce

Each applicant selected for SS4A grant funding must demonstrate, to the full extent possible consistent with the law, an effort to create good-paying jobs with the free and fair choice to join a union and incorporation of high labor standards as described in Section A. To the extent that applicants have not sufficiently considered job quality and labor rights in their planning, as determined by the Department of Labor, the applicants will be required to do so before receiving funds, consistent with Executive Order 14025, Worker Organizing and Empowerment (86 FR 22829), and Executive Order 14052, Implementation of the Infrastructure Investment and Jobs Act (86 FR 64335).

As expressed in section A, equal employment opportunity is an important priority. The Department wants to ensure that sponsors have the support they need to meet requirements under E.O. 11246, Equal Employment Opportunity (30 FR 12319, and as amended). All Federally assisted contractors are required to make good faith efforts to meet the goals of 6.9 percent of construction project hours being performed by women and goals that vary based on geography for construction work hours and for work being performed by people of color.[29] Projects over $35 million shall meet the requirements in Executive Order 14063, Use of Project Labor Agreements for Federal Construction Projects (87 FR 7363).

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) has a Mega Construction Project Program through which it engages with project sponsors as early as the design phase to help promote compliance with non-discrimination and affirmative action obligations. Through the program, OFCCP offers contractors and subcontractors extensive compliance assistance, conducts compliance evaluations, and helps to build partnerships between the project sponsor, prime contractor, subcontractors, and relevant stakeholders. OFCCP will identify projects that receive an award under this notice and are required to participate in OFCCP's Mega Construction Project Program from a wide range of federally assisted projects over which OFCCP has jurisdiction and that have a project cost above $35 million. DOT will require project sponsors with costs above $35 million that receive awards under this funding opportunity to partner with OFCCP, if selected by OFCCP, as a condition of their DOT award. Under that partnership, OFCCP will ask these project sponsors to make clear to prime contractors in the pre-bid phase that project sponsor's award terms will require their participation in the Mega Construction Project Program. Additional information on how OFCCP makes their selections for participation in the Mega Construction Project Program is outlined under ''Scheduling'' on the Department of Labor website: *https://www.dol.gov/agencies/ofccp/faqs/construction-compliance.*

iii. Critical Infrastructure Security and Resilience

It is the policy of the United States to strengthen the security and resilience of its critical infrastructure against both physical and cyber threats. Each applicant selected for SS4A grant funding must demonstrate, prior to the signing of the grant agreement, effort to consider and address physical and cyber security risks relevant to the transportation mode and type and scale of the activities. Award recipients that have not appropriately considered and addressed physical and cyber security and resilience in their planning, design, and oversight, as determined by the Department and the Department of Homeland Security, will be required to do so before receiving Implementation Grant funds for construction, consistent with Presidential Policy Directive 21, Critical Infrastructure Security and Resilience and the National Security Presidential Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems. Additionally, funding recipients must be in compliance with 2 CFR 200.216 and the prohibition on certain telecommunications and video surveillance services or equipment.

Award recipients shall also consider whether projects in floodplains are upgraded consistent with the Federal Flood Risk Management Standard, to the extent consistent with current law, in Executive Order 14030, Climate-Related Financial Risk (86 FR 27967), and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input (80 FR 6425).

iv. National Environmental Policy Act of 1969 (NEPA)

Funding recipients must comply with NEPA under 42 U.S.C. 4321 *et seq.* and the Council on Environmental Quality's NEPA implementing regulations at 40 CFR 1500–1508, where applicable.

v. Other Administrative and Policy Requirements

All awards will be administered pursuant to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards found in 2 CFR 200, subpart F, as adopted by the Department at 2 CFR 1201. Additionally, as permitted under the requirements described above, applicable Federal laws, rules, and regulations of the relevant operating administration (*e.g.,* the Federal Highway Administration, etc.) administering the activities will apply to the activities that receive SS4A grants, including planning requirements, Stakeholder Agreements, and other requirements under the Department's other highway and transit grant programs. DOT anticipates grant recipients to have varying levels of experience administering Federal funding agreements and complying with Federal requirements, and DOT will

[28] An illustrative example of how these requirements are applied to recipients can be found here: *https://cms.buildamerica.dot.gov/buildamerica/financing/infra-grants/infra-fy21-fhwa-general-terms-and-conditions.*

[29] *https://www.dol.gov/sites/dolgov/files/ofccp/ParticipationGoals.pdf.*

take a risk-based approach to SS4A program grant agreement administration to ensure compliance with all applicable laws and regulations.

The Department will also provide additional technical assistance and support resources to first-time DOT funding recipients and those who request additional support, as appropriate. With respect to highway projects, except as otherwise noted in this NOFO, please note that these grants are not required to be administered under Title 23 of the U.S.C., which establishes requirements that are generally applicable to funding that is provided by formula to State departments of transportation.[30] Therefore, the administration and implementation of SS4A grants should be more streamlined for the entities that are eligible for SS4A awards.

As expressed in Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers (86 FR 7475), it is the policy of the executive branch to maximize, consistent with law, the use of goods, products, and materials produced in, and services offered in, the United States. Infrastructure projects are subject to the Build America, Buy America Act (Pub. L. No 117–58, div. G §§ 70901–70927) as clarified in OMB Memorandum M–22–11.[31] The Department expects all recipients to be able to complete their projects without needing a waiver. However, to obtain a waiver, a recipient must be prepared to demonstrate how they will maximize the use of domestic goods, products, and materials in constructing their project. Projects under this notice will be subject to the domestic preference requirements at § 70914 of the Build America, Buy America Act, as implemented by OMB, and any awards will contain the award terms specific in M–22–11.

SS4A award recipients should demonstrate compliance with civil rights obligations and nondiscrimination laws, including Titles VI of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act, and accompanying regulations. Recipients of Federal transportation funding will also be required to comply fully with regulations and guidance for the ADA, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and all other civil rights requirements. Additionally, to the extent practicable, Implementation Grants must adhere to the proposed Public Rights-of-Way Accessibility Guidelines.[32] The Department's and the applicable Operating Administrations' Office of Civil Rights may work with awarded grant recipients to ensure full compliance with Federal civil rights requirements.

In connection with any program or activity conducted with or benefiting from funds awarded under this notice, recipients of funds must comply with all applicable requirements of Federal law, including, without limitation, the Constitution of the United States; the conditions of performance, nondiscrimination requirements, and other assurances made applicable to the award of funds in accordance with regulations of the Department of Transportation; and applicable Federal financial assistance and contracting principles promulgated by the Office of Management and Budget. In complying with these requirements, recipients, in particular, must ensure that no concession agreements are denied or other contracting decisions made on the basis of speech or other activities protected by the First Amendment. If the Department determines that a recipient has failed to comply with applicable Federal requirements, the Department may terminate the award of funds and disallow previously incurred costs, requiring the recipient to reimburse any expended award funds.

3. Reporting

i. Progress Reporting on Grant Activity

Reporting responsibilities include quarterly program performance reports using the Performance Progress Report (SF–PPR) and quarterly financial status using the SF–425 (also known as the Federal Financial Report or SF–FFR).[33]

ii. Post Award Reporting Requirements/Reporting of Matters Related to Integrity and Performance

If the total value of a selected applicant's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then the applicant during that period of time must maintain the currency of information reported in SAM that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110–417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111–212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available. Additionally, if applicable funding recipients must be in compliance with the audit requirements in 2 CFR 200, Subpart F.

iii. Program Evaluation

As a condition of grant award, SS4A grant recipients may be required to participate in an evaluation undertaken by DOT, or another agency or partner. The evaluation may take different forms such as an implementation assessment across grant recipients, an impact and/or outcomes analysis of all or selected sites within or across grant recipients, or a benefit/cost analysis or assessment of return on investment. The Department may require applicants to collect data elements to aid the evaluation. As a part of the evaluation, as a condition of award, grant recipients must agree to: (1) Make records available to the evaluation contractor; (2) provide access to program records, and any other relevant documents to calculate costs and benefits; (3) in the case of an impact analysis, facilitate the access to relevant information as requested; and (4) follow evaluation procedures as specified by the evaluation contractor or DOT staff.

Recipients and sub-recipients are also encouraged to incorporate program evaluation including associated data collection activities from the outset of their program design and implementation to meaningfully document and measure the effectiveness of their projects and strategies. Title I of the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act), Public Law 115–435 (2019) urges Federal awarding agencies and Federal assistance recipients and sub-recipients to use program evaluation as a critical tool to learn, to improve equitable delivery, and to elevate program service and delivery across the program lifecycle. Evaluation means ''an assessment using systematic data collection and analysis of one or more

[30] Please note that some title 23 requirements apply regardless of funding source. In particular, projects involving routes on the National Highway System must meet the applicable design standards at 23 CFR part 625.

[31] Public Law 117–58, division. G, Title IX, Subtitle A, 135 Stat. 429, 1298 (2021). For additional information on § 70914, see OMB–22–11. *https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf.*

[32] *https://www.access-board.gov/prowag/.*

[33] *https://www.grants.gov/forms/post-award-reporting-forms.html.*

programs, policies, and organizations intended to assess their effectiveness and efficiency'' (codified at 5 U.S.C. 311). For grant recipients, evaluation expenses are allowable costs (either as direct or indirect), unless prohibited by statute or regulation, and such expenses may include the personnel and equipment needed for data infrastructure and expertise in data analysis, performance, and evaluation (2 CFR 200).

G. Federal Awarding Agency Contacts

For further information concerning this notice, please contact the Office of the Secretary via email at *SS4A@dot.gov.* In addition, up to the application deadline, the Department will post answers to common questions and requests for clarifications on the Department's website at *www.transportation.gov/SS4A.* To ensure applicants receive accurate information about eligibility or the program, the applicant is encouraged to contact the Department directly, rather than through intermediaries or third parties, with questions. Department staff may also conduct briefings on the SS4A grant selection and award process upon request.

H. Other Information

1. Publication of Application Information

Following the completion of the selection process and announcement of awards, the Department intends to publish a list of all applications received along with the names of the applicant organizations. The Department may share application information within the Department or with other Federal agencies if the Department determines that sharing is relevant to the respective program's objectives.

2. Department Feedback on Applications

The Department will not review applications in advance, but Department staff are available for technical questions and assistance. The deadline to submit technical questions is August 15, 2022. The Department strives to provide as much information as possible to assist applicants with the application process. Unsuccessful applicants may request a debrief up to 90 days after the selected funding recipients are publicly announced on *transportation.gov/SS4A.* Program staff will address questions to *SS4A@dot.gov* throughout the application period.

3. Rural Applicants

User-friendly information and resources regarding DOT's discretionary grant programs relevant to rural applicants can be found on the Rural Opportunities to Use Transportation for Economic Success (ROUTES) website at *www.transportation.gov/rural.*

Signed in Washington, DC, on May 16, 2022.

Christopher Coes,

Principal Deputy Assistant Secretary for Transportation Policy.

[FR Doc. 2022–11113 Filed 5–23–22; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

[OMB Control No. 2105–0573; Docket No. DOT–OST–2022–0061]

Notice and Request for Comments on Revision of a Previously Approved Information Collection Request

AGENCY: Department of Transportation.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Department of Transportation's (DOT) Office of the Secretary (OST) announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. Federal agencies have been directed to provide service to the public that matches or exceeds the best service available in the private sector. In order to work continuously to ensure that our programs are effective and meet our customers' needs, the Department of Transportation (DOT) seeks a renewal without revision to a fast track generic clearance information collection request already approved by OMB. OST requests renewal without revision of ICR with OMB Control Number: 2105–0573 as described below.

DATES: *Submit comments on or before:* July 25, 2022.

ADDRESSES: Submit comments identified by Information Collection 2105–0573, Fast Track Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, by any of the following methods:

- *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.
- *Mail:* U.S. Department of Transportation, Office of the Chief Information Officer, 1200 New Jersey Avenue SE, Washington, DC 20590. ATTN: Chief Data Officer/IC 2105–0573, Fast Track Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Instructions: Please submit comments only and cite Information Collection 2105–0573, Fast Track Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery in all correspondence related to this collection. To confirm receipt of your comment(s), please check *regulations.gov,* approximately two-to-three business days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Daniel Morgan, Assistant Chief Information Officer for Data Services/Chief Data Officer, or via email to *daniel.morgan@dot.gov* or or 202–366–9201.

SUPPLEMENTARY INFORMATION:

Title: Fast Track Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Department's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insight into customer or stakeholder perceptions, opinions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Department of Transportation and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. Feedback or information collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population.

The U.S. Department of Transportation will only submit collections if they meet the following criteria.

- The collections are voluntary.

• The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government.

• The collections are noncontroversial and do not raise issues of concern to other Federal agencies.

• Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future.

• Personally identifiable information (PII) is collected only to the extent necessary and is not retained.

• Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of the Department (if released, the Department must indicate the qualitative nature of the information).

This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Type of Review: Renewal without revision of a previously approved Information Collection Request.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Estimated Number of Respondents: 240,000.

Estimated Annual Responses: 80,000.

Estimated Annual Burden Hours: 20,000 hours.

Frequency: One-time requirement.

Annual burden hours = (80,000 responses) × (15 minutes) = 1,200,000 min = 20,000 hours.

Total burden hours for 3 years = 20,000 × 3 = 60,000 hours.

Total respondents = 80,000 (each year) × 3 = 240,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments will be available for public inspection *Regulations.gov*.

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 Office of Management and Budget control number.

Dated: May 19, 2022.

Daniel Morgan,

Assistant Chief Information Officer for Data Services/Chief Data Officer.

[FR Doc. 2022–11155 Filed 5–23–22; 8:45 am]

BILLING CODE 4910–9X–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 Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date.

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On May 19, 2022, 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. ABDALLAH, Ahmad Jalal Reda (Arabic: احمد جلال رضى عبدالله) (a.k.a. ABDALLAH, Ahmed Jalal Rida), Beirut, Lebanon; DOB 15 Aug 1966; nationality Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: HIZBALLAH).

   Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism," 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, "Modernizing Sanctions To Combat Terrorism," 84 FR 48041 (E.O. 13224, as amended), for having acted or purported to act for or on behalf of, directly or indirectly, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

2. ATTIA, Hussein Kamel (Arabic: حسين كامل عطية) (a.k.a. ATIEH, Hussein; a.k.a. ATIYAH, Husayn; a.k.a. ATTIEH, Hussein Kamel; a.k.a. ATTIYAH, Husayn), Lebanon; DOB 19 Dec 1965; nationality Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: ABDALLAH, Ahmad Jalal Reda).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AHMAD JALAL REDA ABDALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. HAIDAMOUS, Joseph Ilya (Arabic: جوزيف ايليا هيدموس) (a.k.a. HAIDAMOUS, Joseph Elia; a.k.a. HAYDAMOUS, Joseph Elia), Lebanon; DOB 20 Sep 1965; nationality Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: HIZBALLAH).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

4. ABDALLAH, Hussein Reda (Arabic: حسين رضا عبدالله), Lebanon; DOB 03 Jun 1964; nationality Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: ABDALLAH, Ahmad Jalal Reda).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AHMAD JALAL REDA ABDALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

5. ABDALLAH, Ali Reda (Arabic: علي رضا عبدالله), Embassies Street, Bir Hassan, Lebanon; DOB 19 May 1962; nationality Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport LR1191153 (Lebanon); alt. Passport A12404797 (Iraq) (individual) [SDGT] (Linked To: ABDALLAH, Ahmad Jalal Reda).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AHMAD JALAL REDA ABDALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

6. ABDALLAH, Hussein Ahmad Jalal (Arabic: حسين احمد جلال عبدالله) (a.k.a. ABDALLAH, Hussein Ahmad), Safarat St, El Salam Building, 4th floor, Bir Hassan, Lebanon; DOB 11 Feb 1996; nationality Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; (individual) [SDGT] (Linked To: ABDALLAH, Ahmad Jalal Reda).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AHMAD JALAL REDA ABDALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Entities

1. AL MOUKHTAR PRODUCTS CO. SARL (Arabic: منتوجات المختار), Rweiss, Plot 2007, Borj Brajne, Baabda, Lebanon; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 2008; Organization Type: Manufacture of other food products n.e.c.; Registration Number 2012570 (Lebanon) issued 21 Apr 2008 [SDGT] (Linked To: UNITED GENERAL HOLDING SAL).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, UNITED GENERAL HOLDING SAL, a

person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. UNITED GENERAL CONTRACTING COMPANY SARL (Arabic: يونايتد جنرال كونتراكتينغ), Plot 4864, Section 4, Chiyah, Lebanon; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Type: Construction of buildings; Registration Number 2012415 (Lebanon) issued 03 Apr 2008 [SDGT] (Linked To: UNITED GENERAL HOLDING SAL).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, UNITED GENERAL HOLDING SAL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. UNITED GENERAL HOLDING SAL (Arabic: يونايتد جنرال هولدينغ), Bir Hasan, Section 15, Plot 4429, Chiah, Lebanon; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Type: Activities of holding companies; Registration Number 1901123 (Lebanon) issued 19 Feb 2008 [SDGT] (Linked To: ABDALLAH, Ahmad Jalal Reda).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, AHMAD JALAL REDA ABDALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

4. UNITED GENERAL OFFSHORE SAL (Arabic: يونايتد جنرال اوف شور), Property no. 2888, Burj al-Barajneh, Baabda, Lebanon; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Registration Number 1802820 (Lebanon) issued 22 Sep 2008 [SDGT] (Linked To: ABDALLAH, Ahmad Jalal Reda).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, AHMAD JALAL REDA ABDALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

5. UNITED GENERAL SERVICES SARL (Arabic: يونايتد جنرال سرفيسيز), Al-Ghubeirah, Lebanon; Al-Janah, Lebanon; Bir Hassan, Lebanon; Website http://www.unitedgservice.com; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Registration Number 2003067 (Lebanon) issued 11 Mar 2004 [SDGT] (Linked To: ABDALLAH, Ahmad Jalal Reda).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, AHMAD JALAL REDA ABDALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

6. FOCUS COMPANY SARL (Arabic: شركة فوكوس ميديا ش.م.ل.) (a.k.a. FOCUS MEDIA S.A.R.L.; a.k.a. "FOCUS COMPANY"), Plot 6864, Section 5, Block A, Chiah, Lebanon; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Type: Advertising; Registration Number 2002046 (Lebanon) issued 21 Oct 2003 [SDGT] (Linked To: UNITED GENERAL HOLDING SAL).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, UNITED GENERAL HOLDING SAL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

7. FOCUS MEDIA COMPANY SAL OFFSHORE (Arabic: شركة فوكوس ميديا ش.م.ل. اوف شور), Al Rabyeh Building, New Airport Highway, Beirut, Lebanon; Plot number 6864, Section 5, Block A, Chiah, Lebanon; Al Hizam Al-Akhdar Street, Al Amir District, Al-Najaf Al-Ashraf, Iraq; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Type: Advertising; Registration Number 1807467 (Lebanon) issued 25 Apr 2014 [SDGT] (Linked To: FOCUS COMPANY SARL).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, FOCUS COMPANY SARL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

8. UNITED INTERNATIONAL EXHIBITION COMPANY SARL (Arabic: يونايتد للمعارض الدولية ش.م.م.), Property no. 4458, Section 7, Chiyah, Baabda, Lebanon; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Registration Number 2031733 (Lebanon) issued 30 Oct 2012 [SDGT] (Linked To: UNITED GENERAL HOLDING SAL)

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, UNITED GENERAL HOLDING SAL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Dated: May 19, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–11130 Filed 5–23–22; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Return by a Shareholder Making Certain Late Elections To End Treatment as a Passive Foreign Investment Company

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning the return by a shareholder making certain late elections to end treatment as a passive foreign investment company.

DATES: Written comments should be received on or before July 25, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *omb.unit@irs.gov*. Include OMB control number 1545–1950 or Return by a Shareholder Making Certain Late Elections To End Treatment as a Passive Foreign Investment Company.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.L.Dennis@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Return by a Shareholder Making Certain Late Elections To End Treatment as a Passive Foreign Investment Company.

OMB Number: 1545–1950.

Form Number: 8621–A.

Abstract: Form 8621–A is necessary for certain taxpayers/shareholders who are investors in passive foreign investment companies (PFIC's) to request late deemed sale or late deemed dividend elections (late purging elections) under Reg. 1.1298–3(e). The form provides a taxpayer/shareholder the opportunity to fulfill the requirements of the regulation in making the election by asserting the following: (i) The election is being made before an IRS agent has raised on audit the PFIC status of the foreign corporation for any taxable year of the taxpayer/shareholder; (ii) the taxpayer/shareholder is agreeing (by submitting Form 8621–A) to eliminate any prejudice to the interests of the U.S. government on account of the taxpayer/shareholder's inability to make timely purging elections; and (iii) the taxpayer/shareholder shows as a balance due on Form 8621–A an amount reflecting tax plus interest as determined under Reg. 1.1298(e)(3).

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and households, businesses and other for-profit organizations.

Estimated Number of Respondents: 1.

Estimated Time per Respondent: 78 hours, 30 minutes.

Estimated Total Annual Burden Hours: 79 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 19, 2022.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2022–11125 Filed 5–23–22; 8:45 am]

BILLING CODE 4830–01–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission. The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.'' Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on June 9, 2022 on ''U.S.-China Competition in Global Supply Chains.''

DATES: The hearing is scheduled for Thursday, June 9, 2022 at 9:00 a.m.

ADDRESSES: This hearing will be held with panelists and Commissioners participating in-person or online via videoconference. Members of the audience will be able to view a live webcast via the Commission's website at *www.uscc.gov.* Also, please check the Commission's website for possible changes to the hearing schedule. *Reservations are not required to attend the hearing.*

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Jameson Cunningham, 444 North Capitol Street NW, Suite 602, Washington, DC 20001; telephone: 202–624–1496, or via email at *jcunningham@uscc.gov. Reservations are not required to attend the hearing.*

ADA Accessibility: For questions about the accessibility of the event or to request an accommodation, please contact Jameson Cunningham via email at *jcunningham@uscc.gov.* Requests for an accommodation should be made as soon as possible, and at least five business days prior to the event.

SUPPLEMENTARY INFORMATION:

Background: This is the sixth public hearing the Commission will hold during its 2022 report cycle. This hearing will address China's centrality in global supply chains and U.S. policies to bolster supply chain resilience. The hearing will start with a

review of how China's position in global supply chains has evolved and assess the Chinese Communist Party's supply chain objectives. Next, the hearing will evaluate the challenges the United States faces in securing select supply chains and review strategic frameworks and policy options for supply chain realignment. Finally, the hearing will examine risks and vulnerabilities in U.S. defense-critical supply chains.

The hearing will be co-chaired by Commissioner Bob Borochoff and Commissioner Carte Goodwin. Any interested party may file a written statement by June 9, 2022 by transmitting to the contact above. A portion of the hearing will include a question and answer period between the Commissioners and the witnesses.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005), as amended by Public Law 113–291 (December 19, 2014).

Dated: May 18, 2022.

Daniel W. Peck,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2022–11110 Filed 5–23–22; 8:45 am]

BILLING CODE 1137–00–P

FEDERAL REGISTER

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Part II

Department of Housing and Urban Development

Allocations for Community Development Block Grant Disaster Recovery and Implementation of the CDBG–DR Consolidated Waivers and Alternative Requirements; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6326–N–01]

Allocations for Community Development Block Grant Disaster Recovery and Implementation of the CDBG–DR Consolidated Waivers and Alternative Requirements Notice

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: On March 22, 2022, HUD allocated nearly $3 billion in Community Development Block Grant Disaster Recovery (CDBG–DR) funds appropriated by the Disaster Relief Supplemental Appropriations Act, 2022 for major disasters occurring in 2020 and 2021. This Allocation Announcement Notice identifies grant requirements for these funds, including requirements in HUD's *CDBG–DR Consolidated Notice* (''Consolidated Notice'') (Appendix B), and some amendments to the Consolidated Notice that apply to CDBG–DR grants for disasters occurring in 2020 and 2021, as identified herein. The Consolidated Notice, as amended by this Allocation Announcement Notice, includes waivers and alternative requirements, relevant regulatory requirements, the grant award process, criteria for action plan approval, and eligible disaster recovery activities. This notice also includes a modification to the February 3, 2022 notice (87 FR 6364) that announced CDBG–DR grants for disasters occurring in 2020.

DATES: *Applicability Date:* May 31, 2022

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street SW, Room 10166, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Facsimile inquiries may be sent to Ms. Kome at 202–708–0033. (Except for the''800'' number, these telephone numbers are not toll-free). Email inquiries may be sent to *disaster_recovery@hud.gov.*

SUPPLEMENTARY INFORMATION:

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I. Allocations

The Disaster Relief Supplemental Appropriations Act, 2022 (Pub. L. 117–43) approved September 30, 2021 (the ''Appropriations Act'') makes available $5,000,000,000 in Community Development Block Grant Disaster Recovery (CDBG–DR) funds. These CDBG–DR funds are for necessary expenses for activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) (HCDA) related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation in the ''most impacted and distressed'' (MID) areas resulting from a qualifying major disaster in 2020 or 2021. In October 2021, HUD allocated $2,051,217,000 in CDBG–DR funds from the Appropriations Act to assist in long-term recovery from disasters occurring in 2020. In March 2022, HUD allocated an additional $722,688,000 in CDBG–DR funds from the Appropriations Act for disasters occurring in 2020 and $2,213,595,000 in CDBG–DR funds from the Appropriations Act for disasters occurring in 2021. The Appropriations Act requires HUD to include with any final allocation for the total estimate of unmet need an additional amount of 15 percent of that estimate for mitigation activities that reduce risk in the MID areas (see Tables 1 and 3).

The Appropriations Act provides that grants shall be awarded directly to a state, local government, or Indian tribe at the discretion of the Secretary.

Pursuant to the Appropriations Act, HUD has identified the MID areas based on the best available data for all eligible affected areas. A detailed explanation of HUD's allocation methodology is provided in Appendix A of this notice. To comply with requirements that all funds are expended in MID areas, Lake Charles and Baton Rouge, LA; Detroit and Dearborn, MI; Philadelphia, PA; Nashville-Davidson, TN; and Houston, Dallas, and Fort Worth, TX must use 100 percent of the total funds allocated to address unmet disaster needs or mitigation activities within the HUD-identified MID areas identified in the last column in Table 4. All other grantees must use at least 80 percent of their allocations to address unmet disaster needs or mitigation activities in the HUD-identified MID areas, as identified in the last column of Tables 2 and 4. These grantees may use the remaining 20 percent of their allocation to address unmet disaster needs or mitigation activities in those areas that the grantee determines are ''*most* impacted and distressed'' within an area that received a presidential major disaster declaration identified by the FEMA disaster numbers listed in column two of Tables 1 and 3. However, these grantees are not precluded from spending 100 percent of their allocation in the HUD-identified MID areas if they choose to do so. Detailed requirements around MID areas are provided in section II.A.3. of the Consolidated Notice.

Based on review of the impacts from the eligible disasters, and estimates of unmet need, HUD made the following allocations:

TABLE 1—ALLOCATIONS FOR UNMET NEEDS AND MITIGATION ACTIVITIES UNDER PUBLIC LAW 117–43 FOR DISASTERS OCCURING IN 2020

Year	FEMA disaster No.	State	Grantee	Allocation for unmet needs under the Feb 3, 2022 Notice from Public Law 117–43 ($)	CDBG–DR mitigation set-aside amounts under the Feb 3, 2022 notice from Public Law 117–43 ($)	Allocation for unmet needs under this notice from Public Law 117–43 ($)	CDBG–DR mitigation set-aside for amounts under this notice from Public Law 117–43 ($)	Total allocated under this notice from Public Law 117–43 ($)	Total allocated under all notices from Public Law 117–43 ($)
2020	4563, 4573	Alabama	State of Alabama	$271,071,000	$40,661,000	$164,800,000	$24,720,000	$189,520,000	$501,252,000
2020	4558, 4569	California	State of California	201,046,000	30,157,000	0	0	0	231,203,000
2020	4564	Florida	State of Florida	98,427,000	14,764,000	64,515,000	9,677,000	74,192,000	187,383,000
2020	4557	Iowa	State of Iowa	49,513,000	7,427,000	544,000	82,000	626,000	57,566,000
2020	4559, 4570	Louisiana	State of Louisiana	521,853,000	78,278,000	391,423,000	58,713,000	450,136,000	1,050,267,000
2020	4547	Michigan	State of Michigan	52,085,000	7,813,000	0	0	0	59,898,000
2020	4576	Mississippi	State of Mississippi	24,757,000	3,713,000	7,143,000	1,071,000	8,214,000	36,684,000
2020	4562	Oregon	State of Oregon	367,205,000	55,081,000	0	0	0	422,286,000
2020	4473, 4560	Puerto Rico	Commonwealth of Puerto Rico.	*155,794,000	28,832,000	0	0	0	184,626,000
2020	4476, 4541	Tennessee	State of Tennessee	37,165,000	5,575,000	0	0	0	42,740,000
Totals				1,778,916,000	272,301,000	628,425,000	94,263,000	722,688,000	2,773,905,000

*Puerto Rico was allocated $36,424,000 from Public Law 116–20 (see 86 FR 569) for unmet needs related to one of the qualifying disasters listed in the first column (FEMA disaster no. 4473). The grantee's CDBG mitigation set-aside in the sixth column was calculated as 15 percent of the total estimate for unmet needs allocated for this disaster (which includes the portions of unmet need funded by Public Law 116–20 and by Public Law 117–43). The grantee's final allocation in the tenth column represents the total estimate for unmet needs for Puerto Rico's qualifying disasters under Public Law 117–43, including the additional amount for the CDBG mitigation set-aside.

TABLE 2—MOST IMPACTED AND DISTRESSED AREAS FOR DISASTERS OCCURING IN 2020

Grantee	Updated minimum amount under all notices from Public Law 117–43 that must be expended in the HUD-identified "most impacted and distressed" areas in column 3	Updated "Most Impacted and Distressed" areas
State of Alabama	$401,001,600	Baldwin, Mobile, and Escambia Counties; 36545 (Clarke County).
State of California	184,962,400	Butte, Napa, Santa Cruz, Los Angeles, and Siskiyou Counties; 95448 (Sonoma County), 95688 (Solano County), 93602 (Fresno County), 93664 (Fresno County), 94558 (Napa County), 94574 (Napa County), 95404 (Sonoma County), 95409 (Sonoma County), and 96047 (Shasta County).
State of Florida	149,906,400	Escambia and Santa Rosa Counties.
State of Iowa	46,052,800	Linn County.
State of Louisiana	840,213,600	Allen, Beauregard, Caddo, Calcasieu, Cameron, Jefferson Davis, Lafayette, Natchitoches, Ouachita, and Rapides Parishes; 70510 (Vermilion Parish); 70517 (St. Martin Parish), 70526 (Acadia Parish), 70570 (St. Landry Parish), 71446 (Vernon Parish), and 70578 (Acadia Parish).
State of Michigan	47,918,400	Midland and Saginaw Counties; 48612 (Gladwin County).
State of Mississippi	29,347,200	Harrison County; 39563 (Jackson County).
State of Oregon	337,828,800	Clackamas, Douglas, Jackson, Lane, Lincoln, and Marion Counties; 97358 (Linn County).
Commonwealth of Puerto Rico	147,700,800	Guanica, Ponce, and Yauco; 00624 (Penuelas Municipio), 00656 (Guayanilla Municipio), 00667 (Lajas Municipio), and 00680 (Mayaguez Municipio).
State of Tennessee	34,192,000	37208 (Davidson County), 38501 (Putnam County), and 37421 (Hamilton County).

TABLE 3—ALLOCATIONS FOR UNMET NEEDS AND MITIGATION ACTIVITIES UNDER PUBLIC LAW 117–43 FOR DISASTERS OCCURING IN 2021

Year	FEMA disaster No.	State	Grantee	Allocation for unmet needs under this notice from Public Law 117–43 ($)	CDBG–DR mitigation set-aside amounts from Public Law 117–43 ($)	Total allocated under this notice from Public Law 117–43 ($)
2021	4610	California	State of California	$12,835,000	$1,926,000	$14,761,000
2021	4634	Colorado	State of Colorado	6,448,000	967,000	7,415,000
2021	4595, 4630	Kentucky	State of Kentucky	65,176,000	9,777,000	74,953,000
2021	4606	Louisiana	Lake Charles	9,370,000	1,406,000	10,776,000
2021	4606	Louisiana	Baton Rouge	4,042,000	606,000	4,648,000
2021	4611, 4606	Louisiana	State of Louisiana	1,106,388,000	165,958,000	1,272,346,000
2021	4607	Michigan	Detroit	50,079,000	7,512,000	57,591,000
2021	4607	Michigan	Dearborn	14,202,000	2,130,000	16,332,000
2021	4607	Michigan	State of Michigan	10,463,000	1,570,000	12,033,000
2021	4626	Mississippi	State of Mississippi	7,310,000	1,096,000	8,406,000
2021	4617	North Carolina	State of North Carolina	6,935,000	1,040,000	7,975,000
2021	4614	New Jersey	State of New Jersey	198,562,000	29,784,000	228,346,000
2021	4615	New York	New York City	163,455,000	24,518,000	187,973,000
2021	4615	New York	State of New York	35,880,000	5,382,000	41,262,000
2021	4618	Pennsylvania	Philadelphia	85,827,000	12,874,000	98,701,000
2021	4618	Pennsylvania	State of Pennsylvania	20,132,000	3,020,000	23,152,000
2021	4601	Tennessee	Nashville-Davidson	4,479,000	672,000	5,151,000
2021	4609	Tennessee	State of Tennessee	22,089,000	3,314,000	25,403,000
2021	4586	Texas	Houston	26,344,000	3,952,000	30,296,000
2021	4586	Texas	Dallas	21,246,000	3,187,000	24,433,000
2021	4586	Texas	Fort Worth	14,447,000	2,167,000	16,614,000
2021	4586	Texas	State of Texas	22,945,000	3,442,000	26,387,000
2021	4635	Washington	State of Washington	16,210,000	2,431,000	18,641,000
Totals				1,924,864,000	288,731,000	2,213,595,000

TABLE 4—MOST IMPACTED AND DISTRESSED AREAS FOR DISASTERS OCCURING IN 2021

Grantee	Minimum amount from Public Law 117–43 that must be expended in the HUD-identified "most impacted and distressed" areas listed in column 3	"Most Impacted and Distressed" areas
State of California	$11,808,800	Plumas County.
State of Colorado	5,932,000	80027 (Boulder County).
State of Kentucky	59,962,400	Graves and Hopkins Counties; 41339 (Breathitt County) and 42101 (Warren County).
Lake Charles, LA	10,776,000	Lake Charles, LA.
Baton Rouge, LA	4,648,000	Baton Rouge, LA.
State of Louisiana	1,017,876,800	Ascension, Assumption, Calcasieu, East Baton Rouge, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Mary, St. Tammany, Tangipahoa, Terrebonne, and Washington Parishes; 70764 & 70788 (Iberville Parish) and 70767 (West Baton Rouge Parish).
Detroit, MI	57,591,000	Detroit, MI.
Dearborn, MI	16,332,000	Dearborn, MI.
State of Michigan	9,626,400	Wayne County.
State of Mississippi	6,724,800	39563 (Jackson County).
State of North Carolina	6,380,000	28716 (Haywood County).
State of New Jersey	182,676,800	Bergen, Essex, Hudson, Middlesex, Passaic, Somerset, and Union Counties.
New York City, NY	150,378,400	Bronx, Queens, Kings, and Richmond County.
State of New York	33,009,600	Westchester County.
Philadelphia, PA	98,701,000	Philadelphia, PA.
State of Pennsylvania	18,521,600	Delaware and Montgomery Counties.
Nashville-Davidson, TN	5,151,000	Nashville-Davidson, TN.
State of Tennessee	20,322,400	Humphreys County.
Houston, TX	30,296,000	Houston, TX.
Dallas, TX	24,433,000	Dallas, TX.
Fort Worth, TX	16,614,000	Fort Worth, TX.
State of Texas	21,109,600	Dallas, Harris, and Tarrant Counties.
State of Washington	14,912,800	98295 (Whatcom County).

II. Use of Funds

This Allocation Announcement Notice outlines requirements that apply to grantees receiving funds under this notice. Funds for 2021 disasters announced in this notice are subject to the requirements of this Allocation Announcement Notice and the Consolidated Notice, included as Appendix B, as amended. Grantees that receive funds for 2020 disasters under this notice and the February 3, 2022 notice (87 FR 6364) are subject to the requirements of this Allocation Announcement Notice, the February 3, 2022 notice (87 FR 6364), as amended in section II.D. of this notice, and the Consolidated Notice, included as Appendix B, as amended. Sections III.A.1., III.A.1.a., and III.A.1.b. of this Allocation Announcement Notice includes the instructions for a grantee submitting an action plan for program administrative costs and will replace the alternative requirement in the Consolidated Notice at III.C.1. for purposes of accessing funds for program administrative costs prior to the Secretary's certification.

To comply with the statutory requirement in the Appropriations Act, grantees shall not use CDBG–DR funds for activities reimbursable by or for which funds are made available by the Federal Emergency Management Agency (FEMA) or the U.S. Army Corps of Engineers (USACE). Grantees must verify whether FEMA or USACE funds are available prior to awarding CDBG–DR funds to specific activities or beneficiaries. Grantees may use CDBG–DR funds as the non-Federal match as described in section II.C.3. of the Consolidated Notice.

II.A. Action Plan Process for New CDBG–DR Grantees Under the Appropriations Act (Pub. L. 117–43) for Disasters Occurring in 2021

This section applies to CDBG–DR grantees that received allocations announced in this notice for disasters occurring in 2021 and that did not receive allocations announced in the February 3, 2022 notice (State of Colorado; State of Kentucky; Lake Charles, LA; Baton Rouge, LA; Detroit, MI; Dearborn, MI; State of North Carolina; State of New Jersey; New York City, NY; State of New York; Philadelphia, PA; State of Pennsylvania; Nashville-Davidson, TN; Houston, TX; Dallas, TX; Fort Worth, TX; State of Texas; and the State of Washington).

The Appropriations Act requires that prior to the obligation of CDBG–DR funds by the Secretary, a grantee shall submit a plan to HUD for approval detailing the use of funds. The plan must include the criteria for eligibility, and how the use of these funds will address long-term recovery and restoration of infrastructure and housing, economic revitalization, and mitigation in the MID areas. This notice requires grantees to submit an action plan that addresses unmet recovery needs and mitigation activities related to the disasters identified in Table 3 for disasters occurring in 2021. Therefore, the action plan submitted in response to this notice must describe uses and activities that: (1) Are authorized under title I of the HCDA or allowed by a waiver or alternative requirement; and (2) respond to disaster-related impacts to infrastructure, housing, economic revitalization, and mitigation in the MID areas. Requirements related to action plans are provided in section III.C. of the Consolidated Notice.

In accordance with the Appropriations Act, grantees must spend an amount equal to 15 percent of their unmet need allocations, as outlined in Table 3 for disasters occurring in 2021, for mitigation

activities as described in section IV.A.2. of this notice. Grantees must also incorporate mitigation measures into their recovery activities as required under section II.A.2. in the Consolidated Notice. Grantees must conduct an assessment of community impacts and unmet needs to inform the plan and guide the development and prioritization of planned recovery activities, pursuant to section III.C.1.a. of the Consolidated Notice. Additionally, with regard to the funds provided for mitigation activities, grantees must also prepare a mitigation needs assessment to inform their mitigation activities, as described in section IV.A.2.a. of this notice.

II.B. Substantial Action Plan Amendment Process for Existing Grantees Under the Appropriations Act (Pub. L. 117–43) for Disasters Occurring in 2020 and 2021

This section applies to CDBG–DR grantees that received allocations announced in this notice for disasters occurring in 2020 or 2021 and also allocations announced in the February 3, 2022 notice (State of Alabama; State of California; State of Florida; State of Iowa; State of Louisiana; State of Michigan; State of Mississippi; and the State of Tennessee).

Grantees identified in this section may submit a substantial amendment to the Public Action Plan submitted in response to the February 3, 2022 notice or may wait to submit one Public Action Plan that includes all allocations announced in the February 3, 2022 notice and this notice. Instructions and deadlines for both options are covered in the following paragraph. This combined administrative approach should ease grantee burden. When a Public Action Plan describes the use of CDBG–DR allocations for disasters occurring in both 2020 and 2021, HUD will make two grants, one for 2020 disasters and one for 2021 disasters, and each grant will have separate purposes and financial controls.

As of the applicability date of this notice, if the grantee has not submitted an action plan to HUD in response to the February 3, 2022 notice, the grantee may include the previous allocation and this allocation in the same Public Action Plan submission to cover allocations for disasters occurring in 2020 and 2021. If a grantee chooses to include both the previous allocation announced in the February 3, 2022 notice and the allocation announced in this notice in the same Public Action Plan submission, the grantee will follow the required submission deadlines based on the applicability date of this notice. The grantee must inform its HUD grant manager or CPD Representative within 30 days of the applicability date of this notice if it plans to exercise this option and submit one action plan that includes both allocations. Grantees will follow the requirements in section III.C.1. of the Consolidated Notice for that submission, which requires grantees to use the Public Action Plan in HUD's Disaster Recovery Grant Reporting (DRGR) system to submit their action plan and submit within 120 days of the applicability date of this notice.

If a grantee does not exercise the option to submit one action plan and instead submits a substantial amendment to its action plan for funds in the February 3, 2022 notice to include the allocations announced in this notice, the substantial amendment must be submitted no later than 120 days after the initial action plan is approved, in whole or in part, by HUD, or not later than 120 days after the applicability date of this notice, whichever is later. The substantial amendment must include the additional allocation of funds and address the requirements of this notice.

Paragraph III.A.1.b. of the Consolidated Notice outlines when a grantee can or cannot rely on its prior submissions to meet the Financial Management and Grant Compliance Certification Requirements in the Consolidated Notice. The Consolidated Notice allows a grantee to rely on prior submissions ''unless it has been more than three years since the executed grant agreement for the original CDBG–DR grant or a subsequent grant is equal to or greater than ten times the amount of the original CDBG–DR grant.'' Additionally, paragraph III.A.2.b. of the Consolidated Notice provides the same criteria for when a grantee can or cannot rely on its previously submitted implementation plan. The Consolidated Notice allows a grantee to rely on a previously submitted implementation plan ''unless it has been more than three years since the executed grant agreement for the original CDBG–DR grant or the subsequent grant is equal to or greater than ten times the amount of its original CDBG–DR grant.'' No grantee receiving an allocation announcement under both this notice and the February 3, 2022 notice meets the three year or grant threshold criteria noted above.

Therefore, the grantees covered by this section (State of Alabama; State of California; State of Florida; State of Iowa; State of Louisiana; State of Michigan; State of Mississippi; and the State of Tennessee) may rely on their prior submissions provided in response to the Financial Management and Grant Compliance Certification Requirements and the implementation plan in the Consolidated Notice. HUD reminds grantees that it will continue to monitor all of the grantee's submissions and updates made to policies and procedures and its capacity assessment during the normal course of business. The grantee must notify HUD of any substantial changes made to these submissions.

In accordance with the Appropriations Act, grantees must spend an amount that is equal to 15 percent of their unmet need allocation, as outlined in Tables 1 and 3, for mitigation activities as described in section IV.A.2. of this notice. Grantees must also incorporate mitigation measures into their recovery activities as required under section II.A.2. in the Consolidated Notice. Grantees must conduct or update the assessment of community impacts and unmet needs to inform the plan or substantial amendment and guide the development and prioritization of planned recovery activities, pursuant to section III.C.1.a. of the Consolidated Notice. Additionally, with regard to the funds provided for mitigation activities, grantees must also prepare or update a mitigation needs assessment to inform their mitigation activities, as described in section IV.A.2.a. of this notice.

II.C. Allocations of CDBG–DR Funds for Smaller Grants

Paragraph III.C.1.b. of the Consolidated Notice requires that CDBG–DR action plans ''demonstrate a reasonably proportionate allocation of resources relative to areas and categories (*i.e.,* housing, economic revitalization, and infrastructure) of greatest needs identified in the grantee's impact and unmet needs assessment or provide an acceptable justification for a disproportional allocation.'' Additionally, paragraph III.C.1.g. of the Consolidated Notice requires grantees to ''provide a budget for the full amount of the allocation that is reasonably proportionate to its unmet needs (or provide an acceptable justification for disproportional allocation) and is consistent with the requirements to integrate hazard mitigation measures into all its programs and projects.''

HUD recognizes that grantees receiving a relatively small allocation of funds for 2021 disasters in this notice may most effectively advance recovery by more narrowly targeting these limited recovery and mitigation resources. Accordingly, for grantees receiving an allocation of less than $20 million for 2021 disaster(s) in this

notice, HUD will consider the small size of the grant and HUD's allocation methodology as acceptable justification for a grantee to propose a disproportional allocation when the grantee is allocating funds to address unmet affordable rental housing needs caused by or exacerbated by the disaster(s). Grantees exercising this option must continue to comply with the applicable requirements of this notice and the Consolidated Notice, including the CDBG–DR mitigation set-aside requirement in section IV.A.4. of this notice.

II.D. Modifications of the February 3, 2022 Notice (87 FR 6364)

This section of the notice applies to CDBG–DR grantees announced in the February 3, 2022 notice (87 FR 6364) that received funding for a disaster occurring in 2020. HUD is modifying the February 3, 2022 notice to be clear that the Appropriations Act requires HUD to include with any final allocation for the total estimate of unmet need an additional amount of 15 percent of that estimate for mitigation activities and to include a technical correction to modify a waiver citation.

II.D.1. HUD is deleting and replacing the third paragraph of section II of the February 3, 2022 notice with the following:

In accordance with the Appropriations Act, grantees must spend an amount equal to 15 percent of their unmet needs allocations, as outlined in Table 1, for mitigation activities as described in section IV.A.2. of this notice. Grantees must also incorporate mitigation measures into its recovery activities as required under section II.A.2. in the Consolidated Notice. Grantees must conduct an assessment of community impacts and unmet needs to inform the plan and guide the development and prioritization of planned recovery activities, pursuant to section III.C.1.a. of the Consolidated Notice. Additionally, with regard to the funds provided for mitigation activities, grantees must also prepare a mitigation needs assessment to inform their mitigation activities, as described in section IV.A.2.a. of this notice.

II.D.2. HUD is deleting and replacing the third sentence in paragraph III.A.1.b. of the February 3, 2022 notice with the following:

Additionally, HUD is waiving section 104 of the HCDA ((42 U.S.C. 5304, section 106 of the HCDA (42 U.S.C. 5306), section 210 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4630), section 305 of the URA (42 U.S.C. 4655), and regulations at 24 CFR 91.225(a)(2), (6), and (7), 91.225(b)(7), 91.325(a)(2), (6), and (7) and 24 CFR 42.325 only to the extent necessary to allow grantees to receive a portion of their allocation as a grant for program administrative costs before submitting other statutorily required certifications.

III. Overview of Grant Process

III.A. Requirements Related to Administrative Funds

III.A.1. *Action plan submittal for program administrative costs.* The Appropriations Act allows grantees receiving an award under this notice to access funding for program administrative costs prior to the Secretary's certification of financial controls and procurement processes, and adequate procedures for proper grant management. To implement this authority, the following alternative requirement will replace the alternative requirement in the Consolidated Notice at III.C.1.

If a grantee chooses to access funds for program administrative costs prior to the Secretary's certification, it must first prepare an action plan describing its use of funds for program administrative costs, subject to the five percent cap on the use of grant funds for such costs. Instead of following requirements in section III.C.1. of the Consolidated Notice, which require grantees to use the Public Action Plan in HUD's DRGR system to submit their action plans, grantees will follow a different process to access funds for program administrative costs prior to the Secretary's certification.

As part of the process of accessing funds for these costs, grantees must submit to HUD an action plan describing their use of funds for program administrative costs. The action plan will be developed outside of DRGR and must include all proposed uses of funds for program administrative costs incurred prior to a final action plan being submitted and approved. The action plan for program administrative costs must also include the criteria for eligibility and the amount to be budgeted for that activity. If a grantee chooses to submit the action plan for program administrative costs, the grantee should calculate its need to cover program administrative costs over the life of the grant and consider how much of its available program administrative funds may be reasonably budgeted at this very early stage of its grant lifecycle.

III.A.1.a. *Publication of the action plan for program administrative costs and opportunity for public comment.* The grantee must publish the proposed action plan for program administrative costs, and substantial amendments to the plan, for public comment. To permit a more streamlined process and ensure that grants for program administrative costs are awarded in a timely manner in order to allow grantees to more rapidly design and launch recovery activities, provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 24 CFR 1003.604, 24 CFR 91.105(b) through (d), and 24 CFR 91.115(b) through (d), with respect to citizen participation requirements, are waived and replaced by the alternative requirements in section III.A.1. that apply only to action plans for program administrative costs and substantial amendments to these plans. Additionally, for these action plans only, grantees are not subject to the Consolidated Notice action plan requirements in sections III.B.2.i., III.C.2., III.C.3., III.C.6., and III.D.1.a.–c.

The manner of publication of the action plan for program administrative costs must include prominent posting on the grantee's official disaster recovery website and must afford residents, affected local governments, and other interested parties a reasonable opportunity to review the contents of the plan or substantial amendment. Subsequent to publication of the action plan or substantial amendment to that plan, the grantee must provide a reasonable time frame (no less than seven days) and multiple methods (including electronic submission) for receiving comments on the action plan or substantial amendment for program administrative costs. At a minimum, the topic of disaster recovery on the grantee's website, including the posted action plan or substantial amendment, must be navigable by interested parties from the grantee homepage and must link to the disaster recovery website as required by section III.D.1.e. of the Consolidated Notice. The grantee's records must demonstrate that it has notified affected parties through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with neighborhood organizations. Grantees are not required to hold any public hearings on the proposed action plan or substantial amendment for program administrative costs.

The grantee must consider all oral and written comments on the action plan or any substantial amendment. Any updates or changes made to the action plan in response to public comments should be clearly identified in the action plan. A summary of comments on the plan or amendment, and the grantee's response to each, must be included with the action plan or substantial amendment. Grantee responses shall address the substance of the comment rather than merely

acknowledge that the comment was received.

After the grantee responds to public comments, it will then submit its action plan or substantial amendment for program administrative costs (which includes Standard Form 424 (SF–424)) to HUD for approval. There is no due date for this plan as it may be submitted any time prior to the grantee's Public Action Plan. HUD will review the action plan or substantial amendment for program administrative costs within 15 days from date of receipt and determine whether to approve the action plan or substantial amendment to that plan per the criteria identified in this notice.

III.A.1.b. *Certifications waiver and alternative requirement.* Sections 104(b)(4), (c), and (m) of the HCDA (42 U.S.C. 5304(b)(4), (c) & (m)), sections 106(d)(2)(C) & (D) of the HCDA (42 U.S.C. 5306(d)(2)(C) & (D)), and section 106 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12706), and regulations at 24 CFR 91.225 and 91.325 are waived and replaced with the following alternative. Each grantee choosing to submit an action plan for program administrative costs must make the following certifications listed in section III.F.7. of the Consolidated Notice and include them with the submission of this plan: Paragraphs b., c., d., g., i., j., k., l., p., and q. Additionally, HUD is waiving section 104 of the HCDA ((42 U.S.C. 5304, section 106 of the HCDA (42 U.S.C. 5306), section 210 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4630), section 305 of the URA (42 U.S.C. 4655), and regulations at 24 CFR 91.225(a)(2), (6), and (7), 91.225(b)(7), 91.325(a)(2), (6), and (7) and 24 CFR 42.325 only to the extent necessary to allow grantees to receive a portion of their allocation as a grant for program administrative costs before submitting other statutorily required certifications. Each grantee must make all certifications included in section III.F.7. of the Consolidated Notice and submit them to HUD when it submits its Public Action Plan in DRGR described in III.C.1.

III.A.1.c. *Submission of the action plan for program administrative costs in DRGR.* After HUD's approval of the action plan for program administrative costs, the grantee enters the activities from its approved action plan into the DRGR system if it has not previously done so and submits its DRGR action plan to HUD (funds can be drawn from the line of credit only for activities that are established in the DRGR system). HUD will provide additional guidance (''Fact Sheet'') with screenshots and step-by-step instructions describing the submittal process for this DRGR action plan for program administrative costs. This process will allow a grantee to access funds for program administrative costs while the grantee begins developing its Public Action Plan in DRGR as provided in section III.C.1. of the Consolidated Notice.

If a grantee receiving funds in both this notice and the February 3, 2022 notice has already received approval of the action plan for program administrative costs and received approval of the DRGR action plan for program administrative costs, the grantee may submit an amendment to HUD of its action plan for program administrative costs to budget funds for additional administrative costs. Grantees may do this by using the template provided on HUD's website here: *https://www.hud.gov/program_offices/comm_planning/cdbg-dr/grantees.* After HUD's approval of the amended action plan for program administrative costs and issuance of a grant agreement, the grantee will amend the previously approved DRGR action plan for program administrative costs to access or draw funds.

III.A.1.d. *Incorporation of the action plan for program administrative costs into the Public Action Plan.* The grantee shall describe the use of all grant funds for administrative costs in the Public Action Plan required by section III.C.1. Use of grant funds for administrative costs before approval of the Public Action Plan must be consistent with the action plan for administrative costs. Once the Public Action Plan is approved, the use of all grant funds must be consistent with the Public Action Plan. Upon HUD's approval of the Public Action Plan, the action plan for administrative costs shall only be relevant to administrative costs charged to the grant before the date of approval of the Public Action Plan.

III.A.2. *Use of administrative funds across multiple grants.* The Appropriations Act authorizes special treatment of grant administrative funds. Grantees that are receiving awards under this notice, and that have received CDBG–DR or CDBG–MIT grants in the past or in any future acts, may use eligible administrative funds (up to five percent of each grant award plus up to five percent of program income generated by the grant) appropriated by these acts for the cost of administering any CDBG–DR or CDBG–MIT grant without regard to the particular disaster appropriation from which such funds originated. If the grantee chooses to exercise this authority, the grantee must have appropriate financial controls to comply with the requirement that the amount of grant administration expenditures for each CDBG–DR or CDBG–MIT grant will not exceed five percent of the total grant award for each grant (plus five percent of program income generated by the grant), review and modify its financial management policies and procedures regarding the tracking and accounting of administration costs, as necessary, and address the adoption of this treatment of administrative costs in the applicable portions of its Financial Management and Grant Compliance submissions as referenced in section III.A.1. of the Consolidated Notice. Grantees are reminded that all uses of funds for program administrative activities must qualify as an eligible administration cost.

IV. Applicable Rules, Statutes, Waivers, and Alternative Requirements

The Appropriations Act authorizes the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary, or use by the recipient, of these funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. This section of the notice and the Consolidated Notice describe rules, statutes, waivers, and alternative requirements that apply to allocations under this notice. For each waiver and alternative requirement in this notice and incorporated through the Consolidated Notice, the Secretary has determined that good cause exists, and the waiver or alternative requirement is not inconsistent with the overall purpose of title I of the HCDA. The waivers and alternative requirements provide flexibility in program design and implementation to support full and swift recovery following eligible disasters, while ensuring that statutory requirements are met.

Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their recovery and mitigation activities. Grantees should work with the assigned CPD representative to request any additional waivers or alternative requirements from HUD headquarters. Waivers and alternative requirements described below apply to all grantees under this notice. Under the requirements of the Appropriations Act, waivers and alternative requirements are effective five days after they are published in the **Federal Register** or on the website of the Department.

IV.A. Grant Administration

IV.A.1. *Duplication of Benefits (DOB).* HUD published a **Federal Register** notice on June 20, 2019, titled, ''Updates to Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees'' (84 FR 28836) (''2019 DOB Notice''), which revised the DOB requirements that apply to CDBG–DR grants for disasters declared between January 1, 2015 and December 31, 2021. To comply with the Stafford Act and the Appropriations Act, grantees must prevent the duplication of benefits and must have adequate policies and procedures for this purpose. Accordingly, grantees that received funds for disasters occurring in 2020 and 2021 must follow all requirements in the 2019 DOB Notice and the requirements located in section IV.A. of the Consolidated Notice.

IV.A.2. *CDBG–DR mitigation set-aside.* The Appropriations Act requires HUD to include in any allocation of CDBG–DR funds for unmet needs an additional amount of 15 percent for mitigation activities (''CDBG–DR mitigation set-aside''). Grantees should consult Tables 1 and 3 for the amount allocated specifically for the CDBG–DR mitigation set-aside. For purposes of grants under this notice, mitigation activities are defined as those activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters.

In the grantee's action plan, it must identify how the proposed use of the CDBG–DR mitigation set-aside will: (1) Meet the definition of mitigation activities; (2) address the current and future risks as identified in the grantee's mitigation needs assessment in the MID areas; (3) be CDBG-eligible activities under title I of the HCDA or otherwise eligible pursuant to a waiver or alternative requirement; and (4) meet a national objective.

Unlike recovery activities where grantees must demonstrate that their activities ''tie-back'' to the specific disaster and address a specific unmet recovery need for which the CDBG–DR funds were appropriated, activities funded by the CDBG–DR mitigation set-aside do not require such a ''tie-back'' to the specific qualified disaster that has served as the basis for the grantee's allocation. Instead, grantees must demonstrate that activities funded by the CDBG–DR mitigation set-aside meet the provisions included as (1) through (4) in the prior paragraph, to be eligible. Grantees must report activities as a ''MIT'' activity type in DRGR so that HUD and the public can determine that the grantee has met the expenditure requirement for the CDBG–DR mitigation set-aside.

Grantees may also meet the requirement of the CDBG–DR mitigation set-aside by including eligible recovery activities that both address the impacts of the disaster (*i.e.,* have ''tie-back'' to the specific qualified disaster) and incorporate mitigation measures into the recovery activities. In section II.A.2.b. of the Consolidated Notice, grantees are instructed to incorporate mitigation measures when carrying out activities to construct, reconstruct, or rehabilitate residential or non-residential structures with CDBG–DR funds as part of activities eligible under 42 U.S.C. 5305(a) (including activities authorized by waiver and alternative requirement). Additionally, in section II.A.2.c. of the Consolidated Notice, grantees are required to establish resilience performance metrics for those activities.

If grantees wish to count those activities towards the grantee's CDBG–DR mitigation set-aside, grantees must: (1.) Document how those activities and the incorporated mitigation measures will meet the definition of mitigation, as provided above; and (2.) Report those activities as a ''MIT'' activity type in DRGR so they are easily tracked.

IV.A.2.a. *Mitigation needs assessment.* In addition to the requirements prescribed in section III.C.1.a of the Consolidated Notice that grantees must develop an impact and unmet needs assessment, grantees receiving an award under this Allocation Announcement Notice must also include in their action plan a mitigation needs assessment to inform the activities funded by the CDBG–DR mitigation set-aside. Each grantee must assess the characteristics and impacts of current and future hazards identified through its recovery from the qualified disaster and any other Presidentially declared disaster. Mitigation solutions designed to be resilient only for threats and hazards related to a prior disaster can leave a community vulnerable to negative effects from future extreme events related to other threats or hazards. When risks are identified among other vulnerabilities during the framing and design of mitigation projects, implementation of those projects can enhance protection and save lives, maximize the utility of scarce resources, and benefit the community long after the projects are complete.

Accordingly, each grantee receiving a CDBG–DR allocation under this notice must conduct a risk-based assessment to inform the use of its CDBG–DR mitigation set-aside considering identified current and future hazards. Grantees must assess their mitigation needs in a manner that effectively addresses risks to indispensable services that enable continuous operation of critical business and government functions and are critical to human health and safety or economic security. In the mitigation needs assessment, each grantee must cite data sources and must, at a minimum, use the risks identified in the current FEMA-approved state or local Hazard Mitigation Plan (HMP). If a jurisdiction is currently updating an expired HMP, the grantee's agency administering the CDBG–DR funds must consult with the agency administering the HMP update to identify the risks that will be included in the assessment. Mitigation needs evolve over time and grantees are to amend the mitigation needs assessment and action plan as conditions change, additional mitigation needs are identified, and additional resources become available.

IV.A.2.b. *Connection of programs and projects to the mitigation needs assessment.* Grantees are required by section III.C.1.b. of the Consolidated Notice to describe the connection between identified unmet needs and the allocation of CDBG–DR resources. In a similar fashion, the plan must provide a clear connection between a grantee's mitigation needs assessment and its proposed activities in the MID areas funded by the CDBG–DR mitigation set-aside (or outside in connection to the MID areas as described in section II.A.3. of the Consolidated Notice). To maximize the impact of all available funds, grantees are encouraged to coordinate and align these funds with other projects funded with CDBG–DR and CDBG–MIT funds, as well as other disaster recovery activities funded by FEMA, USACE, the U.S. Forest Service, and other agencies as appropriate. Grantees are encouraged to fund planning activities that complement FEMA's Building Resilient Infrastructure and Communities (BRIC) program and to upgrade mapping, data, and other capabilities to better understand evolving disaster risks.

IV.A.3. *Interchangeability of disaster funds.* The Appropriations Act gives the Secretary authority to authorize grantees that receive an award in this Allocation Announcement Notice and under prior or future appropriations to use those funds interchangeably and without limitation for the same activities related to unmet recovery needs in the MID areas resulting from a major disaster in the Appropriations Act or in prior or future appropriation acts, when the MID

areas overlap and when the use of the funds will address unmet recovery needs of major disasters in the Appropriations Act or in any prior or future appropriation acts.

Based on this authority, the Secretary authorizes grantees receiving a CDBG–DR grant under the Appropriations Act and prior or future appropriation acts for activities authorized under title I of the HCDA for a specific qualifying disaster(s) to use these funds interchangeably and without limitation for the same activities in MID areas resulting from a major disaster in prior or future appropriation acts, as long as the MID areas overlap and the activities address unmet needs of both disasters.

Grantees are reminded that expanding the eligible beneficiaries of activities in an action plan funded by any prior or future acts to include those impacted by the specific qualifying disaster(s) in this notice requires the submission of a substantial action plan amendment in accordance with section III.C.6. of the Consolidated Notice. Additionally, all waivers and alternative requirements associated with a CDBG–DR grant apply to the use of the funds provided by that grant, regardless of which disaster the funded activity will address.

For example, if a grantee is receiving funds under this notice for a disaster occurring in 2021 and the MID areas for the 2021 disaster overlap with the MID areas for a disaster that occurred in 2017, the grantee may choose to use the funds allocated under this notice to address unmet needs of both the 2017 disaster and the 2021 disaster. In doing so, the grantee must follow the rules and requirements outlined in this notice. However, if the grantee chooses to use its CDBG–DR grant awarded due to a disaster that occurred in 2017 to address unmet needs of both that disaster and the 2021 disaster, the grantee must follow the rules and requirements outlined in the **Federal Register** notices applicable to its CDBG–DR grant for 2017 disasters.

V. Duration of Funding

The Appropriations Act makes the funds available for obligation by HUD until expended. HUD waives the provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution and expenditure of funds and establishes an alternative requirement providing that each grantee must expend 100 percent of its allocation within six years of the date HUD signs the grant agreement. HUD may extend the period of performance administratively, if good cause for such an extension exists at that time, as requested by the grantee, and approved by HUD. When the period of performance has ended, HUD will close out the grant and any remaining funds not expended by the grantee on appropriate programmatic purposes will be recaptured by HUD.

VI. Federal Assistance Listings (Formerly Known as the CFDA Number)

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this notice are as follows: 14.218; 14.228.

VII. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available online on HUD's CDBG–DR website. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number).

Adrianne Todman,

Deputy Secretary.

Appendix A—Allocation of CDBG–DR Funds to Most Impacted and Distressed Areas Due to Presidentially Declared Disasters Occurring in 2020 and 2021

Background

Public Law 117–43, Disaster Relief Supplemental Appropriations Act, 2022, (approved September 30, 2022) appropriated $5 billion for CDBG-Disaster Recovery (CDBG–DR) funds for disasters occurring in 2020 and 2021. The statutory text related to the allocation is as follows:

''For an additional amount for ''Community Development Fund'', $5,000,000,000, to remain available until expended, for necessary expenses for activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation, in the most impacted and distressed areas resulting from a major disaster that occurred in 2020 or 2021 pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*): *Provided,* That amounts made available under this heading in this Act shall be awarded directly to the State, unit of general local government, or Indian tribe (as such term is defined in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302)) at the discretion of the Secretary: *Provided further,* That the Secretary shall allocate, using the best available data, an amount equal to the total estimate for unmet needs for qualifying disasters under this heading in this Act: *Provided further,* That any final allocation for the total estimate for unmet need made available under the preceding proviso shall include an additional amount of 15 percent of such estimate for additional mitigation: *Provided further,* That of the amounts made available under this heading in this Act, no less than $1,610,000,000 shall be allocated for major declared disasters that occurred in 2020 within 30 days of the date of enactment of this Act:''

Most Impacted and Distressed Areas

As with prior CDBG–DR appropriations, HUD is not obligated to allocate funds for all major disasters occurring in the statutory timeframes. HUD is directed to use the funds ''in the most impacted and distressed areas.'' HUD has implemented this directive by limiting CDBG–DR formula allocations to grantees with major disasters that meet these standards:

(1) Individual Assistance/IHP designation. HUD has limited allocations to those disasters where FEMA had determined the damage was sufficient to declare the disaster as eligible to receive Individual and Households Program (IHP) funding.

(2) Concentrated damage. HUD has limited its estimate of serious unmet housing need to counties and zip codes with high levels of damage, collectively referred to as ''most impacted areas.'' For this allocation, HUD is defining most impacted areas as most impacted counties—counties exceeding $10 million in serious unmet housing needs—and most impacted Zip Codes—Zip Codes with $2 million or more of serious unmet housing needs. The calculation of serious unmet housing needs is described below.

For disasters that meet the most impacted threshold described above, the unmet need allocations are based on the following factors summed together:

(1) Repair estimates for seriously damaged owner-occupied units without insurance (with some exceptions) in most impacted areas after FEMA and SBA repair grants or loans;

(2) Repair estimates for seriously damaged rental units occupied by very low-income renters in most impacted areas;

(3) Repair and content loss estimates for small businesses with serious damage denied by SBA; and

(4) The estimated local cost share for Public Assistance Category C to G projects.

Methods for Estimating Serious Unmet Needs for Housing

The data HUD uses to calculate unmet needs for 2020 and 2021 qualifying disasters come from the FEMA Individual Assistance program data on housing-unit damage as of February 10, 2022 and reflect disasters occurring in 2020 and 2021.

The core data on housing damage for both the unmet housing needs calculation and the concentrated damage are based on home inspection data for FEMA's Individual Assistance program and SBA's disaster loan program. HUD calculates ''unmet housing needs'' as the number of housing units with unmet needs times the estimated cost to repair those units less repair funds already provided by FEMA and SBA.

Each of the FEMA inspected owner units are categorized by HUD into one of five categories:

- *Minor-Low:* Less than $3,000 of FEMA inspected real property damage.
- *Minor-High:* $3,000 to $7,999 of FEMA inspected real property damage.
- *Major-Low:* $8,000 to $14,999 of FEMA inspected real property damage and/or 1 to 3.9 feet of flooding on the first floor.
- *Major-High:* $15,000 to $28,800 of FEMA inspected real property damage and/or 4 to 5.9 feet of flooding on the first floor.
- *Severe:* Greater than $28,800 of FEMA inspected real property damage or determined destroyed and/or 6 or more feet of flooding on the first floor.

When owner-occupied properties also have a personal property inspection or only have a personal property inspection, HUD reviews the personal property damage amounts such that if the personal property damage places the home into a higher need category over the real property assessment, the personal property amount is used. The personal property-based need categories for owner-occupied units are defined as follows:

- *Minor-Low:* Less than $2,500 of FEMA inspected personal property damage.
- *Minor-High:* $2,500 to $3,499 of FEMA inspected personal property damage.
- *Major-Low:* $3,500 to $4,999 of FEMA inspected personal property damage or 1 to 3.9 feet of flooding on the first floor.
- *Major-High:* $5,000 to $9,000 of FEMA inspected personal property damage or 4 to 5.9 feet of flooding on the first floor.
- *Severe:* Greater than $9,000 of FEMA inspected personal property damage or determined destroyed and/or 6 or more feet of flooding on the first floor.

To meet the statutory requirement of ''most impacted'' in this legislative language, homes are determined to have a high level of damage if they have damage of ''major-low'' or higher. That is, they have a FEMA inspected real property damage of $8,000 or above, personal property damage $3,500 or above, or flooding 1 foot or above on the first floor.

Furthermore, a homeowner with flooding outside the one percent risk flood hazard area is determined to have unmet needs if they reported damage and no flood insurance to cover that damage. For homeowners inside the one percent risk flood hazard area, homeowners without flood insurance with flood damage below the greater of national median or 120 percent of Area Median Income are determined to have unmet needs. For non-flood damage, homeowners without hazard insurance with incomes below the greater of national median or 120 percent of Area Median Income are included as having unmet needs. The unmet need categories for these types of homeowners are defined as above for real and personal property damage.

FEMA does not inspect rental units for real property damage so personal property damage is used as a proxy for unit damage. Each of the FEMA-inspected renter units are categorized by HUD into one of five categories:

- *Minor-Low:* Less than $1,000 of FEMA inspected personal property damage.
- *Minor-High:* $1,000 to $1,999 of FEMA inspected personal property damage or determination of ''Moderate'' damage by the FEMA inspector.
- *Major-Low:* $2,000 to $3,499 of FEMA inspected personal property damage or 1 to 3.9 feet of flooding on the first floor or determination of ''Major'' damage by the FEMA inspector.
- *Major-High:* $3,500 to $7,500 of FEMA inspected personal property damage or 4 to 5.9 feet of flooding on the first floor.
- *Severe:* Greater than $7,500 of FEMA inspected personal property damage or determined destroyed and/or 6 or more feet of flooding on the first floor or determination of ''Destroyed'' by the FEMA inspector.

To meet the statutory requirement of ''most impacted'' for rental properties, homes are determined to have a high level of damage if they have damage of ''major-low'' or higher. That is, they have a FEMA personal property damage assessment of $2,000 or greater or flooding 1 foot or above on the first floor.

Furthermore, landlords are presumed to have adequate insurance coverage unless the unit is occupied by a renter with income less than the greater of the Federal poverty level or 50 percent of the area median income. Units occupied by a tenant with income less than the greater of the poverty level or 50 percent of the area median income are used to calculate likely unmet needs for affordable rental housing.

The average cost to fully repair a home for a specific disaster to code within each of the damage categories noted above is calculated using the median real property damage repair costs determined by the SBA for its disaster loan program based on a match comparing FEMA and SBA inspections by each of the FEMA damage categories described above.

Minimum multipliers are not less than the 25th percentile for all Individual Assistance (IA) eligible disasters combined in eligible disaster years at the time of the allocation calculation, and maximum multipliers are not more than the 75th percentile for all IA eligible disasters combined with data available as of the allocation. Because SBA is inspecting for full repair costs, their estimate is presumed to reflect the full cost to repair the home, which is generally more than the FEMA estimates on the cost to make the home habitable. If there is a match of fewer than 20 SBA inspections to FEMA inspections for any damage category, the minimum multiplier is used.

Mobile home multipliers are based on a multiplier that is the same across all eligible disasters.

For each household determined to have serious unmet housing needs (as described above), their estimated average unmet housing need is equal to the average cost to fully repair a home to code less assistance from FEMA and SBA provided for repair to the home, based on the damage category (noted above).

Methods for Estimating Serious Unmet Economic Revitalization Needs

Based on SBA disaster loans to businesses using data for 2021 disasters from as of date February 22, 2022, HUD calculates the median real estate and content loss by the following damage categories for each state:

- *Category 1:* Real estate + content loss = below $12,000
- *Category 2:* Real estate + content loss = $12,000–$29,999
- *Category 3:* Real estate + content loss = $30,000–$64,999
- *Category 4:* Real estate + content loss = $65,000–$149,999
- *Category 5:* Real estate + content loss = $150,000 and above

For properties with real estate and content loss of $30,000 or more, HUD calculates the estimated amount of unmet needs for small businesses by multiplying the median damage estimates for the categories above by the number of small businesses denied an SBA loan, including those denied a loan prior to inspection due to inadequate credit or income (or a decision had not been made), under the assumption that damage among those denied at pre-inspection have the same distribution of damage as those denied after inspection.

Methods for Estimating Unmet Infrastructure Needs

To calculate 2021 unmet needs for infrastructure projects, HUD obtained FEMA cost estimates as of February 10, 2022, of the expected local cost share to repair the permanent public infrastructure (Categories C to G) to their pre-storm condition.

Allocation Calculation

Once eligible entities are identified using the above criteria, the allocation to individual grantees represents their proportional share of the estimated unmet needs. For the formula allocation, HUD calculates total unmet recovery needs for eligible disasters as the aggregate of:

- Serious unmet housing needs in most impacted counties (owner and renter);
- Serious unmet business needs; and
- Unmet infrastructure need.

Note that for 2020 Disasters, the business and infrastructure data were the same as for the October 2021 allocation, only the housing need data were updated to reflect the more precise housing data in February 2022 relative to the September 2021 housing data used at the time.

Mitigation is calculated as 15 percent of the unmet need calculation and then rounded to the nearest $1,000.

For disasters occurring in 2020 that previously received an allocation, their grant amount is the greater of the amount previously calculated or the new calculation with the updated February 10th data for housing.

For 2021 disasters, the amount available for allocation was 60.4 percent of the estimated need plus mitigation calculated above, so each grantee receives 60.4 percent of the calculated unmet needs and mitigation.

Local Allocations

After calculating the disaster level allocation amounts, local allocations are calculated for entitlement areas and proportionally allocated among the entitlement areas and the state balance based on the proportional share of serious unmet housing need in most impacted areas. If entitlement areas represent 70 percent or more of the serious unmet housing need from

a particular disaster and the individual entitlement likely has capacity to implement (as measured by the calculated award amount not exceeding their regular CDBG grant by 20 times or more), then local allocations are made to qualifying entitlement areas.

Amount Required for Allocating to Most Impacted and Distressed Areas

For most grantees, 80 percent of the funds allocated for a disaster are to be spent in areas that HUD identifies as most impacted or distressed, and the remaining 20 percent of funds can be expended in areas that either HUD or the grantee designates as most impacted and distressed. In most places where an entitlement is within a county defined as a most impacted area, 100 percent of the funds allocated locally will be spent in the entitlement.

Appendix B—The Consolidated Notice

CDBG–DR Consolidated Notice Waivers and Alternative Requirements

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I. Waivers and Alternative Requirements

CDBG–DR grantees that are subject to this Consolidated Notice, as indicated in each **Federal Register** notice that announces allocations of the appropriated CDBG–DR funds (''Allocation Announcement Notice''), must comply with all waivers and alternative requirements in the Consolidated Notice, unless expressly made inapplicable (*e.g.,* a waiver that applies to states only does not apply to units of general local governments and Indian tribes). Except as described in applicable waivers and alternative requirements, the statutory and regulatory provisions governing the CDBG program (and for Indian tribes, the Indian CDBG program) shall apply to grantees receiving a CDBG–DR allocation. Statutory provisions (title I of the HCDA) that apply to all grantees can be found at 42 U.S.C. 5301 *et seq.* and regulatory requirements, which differ for each type of grantee, are described in each of the three paragraphs below.

Except as modified, the State CDBG program rules shall apply to state grantees receiving a CDBG–DR allocation. Applicable State CDBG program regulations are found at 24 CFR part 570, subpart I. For insular areas, HUD waives the provisions of 24 CFR part 570, subpart F and imposes the following alternative requirement: Insular areas shall administer their CDBG–DR allocations in accordance with the regulatory and statutory provisions governing the State CDBG program, as modified by the Consolidated Notice.

Except as modified, statutory and regulatory provisions governing the Entitlement CDBG Program shall apply to unit of general local government grantees (often referred to as local government grantees in appropriations acts). Applicable Entitlement CDBG Program regulations are found at 24 CFR part 570, as described in 570.1(a).

Except as modified, CDBG–DR grants made by HUD to Indian tribes shall be subject to the statutory provisions in title I of the HCDA that apply to Indian tribes and the regulations in 24 CFR part 1003 governing the Indian CDBG program, except those requirements in part 1003 related to the funding application and selection process.

References to the action plan in the above regulations shall refer to the action plan required by the Consolidated Notice and not to the consolidated plan action plan required by 24 CFR part 91. All references pertaining to timelines and/or deadlines are in terms of calendar days unless otherwise noted.

II. Eligible Activities

II.A. Clarification of Disaster-Related Activities

CDBG–DR funds are provided for necessary expenses for activities authorized under title I of the HCDA related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation of risk associated with activities carried out for these purposes, in the ''most impacted and distressed'' areas (identified by HUD or the grantee) resulting from a major disaster. All CDBG–DR funded activities must address an impact of the disaster for which funding was allocated. Accordingly, each activity must: (1) Address a direct or indirect impact from the disaster in a most impacted and distressed area; (2) be a CDBG-eligible activity (or be eligible under a waiver or alternative requirement); and (3) meet a national objective. When appropriations acts provide an additional allocation amount for mitigation of hazard risks that does not require a connection to the qualifying major disaster, requirements for the use of those funds will be included in the Allocation Announcement Notice.

II.A.1. *Documenting a Connection to the Disaster.* Grantees must maintain records that document how each funded activity addresses a direct or indirect impact from the disaster. Grantees may do this by linking activities to a disaster recovery need that is described in the impact and unmet needs assessment in the action plan (requirements for the assessment are addressed in section III.C.1.a.). Sufficient documentation of physical loss must include damage or rebuilding estimates, insurance loss reports, images, or similar information that documents damage caused by the disaster. Sufficient documentation for non-physical disaster-related impacts must clearly show how the activity addresses the disaster impact, *e.g.,* for economic development activities, data about job loss or businesses closing after the disaster or data showing how pre-disaster economic stressors were aggravated by the disaster; or for housing activities, a post-disaster housing analysis that describes the activities that are necessary to address the post-disaster housing needs.

II.A.2. *Resilience and hazard mitigation.* The Consolidated Notice will help to improve long-term community resilience by requiring grantees to fully incorporate mitigation measures that will protect the public, including members of protected classes, vulnerable populations, and underserved communities, from the risks identified by the grantee among other vulnerabilities. This approach will better ensure the revitalization of the community long after the recovery projects are complete.

Accordingly, HUD is adopting the following alternative requirement to section 105(a): Grantees may carry out the activities described in section 105(a), as modified by waivers and alternative requirements, to the extent that the activities comply with the following:

II.A.2.a. *Alignment with mitigation plans.* Grantees must ensure that the mitigation measures identified in their action plan will align with existing hazard mitigation plans submitted to the Federal Emergency Management Agency (FEMA) under section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5165) or other state, local, or tribal hazard mitigation plans.

II.A.2.b. *Mitigation measures.* Grantees must incorporate mitigation measures when carrying out activities to construct, reconstruct, or rehabilitate residential or non-residential structures with CDBG–DR funds as part of activities eligible under 42 U.S.C. 5305(a) (including activities authorized by waiver and alternative requirement). To meet this alternative requirement, grantees must demonstrate that they have incorporated mitigation measures into CDBG–DR activities as a construction standard to create communities that are more resilient to the impacts of recurring natural disasters and the impacts of climate change. When determining which mitigation measures to incorporate, grantees should design and construct structures to withstand existing and future climate impacts expected to occur over the service life of the project.

II.A.2.c. *Resilience performance metrics.* Before carrying out CDBG–DR funded activities to construct, reconstruct, or rehabilitate residential or non-residential

structures, the grantee must establish resilience performance metrics for the activity, including: (1) An estimate of the projected risk to the completed activity from natural hazards, including those hazards that are influenced by climate change (*e.g.,* high winds destroying newly built homes), (2) identification of the mitigation measures that will address the projected risks (*e.g.,* using building materials that are able to withstand high winds), and (3) an assessment of the benefit of the grantee's measures through verifiable data (*e.g.,* 10 newly built homes will withstand high winds up to 100 mph).

II.A.3. *Most impacted and distressed (MID) areas.* Funds must be used for costs related to unmet needs in the MID areas resulting from qualifying disasters. HUD allocates funds using the best available data that cover the eligible affected areas and identifies MID areas. Grantees are required to use 80 percent of all CDBG–DR funds to benefit the HUD-identified MID areas. The HUD-identified MID areas and the minimum dollar amount that must be spent to benefit those areas will be identified for each grantee in the applicable Allocation Announcement Notice. If a grantee seeks to add other areas to the HUD-identified MID area, the grantee must contact its CPD Representative or CPD Specialist and submit the request with a data-driven analysis that illustrates the basis for designating the additional area as most impacted and distressed as a result of the qualifying disaster.

Grantees may use up to five percent of the total grant award for grant administration. Therefore, HUD will include 80 percent of a grantee's expenditures for grant administration in its determination that 80 percent of the total award has benefited the HUD-identified MID area. Expenditures for planning activities may also be counted towards the HUD-identified MID area requirement, if the grantee describes in its action plan how those planning activities benefit those areas.

HUD may identify an entire jurisdiction or a ZIP code as a MID area. If HUD designates a ZIP code as a MID area for the purposes of allocating funds, the grantee may expand program operations to the whole county or counties that overlap with the HUD designated ZIP code. A grantee must indicate the decision to expand eligibility to the whole county or counties in its action plan.

Grantees must determine where to use the remaining amount of the CDBG–DR grant, but that portion of the allocation may only be used to address unmet needs and that benefit those areas that the grantee determines are most impacted and distressed (''grantee-identified MID areas'') within areas that received a presidential major disaster declaration identified by the disaster numbers listed in the applicable Allocation Announcement Notice. The grantee must use quantifiable and verifiable data in its analysis, as referenced in its action plan, to identify the MID areas where it will use the remaining amount of CDBG–DR funds.

Grantee expenditures for eligible unmet needs outside of the HUD-identified or grantee-identified MID areas are allowable, provided that the grantee can demonstrate how the expenditure of CDBG–DR funds outside of the MID areas will address unmet needs identified within the HUD-identified or grantee-identified MID area (*e.g.,* upstream water retention projects to reduce downstream flooding in the HUD-identified MID area).

II.B. Housing Activities and Related Floodplain Issues

Grantees may use CDBG–DR funds for activities that may include, but are not limited to, new construction, reconstruction, and rehabilitation of single-family or multifamily housing, homeownership assistance, buyouts, and rental assistance. The broadening of eligible CDBG–DR activities related to housing under the HCDA is necessary following major disasters in which housing, including large numbers of affordable housing units, have been damaged or destroyed. The following waivers and alternative requirements will assist grantees in addressing the full range of unmet housing needs arising from a disaster.

II.B.1. *New housing construction waiver and alternative requirement.* 42 U.S.C. 5305(a) and 24 CFR 570.207(b)(3) are waived to the extent necessary to permit new housing construction, subject to the following alternative requirement. When a CDBG–DR grantee carries out a new housing construction activity, 24 CFR 570.202 shall apply and shall be read to extend to new construction in addition to rehabilitation assistance. Private individuals and entities must remain compliant with federal accessibility requirements as well as with the applicable site selection requirements of 24 CFR 1.4(b)(3) and 8.4(b)(5).

II.B.2. *Construction standards for new construction, reconstruction, and rehabilitation.* HUD is adopting an alternative requirement to require grantees to adhere to the applicable construction standards in II.B.2.a. through II.B.2.d. when carrying out activities to construct, reconstruct, or rehabilitate residential structures with CDBG–DR funds as part of activities eligible under 42 U.S.C. 5305(a) (including activities authorized by waiver and alternative requirement). For purposes of the Consolidated Notice, the terms ''substantial damage'' and ''substantial improvement'' shall be as defined in 44 CFR 59.1 unless otherwise noted.

II.B.2.a. *Green and resilient building standard for new construction and reconstruction of housing.* Grantees must meet the Green and Resilient Building Standard, as defined in this subparagraph, for: (i) All new construction and reconstruction (*i.e.,* demolishing a housing unit and rebuilding it on the same lot in substantially the same manner) of residential buildings and (ii) all rehabilitation activities of substantially damaged residential buildings, including changes to structural elements such as flooring systems, columns, or load-bearing interior or exterior walls.

The Green and Resilient Building Standard requires that all construction covered by the paragraph above and assisted with CDBG–DR funds meet an industry-recognized standard that has achieved certification under (i) Enterprise Green Communities; (ii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development); (iii) ICC–700 National Green Building Standard Green+ Resilience; (iv) Living Building Challenge; or (v) any other equivalent comprehensive green building program acceptable to HUD. Additionally, all such covered construction must achieve a minimum energy efficiency standard, such as (i) ENERGY STAR (Certified Homes or Multifamily High-Rise); (ii) DOE Zero Energy Ready Home; (iii) EarthCraft House, EarthCraft Multifamily; (iv) Passive House Institute Passive Building or EnerPHit certification from the Passive House Institute US (PHIUS), International Passive House Association; (v) Greenpoint Rated New Home, Greenpoint Rated Existing Home (Whole House or Whole Building label); (vi) Earth Advantage New Homes; or (vii) any other equivalent energy efficiency standard acceptable to HUD. Grantees must identify, in each project file, which of these Green and Resilient Building Standards will be used for any building subject to this paragraph. However, grantees are not required to use the same standards for each project or building.

II.B.2.b. *Standards for rehabilitation of nonsubstantially damaged residential buildings.* For rehabilitation other than the rehabilitation of substantially damaged residential buildings described in section II.B.2.a. above, grantees must follow the guidelines specified in the HUD CPD Green Building Retrofit Checklist.

Grantees must apply these guidelines to the extent applicable for the rehabilitation work undertaken, for example, the use of mold resistant products when replacing surfaces such as drywall. Products and appliances replaced as part of the rehabilitation work, must be ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP)-designated products or appliances.

II.B.2.c. *Elevation standards for new construction, reconstruction, and rehabilitation of substantial damage, or rehabilitation resulting in substantial improvements.* The following elevation standards apply to new construction, rehabilitation of substantial damage, or rehabilitation resulting in substantial improvement of residential structures located in an area delineated as a special flood hazard area or equivalent in FEMA's data sources. 24 CFR 55.2(b)(1) provides additional information on data sources, which apply to all floodplain designations. All structures, defined at 44 CFR 59.1, designed principally for residential use, and located in the one percent annual chance (or 100-year) floodplain, that receive assistance for new construction, reconstruction, rehabilitation of substantial damage, or rehabilitation that results in substantial improvement, as defined at 24 CFR 55.2(b)(10), must be elevated with the lowest floor, including the basement, at least two feet above the one percent annual chance floodplain elevation (base flood elevation). Mixed-use structures with no dwelling units and no residents below two feet above base flood elevation, must be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above base flood elevation.

All Critical Actions, as defined at 24 CFR 55.2(b)(3), within the 500-year (or 0.2 percent annual chance) floodplain must be elevated or floodproofed (in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(2)–(3) or successor standard) to the higher of the 500-year floodplain elevation or three feet above the 100-year floodplain elevation. If the 500-year floodplain is unavailable, and the Critical Action is in the 100-year floodplain, then the structure must be elevated or floodproofed (in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(2)–(3) or successor standard) at least three feet above the 100-year floodplain elevation. Critical Actions are defined as ''any activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons or damage to property.'' For example, Critical Actions include hospitals, nursing homes, emergency shelters, police stations, fire stations, and principal utility lines.

In addition to other requirements in this section, grantees must comply with applicable state, local, and tribal codes and standards for floodplain management, including elevation, setbacks, and cumulative substantial damage requirements. Grantees using CDBG–DR funds as the non-Federal match in a FEMA-funded project may apply the alternative requirement for the elevation of structures described in section III.F.6. Structures that are elevated must meet federal accessibility standards.

II.B.2.d. *Broadband infrastructure in housing.* Any substantial rehabilitation, as defined by 24 CFR 5.100, reconstruction, or new construction of a building with more than four rental units must include installation of broadband infrastructure, except where the grantee documents that: (i) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible; (ii) the cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity, or in an undue financial burden; or (iii) the structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

II.B.3. *Applicable affordability periods for new construction of affordable rental housing.* To meet the low- and moderate-income housing national objective, rental housing assisted with CDBG–DR funds must be rented to low- and moderate-income (LMI) households at affordable rents, and a grantee must define ''affordable rents'' in its action plan. Because the waiver and alternative requirement in II.B.1. authorizes the use of grant funds for new housing construction, HUD is imposing the following alternative requirement to modify the low- and moderate-income housing national objective criteria in 24 CFR 570.208(a)(3) and 570.483(b)(3) for activities involving the new construction of affordable rental housing of five or more units. For activities that will construct five or more units, in addition to other applicable criteria in 24 CFR 570.208(a)(3) and 570.483(b)(3), in its action plan, a grantee must define the affordability standards, including ''affordable rents,'' the enforcement mechanisms, and applicable timeframes, that will apply to the new construction of affordable rental housing, *i.e.,* when the activity will result in construction of five or more units, the affordability requirements described in the action plan apply to the units that will be occupied by LMI households. The minimum timeframes and other related requirements acceptable for compliance with this alternative requirement are the HOME Investment Partnerships Program (HOME) requirements at 24 CFR 92.252(e), including the table listing the affordability periods at the end of 24 CFR 92.252(e). Therefore, the grantee must adopt and implement enforceable affordability standards that comply with or exceed requirements at 24 CFR 92.252(e)(1) for the new construction of affordable rental housing in structures containing five or more units.

II.B.4. *Affordability period for new construction of homes built for LMI households.* In addition to alternative requirements in II.B.1., the following alternative requirement applies to activities to construct new single-family units for homeownership that will meet the LMI housing national objective criteria. Grantees must establish affordability restrictions on all newly constructed single-family housing (for purposes of the Consolidated Notice, single-family housing is defined as four units or less), that, upon completion, will be purchased and occupied by LMI homeowners. The minimum affordability period acceptable for compliance are the HOME requirements at 24 CFR 92.254(a)(4). If a grantee applies other standards, the periods of affordability applied by a grantee must meet or exceed the applicable HOME requirements in 24 CFR 92.254(a)(4) and the table of affordability periods directly following that provision. Grantees shall establish resale or recapture requirements for housing funded pursuant to this paragraph and shall describe those requirements in the action plan or substantial amendment in which the activity is proposed. The resale or recapture requirements must clearly describe the terms of resale or recapture and the specific circumstances under which resale or recapture will be used. Affordability restrictions must be enforceable and imposed by recorded deed restrictions, covenants, or other similar mechanisms. The affordability restrictions, including the affordability period requirements in this paragraph do not apply to housing units newly constructed or reconstructed for an owner-occupant to replace the owner-occupant's home that was damaged by the disaster.

II.B.5. *Homeownership assistance waiver and alternative requirement.* 42 U.S.C. 5305(a)(24) is waived and replaced with the following alternative requirement:

''Provision of direct assistance to facilitate and expand homeownership among persons at or below 120 percent of area median income (except that such assistance shall not be considered a public service for purposes of 42 U.S.C. 5305(a)(8)) by using such assistance to—

(A) subsidize interest rates and mortgage principal amounts for homebuyers with incomes at or below 120 percent of area median income;

(B) finance the acquisition of housing by homebuyers with incomes at or below 120 percent of area median income that is occupied by the homebuyers;

(C) acquire guarantees for mortgage financing obtained by homebuyers with incomes at or below 120 percent of area median income from private lenders, meaning that if a private lender selected by the homebuyer offers a guarantee of the mortgage financing, the grantee may purchase the guarantee to ensure repayment in case of default by the homebuyer. This subparagraph allows the purchase of mortgage insurance by the household but not the direct issuance of mortgage insurance by the grantee;

(D) provide up to 100 percent of any down payment required from homebuyers with incomes at or below 120 percent of area median income; or

(E) pay reasonable closing costs (normally associated with the purchase of a home) incurred by homebuyers with incomes at or below 120 percent of area median income.''

While homeownership assistance, as described above, may be provided to households with incomes at or below 120 percent of the area median income, HUD will only consider those funds used for households with incomes at or below 80 percent of the area median income to qualify as meeting the LMI person benefit national objective.

II.B.6. *Limitation on emergency grant payments—interim mortgage assistance.* 42 U.S.C. 5305(a)(8), 24 CFR 570.201(e), 24 CFR 570.207(b)(4), and 24 CFR 1003.207(b)(4) are modified to extend interim mortgage assistance (IMA) to qualified individuals from three months to up to twenty months. IMA must be used in conjunction with a buyout program, or the rehabilitation or reconstruction of single-family housing, during which mortgage payments may be due but the home is not habitable. A grantee using this alternative requirement must document, in its policies and procedures, how it will determine that the amount of assistance to be provided is necessary and reasonable.

II.B.7. *Buyout activities.* CDBG–DR grantees may carry out property acquisition for a variety of purposes, but buyouts are a type of acquisition for the specific purpose of reducing the risk of property damage. HUD has determined that creating a new activity and alternative requirement for buyouts is necessary for consistency with the application of other Federal resources commonly used for this type of activity. Therefore, HUD is waiving 42 U.S.C. 5305(a) and establishing an alternative requirement only to the extent necessary to create a new eligible activity for buyouts. The term ''buyouts'' means the acquisition of properties located in a floodway, floodplain, or other Disaster Risk Reduction Area that is intended to reduce risk from future hazards. Grantees can designate a Disaster Risk Reduction Area, as defined below.

Grantees carrying out buyout activities must establish an open space management plan or equivalent, if one has not already been established, before implementation. The plan must establish full transparency about

the planned use of acquired properties post-buyout, or the process by which the planned use will be determined and enforced.

Buyout activities are subject to all requirements that apply to acquisition activities generally including but not limited to, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601, *et seq.*) and its implementing regulations at 49 CFR part 24, subpart B, unless waived or modified by alternative requirements. Only acquisitions that meet the definition of a ''buyout'' are subject to the post-acquisition land use restrictions imposed by the alternative requirement (II.B.7.a. below). The key factor in determining whether the acquisition is a buyout is whether the intent of the purchase is to reduce risk of property damage from future flooding or other hazards in a floodway, floodplain, or a Disaster Risk Reduction Area. A grantee that will buyout properties in a Disaster Risk Reduction Area must establish criteria in its policies and procedures to designate an area as a Disaster Risk Reduction Area for the buyout, pursuant to the following requirements:

(1) The area has been impacted by the hazard that has been caused or exacerbated by the disaster for which the grantee received its CDBG–DR allocation;

(2) the hazard identified must be a predictable environmental threat to the safety and well-being of program beneficiaries, including members of protected classes, vulnerable populations, and underserved communities, as evidenced by the best available data (*e.g.,* FEMA Repetitive Loss Data, EPA's Environmental Justice Screening and Mapping Tool, HHS's climate change related guidance and data, etc.) and science (such as engineering and structural solutions propounded by FEMA, USACE, other federal agencies, etc.); and

(3) the area must be clearly delineated so that HUD and the public may easily determine which properties are located within the designated area.

Grantees may only redevelop an acquired property if the property is not acquired through a buyout program (*i.e.,* the purpose of acquisition was something other than risk reduction). When acquisitions are not acquired through a buyout program, the purchase price must be consistent with 2 CFR part 200, subpart E—Cost Principles (''cost principles'') and the pre-disaster fair market value may not be used.

II.B.7.a. *Buyout requirements:*

(i) Property to be acquired or accepted must be located within a floodway, floodplain, or Disaster Risk Reduction Area.

(ii) Any property acquired or accepted must be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, floodplain and wetlands management practices, or other disaster-risk reduction practices.

(iii) No new structure will be erected on property acquired or accepted under the buyout program other than:

(a) A public facility that is open on all sides and functionally related to a designated open space (*e.g.,* a park, campground, or outdoor recreation area);

(b) a restroom; or

(c) a flood control structure, provided that:

(1) The structure does not reduce valley storage, increase erosive velocities, or increase flood heights on the opposite bank, upstream, or downstream; and

(2) the local floodplain manager approves the structure, in writing, before commencement of construction of the structure.

(iv) After the purchase of a buyout property with CDBG–DR funds, the owner of the buyout property (including subsequent owners) is prohibited from making any applications to any Federal entity in perpetuity for additional disaster assistance for any purpose related to the property acquired through the CDBG–DR funded buyout, unless the assistance is for an allowed use as described in paragraph (ii) above. The entity acquiring the property may lease or sell it to adjacent property owners or other parties for compatible uses that comply with buyout requirements in return for a maintenance agreement.

(v) A deed restriction or covenant running with the property must require that the buyout property be dedicated and maintained for compatible uses that comply with buyout requirements in perpetuity.

(vi) Grantees must choose from one of two valuation methods (pre-disaster value or post-disaster value) for a buyout program (or a single buyout activity). The grantee must apply its valuation method for all buyouts carried out under the program. If the grantee determines the post-disaster value of a property is higher than the pre-disaster value, a grantee may provide exceptions to its established valuation method on a case-by-case basis. The grantee must describe the process for such exceptions and how it will analyze the circumstances to permit an exception in its buyout policies and procedures. Each grantee must adopt policies and procedures on how it will demonstrate that the amount of assistance for a buyout is necessary and reasonable.

(vii) All buyout activities must be classified using the ''buyout'' activity type in the Disaster Recovery and Grant Reporting (DRGR) system.

(viii) Any state grantee implementing a buyout program or activity must consult with local or tribal governments within the areas in which buyouts will occur.

II.B.8. *Safe housing incentives in disaster-affected communities.* The limitation on eligible activities in section 42 U.S.C. 5305(a) is waived and HUD is establishing the following alternative requirement to establish safe housing incentives as an eligible activity. A safe housing incentive is any incentive provided to encourage households to relocate to suitable housing in a lower risk area or in an area promoted by the community's comprehensive recovery plan. Displaced persons must receive any relocation assistance to which they are entitled under other legal authorities, such as the URA, section 104(d) of the HCDA, or those described in the Consolidated Notice. The grantee may offer safe housing incentives in addition to the relocation assistance that is legally required.

Grantees must maintain documentation, at least at a programmatic level, describing how the grantee determined the amount of assistance for the incentive was necessary and reasonable, how the incentive meets a national objective, and that the incentives are in accordance with the grantee's approved action plan and published program design(s). A grantee may require the safe housing incentive to be used for a particular purpose by the household receiving the assistance. However, this waiver does not permit a compensation program meaning that funds may not be provided to a beneficiary to compensate the beneficiary for an estimated or actual amount of loss from the declared disaster. Grantees are prohibited from offering housing incentives to a homeowner as an incentive to induce the homeowner to sell a second home, consistent with the prohibition and definition of second home in section II.B.12.

II.B.9. *National objectives for buyouts and safe housing incentives.* Activities that assist LMI persons and meet the criteria for the national objectives described below, including in II.B.10., will be considered to benefit LMI persons unless there is substantial evidence to the contrary and will count towards the calculation of a grantee's overall LMI benefit requirement as described in section III.F.2. The grantee shall appropriately ensure that activities that meet the criteria for any of the national objectives below do not benefit moderate-income persons to the exclusion of low-income persons.

When undertaking buyout activities, to demonstrate that a buyout meets the low- and moderate-income housing (LMH) national objective, grantees must meet all requirements of the HCDA, and applicable regulatory criteria described below. 42 U.S.C. 5305(c)(3) provides that any assisted activity that involves the acquisition of property to provide housing shall be considered to benefit LMI persons only to the extent such housing will, upon completion, be occupied by such persons. In addition, 24 CFR 570.483(b)(3), 24 CFR 570.208(a)(3), and 24 CFR 1003.208(c) apply the LMH national objective to an eligible activity carried out for the purpose of providing or improving permanent residential structures that, upon completion, will be occupied by LMI households.

A buyout program that merely pays homeowners to leave their existing homes does not guarantee that those homeowners will occupy a new residential structure. Therefore, acquisition-only buyout programs cannot satisfy the LMH national objective criteria.

To meet a national objective that benefits a LMI person, buyout programs can be structured in one of the following ways:

(1) The buyout activity combines the acquisition of properties with another direct benefit—LMI housing activity, such as down payment assistance—that results in occupancy and otherwise meets the applicable LMH national objective criteria;

(2) The activity meets the low- and moderate-income area (LMA) benefit criteria and documents that the acquired properties will have a use that benefits all the residents in a particular area that is primarily residential, where at least 51 percent of the

residents are LMI persons. Grantees covered by the ''exception criteria'' as described in section IV.C. of the Consolidated Notice may apply it to these activities. To satisfy LMA criteria, grantees must define the service area based on the end use of the buyout properties; or

(3) The program meets the criteria for the low- and moderate-income limited clientele (LMC) national objective by restricting buyout program eligibility to exclusively LMI persons and benefiting LMI sellers by acquiring their properties for more than current fair market value (in accordance with the valuation requirements in section II.B.7.a.(vi)).

II.B.10. *For LMI Safe Housing Incentive (LMHI).* The following alternative requirement establishes new LMI national objective criteria that apply to safe housing incentive (LMHI) activities that benefit LMI households. HUD has determined that providing CDBG–DR grantees with an additional method to demonstrate how safe housing incentive activities benefit LMI households will ensure that grantees and HUD can account for and assess the benefit that CDBG–DR assistance for these activities has on LMI households.

The LMHI national objective may be used when a grantee uses CDBG–DR funds to carry out a safe housing incentive activity that benefits one or more LMI persons. To meet the LMHI national objective, the incentive must be (a.) tied to the voluntary acquisition of housing (including buyouts) owned by a qualifying LMI household and made to induce a move outside of the affected floodplain or disaster risk reduction area to a lower-risk area or structure; or (b.) for the purpose of providing or improving residential structures that, upon completion, will be occupied by a qualifying LMI household and will be in a lower risk area.

II.B.11. *Redevelopment of acquired properties.* Although properties acquired through a buyout program may not be redeveloped, grantees may redevelop other acquired properties. For non-buyout acquisitions, HUD has not permitted the grantee to base acquisition cost on pre-disaster fair market value. The acquisition cost must comply with applicable cost principles and with the acquisition requirements at 49 CFR 24, Subpart B, as revised by the Consolidated Notice waivers and alternative requirements. In addition to the purchase price, grantees may opt to provide optional relocation assistance, as allowable under Section 104 and 105 of the HCDA (42 U.S.C. 5304 and 42 U.S.C. 5305) and 24 CFR 570.606(d), and as expanded by section IV.F.5. of the Consolidated Notice, to the owner of a property that will be redeveloped if: (a.) The property is purchased by the grantee or subrecipient through voluntary acquisition; and (b.) the owner's need for additional assistance is documented. Any optional relocation assistance must provide equal relocation assistance within each class of displaced persons, including but not limited to providing reasonable accommodation exceptions to persons with disabilities. See 24 CFR 570.606(d) for more information on optional relocation assistance. In addition, tenants displaced by these voluntary acquisitions may be eligible for URA relocation assistance. In carrying out acquisition activities, grantees must ensure they are in compliance with the long-term redevelopment plans of the community in which the acquisition and redevelopment is to occur.

II.B.12. *Alternative requirement for housing rehabilitation—assistance for second homes.* HUD is instituting an alternative requirement to the rehabilitation provisions at 42 U.S.C. 5305(a)(4) as follows: Properties that served as second homes at the time of the disaster, or following the disaster, are not eligible for rehabilitation assistance or safe housing incentives. This prohibition does not apply to acquisitions that meet the definition of a buyout. A second home is defined for purposes of the Consolidated Notice as a home that is not the primary residence of the owner, a tenant, or any occupant at the time of the disaster or at the time of application for CDBG–DR assistance. Grantees can verify a primary residence using a variety of documentation including, but not limited to, voter registration cards, tax returns, homestead exemptions, driver's licenses, and rental agreements. Acquisition of second homes at post-disaster fair market value is not prohibited.

II.C. Infrastructure (Public Facilities, Public Improvements), Match, and Elevation of Non-Residential Structures

HUD is adopting an alternative requirement to require grantees to adhere to the applicable construction standards and requirements in II.C.1., II.C.2. and II.C.4., which apply only to those eligible activities described in those paragraphs.

II.C.1. *Infrastructure planning and design.* All newly constructed infrastructure that is assisted with CDBG–DR funds must be designed and constructed to withstand extreme weather events and the impacts of climate change. To satisfy this requirement, the grantee must identify and implement resilience performance metrics as described in section II.A.2.

For purposes of this requirement, an infrastructure activity includes any activity or group of activities (including acquisition or site or other improvements), whether carried out on public or private land, that assists the development of the physical assets that are designed to provide or support services to the general public in the following sectors: Surface transportation, including roadways, bridges, railroads, and transit; aviation; ports, including navigational channels; water resources projects; energy production and generation, including from renewable, nuclear, and hydro sources; electricity transmission; broadband; pipelines; stormwater and sewer infrastructure; drinking water infrastructure; schools, hospitals, and housing shelters; and other sectors as may be determined by the Federal Permitting Improvement Steering Council. For purposes of this requirement, an activity that falls within this definition is an infrastructure activity regardless of whether it is carried out under sections 105(a)(2), 105(a)(4), 105(a)(14), another section of the HCDA, or a waiver or alternative requirement established by HUD. Action plan requirements related to infrastructure activities are found in section III.C.1.e. of the Consolidated Notice.

II.C.2. *Elevation of nonresidential structure.* Nonresidential structures, including infrastructure, assisted with CDBG–DR funds must be elevated to the standards described in this paragraph or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above the 100-year (or one percent annual chance) floodplain. All Critical Actions, as defined at 24 CFR 55.2(b)(3), within the 500-year (or 0.2 percent annual chance) floodplain must be elevated or floodproofed (in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(2)–(3) or successor standard) to the higher of the 500-year floodplain elevation or three feet above the 100-year floodplain elevation. If the 500-year floodplain or elevation is unavailable, and the Critical Action is in the 100-year floodplain, then the structure must be elevated or floodproofed at least three feet above the 100-year floodplain elevation. Activities subject to elevation requirements must comply with applicable federal accessibility mandates.

In addition to the other requirements in this section, the grantee must comply with applicable state, local, and tribal codes and standards for floodplain management, including elevation, setbacks, and cumulative substantial damage requirements. Grantees using CDBG–DR funds as the non-Federal match in a FEMA-funded project may apply the alternative requirement for the elevation of structures described in section IV.D.5.

II.C.3. *CDBG–DR funds as match.* As provided by the HCDA, grant funds may be used to satisfy a match requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG–DR activity. This includes programs or activities administered by the FEMA or the U.S. Army Corps of Engineers (USACE). By law, (codified in the HCDA as a note to section 105(a)) only $250,000 or less of CDBG–DR funds may be used for the non-Federal cost-share of any project funded by USACE. Appropriations acts prohibit the use of CDBG–DR funds for any activity reimbursable by, or for which funds are also made available by FEMA or USACE.

In response to a disaster, FEMA may implement, and grantees may elect to follow, alternative procedures for FEMA's Public Assistance Program, as authorized pursuant to Section 428 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''Stafford Act''). Like other projects, grantees may use CDBG–DR funds as a matching requirement, share, or contribution for Section 428 Public Assistance Projects. For all match activities, grantees must document that CDBG–DR funds have been used for the actual costs incurred for the assisted project and for costs that are eligible, meet a national objective, and meet other applicable CDBG requirements.

II.C.4. *Requirements for flood control structures.* Grantees that use CDBG–DR funds to assist flood control structures (*i.e.,* dams and levees) are prohibited from using CDBG–

DR funds to enlarge a dam or levee beyond the original footprint of the structure that existed before the disaster event, without obtaining pre-approval from HUD and any Federal agencies that HUD determines are necessary based on their involvement or potential involvement with the levee or dam. Grantees that use CDBG–DR funds for levees and dams are required to: (1) Register and maintain entries regarding such structures with the USACE National Levee Database or National Inventory of Dams; (2) ensure that the structure is admitted in the USACE PL 84–99 Program (Levee Rehabilitation and Inspection Program); (3) ensure the structure is accredited under the FEMA National Flood Insurance Program; (4) enter the exact location of the structure and the area served and protected by the structure into the DRGR system; and (5) maintain file documentation demonstrating that the grantee has conducted a risk assessment before funding the flood control structure and documentation that the investment includes risk reduction measures.

II.D. Economic Revitalization and Section 3 Requirements on Economic Opportunities

CDBG–DR funds can be used for CDBG–DR eligible activities related to economic revitalization. The attraction, retention, and return of businesses and jobs to a disaster-impacted area is critical to long-term recovery. Accordingly, for CDBG–DR purposes, economic revitalization may include any CDBG–DR eligible activity that demonstrably restores and improves the local economy through job creation and retention or by expanding access to goods and services. The most common CDBG–DR eligible activities to support economic revitalization are outlined in 24 CFR 570.203 and 570.204 and sections 105(a)(14), (15), and (17) of the HCDA.

Based on the U.S. Change Research Program's Fourth National Climate Assessment, climate-related natural hazards, extreme events, and natural disasters disproportionately affect LMI individuals who belong to underserved communities because they are less able to prepare for, respond to, and recover from the impacts of extreme events and natural hazards, or are members of communities that have experienced significant disinvestment and historic discrimination. Therefore, HUD is imposing the following alternative requirement: When funding activities under section 105(a) of the HCDA that support economic revitalization, grantees must prioritize those underserved communities that have been impacted by the disaster and that were economically distressed before the disaster, as described further below in II.D.1.

The term ''underserved communities'' refers to 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. Underserved communities that were economically distressed before the disaster include, but are not limited to, those areas that were designated as a Promise Zone, Opportunity Zone, a Neighborhood Revitalization Strategy Area, a tribal area, or those areas that meet at least one of the distress criteria established for the designation of an investment area of Community Development Financial Institution at 12 CFR 1805.201(b)(3)(ii)(D).

Grantees undertaking an economic revitalization activity must maintain supporting documentation to demonstrate how the grantee has prioritized underserved communities for purposes of its activities that support economic revitalization, as described below in II.D.1.

II.D.1. *Prioritizing economic revitalization assistance—alternative requirement.* When funding activities outlined in 24 CFR 570.203 and 570.204 and sections 105(a)(14), (15), and (17) of the HCDA, HUD is instituting an alternative requirement in addition to the other requirements in these provisions to require grantees to prioritize assistance to disaster-impacted businesses that serve underserved communities and spur economic opportunity for underserved communities that were economically distressed before the disaster.

II.D.2. *National objective documentation for activities that support economic revitalization.* 24 CFR 570.208(a)(4)(i)&(ii), 24 CFR 570.483(b)(4)(i)&(ii), 24 CFR 570.506(b)(5)&(6), and 24 CFR 1003.208(d) are waived to allow the grantees under the Consolidated Notice to identify the LMI jobs benefit by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job. HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family. This method replaces the standard CDBG requirement—in which grantees must review the annual wages or salary of a job in comparison to the person's total household income and size (*i.e.,* the number of persons). Thus, this method streamlines the documentation process by allowing the collection of wage data for each position created or retained from the assisted businesses, rather than from each individual household.

II.D.3. *Public benefit for activities that support economic revitalization.* When applicable, the public benefit provisions set standards for individual economic development activities (such as a single loan to a business) and for the aggregate of all economic development activities. Economic development activities support economic revitalization. Currently, public benefit standards limit the amount of CDBG assistance per job retained or created, or the amount of CDBG assistance per LMI person to whom goods or services are provided by the activity. These dollar thresholds can impede recovery by limiting the amount of assistance the grantee may provide to a critical activity.

HUD waives the public benefit standards at 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6), and 570.209(b)(1), (2), (3)(i), (4), and 24 CFR 1003.302(c) for all economic development activities. Paragraph (g) of 24 CFR 570.482 and paragraph (c) and (d) under 570.209 are also waived to the extent these provisions are related to public benefit. However, grantees that choose to take advantage of this waiver in lieu of complying with public benefit standards under the existing regulatory requirements shall be subject to the following condition: Grantees shall collect and maintain documentation in the project file on the creation and retention of total jobs; the number of jobs within appropriate salary ranges, as determined by the grantee; the average amount of assistance provided per job, by activity or program; and the types of jobs. Additionally, grantees shall report the total number of jobs created and retained and the applicable national objective in the DRGR system.

II.D.4. *Clarifying note on Section 3 worker eligibility and documentation requirements.* Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) applies to CDBG–DR activities that are Section 3 projects, as defined at 24 CFR 75.3(a)(2). The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent. CDBG–DR grantees are directed to HUD's guidance published in CPD Notice 2021–09, ''Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992, final rule requirements for CDBG, CDBG–CV, CDBG–DR, CDBG–Mitigation (CDBG–MIT), NSP, Section 108, and RHP projects,'' as amended (*https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-09cpdn.pdf*). All direct recipients of CDBG–DR funding must report Section 3 information through the DRGR system.

II.D.5. *Waiver and modification of the job relocation clause to permit assistance to help a business return.* CDBG requirements prevent program participants from providing assistance to a business to relocate from one labor market area to another if the relocation is likely to result in a significant loss of jobs in the labor market from which the business moved. This prohibition can be a critical barrier to reestablishing and rebuilding a displaced employment base after a major disaster. Therefore, 42 U.S.C. 5305(h), 24 CFR 570.210, 24 CFR 570.482(h), and 24 CFR 1003.209, are waived to allow a grantee to provide assistance to any business that was operating in the disaster-declared labor market area before the incident date of the applicable disaster and has since moved, in whole or in part, from the affected area to another state or to another labor market area within the same state to continue business.

II.D.6. *Underwriting.* Notwithstanding section 105(e)(1) of the HCDA, no CDBG–DR funds may be provided to a for-profit entity for an economic development project under section 105(a)(17) of the HCDA unless such project has been evaluated and selected in accordance with guidelines developed by HUD pursuant to section 105(e)(2) of the HCDA for evaluating and selecting economic development projects. Grantees and their subrecipients are required to comply with the underwriting guidelines in Appendix A to 24 CFR part 570 if they are using grant funds to provide assistance to a for-profit entity for an

economic development project under section 105(a)(17) of the HCDA. The underwriting guidelines are found at Appendix A of 24 CFR part 570.

II.D.7. *Limitation on use of funds for eminent domain.* CDBG–DR funds may not be used to support any Federal, state, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use. For purposes of this paragraph, public use shall not be construed to include economic development that primarily benefits private entities. The following shall be considered a public use for the purposes of eminent domain: Any use of funds for (1) mass transit, railroad, airport, seaport, or highway projects; (2) utility projects that benefit or serve the general public, including energy related, communication-related, water related, and wastewater-related infrastructure; (3) other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government; and (4) projects for the removal of an immediate threat to public health and safety, including the removal of a brownfield as defined in the Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107–118).

III. Grant Administration

III.A. Pre-Award Evaluation of Management and Oversight of Funds

III.A.1. *Certification of financial controls and procurement processes, and adequate procedures for proper grant management.* Appropriations acts require that the Secretary certify that the grantee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act, 42 U.S.C. 5155, to ensure timely expenditure of funds, to maintain a comprehensive website regarding all disaster recovery activities assisted with these funds, and to detect and prevent waste, fraud, and abuse of funds.

III.A.1.a. *Documentation requirements.* To enable the Secretary to make this certification, each grantee must submit to HUD the certification documentation listed below. This information must be submitted within 60 days of the applicability date of the Allocation Announcement Notice, or with the grantee's submission of its action plan in DRGR as described in section III.C.1, whichever date is earlier. If required by appropriations acts, grant agreements will not be executed until the Secretary has issued a certification for the grantee. For each of the items (1) through (6) below (collectively referred to as the ''Financial Management and Grant Compliance Certification Requirements'') the grantee must certify to the accuracy of its submission when submitting the Financial Management and Grant Compliance Certification Checklist (the ''Certification Checklist''). The Certification Checklist is a document that incorporates all of the Financial Management and Grant Compliance Certification Requirements. Not all of the requirements in (1) through (6) below are appropriate or applicable to Indian tribes. Therefore, Indian tribes that receive an allocation directly from HUD may request an alternative method to document support for the Secretary's certification.

(1) Proficient financial management controls. A grantee has proficient financial management controls if each of the following criteria is satisfied:

(a) The grantee agency administering this grant submits its most recent single audit and consolidated annual financial report (CAFR), which in HUD's determination indicates that the grantee has no material weaknesses, deficiencies, or concerns that HUD considers to be relevant to the financial management of CDBG, CDBG–DR, or CDBG–MIT funds. If the single audit or CAFR identified weaknesses or deficiencies, the grantee must provide documentation satisfactory to HUD showing how those weaknesses have been removed or are being addressed.

(b) The grantee has completed and submitted the certification documentation required in the applicable Certification Checklist. The grantee's documentation must demonstrate that the standards meet the requirements in the Consolidated Notice and the Certification Checklist.

(2) Each grantee must provide HUD its procurement processes for review, so HUD may evaluate the grantee's processes to determine that they are based on principles of full and open competition. A grantee's procurement processes must comply with the procurement requirements at section IV.B.

(a) A state grantee has proficient procurement processes if HUD determines that its processes uphold the principles of full and open competition and include an evaluation of the cost or price of the product or service, and if its procurement processes reflect that it:

(i) Adopted 2 CFR 200.318 through 200.327;

(ii) follows its own state procurement policies and procedures and establishes requirements for procurement processes for local governments and subrecipients based on full and open competition pursuant to 24 CFR 570.489(g), and the requirements for the state, its local governments, and subrecipients include evaluation of the cost or price of the product or service; or

(iii) adopted 2 CFR 200.317, meaning that it will follow its own state procurement processes and evaluate the cost or price of the product or service, but impose 2 CFR 200.318 through 200.327 on its subrecipients.

(b) A local government grantee has proficient procurement processes if the processes are consistent with the specific applicable procurement standards identified in 2 CFR 200.318 through 200.327. When the grantee provides a copy of its procurement processes, it must indicate the sections that incorporate these provisions.

(c) An Indian tribe grantee has proficient procurement processes if its procurement standards are consistent with procurement requirements in 2 CFR part 200 imposed by 24 CFR 1003.501, and additional procurement requirements in 1003.509(e) and 1003.510.

(3) Duplication of benefits. A grantee has adequate policies and procedures to prevent the duplication of benefits (DOB) if the grantee submits and identifies a uniform process that reflects the requirements in section IV.A of the Consolidated Notice, including:

(a) Determining all disaster assistance received by the grantee or applicant and all reasonably identifiable financial assistance available to the grantee or applicant, as applicable, before committing funds or awarding assistance;

(b) determining a grantee's or an applicant's unmet need(s) for CDBG–DR assistance before committing funds or awarding assistance; and

(c) requiring beneficiaries to enter into a signed agreement to repay any duplicative assistance if they later receive additional assistance for the same purpose for which the CDBG–DR award was provided. The grantee must identify a method to monitor compliance with the agreement for a reasonable period (*i.e.,* a time period commensurate with risk) and must articulate this method in its policies and procedures, including the basis for the period during which the grantee will monitor compliance. This agreement must also include the following language: ''Warning: Any person who knowingly makes a false claim or statement to HUD or causes another to do so may be subject to civil or criminal penalties under 18 U.S.C. 2, 287, 1001 and 31 U.S.C. 3729.''

Policies and procedures of the grantee submitted to support the certification must provide that before the award of assistance, the grantee will use the best, most recent available data from FEMA, the Small Business Administration (SBA), insurers, and any other sources of local, state, and Federal sources of funding to prevent the duplication of benefits.

(4) Timely expenditures. A grantee has adequate policies and procedures to determine timely expenditures if it submits policies and procedures that indicate the following to HUD: How it will track and document expenditures of the grantee and its subrecipients (both actual and projected reported in performance reports); how it will account for and manage program income; how it will reprogram funds in a timely manner for activities that are stalled; and how it will project expenditures of all CDBG–DR funds within the period provided for in section V.A.

(5) Comprehensive disaster recovery website. A grantee has adequate policies and procedures to maintain a comprehensive accessible website if it submits policies and procedures indicating to HUD that the grantee will have a separate web page dedicated to its disaster recovery activities assisted with CDBG–DR funds that includes the information described at section III.D.1.d.–e. The procedures must also indicate the frequency of website updates. At minimum, grantees must update their website quarterly.

(6) Procedures to detect and prevent fraud, waste, and abuse. A grantee has adequate procedures to detect and prevent fraud, waste, and abuse if it submits procedures that indicate:

(a) How the grantee will verify the accuracy of information provided by applicants;

(b) the criteria to be used to evaluate the capacity of potential subrecipients;

(c) the frequency with which the grantee will monitor other agencies of the grantee that will administer CDBG–DR funds, and how it will monitor subrecipients, contractors, and other program participants, and why monitoring is to be conducted and which items are to be monitored;

(d) it has or will hire an internal auditor that provides both programmatic and financial oversight of grantee activities, and has adopted policies that describes the auditor's role in detecting fraud, waste, and abuse, which policies must be submitted to HUD;

(e)(i) for states or grantees subject to the same requirements as states, a written standard of conduct and conflicts of interest policy that complies with the requirements of 24 CFR 570.489(g) and (h) and subparagraph III.A.1.a(2)(a) of the Consolidated Notice, which policy includes the process for promptly identifying and addressing such conflicts;

(ii) for units of general local government or grantees subject to the same requirements as units of general local government, a written standard of conduct and conflicts of interest policy that complies with 24 CFR 570.611 and 2 CFR 200.318, as applicable, which includes the process for promptly identifying and addressing such conflicts;

(iii) for Indian tribes, a written standard of conduct and conflicts of interest policy that complies with 24 CFR 1003.606, as applicable; and

(f) it assists in investigating and taking action when fraud occurs within the grantee's CDBG–DR activities and/or programs. All grantees receiving CDBG–DR funds for the first time shall attend and require subrecipients to attend fraud related training provided by HUD OIG, when offered, to assist in the proper management of CDBG–DR grant funds. Instances of fraud, waste, and abuse should be referred to the HUD OIG Fraud Hotline (phone: 1–800–347–3735 or email: *hotline@hudoig.gov*).

Following a disaster, property owners and renters are frequently the targets of persons fraudulently posing as government employees, creditors, mortgage servicers, insurance adjusters, and contractors. The grantee's procedures must address how the grantee will make CDBG–DR beneficiaries aware of the risks of contractor fraud and other potentially fraudulent activity that can occur in communities recovering from a disaster. Grantees must provide CDBG–DR beneficiaries with information that raises awareness of possible fraudulent activity, how the fraud can be avoided, and what local or state agencies to contact to take action and protect the grantee and beneficiary investment. The grantee's procedures must address the steps it will take to assist a CDBG–DR beneficiary if the beneficiary experiences contractor or other fraud. If the beneficiary is eligible for additional assistance as a result of the fraudulent activity and the creation of remaining unmet need, the procedures must also address what steps the grantee will follow to provide the additional assistance.

III.A.1.b. *Relying on prior submissions—financial management and grant compliance certification requirements.* This section only applies once a grantee has received a CDBG–DR grant through an Allocation Announcement Notice that makes the Consolidated Notice applicable. After that original grant, if a CDBG–DR grantee is awarded a subsequent CDBG–DR grant, HUD will rely on the grantee's prior submissions provided in response to the Financial Management and Grant Compliance Certification Requirements in the Consolidated Notice. HUD will continue to monitor the grantee's submissions and updates made to policies and procedures during the normal course of business. The grantee must notify HUD of any substantial changes made to these submissions.

If a CDBG–DR grantee is awarded a subsequent CDBG–DR grant, and it has been more than three years since the executed grant agreement for the original CDBG–DR grant or a subsequent grant is equal to or greater than ten times the amount of the original CDBG–DR grant, grantees must update and resubmit the documentation required by paragraph III.A.1.a. with the completed Certification Checklist to enable the Secretary to certify that the grantee has in place proficient financial controls and procurement processes, and adequate procedures for proper grant management. However, the Secretary may require any CDBG–DR grantee to update and resubmit the documentation required by paragraph III.A.1.a., if there is good cause to require it.

III.A.2. *Implementation plan.* HUD requires each grantee to demonstrate that it has sufficient capacity to manage the CDBG–DR funds and the associated risks. Grantees must evidence their management capacity through their implementation plan submissions. These submissions must meet the criteria below and must be submitted within 120 days of the applicability date of the governing Allocation Announcement Notice or with the grantee's submission of its action plan, whichever is earlier, unless the grantee has requested, and HUD has approved an extension of the submission deadline.

III.A.2.a. To enable HUD to assess risk as described in 2 CFR 200.206, the grantee will submit an implementation plan to HUD. The implementation plan must describe the grantee's capacity to carry out the recovery and how it will address any capacity gaps. HUD will determine that the grantee has sufficient management capacity to adequately reduce risk if the grantee submits implementation plan documentation that addresses (1) through (3) below:

(1) Capacity assessment. The grantee identifies the lead agency responsible for implementation of the CDBG–DR award and indicates that the head of that agency will report directly to the chief executive officer of the jurisdiction. The grantee has conducted an assessment of its capacity to carry out CDBG–DR recovery efforts and has developed a timeline with milestones describing when and how the grantee will address all capacity gaps that are identified. The assessment must include a list of any open CDBG–DR findings and an update on the corrective actions undertaken to address each finding.

(2) Staffing. The grantee must submit an organizational chart of its department or division and must also provide a table that clearly indicates which personnel or organizational unit will be responsible for each of the Financial Management and Grant Compliance Certification Requirements identified in section III.A.1.a. along with staff contact information, if available (*i.e.,* personnel responsible for conducting DOB analysis, timely expenditure, website management, monitoring and compliance, and financial management). The grantee must also submit documentation demonstrating that it has assessed staff capacity and identified positions for the purpose of: Case management in proportion to the applicant population; program managers who will be assigned responsibility for each primary recovery area; staff who have demonstrated experience in housing, infrastructure (as applicable), and economic revitalization (as applicable); staff responsible for procurement/contract management, regulations implementing Section 3 of the Housing and Urban Development Act of 1968, as amended (24 CFR part 75) (Section 3), fair housing compliance, and environmental compliance. An adequate plan must also demonstrate that the internal auditor and responsible audit staff report independently to the chief elected or executive officer or board of the governing body of any designated administering entity.

The grantee's implementation plan must describe how it will provide technical assistance for any personnel that are not employed by the grantee at the time of action plan submission, and to fill gaps in knowledge or technical expertise required for successful and timely recovery. State grantees must also include how it plans to provide technical assistance to subgrantees and subrecipients, including units of general local government.

(3) Internal and interagency coordination. The grantee's plan must describe how it will ensure effective communication between different departments and divisions within the grantee's organizational structure that are involved in CDBG–DR-funded recovery efforts, mitigation efforts, and environmental review requirements, as appropriate; between its lead agency and subrecipients responsible for implementing the grantee's action plan; and with other local and regional planning efforts to ensure consistency. The grantee's submissions must demonstrate how it will consult with other relevant government agencies, including the State Hazard Mitigation Officer (SHMO), State or local Disaster Recovery Coordinator, floodplain administrator, and any other state and local emergency management agencies, such as public health and environmental protection agencies, that have primary responsibility for the administration of FEMA or USACE funds.

III.A.2.b. *Relying on prior submissions—Implementation plan.* This section only applies once a grantee has received a CDBG–DR grant through an Allocation Announcement Notice that makes the Consolidated Notice applicable. After that

original grant, if a CDBG–DR grantee is awarded a subsequent CDBG–DR grant, HUD will rely on the grantee's implementation plan submitted for its original CDBG–DR grant unless it has been more than three years since the executed grant agreement for the original CDBG–DR grant or the subsequent grant is equal to or greater than ten times the amount of its original CDBG–DR grant.

If a CDBG–DR grantee is awarded a subsequent CDBG–DR grant, and it has been more than three years since the executed grant agreement for its original CDBG–DR grant or a subsequent grant is equal to or greater than ten times the amount of the original CDBG–DR grant, the grantee is to update and resubmit its implementation plan to reflect any changes to its capacity, staffing, and coordination.

III.B. Administration, Planning, and Financial Management

III.B.1. *Grant administration and planning.*

III.B.1.a. *Grantee responsibilities.* Each grantee shall administer its award in compliance with all applicable laws and regulations and shall be financially accountable for the use of all awarded funds. CDBG–DR grantees must comply with the recordkeeping requirements of 24 CFR 570.506 and 24 CFR 570.490, as amended by the Consolidated Notice waivers and alternative requirements. All grantees must maintain records of performance in DRGR, as described elsewhere in the Consolidated Notice.

III.B.1.b. *Grant administration cap.* Up to five percent of the grant (plus five percent of program income generated by the grant) can be used for administrative costs by the grantee, units of general local government, or subrecipients. Thus, the total of all costs classified as administrative for a CDBG–DR grant must be less than or equal to the five percent cap (plus five percent of program income generated by the grant). The cap for administrative costs is subject to the combined technical assistance and administrative cap for state grantees as discussed in section III.B.2.a.

III.B.1.c. *Use of funds for administrative costs across multiple grants.* The Additional Supplemental Appropriations for Disaster Relief Act, 2019 (Pub. L. 116–20) authorized special treatment for eligible administrative costs for grantees that received awards under Public Laws 114–113, 114–223, 114–254, 115–31, 115–56, 115–123, 115–254, 116–20, or any future act. The Consolidated Notice permits grantees to use eligible administrative funds (up to five percent of each grant award plus up to five percent of program income generated by the grant) for the cost of administering any of these grants awarded under the identified Public Laws (including future Acts) without regard to the particular disaster appropriation from which such funds originated. To exercise this authority, the grantee must ensure that it has appropriate financial controls to guarantee that the amount of grant administration expenditures for each of the aforementioned grants will not exceed five percent of the total grant award for each grant (plus five percent of program income generated by the grant). The grantee must review and modify any financial management policies and procedures regarding the tracking and accounting of administration costs as necessary.

III.B.1.d. *Planning expenditures cap.* Both state and local government grantees are limited to spending a maximum of fifteen percent of their total grant amount on planning costs. Planning costs subject to the 15 percent cap are those defined in 42 U.S.C. 5305(a)(12) and more broadly in 24 CFR 570.205.

III.B.2. *State grantees only.*

III.B.2.a. *Combined technical assistance and administrative cap (state grantees only).* The provisions of 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii), and 24 CFR 570.489(a)(2) shall not apply to the extent that they cap administration and technical assistance expenditures, limit a state's ability to charge a nominal application fee for grant applications for activities the state carries out directly, and require a dollar-for-dollar match of state funds for administrative costs exceeding $100,000. 42 U.S.C. 5306(d)(5) and (6) are waived and replaced with the alternative requirement that the aggregate total for administrative and technical assistance expenditures must not exceed five percent of the grant, plus five percent of program income generated by the grant.

III.B.2.b. *Planning-only activities (state grantees only).* The State CDBG Program requires that, for planning-only grants, local government grant recipients must document that the use of funds meets a national objective. In the CDBG Entitlement Program, these more general planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4). HUD notes that almost all effective recoveries in the past have relied on some form of area-wide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. To assist state grantees, HUD is waiving the requirements at 24 CFR 570.483(b)(5) and (c)(3), which limit the circumstances under which the planning activity can meet a low- and moderate-income or slum-and-blight national objective. Instead, as an alternative requirement, 24 CFR 570.208(d)(4) applies to states when funding disaster recovery-assisted, planning-only grants, or when directly administering planning activities that guide disaster recovery. In addition, 42 U.S.C. 5305(a)(12) is waived to the extent necessary so the types of planning activities that states may fund or undertake are expanded to be consistent with those of CDBG Entitlement grantees identified at 24 CFR 570.205.

III.B.2.c. *Direct grant administration and means of carrying out eligible activities (state grantees only).* Requirements at 42 U.S.C. 5306(d) are waived to allow a state to use its disaster recovery grant allocation directly to carry out state-administered activities eligible under the Consolidated Notice, rather than distribute all funds to local governments. Pursuant to this waiver and alternative requirement, the standard at 24 CFR 570.480(c) and the provisions at 42 U.S.C. 5304(e)(2) will also include activities that the state carries out directly. Activities eligible under the Consolidated Notice may be carried out by a state, subject to state law and consistent with the requirement of 24 CFR 570.200(f), through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients. State grantees continue to be responsible for civil rights, labor standards, and environmental protection requirements, for compliance with 24 CFR 570.489(g) and (h), and subparagraph III.A.1.a.(2)(a) of the Consolidated Notice relating to conflicts of interest, and for compliance with 24 CFR 570.489(m) relating to monitoring and management of subrecipients.

A state grantee may also carry out activities in tribal areas. A state must coordinate with the Indian tribe with jurisdiction over the tribal area when providing CDBG–DR assistance to beneficiaries in tribal areas. State grantees carrying out projects in tribal areas, either directly or through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients, must obtain the consent of the Indian tribe with jurisdiction over the tribal area to allow the state grantee to carry out or to fund CDBG–DR projects in the area.

III.B.2.d. *Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties (state grantees only).* 42 U.S.C. 5302(a)(7) (definition of ''nonentitlement area'') and related provisions of 24 CFR part 570, including 24 CFR 570.480, are waived to permit state grantees to distribute CDBG–DR funds to units of local government and Indian tribes.

III.B.2.e. *Use of subrecipients (state grantees only).* Paragraph III.B.2.c. provides a waiver and alternative requirement that a state may carry out activities directly, including through assistance provided under agreements with subrecipients. Therefore, when states carry out activities directly through subrecipients, the following alternative requirements apply: The state is subject to the definition of subrecipients at 24 CFR 570.500(c) and must adhere to the requirements for agreements with subrecipients at 24 CFR 570.503. Additionally, 24 CFR 570.503(b)(4) is modified to require the subrecipient to comply with applicable uniform requirements, as described in 24 CFR 570.502, except that the subrecipient shall follow procurement requirements imposed by the state in accordance with subparagraph III.A.1.a.(2) of the Consolidated Notice. When 24 CFR 570.503 applies, notwithstanding 24 CFR 570.503(b)(5)(i), units of general local government that are subrecipients are defined as recipients under 24 CFR part 58 and are therefore responsible entities that assume environmental review responsibilities, as described in III.F.5. Grantees are reminded that they are responsible for providing on-going oversight and monitoring of subrecipients and are ultimately responsible for subrecipient compliance with all CDBG–DR requirements.

III.B.2.f. *Recordkeeping (state grantees only).* When a state carries out activities directly, 24 CFR 570.490(b) is waived and the following alternative provision shall apply: A state grantee shall establish and maintain

such records as may be necessary to facilitate review and audit by HUD of the state's administration of CDBG–DR funds, under 24 CFR 570.493 and reviews and audits by the state under III.B.2.h. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the state shall be sufficient to: (a) Enable HUD to make the applicable determinations described at 24 CFR 570.493; (b) make compliance determinations for activities carried out directly by the state; and (c) show how activities funded are consistent with the descriptions of activities proposed for funding in the action plan and/or DRGR system. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.

III.B.2.g. *Change of use of real property (state grantees only).* This alternative requirement conforms the change of use of real property rule to the waiver allowing a state to carry out activities directly. For purposes of these grants, all references to ''unit of general local government'' in 24 CFR 570.489(j), shall be read as ''state, local governments, or Indian tribes (either as subrecipients or through a method of distribution), or other state subrecipient.''

III.B.2.h. *Responsibility for review and handling of noncompliance (state grantees only).* This change is in conformance with the waiver allowing a state to carry out activities directly. 24 CFR 570.492 is waived, and the following alternative requirement applies for any state receiving a direct award: The state shall make reviews and audits, including on-site reviews of any local governments or Indian tribes (either as subrecipients or through a method of distribution) designated public agencies, and other subrecipients, as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the HCDA, as amended, and as modified by the Consolidated Notice. In the case of noncompliance with these requirements, the state shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The state shall establish remedies for noncompliance by any subrecipients, designated public agencies, or local governments.

III.B.2.i. *Consultation (state grantees only).* Currently, the HCDA and regulations require a state grantee to consult with affected local governments in nonentitlement areas of the state in determining the state's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 42 U.S.C. 5306(d)(2)(D), 24 CFR 91.325(b)(2), and 24 CFR 91.110, and imposing an alternative requirement that states receiving an allocation of CDBG–DR funds consult with all disaster-affected local governments (including any CDBG-entitlement grantees), Indian tribes, and any public housing authorities in determining the use of funds. This approach ensures that a state grantee sufficiently assesses the recovery needs of all areas affected by the disaster.

III.C. Action Plan for Disaster Recovery Waiver and Alternative Requirement

Requirements for CDBG actions plans, located at 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(a)(1), 42 U.S.C. 5306(d)(2)(C)(iii), 42 U.S.C. 12705(a)(2), and 24 CFR 91.220 and 91.320, are waived for CDBG–DR grants. Instead, grantees must submit to HUD an action plan for disaster recovery which will describe programs and activities that conform to applicable requirements as specified in the Consolidated Notice and the applicable Allocation Announcement Notice. HUD will monitor the grantee's actions and use of funds for consistency with the plan, as well as meeting the performance and timeliness objectives therein. The Secretary will disapprove all action plans that are substantially incomplete if it is determined that the plan does not satisfy all of the required elements identified in the Consolidated Notice and the applicable Allocation Announcement Notice.

III.C.1. *Action plan.* The grantee's action plan must identify the use of all funds—including criteria for eligibility and how the uses address long-term recovery needs, restoration of infrastructure and housing, economic revitalization, and the incorporation of mitigation measures in the MID areas. HUD created the Public Action Plan in DRGR which is a function that allows grantees to develop and submit their action plans for disaster recovery directly into DRGR. Grantees must use HUD's Public Action Plan in DRGR to develop all CDBG–DR action plans and substantial amendments submitted to HUD for approval. The Public Action Plan is different from the DRGR Action Plan, which is a comprehensive description of projects and activities in DRGR.

The grantee must describe the steps it will follow to make the action plan, substantial amendments, performance reports, and other relevant program materials available in a form accessible to persons with disabilities and those with limited English proficiency (LEP). All grantees must include sufficient information in its action plan so that all interested parties will be able to understand and comment on the action plan. The action plan (and subsequent amendments) must include a single chart or table that illustrates, at the most practical level, how all funds are budgeted (*e.g.,* by program, subrecipient, grantee-administered activity, or other category). The grantee must certify, as required by section III.F.7., that activities to be undertaken with CDBG–DR funds are consistent with its action plan.

The action plan must contain:

III.C.1.a. *An impact and unmet needs assessment.* Each grantee must develop an impact and unmet needs assessment to understand the type and location of community needs and to target limited resources to those areas with the greatest need. CDBG–DR grantees must conduct an impact and unmet needs assessment to inform the use of the grant. Grantees must cite data sources in the impact and unmet needs assessment. At a minimum, the impact and unmet needs assessment must:

- Evaluate all aspects of recovery including housing (interim and permanent, owner and rental, single family and multifamily, affordable and market rate, and housing to meet the needs of persons who were experiencing homelessness pre-disaster), infrastructure, and economic revitalization needs, while also incorporating mitigation needs into activities that support recovery as required in section II.A.2.;
- Estimate unmet needs to ensure CDBG–DR funds meet needs that are not likely to be addressed by other sources of funds by accounting for the various forms of assistance available to, or likely to be available to, affected communities (*e.g.,* projected FEMA funds) and individuals (*e.g.,* estimated insurance) and, using the most recent available data, estimating the portion of need unlikely to be addressed by insurance proceeds, other Federal assistance, or any other funding sources;
- Assess whether public services (*e.g.,* housing counseling, legal advice and representation, job training, mental health, and general health services) are necessary to complement activities intended to address housing, infrastructure, and economic revitalization and how those services would need to be made accessible to individuals with disabilities including, but not limited to, mobility, sensory, developmental, emotional, cognitive, and other impairments;
- Describe the extent to which expenditures for planning activities, including the determination of land use goals and policies, will benefit the HUD-identified MID areas, as described in section II.A.3.;
- Describe disaster impacts geographically by type at the lowest level practicable (*e.g.,* county/parish level or lower if available for states, and neighborhood or census tract level for cities); and
- Take into account the costs and benefits of incorporating hazard mitigation measures to protect against the specific identified impacts of future extreme weather events and other natural hazards. This analysis should factor in historical and projected data on risk that incorporates best available science (*e.g.,* the most recent National Climate Assessment).

Disaster recovery needs evolve over time and grantees must amend the impact and unmet needs assessment and action plan as additional needs are identified and additional resources become available. At a minimum, grantees must revisit and update the impact and unmet needs assessment when moving funds from one program to another through a substantial amendment.

III.C.1.b. *Connection of programs and projects to unmet needs.* The grantee must describe the connection between identified unmet needs and the allocation of CDBG–DR resources. The plan must provide a clear connection between a grantee's impact and unmet needs assessment and its proposed programs and projects in the MID areas (or outside in connection to the MID areas as described in section II.A.3). Such description must demonstrate a reasonably proportionate allocation of resources relative to areas and categories (*i.e.,* housing, economic revitalization, and infrastructure) of greatest needs identified in the grantee's impact and unmet needs assessment or provide an acceptable justification for a disproportional

allocation, while also incorporating hazard mitigation measures to reduce the impacts of recurring natural disasters and the long-term impacts of climate change. Grantee action plans may provide for the allocation of funds for administration and planning activities and for public service activities, subject to the caps on such activities as described in the Consolidated Notice.

III.C.1.c. *Public housing, affordable rental housing, and housing for vulnerable populations.* Each grantee must include a description of how it has analyzed, identified, and will address (with CDBG–DR or other sources) the disaster-related rehabilitation, reconstruction, and new construction needs in the MID-area of the types of housing described below. Specifically, a grantee must assess and describe how it will address unmet needs in the following types of housing, subject to the applicable HUD program requirements: Public housing, affordable rental housing (including both subsidized and market rate affordable housing), and housing for vulnerable populations (See Section III.C.1.c.iii below), including emergency shelters and permanent housing for persons experiencing homelessness, in the areas affected by the disaster. Grantees must coordinate with local public housing authorities (PHA) in the MID areas to ensure that the grantee's representation in the action plan reflects the input of those entities as well as coordinating with State Housing Finance agencies to make sure that all funding sources that are available and opportunities for leverage are noted in the action plan.

(i) *Public housing:* Describe unmet public housing needs of each disaster-impacted PHA within its jurisdiction, if applicable. The grantee must work directly with impacted PHAs in identifying necessary and reasonable costs and ensuring that adequate funding from all available sources is dedicated to addressing the unmet needs of damaged public housing (*e.g.,* FEMA, insurance, and funds available from programs administered by HUD's Office of Public and Indian Housing).

(ii) *Affordable rental housing:* Describe unmet affordable rental housing needs for LMI households as a result of the disaster or exacerbated by the disaster, including private market units receiving project-based rental assistance or with tenants that participate in the Section 8 Housing Choice Voucher Program, and any other housing that is assisted under a HUD program in the MID areas. Identify funding to specifically address these unmet needs for affordable rental housing to LMI households. If a grantee is proposing an allocation of CDBG–DR funds for affordable rental housing needs, the action plan must, at a minimum, meet the requirements described in II.B.3.

(iii) *Housing for vulnerable populations:* Describe how CDBG–DR or other funding sources available will promote housing for vulnerable populations, as defined in section III.C.1.d., in the MID area, including how it plans to address: (1) Transitional housing, including emergency shelters and housing for persons experiencing homelessness, permanent supportive housing, and permanent housing needs of individuals and families (including subpopulations) that are experiencing or at risk of experiencing homelessness; (2) the prevention of low-income individuals and families with children (especially those with incomes below thirty percent of the area median) from becoming homeless; (3) the special needs of persons who are not experiencing homelessness but require supportive housing (*i.e.,* elderly, frail elderly, persons with disabilities (mental, physical, developmental, etc.), victims of domestic violence, persons with alcohol or other substance-use disorder, persons with HIV/AIDS and their families, and public housing residents, as identified in 24 CFR 91.315(e)).

III.C.1.d. *Fair housing, civil rights data, and advancing equity.* The grantee must use its CDBG–DR funds in a manner that complies with its fair housing and nondiscrimination obligations, including title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.,* the Fair Housing Act, 42 U.S.C. 3601–19, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, the Americans with Disabilities Act of 1990, 42 U.S.C. 12131 *et seq.,* and Section 109 of the HCDA, 42 U.S.C. 5309. To ensure that the activities performed in connection with the action plan will comply with these requirements, the grantee must provide an assessment of whether its planned use of CDBG–DR funds will have an unjustified discriminatory effect on or failure to benefit racial and ethnic minorities in proportion to their communities' needs, particularly in racially and ethnically concentrated areas of poverty, and how it will address the recovery needs of impacted individuals with disabilities.

Grantees should also consider the impact of their planned use of CDBG–DR funds on other protected class groups under fair housing and civil rights laws, vulnerable populations, and other historically underserved communities. For purposes of the Consolidated Notice, HUD defines vulnerable populations as a group or community whose circumstances present barriers to obtaining or understanding information or accessing resources. In the action plan, grantees should identify those populations (*i.e.,* which protected class, vulnerable population, and historically underserved groups were considered) and how those groups can be expected to benefit from the activities set forth in the plan consistent with the civil rights requirements set forth above.

To perform such an assessment, grantees must include data for the HUD-identified and grantee-identified MID areas that identifies the following information, as it is available:

- Racial and ethnic make-up of the population, including relevant sub-populations depending on activities and programs outlined in the plan (this would include renters and homeowners if eligibility is dependent on housing tenure) and the specific sub- geographies in the MID areas in which those programs and activities will be carried out;
- LEP populations, including number and percentage of each identified group;
- Number and percentage of persons with disabilities;
- Number and percentage of persons belonging to Federally protected classes under the Fair Housing Act (race, color, national origin, religion, sex—which includes sexual orientation and gender identity—familial status, and disability) and other vulnerable populations as determined by the grantee;
- Indigenous populations and tribal communities, including number and percentage of each identified group;
- Racially and ethnically concentrated areas and concentrated areas of poverty; and
- Historically distressed and underserved communities;

Grantees must explain how the use of funds will reduce barriers that individuals may face when enrolling in and accessing CDBG–DR assistance, for example, barriers imposed by a lack of outreach to their community or by the lack of information in non-English languages or accessible formats for individuals with different types of disabilities.

Grantees are strongly encouraged to include examples of how their proposed allocations, selection criteria, and other actions can be expected to advance equity for protected class groups. Grantees are strongly encouraged to explain and provide examples of how their actions can be expected to advance the following objectives:

- Equitably benefit protected class groups in the MID areas, including racial and ethnic minorities, and sub geographies in the MID areas in which residents belonging to such groups are concentrated;
- To the extent consistent with purposes and uses of CDBG–DR funds, overcome prior disinvestment in infrastructure and public services for protected class groups, and areas in which residents belonging to such groups are concentrated, when addressing unmet needs;
- Enhance for individuals with disabilities in the MID areas (a) the accessibility of disaster preparedness, resilience, or recovery services, including the accessibility of evacuation services and shelters; (b) the provision of critical disaster-related information in accessible formats; and/or (c) the availability of integrated, accessible housing and supportive services.

Grantees must identify the proximity of natural and environmental hazards (*e.g.,* industrial corridors, sewage treatment facilities, waterways, EPA superfund sites, brownfields, etc.) to affected populations in the MID area, including members of protected classes, vulnerable populations, and underserved communities and explore how CDBG–DR activities may mitigate environmental concerns and increase resilience among these populations to protect against the effects of extreme weather events and other natural hazards.

Grantees must also describe how their use of CDBG–DR funds is consistent with their obligation to affirmatively further fair housing. HUD regulations at 24 CFR 5.151 provide that affirmatively furthering fair housing means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on

protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.

State and local government grantees must submit a certification to AFFH in accordance with 24 CFR 5.150, *et seq.* CDBG–DR grantees must also comply with the recordkeeping requirements of 24 CFR 570.506 and 24 CFR 570.490(b), as amended by the Consolidated Notice.

III.C.1.e. *Infrastructure.* In its action plan, each grantee must include a description of how it plans to meet the requirements of the Consolidated Notice, including how it will: Promote sound, sustainable long-term recovery planning as described in this section; adhere to the elevation requirements established in section II.C.2.; and coordinate with local and regional planning efforts as described in section III.B.2.i and III.D.1.a. All infrastructure investments must be designed and constructed to withstand chronic stresses and extreme events by identifying and implementing resilience performance metrics as described in section II.A.2.c.

If a grantee is allocating funds for infrastructure, its description must include:

(1) How it will address the construction or rehabilitation of disaster-related systems (*e.g.,* storm water management systems) or other disaster-related community-based mitigation systems (*e.g.,* using FEMA's community lifelines). State grantees carrying out infrastructure activities must work with units of general local government and Indian tribes in the MID areas to identify the unmet needs and associated costs of needed disaster-related infrastructure improvements;

(2) How mitigation measures and strategies to reduce natural hazard risks, including climate-related risks, will be integrated into rebuilding activities;

(3) The extent to which CDBG–DR funded infrastructure activities will achieve objectives outlined in regionally or locally established plans and policies that are designed to reduce future risk to the jurisdiction;

(4) How the grantee will evaluate the costs and benefits in selecting infrastructure projects to assist with CDBG–DR funds;

(5) How the grantee will align infrastructure investments with other planned federal, state, or local capital improvements and infrastructure development efforts, and will work to foster the potential for additional infrastructure funding from multiple sources, including state and local capital improvement projects in planning, and the potential for private investment;

(6) How the grantee will employ adaptable and reliable technologies to prevent premature obsolescence of infrastructure; and

(7) How the grantee will invest in restoration of infrastructure and related long-term recovery needs within historically underserved communities that lacked adequate investments in housing, transportation, water, and wastewater infrastructure prior to the disaster.

III.C.1.f. *Minimize Displacement.* A description of how the grantee plans to minimize displacement of persons or entities, and assist any persons or entities displaced, and ensure accessibility needs of displaced persons with disabilities. Specifically, grantees must detail how they will meet the Residential Anti-displacement and Relocation Assistance Plan (RARAP) requirements in section IV.F.7. Grantees must indicate to HUD whether they will be amending an existing RARAP or creating a new RARAP specific to CDBG–DR. Grantees must meet the requirements related to the RARAP prior to implementing any activity with CDBG–DR grant funds, such as buyouts and other disaster recovery activities. Grantees must seek to minimize displacement or adverse impacts from displacement, consistent with the requirements of Section IV.F of the Consolidated Notice, Section 104(d) of the HCDA (42 U.S.C. 5304(d)) and implementing regulations at 24 CFR part 42, and 24 CFR 570.488 or 24 CFR 570.606, as applicable. Grantees must describe how they will plan and budget for relocation activities in the action plan.

III.C.1.g. *Allocation and award caps.* The grantee must provide a budget for the full amount of the allocation that is reasonably proportionate to its unmet needs (or provide an acceptable justification for disproportional allocation) and is consistent with the requirements to integrate hazard mitigation measures into all its programs and projects. The grantee shall provide a description of each disaster recovery program or activity to be funded, including the CDBG–DR eligible activities and national objectives associated with each program and the eligibility criteria for assistance. The grantee shall also describe the maximum amount of assistance (*i.e.,* award cap) available to a beneficiary under each of the grantee's disaster recovery programs. A grantee may find it necessary to provide exceptions on a case-by-case basis to the maximum amount of assistance and must describe the process it will use to make such exceptions in its action plan. At a minimum, each grantee must adopt policies and procedures that communicate how it will analyze the circumstances under which an exception is needed and how it will demonstrate that the amount of assistance is necessary and reasonable. Each grantee must also indicate in its action plan that it will make exceptions to the maximum award amounts when necessary, to comply with federal accessibility standards or to reasonably accommodate a person with disabilities.

III.C.1.h. *Cost controls and warranties.* The grantee must provide a description of the standards to be established for construction contractors performing work in the jurisdiction and the mechanisms to be used by the grantee to assist beneficiaries in responding to contractor fraud, poor quality work, and associated issues. Grantees must require a warranty period post-construction with a formal notification to beneficiaries on a periodic basis (*e.g.,* 6 months and one month before expiration date of the warranty). Each grantee must also describe its controls for assuring that construction costs are reasonable and consistent with market costs at the time and place of construction.

III.C.1.i. *Resilience planning.* Resilience is defined as a community's ability to minimize damage and recover quickly from extreme events and changing conditions, including natural hazard risks. At a minimum, the grantee's action plan must contain a description of how the grantee will: (a) Emphasize high quality design, durability, energy efficiency, sustainability, and mold resistance; (b) support adoption and enforcement of modern and/or resilient building codes that mitigate against natural hazard risks, including climate-related risks (*e.g.,* sea level rise, high winds, storm surge, flooding, volcanic eruption, and wildfire risk, where appropriate and as may be identified in the jurisdiction's rating and identified weaknesses (if any) in building code adoption using FEMA's Nationwide Building Code Adoption Tracking (BCAT) portal), and provide for accessible building codes and standards, as applicable; (c) establish and support recovery efforts by funding feasible, cost-effective measures that will make communities more resilient against a future disaster; (d) make land-use decisions that reflect responsible and safe standards to reduce future natural hazard risks, *e.g.,* by adopting or amending an open space management plan that reflects responsible floodplain and wetland management and takes into account continued sea level rise, if applicable, and (e) increase awareness of the hazards in their communities (including for members of protected classes, vulnerable populations, and underserved communities) through outreach to the MID areas.

While the purpose of CDBG–DR funds is to recover from a Presidentially declared disaster, integrating hazard mitigation and resilience planning with recovery efforts will promote a more resilient and sustainable long-term recovery. The action plan must include a description of how the grantee will promote sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, including climate-related natural hazards and the creation of resilience performance metrics as described in paragraph II.A.2.c. of the Consolidated Notice. This information should be based on the history of FEMA and other federally-funded disaster mitigation efforts and, as appropriate, take into account projected increases in sea level, the frequency and intensity of extreme weather events, and worsening wildfires. Grantees must use the FEMA-approved Hazard Mitigation Plan (HMP), Community Wildfire Protection Plan (CWPP), or other resilience plans to inform the evaluation, and it should be referenced in the action plan.

III.C.2. *Additional action plan requirements for states.* For state grantees, the action plan must describe how the grantee will distribute grant funds, either through specific programs and projects the grantee will carry out directly (through employees, contractors, or through subrecipients), or through a method of

distribution of funds to local governments and Indian tribes (as permitted by III.B.2.d.). The grantee shall describe how the method of distribution to local governments or Indian tribes, or programs/projects carried out directly, will result in long-term recovery from specific impacts of the disaster.

All states must include in their action plan the information outlined in (1) through (7) below (in addition to other information required by section III.C.). For states using a method of distribution, if some required information is unknown when the grantee is submitting its action plan to HUD (*e.g.,* the list of programs or activities required by III.C.1.g. or the projected use of CDBG–DR funds by responsible entity as required by subparagraph (5) below), the grantee must update the action plan through a substantial amendment once the information is known. If necessary to comply with a statutory requirement that a grantee shall submit a plan detailing the proposed use of all funds prior to HUD's obligation of grant funds, HUD may obligate only a portion of grant funds until the substantial amendment providing the required information is submitted and approved by HUD.

(1) How the impact and unmet needs assessment informs funding determinations, including the rationale behind the decision(s) to provide funds to most impacted and distressed areas.

(2) When funds are subgranted to local governments or Indian tribes (either as subrecipients or through a method of distribution), all criteria used to allocate and award the funds including the relative importance of each criterion (including any priorities). If the criteria are unknown when the grantee is submitting the initial action plan to HUD, the grantee must update the action plan through a substantial amendment once the information is known. The substantial amendment must be submitted and approved before distributing the funds to a local government or Indian tribe.

(3) How the distribution and selection criteria will address disaster-related unmet needs in a manner that does not have an unjustified discriminatory effect based on race or other protected class and ensure the participation of minority residents and those belonging to other protected class groups in the MID areas. Such description should include an assessment of who may be expected to benefit, the timing of who will be prioritized, and the amount or proportion of benefits expected to be received by different communities or groups (*e.g.,* the proportion of benefits going to different locations within the MID or to homeowners versus renters).

(4) The threshold factors and recipient or beneficiary grant size limits that are to be applied.

(5) The projected uses for the CDBG–DR funds, by responsible entity, activity, and geographic area.

(6) For each proposed program and/or activity, its respective CDBG activity eligibility category (or categories), national objective(s), and what disaster-related impact is addressed, as described in section II.A.1.

(7) When applications are solicited for programs carried out directly, all criteria used to select applications for funding, including the relative importance of each criterion, and any eligibility requirements. If the criteria are unknown when the grantee is submitting the initial action plan to HUD, the grantee must update the action plan through a substantial amendment once the information is known. The substantial amendment must be submitted and approved before selecting applications.

III.C.3. *Additional action plan requirements for local governments.* For local governments grantees, the action plan shall describe specific programs and/or activities they will carry out. The action plan must also describe:

(1) How the impact and unmet needs assessment informs funding determinations, including the rationale behind the decision(s) to provide funds to most impacted and distressed areas.

(2) All criteria used to select applications (including any priorities), including the relative importance of each criterion, and any eligibility requirements. If the criteria are unknown when the grantee is submitting the initial action plan to HUD, the grantee must update the action plan through a substantial amendment once the information is known. The substantial amendment must be submitted and approved before selecting applications.

(3) How the distribution and selection criteria will address disaster-related unmet needs in a manner that does not have an unjustified discriminatory effect and ensures the participation of minority residents and those belonging to other protected class groups in the MID areas, including with regards to who may benefit, the timing of who will be prioritized, and the amount or proportion of benefits expected to be received by different communities or groups (*e.g.,* the proportion of benefits going to different locations within the MID or to homeowners versus renters).

(4) The threshold factors and grant size limits that are to be applied.

(5) The projected uses for the CDBG–DR funds, by responsible entity, activity, and geographic area.

(6) For each proposed program and/or activity, its respective CDBG activity eligibility category (or categories), national objective(s), and what disaster-related impact is addressed, as described in section II.A.1. of the Consolidated Notice.

III.C.4. *Waiver of 45-day review period for CDBG–DR action plans to 60 days.* HUD may disapprove an action plan or substantial action plan amendment if it is incomplete. HUD works with grantees to resolve or provide additional information during the review period to avoid the need to disapprove an action plan or substantial action plan amendments. There are several issues related to the action plan as submitted that can be fully resolved via further discussion and revision during an extended review period, rather than through HUD disapproval of the plan, which in turn would require grantees to take additional time to revise and resubmit their respective plan. Therefore, the Secretary has determined that good cause exists and waives 24 CFR 91.500(a) to extend HUD's action plan review period from 45 days to 60 days.

The action plan (including SF–424 and certifications) must be submitted to HUD for review and approval using DRGR. By submitting required standard forms (that must be submitted with the action plan), the grantee is providing assurances that it will comply with statutory requirements, including, but not limited to civil rights requirements. Applicants and recipients are required to submit assurances of compliance with federal civil rights requirements. A grantee will use DRGR's upload function to include the SF 424 (including SF 424B and SF 424D, as applicable) and certifications with its action plan. Grantees receiving an allocation are required to submit an action plan within 120 days of the applicability date of the Allocation Announcement Notice, unless the grantee has requested, and HUD has approved an extension of the submission deadline. HUD will then review each action plan within 60 days from the date of receipt.

During its review, HUD typically provides grantees with comments on the submitted plan to avoid the need to disapprove an action plan and offers a grantee the opportunity to make updates to the action plan during the first forty-five days of HUD's initial sixty-day review period. If a grantee wants to make updates to the action plan, HUD will reject the Public Action Plan in DRGR to return the plan to the grantee. Then, once the grantee resubmits the plan, HUD reviews the revised plan within the initial sixty-day period. HUD is establishing an alternative process that offers a grantee the option to voluntarily provide a revised action plan, updated to respond to HUD's comments, no later than day forty-five in HUD's sixty-day review. A grantee is not required to participate in the revisions of the action plan during this time, but with the understanding that an action plan may be determined to be substantially incomplete. The Secretary may disapprove an action plan as substantially incomplete if HUD determines that the action plan does not meet the requirements of the Consolidated Notice and the applicable Allocation Announcement Notice.

III.C.5. *Obligation and expenditure of funds.* Once HUD approves the action plan and approves certifications if required by appropriations acts, it will then sign a grant agreement obligating allocated funds to the grantee. The grantee will continue the action plan process in DRGR to draw funds (see section V.C.1.).

The grantee must meet the applicable environmental requirements before the use or commitment of funds for each activity. After the Responsible Entity (1) completes environmental review(s) pursuant to 24 CFR part 58 and receives from HUD an approved Request for Release of Funds and certification (as applicable), or (2) adopts another Federal agency's environmental review, approval, or permit and receives from HUD (or the state) an approved Request for Release of Funds and certification (as applicable), the grantee may draw down funds from the line of credit for an activity. The disbursement of grant funds must begin no later than 180 calendar days after HUD executes a grant agreement with the grantee. Failure to draw funds within this timeframe

may result in HUD's review of the grantee's certification of its financial controls, procurement processes, and capacity, and may result in the imposition of any corrective actions deemed appropriate by HUD pursuant to 24 CFR 570.495, 24 CFR 570.910, or 24 CFR 1003.701.

III.C.6. *Amending the action plan.* The grantee must amend its action plan to update its needs assessment, modify or create new activities, or reprogram funds, as necessary, in the DRGR system. Each amendment must be published on the grantee's official website and describe the changes within the context of the entire action plan. A grantee's current version of its entire action plan must be accessible for viewing as a single document at any given point in time, rather than require the public or HUD to view and cross-reference changes among multiple amendments. HUD's DRGR system will include the capabilities necessary for a grantee to sufficiently identify the changes for each amendment. When a grantee has finished amending the content in the Public Action Plan, the grantee will click ''Submit Plan'' in the DRGR system. The DRGR system will prompt the grantee to select the ''Public Action Plan'' and identify the amendment type (substantial or nonsubstantial). The grantee will complete this cover page to describe each amendment. At a minimum, the grantee must: (1) Identify exactly what content is being added, deleted, or changed; (2) clearly illustrate where funds are coming from and where they are moving to; and (3) include a revised budget allocation table that reflects the entirety of all funds, as amended.

III.C.6.a. *Substantial amendment.* In its action plan, each grantee must specify criteria for determining what changes in the grantee's plan constitute a substantial amendment to the plan. At a minimum, the following modifications will constitute a substantial amendment: A change in program benefit or eligibility criteria; the addition or deletion of an activity; a proposed reduction in the overall benefit requirement, as outlined in III.F.2.; or the allocation or reallocation of a monetary threshold specified by the grantee in their action plan. For all substantial amendments, the grantee must follow the same procedures required for the preparation and submission of an action plan for disaster recovery, with the exception of the public hearing requirements described in section III.D.1.b. and the consultation requirements described in section III.D.1.a., which are not required for substantial amendments. A substantial action plan amendment shall require a 30-day public comment period.

III.C.6.b *Nonsubstantial amendment.* The grantee must notify HUD, but is not required to seek public comment, when it makes any plan amendment that is not substantial. Although nonsubstantial amendments do not require HUD's approval to become effective, the DRGR system must approve the amendment to change the status of the Public Action Plan to ''reviewed and approved.'' The DRGR system will automatically approve the amendment by the fifth day, if not completed by HUD sooner.

III.C.7. *Projection of expenditures and outcomes.* Each grantee must submit projected expenditures and outcomes with the action plan. The projections must be based on each quarter's expected performance—beginning with the first quarter funds are available to the grantee and continuing each quarter until all funds are expended. The grantee will use DRGR's upload feature to include projections and accomplishments for each program created.

III.D. Citizen Participation Requirements

III.D.1. *Citizen participation waiver and alternative requirement.* To permit a more streamlined process and ensure disaster recovery grants are awarded in a timely manner, provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 24 CFR 1003.604, 24 CFR 91.105(b) through (d), and 24 CFR 91.115(b) through (d), with respect to citizen participation requirements, are waived and replaced by the alternative requirements in this section. The streamlined requirements require the grantee to include public hearings on the proposed action plan and provide a reasonable opportunity (at least 30 days) for citizen comment.

The grantee must follow a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 or 91.105 (except as provided for in notices providing waivers and alternative requirements). Each local government receiving assistance from a state grantee must follow a detailed citizen participation plan that satisfies the requirements of 24 CFR 570.486 (except as provided for in notices providing waivers and alternative requirements).

In addition to the requirements above, the streamlined citizen participation alternative requirements for CDBG–DR grants are as follows:

III.D.1.a. *Requirement for consultation during plan preparation.* All grantees must consult with states, Indian tribes, local governments, Federal partners, nongovernmental organizations, the private sector, and other stakeholders and affected parties in the surrounding geographic area, including organizations that advocate on behalf of members of protected classes, vulnerable populations, and underserved communities impacted by the disaster, to ensure consistency of the action plan with applicable regional redevelopment plans. A grantee must consult with other relevant government agencies, including state and local emergency management agencies that have primary responsibility for the administration of FEMA funds, if applicable.

III.D.1.b. *Publication of the action plan and opportunity for public comment.* Following the creation of the action plan or substantial amendment in DRGR and before the grantee submits the action plan or substantial amendment to HUD, the grantee must publish the proposed plan or amendment for public comment. The manner of publication must include prominent posting on the grantee's official disaster recovery website and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to review the plan or substantial amendment. Grantees shall consider if there are potential barriers that may limit or prohibit vulnerable populations or underserved communities and individuals affected by the disaster from providing public comment on the grantee's action plan or substantial amendment. If the grantee identifies barriers that may limit or prohibit equitable participation, the grantee must take reasonable measures to increase coordination, communication, affirmative marketing, targeted outreach, and engagement with underserved communities and individuals, including persons with disabilities and persons with LEP.

At a minimum, the topic of disaster recovery on the grantee's website must be navigable by all interested parties from the grantee homepage and must link to the disaster recovery website required by section III.D.1.e. The grantee's records must demonstrate that it has notified affected citizens through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with neighborhood organizations.

Additionally, the CDBG–DR grantee must convene at least one public hearing on the proposed action plan after it has published on its website to solicit public comment and before submittal of the action plan to HUD. If the grantee holds more than one public hearing, it must hold each hearing in a different location within the MID area in locations that the grantee determines will promote geographic balance and maximum accessibility. The minimum number of public hearings a grantee must convene on the action plan to obtain interested parties' views and to respond to comments and questions shall be determined by the amount of the grantee's CDBG–DR allocation: (1) CDBG–DR grantees with allocations under $500 million are required to hold at least one public hearing in a HUD-identified MID area; and (2) CDBG–DR grantees with allocations over $500 million or more shall convene at least two public hearings in HUD-identified MID areas.

Grantees may convene public hearings virtually (alone, or in concert with an in-person hearing). All in-person hearings must be held in facilities that are physically accessible to persons with disabilities. HUD's implementing regulations for Section 504 of the Rehabilitation Act (24 CFR part 8, subpart C) provide that where physical accessibility is not achievable, grantees must give priority to alternative methods of product or information delivery that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate. When conducting a virtual hearing, the grantee must allow questions in real time, with answers coming directly from the grantee representatives to all ''attendees.''

For both virtual and in person hearings, grantees must update their citizen participation plans to provide that hearings be held at times and locations convenient to potential and actual beneficiaries, with accommodation for persons with disabilities and appropriate auxiliary aids and services to ensure effective communication, and specify how they will meet these requirements. See 24 CFR 8.6 for HUD's regulations about effective communication. Grantees must also provide meaningful access for individuals with LEP at both in-person and virtual

hearings. In their citizen participation plan, state and local government grantees shall identify how the needs of non-English speaking residents will be met in the case of virtual and in-person public hearings where a significant number of non-English speaking residents can be reasonably expected to participate. In addition, for both virtual or in-person hearings, the grantee shall provide reasonable notification and access for citizens in accordance with the grantee's certifications at III.F.7.g., timely responses to all citizen questions and issues, and public access to all questions and responses.

III.D.1.c. *Consideration of public comments.* The grantee must provide a reasonable time frame (no less than 30 days) and method(s) (including electronic submission) for receiving comments on the action plan or substantial amendment. The grantee must consider all oral and written comments on the action plan or any substantial amendment. Any updates or changes made to the action plan in response to public comments should be clearly identified in the action plan. A summary of comments on the plan or amendment, and the grantee's response to each, must be included (*e.g.,* uploaded) in DRGR with the action plan or substantial amendment. Grantee responses shall address the substance of the comment rather than merely acknowledge that the comment was received.

III.D.1.d. *Availability and accessibility of documents.* The grantee must make the action plan, any substantial amendments, vital documents, and all performance reports available to the public on its website. See the following guidance for more information on vital documents: *https://www.lep.gov/guidance/HUD_guidance_Jan07.pdf.* In addition, the grantee must make these documents available in a form accessible to persons with disabilities and those with LEP. Grantees must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons, including members of protected classes, vulnerable populations, and individuals from underserved communities. In their citizen participation plan, state and local government grantees shall describe their procedures for assessing their language needs and identify any need for translation of notices and other vital documents. At a minimum, the citizen participation plan shall require that the state or local government grantee take reasonable steps to provide language assistance to ensure meaningful access to participation by non-English-speaking residents of the grantee's jurisdiction.

III.D.1.e. *Public website.* The grantee must maintain a public website that permits individuals and entities awaiting assistance and the general public to see how all grant funds are used and administered. The website must include copies of all relevant procurement documents and, except as noted in the next paragraph, all grantee administrative contracts, details of ongoing procurement processes, and action plans and amendments. The public website must be accessible to persons with disabilities and individuals with LEP.

To meet this requirement, each grantee must make the following items available on its website: The action plan created using DRGR (including all amendments); each performance report (as created using the DRGR system); citizen participation plan; procurement policies and procedures; all contracts, as defined in 2 CFR 200.22, that will be paid with CDBG–DR funds (including, but not limited to, subrecipients' contracts); and a summary including the description and status of services or goods currently being procured by the grantee or the subrecipient (*e.g.,* phase of the procurement, requirements for proposals, etc.). Contracts and procurement actions that do not exceed the micro-purchase threshold, as defined in 2 CFR 200.1, are not required to be posted to a grantee's website.

III.D.1.f. *Application status.* The grantee must provide multiple methods of communication, such as websites, toll-free numbers, TTY and relay services, email address, fax number, or other means to provide applicants for recovery assistance with timely information to determine the status of their application.

III.D.1.g. *Citizen complaints.* The grantee will provide a timely written response to every citizen complaint. The grantee response must be provided within fifteen working days of the receipt of the complaint, or the grantee must document why additional time for the response was required. Complaints regarding fraud, waste, or abuse of government funds should be forwarded to the HUD OIG Fraud Hotline (phone: 1–800–347–3735 or email: *hotline@hudoig.gov*).

III.D.1.h. *General requirements.* For plan publication, the comprehensive disaster recovery website and vital documents must ensure effective communication for individuals with disabilities, as required by 24 CFR 8.6 and the Americans with Disabilities Act, as applicable. In addition to ensuring the accessibility of the comprehensive disaster recovery website and vital documents, this obligation includes the requirement to provide auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities, which may take the form of the furnishing of the above referenced materials in alternative formats (24 CFR 8.6(a)(1)). When required by III.D.1.d., grantees must take reasonable steps to ensure meaningful access for individuals with LEP.

III.E. Program Income

III.E.1. *Program income waiver and alternative requirement.* For state and unit of general local government grantees, HUD is waiving all applicable program income rules at 42 U.S.C. 5304(j), 24 CFR 570.489(e), 24 CFR 570.500, and 24 CFR 570.504 and providing the alternative requirement described below. Program income earned by Indian tribes that receive an allocation from HUD will be governed by the regulations at 24 CFR 1003.503 until grant closeout and not by the waivers and alternative requirements in this Consolidated Notice. Program income earned by Indian tribes that are subrecipients of state grantees or local government grantees will be subject to the program income requirements for subrecipients of those grantees.

III.E.1.a. *Definition of program income.* ''Program income'' is defined as gross income generated from the use of CDBG–DR funds, except as provided in III.E.1.b., and received by a state, local government, Indian tribe receiving funds from a grantee, or their subrecipients. When income is generated by an activity that is only partially assisted with CDBG–DR funds, the income shall be prorated to reflect the percentage of CDBG–DR funds used (*e.g.,* a single loan supported by CDBG–DR funds and other funds, or a single parcel of land purchased with CDBG–DR funds and other funds). If CDBG funds are used with CDBG–DR funds on an activity, any income earned on the CDBG portion would not be subject to the waiver and alternative requirement in the Consolidated Notice.

Program income includes, but is not limited to, the following:

(i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG–DR funds.

(ii) Proceeds from the disposition of equipment purchased with CDBG–DR funds.

(iii) Gross income from the use or rental of real or personal property acquired by a state, local government, or subrecipient thereof with CDBG–DR funds, less costs incidental to generation of the income.

(iv) Gross income from the use or rental of real property owned by a state, local government, or subrecipient thereof, that was constructed or improved with CDBG–DR funds, less costs incidental to generation of the income.

(v) Payments of principal and interest on loans made using CDBG–DR funds.

(vi) Proceeds from the sale of loans made with CDBG–DR funds.

(vii) Proceeds from the sale of obligations secured by loans made with CDBG–DR funds.

(viii) Interest earned on program income pending disposition of the income, including interest earned on funds held in a revolving fund account.

(ix) Funds collected through special assessments made against nonresidential properties and properties owned and occupied by non-LMI households, where the special assessments are used to recover all or part of the CDBG–DR portion of a public improvement.

(x) Gross income paid to a state, local government, or subrecipient thereof, from the ownership interest in a for-profit entity in which the income is in return for the provision of CDBG–DR assistance.

III.E.1.b. *Program income—does not include:*

(i) The total amount of funds that is less than $35,000 received in a single year and retained by a state, local government, or a subrecipient thereof.

(ii) Amounts generated by activities eligible under section 105(a)(15) of the HCDA and carried out by an entity under the authority of section 105(a)(15) of the HCDA.

III.E.1.c. *Retention of program income.* State grantees may permit a local government that receives or will receive program income to retain the program income but are not required to do so.

III.E.1.d. *Program income—use, close out, and transfer.*

(i) Program income received (and retained, if applicable) before or after closeout of the

grant that generated the program income, and used to continue disaster recovery activities, is treated as additional CDBG–DR funds subject to the requirements of the Consolidated Notice and must be used in accordance with the grantee's action plan for disaster recovery. To the maximum extent feasible, program income shall be used or distributed before additional withdrawals from the U.S. Treasury are made, except as provided in III.E.1.e. below.

(ii) In addition to the alternative requirements dealing with program income required above, the following rules apply:

(1) A state or local government grantee may transfer program income to its annual CDBG program before closeout of the grant that generated the program income. In addition, state grantees may transfer program income before closeout to any annual CDBG-funded activities carried out by a local government within the state.

(2) Program income received by a grantee, or received and retained by a subrecipient, after closeout of the grant that generated the program income, may also be transferred to a grantee's annual CDBG award.

(3) In all cases, any program income received that is not used to continue the disaster recovery activity will not be subject to the waivers and alternative requirements of the Consolidated Notice. Rather, those funds will be subject to the state or local government grantee's regular CDBG program rules. Any other transfer of program income not specifically addressed in the Consolidated Notice may be carried out if the grantee first seeks and then receives HUD's approval.

III.E.1.e. *Revolving funds.* State and local government grantees may establish revolving funds to carry out specific, identified activities. State grantees may also establish a revolving fund to distribute funds to local governments or tribes to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities. These activities must generate payments used to support similar activities going forward. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the U.S. Treasury for payments that could be funded from the revolving fund. Such program income is not required to be disbursed for nonrevolving fund activities. A revolving fund established by a CDBG–DR grantee shall not be directly funded or capitalized with CDBG–DR grant funds, pursuant to 24 CFR 570.489(f)(3).

III.F. Other General Waivers and Alternative Requirements

III.F.1. *Consolidated Plan waiver.* HUD is temporarily waiving the requirement for consistency with the consolidated plan (requirements at 42 U.S.C. 12706, 24 CFR 91.225(a)(5), and 24 CFR 91.325(a)(5)), because the effects of a major disaster alter a grantee's priorities for meeting housing, employment, and infrastructure needs. In conjunction, 42 U.S.C. 5304(e) is also waived, to the extent that it would require HUD to annually review grantee performance under the consistency criteria. These waivers apply only for 24 months after the applicability date of the grantee's applicable Allocation Announcement Notice. If the grantee is not scheduled to submit a new three-to five-year consolidated plan within the next two years, the grantee must update its existing three-to five-year consolidated plan to reflect disaster-related needs no later than 24 months after the applicability date of the grantee's applicable Allocation Announcement Notice.

III.F.2. *Overall benefit requirement.* The primary objective of the HCDA is the ''development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income'' (42 U.S.C. 5301(c)). Consistent with the HCDA, this notice requires grantees to comply with the overall benefit requirements in the HCDA and 24 CFR 570.484, 24 CFR 570.200(a)(3), and 24 CFR 1003.208, which require that 70 percent of funds be used for activities that benefit LMI persons. For purposes of a CDBG–DR grant, HUD is establishing an alternative requirement that the overall benefit test shall apply only to the grant of CDBG–DR funds described in the Allocation Announcement Notice and related program income.

A grantee may seek to reduce the overall benefit requirement below 70 percent of the total grant, but must submit a substantial amendment as provided in section III.C.6.a. in the Consolidated Notice, and provide a justification that, at a minimum: (a) Identifies the planned activities that meet the needs of its LMI population; (b) describes proposed activities and programs that will be affected by the alternative requirement, including their proposed location(s) and role(s) in the grantee's long-term disaster recovery plan; (c) describes how the activities/programs identified in (b) prevent the grantee from meeting the 70 percent requirement; (d) demonstrates that LMI persons' disaster-related needs have been sufficiently met and that the needs of non-LMI persons or areas are disproportionately greater, and that the jurisdiction lacks other resources to serve non-LMI persons; and (e) demonstrates a compelling need for HUD to lower the percentage of the grant that must benefit low- and moderate-income persons.

III.F.3. *Use of the urgent need national objective.* Because HUD provides CDBG–DR funds only to grantees with documented disaster-related impacts and each grantee is limited to spending funds only for the benefit of areas that received a Presidential disaster declaration, the Secretary finds good cause to waive the urgent need national objective criteria in section 104(b)(3) of the HCDA and to establish the following alternative requirement for any CDBG–DR grantee using the urgent need national objective for a period of 36 months after the applicability date of the grantee's Allocation Announcement Notice.

Pursuant to this alternative requirement, grantees that use the urgent need national objective must: (1) Describe in the impact and unmet needs assessment why specific needs have a particular urgency, including how the existing conditions pose a serious and immediate threat to the health or welfare of the community; (2) identify each program or activity in the action plan that will use the urgent need national objective—either through its initial action plan submission or through a substantial amendment submitted by the grantee within 36 months of the applicability date of the grantee's Allocation Announcement Notice; and (3) document how each program and/or activity funded under the urgent need national objective in the action plan responds to the urgency, type, scale, and location of the disaster-related impact as described in the grantee's impact and unmet needs assessment.

The grantee's action plan must address all three criteria described above to use the alternative urgent need national objective for the program and/or activity. This alternative urgent need national objective is in effect for a period of 36 months following the applicability date of the grantee's Allocation Announcement Notice. After 36 months, the grantee will be required to follow the criteria established in section 104(b)(3) of the HCDA and its implementing regulations in 24 CFR part 570 when using the urgent need national objective for any new programs and/or activities added to an action plan.

III.F.4. *Reimbursement of disaster recovery expenses by a grantee or subrecipient.* The provisions of 24 CFR 570.489(b) are applied to permit a state grantee to charge to the grant otherwise allowable costs incurred by the grantee, its recipients or subrecipients (including Indian tribes and PHAs) on or after the incident date of the covered disaster. A local government grantee is subject to the provisions of 24 CFR 570.200(h) but may reimburse itself or its subrecipients for otherwise allowable costs incurred on or after the incident date of the covered disaster. Section 570.200(h)(1)(i) is waived to the extent that it requires pre-agreement activities to be included in the local government's consolidated plan. As an alternative requirement, grantees must include any pre-agreement activities in their action plans, including any costs of eligible activities that were funded with short-term loans (*e.g.,* bridge loans) and that the grantee intends to reimburse or otherwise charge to the grant, consistent with applicable program requirements.

III.F.5. *Reimbursement of pre-application costs of homeowners, renters, businesses, and other qualifying entities.* Grantees are permitted to charge to grants the pre-award and pre-application costs of homeowners, renters, businesses, and other qualifying entities for eligible costs these applicants have incurred in response to an eligible disaster covered under a grantees' applicable Allocation Announcement Notice. For purposes of the Consolidated Notice, pre-application costs are costs incurred by an applicant to CDBG–DR funded programs before the time of application to a grantee or subrecipient, which may be before (pre-award) or after the grantee signs its CDBG–DR grant agreement. In addition to the terms described in the remainder of the Consolidated Notice, grantees may only charge costs to the grant that meet the following requirements:

• Grantees may only charge the costs for rehabilitation, demolition, and reconstruction of single family, multifamily, and nonresidential buildings, including commercial properties, owned by private individuals and entities, incurred before the owner applies to a CDBG–DR grantee, recipient, or subrecipient for CDBG–DR assistance;

• For rehabilitation and reconstruction costs, grantees may only charge costs for activities completed within the same footprint of the damaged structure, sidewalk, driveway, parking lot, or other developed area;

• As required by 2 CFR 200.403(g), costs must be adequately documented; and

• Grantees must complete a duplication of benefits check before providing assistance pursuant to section IV.A. in the Consolidated Notice.

Grantees are required to ensure that all costs charged to a CDBG–DR grant are necessary expenses related to authorized recovery purposes. Grantees may charge to CDBG–DR grants the eligible pre-application costs of individuals and private entities related to single family, multifamily, and nonresidential buildings, only if: (1) The person or private entity incurred the expenses within one year after the applicability date of the grantee's Allocation Announcement Notice (or within one year after the date of the disaster, whichever is later); and (2) the person or entity pays for the cost before the date on which the person or entity applies for CDBG–DR assistance. Exempt activities as defined at 24 CFR 58.34, but not including 24 CFR 58.34(a)(12), and categorical exclusions as defined at 24 CFR 58.35(b) are not subject to the time limit on pre-application costs outlined above. Actions that convert or potentially convert to exempt under 24 CFR 58.34(a)(12) remain subject to the reimbursement requirements provided herein. If a grantee cannot meet all requirements at 24 CFR part 58, the pre-application costs cannot be reimbursed with CDBG–DR or other HUD funds.

Grantees must comply with the necessary and reasonable cost principles for state, local, and Indian tribal governments (described at 2 CFR 200.403). Grantees must incorporate into their policies and procedures the basis for determining that the assistance provided under the terms of this provision is necessary and reasonable.

A grantee may not charge such pre-award or pre-application costs to grants if the grantee cannot meet all requirements at 24 CFR part 58. Under CDBG–DR authorizing legislation and HUD's environmental regulations in 24 CFR part 58, the CDBG–DR ''recipient'' (as defined in 24 CFR part 58.2(a)(5), which differs from the definition in 2 CFR part 200) is the responsible entity that assumes the responsibility for completing environmental reviews under Federal laws and authorities. The responsible entity assumes all legal liability for the application, compliance, and enforcement of these requirements. Pre-award costs are also allowable when CDBG–DR assistance is provided for the rehabilitation, demolition, or reconstruction of government buildings, public facilities, and infrastructure. However, in such instances, the environmental review must occur before the underlying activity (*e.g.,* rehabilitation of a government building) begins.

Grantees are also required to consult with the State Historic Preservation Officer, Fish and Wildlife Service, and National Marine Fisheries Service, to obtain formal agreements for compliance with section 106 of the National Historic Preservation Act (54 U.S.C. 306108) and section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) when designing a reimbursement program.

All grantees must follow all cross-cutting requirements, as applicable, for all CDBG–DR funded activities including but not limited to the environmental requirements above, the Davis Bacon Act, Civil Rights Requirements, HUD's Lead Safe Housing Rule, and the URA.

III.F.6. *Alternative requirement for the elevation of structures when using CDBG–DR funds as the non-Federal match in a FEMA-funded project.* Currently, CDBG–DR grantees using FEMA and CDBG–DR funds on the same activity have encountered challenges in certain circumstances in reconciling CDBG–DR elevation requirements and those established by FEMA. FEMA regulations at 44 CFR 9.11(d)(3)(i) and (ii) prohibit new construction or substantial improvements to a structure unless the lowest floor of the structure is at or above the level of the base flood and, for Critical Actions, at or above the level of the 500-year flood. However, 44 CFR 9.11(d)(3)(iii) allows for an alternative to elevation to the 100- or 500-year flood level, subject to FEMA approval, which would provide for improvements that would ensure the substantial impermeability of the structure below flood level. While FEMA may change its standards for elevation in the future, as long as the CDBG–DR grantee is following a FEMA-approved flood standard this waiver and alternative requirement will continue to apply.

FEMA funded projects generally commence well in advance of the availability of CDBG–DR funds and when CDBG–DR funds are used as match for a FEMA project that is underway, the alignment of HUD's elevation standards with any alternative standard allowed by FEMA may not be feasible and may not be cost reasonable. For these reasons, the Secretary finds good cause to establish an alternative requirement for the use of an alternative, FEMA-approved flood standard instead of the elevation requirements established in section II.B.2.c. and II.C.2. of the Consolidated Notice.

The alternative requirements apply when: (a) CDBG–DR funds are used as the non-Federal match for FEMA assistance; (b) the FEMA-assisted activity, for which CDBG–DR funds will be used as match, commenced before HUD's obligation of CDBG–DR funds to the grantee; and (c) the grantee has determined and demonstrated with records in the activity file that implementation costs of the required CDBG–DR elevation or flood proofing requirements are not reasonable costs, as that term is defined in the applicable cost principles at 2 CFR 200.404.

III.F.7. *Certifications waiver and alternative requirement.* Sections 104(b)(4), (c), and (m) of the HCDA (42 U.S.C. 5304(b)(4), (c) & (m)), sections 106(d)(2)(C) & (D) of the HCDA (42 U.S.C. 5306(d)(2)(C) & (D)), and section 106 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12706), and regulations at 24 CFR 91.225 and 91.325 are waived and replaced with the following alternative. Each grantee receiving an allocation under an Allocation Announcement Notice must make the following certifications with its action plan:

a. The grantee certifies that it has in effect and is following a residential anti-displacement and relocation assistance plan (RARAP) in connection with any activity assisted with CDBG–DR grant funds that fulfills the requirements of Section 104(d), 24 CFR part 42, and 24 CFR part 570, as amended by waivers and alternative requirements.

b. The grantee certifies its compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.

c. The grantee certifies that the action plan for disaster recovery is authorized under state and local law (as applicable) and that the grantee, and any entity or entities designated by the grantee, and any contractor, subrecipient, or designated public agency carrying out an activity with CDBG–DR funds, possess(es) the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations as modified by waivers and alternative requirements.

d. The grantee certifies that activities to be undertaken with CDBG–DR funds are consistent with its action plan.

e. The grantee certifies that it will comply with the acquisition and relocation requirements of the URA, as amended, and implementing regulations at 49 CFR part 24, as such requirements may be modified by waivers or alternative requirements.

f. The grantee certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 75.

g. The grantee certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 or 91.105 (except as provided for in waivers and alternative requirements). Also, each local government receiving assistance from a state grantee must follow a detailed citizen participation plan that satisfies the requirements of 24 CFR 570.486 (except as provided for in waivers and alternative requirements).

h. State grantee certifies that it has consulted with all disaster-affected local governments (including any CDBG-entitlement grantees), Indian tribes, and any local public housing authorities in determining the use of funds, including the method of distribution of funding, or activities carried out directly by the state.

i. The grantee certifies that it is complying with each of the following criteria:

(1) Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation in the most impacted and distressed areas for which the President

declared a major disaster pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*).

(2) With respect to activities expected to be assisted with CDBG–DR funds, the action plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families.

(3) The aggregate use of CDBG–DR funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 70 percent (or another percentage permitted by HUD in a waiver) of the grant amount is expended for activities that benefit such persons.

(4) The grantee will not attempt to recover any capital costs of public improvements assisted with CDBG–DR grant funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless: (a) Disaster recovery grant funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this title; or (b) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (a).

j. State and local government grantees certify that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619), and implementing regulations, and that it will affirmatively further fair housing. An Indian tribe grantee certifies that the grant will be conducted and administered in conformity with the Indian Civil Rights Act.

k. The grantee certifies that it has adopted and is enforcing the following policies, and, in addition, state grantees must certify that they will require local governments that receive their grant funds to certify that they have adopted and are enforcing:

(1) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and

(2) A policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

l. The grantee certifies that it (and any subrecipient or administering entity) currently has or will develop and maintain the capacity to carry out disaster recovery activities in a timely manner and that the grantee has reviewed the requirements applicable to the use of grant funds.

m. The grantee certifies to the accuracy of its Financial Management and Grant Compliance Certification Requirements, or other recent certification submission, if approved by HUD, and related supporting documentation as provided in section III.A.1. of the Consolidated Notice and the grantee's implementation plan and related submissions to HUD as provided in section III.A.2. of the Consolidated Notice.

n. The grantee certifies that it will not use CDBG–DR funds for any activity in an area identified as flood prone for land use or hazard mitigation planning purposes by the state, local, or tribal government or delineated as a Special Flood Hazard Area (or 100-year floodplain) in FEMA's most current flood advisory maps, unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain, in accordance with Executive Order 11988 and 24 CFR part 55. The relevant data source for this provision is the state, local, and tribal government land use regulations and hazard mitigation plans and the latest-issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps.

o. The grantee certifies that its activities concerning lead-based paint will comply with the requirements of 24 CFR part 35, subparts A, B, J, K, and R.

p. The grantee certifies that it will comply with environmental requirements at 24 CFR part 58.

q. The grantee certifies that it will comply with the provisions of title I of the HCDA and with other applicable laws.

Warning: Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001, and 31 U.S.C. 3729.

III.G. Ineligible Activities in CDBG–DR

Any activity that is not authorized under Section 105(a) of the HCDA is ineligible to be assisted with CDBG–DR funds, unless explicitly allowed by waiver and alternative requirement in the Consolidated Notice. Additionally, the uses described below are explicitly prohibited.

III.G.1. *Prohibition on compensation.* Grantees shall not use CDBG–DR funds to provide compensation to beneficiaries for losses stemming from disaster related impacts. Grantees may, however, reimburse disaster-impacted beneficiaries based on the pre-application costs incurred by the beneficiary to complete an eligible activity. Reimbursement of beneficiaries for eligible activity costs are subject to the requirements established in section III.F.5. of the Consolidated Notice.

III.G.2. *Prohibition on forced mortgage payoff.* A forced mortgage payoff occurs when homeowners with an outstanding mortgage balance are required, under the terms of their loan agreement, to repay the balance of the mortgage loan before using assistance to rehabilitate or reconstruct their homes. CDBG–DR funds, however, shall not be used for a forced mortgage payoff. The ineligibility of a forced mortgage payoff with CDBG–DR funds does not affect HUD's longstanding guidance that when other non-CDBG disaster assistance is taken by lenders for a forced mortgage payoff, those funds are not considered to be available to the homeowner and do not constitute a duplication of benefits for the purpose of housing rehabilitation or reconstruction.

III.G.3. *Prohibiting assistance to private utilities.* HUD is adopting the following alternative requirement to section 105(a) and prohibiting the use of CDBG–DR funds to assist a privately-owned utility for any purpose.

IV. Other Program Requirements

IV.A. Duplication of Benefits

The grantee must comply with section 312 of the Stafford Act, as amended, which prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster for which such person, business concern, or other entity has received financial assistance under any other program or from insurance or any other source. To comply with section 312, a person or entity may receive financial assistance only to the extent that the person or entity has a disaster recovery need that has not been fully met. Grantees must also establish policies and procedures to provide for the repayment of a CDBG–DR award when assistance is subsequently provided for that same purpose from any other source. Grantees may be subject to additional DOB requirements described in a separate notice. The applicable Allocation Announcement Notice will describe any additional requirements, as applicable.

Subsidized loans are financial assistance and therefore can duplicate financial assistance provided from another source unless an exception in IV.A.1. applies.

IV.A.1. *Exceptions when subsidized loans are not a duplication.* When an exception described in paragraphs IV.A.1.a. or IV.A.1.b. applies, documentation required by those paragraphs must be maintained by the grantee. Without this documentation, any approved but undisbursed portion of a subsidized loan must be included in the grantee's calculation of the total assistance amount unless another exception applies. For cancelled SBA loans, the grantee must notify the SBA that the applicant has agreed to not take any actions to reinstate the cancelled loan or draw any additional undisbursed loan amounts.

IV.A.1.a. *Short-term subsidized loans for costs later reimbursed with CDBG–DR.* CDBG–DR funds may be used to reimburse pre-award costs of the grantee or subrecipient for eligible activities on or after the date of the disaster. If the grantee or subrecipient obtained a subsidized short-term loan to pay for eligible costs before CDBG–DR funds became available (for example, a low-interest loan from a local tax increment financing fund), the reimbursement of the costs paid by the loan does not create a duplication.

IV.A.1.b. *Declined or cancelled subsidized loans.* The amount of a subsidized loan that is declined or cancelled is not a DOB. To exclude declined or cancelled loan amounts from the DOB calculation, the grantee must document that all or a portion of the subsidized loan is cancelled or declined.

(i) *Declined SBA Loans:* Declined loan amounts are loan amounts that were approved or offered by a lender in response to a loan application, but were turned down by the applicant, meaning the applicant never signed loan documents to receive the loan proceeds.

CDBG–DR grantees shall not treat declined subsidized loans, including declined SBA loans, as a DOB (but are not prohibited from considering declined subsidized loans for other reasons, such as underwriting). A grantee is only required to document declined loans if information available to the grantee (*e.g.,* the data the grantee receives from FEMA, SBA, or other sources) indicates that the applicant received an offer for subsidized loan assistance, and the grantee is unable to determine from that available information that the applicant declined the loan. If the grantee is aware that the applicant received an offer of loan assistance and cannot ascertain from available data that the applicant declined the loan, the grantee must obtain a written certification from the applicant that the applicant did not accept the subsidized loan by signing loan documents and did not receive the loan.

(ii) *Cancelled Loans:* Cancelled loans are loans (or portions of loans) that were initially accepted, but for a variety of reasons, all or a portion of the loan amount was not disbursed and is no longer available to the applicant.

The cancelled loan amount is the amount that is no longer available. The loan cancellation may be due to default of the borrower, agreement by both parties to cancel the undisbursed portion of the loan, or expiration of the term for which the loan was available for disbursement. The following documentation is sufficient to demonstrate that any undisbursed portion of an accepted subsidized loan is cancelled and no longer available: (a) A written communication from the lender confirming that the loan has been cancelled and undisbursed amounts are no longer available to the applicant; or (b) a legally binding agreement between the CDBG–DR grantee (or local government, Indian tribe, or subrecipient administering the CDBG–DR assistance) and the applicant that indicates that the period of availability of the loan has passed and the applicant agrees not to take actions to reinstate the loan or draw any additional undisbursed loan amounts.

IV.B. Procurement

For a grantee to have proficient procurement processes, a grantee must: Indicate the procurement standards that apply to its use of CDBG–DR funds; indicate the procurement standards for subrecipients or local governments as applicable; comply with the standards it certified to HUD that it follows (and update the certification submissions when substantial changes are made); post the required documentation to the official website as described below; and include periods of performance and date of completion in all CDBG–DR contracts.

State grantees must comply with the procurement requirements at 24 CFR 570.489(g) and the following alternative requirements: The grantee must evaluate the cost or price of the product or service being procured. State grantees shall establish requirements for procurement processes for local governments and subrecipients based on full and open competition consistent with the requirements of 24 CFR 570.489(g), and shall require a local government or subrecipient to evaluate the cost or price of the product or service being procured with CDBG–DR funds. Additionally, if the state agency designated as the administering agency chooses to provide funding to another state agency, the administering agency must specify in its procurement processes whether the agency implementing the CDBG–DR activity must follow the procurement processes that the administering agency is subject to, or whether the agency must follow the same processes to which other local governments and subrecipients are subject, or its own procurement processes.

A grantee shall administer CDBG–DR grant funds in accordance with all applicable laws and regulations. As an alternative requirement, grantees may not delegate, by contract, or otherwise, the responsibility for administering such grant funds.

HUD is establishing an additional alternative requirement for all contracts with contractors used to provide goods and services, as follows:

1. The grantee (or procuring entity) is required to clearly state the period of performance or date of completion in all contracts;

2. The grantee (or procuring entity) must incorporate performance requirements and liquidated damages into each procured contract. Contracts that describe work performed by general management consulting services need not adhere to the requirement on liquidated damages but must incorporate performance requirements; and

3. The grantee (or procuring entity) may contract for administrative support, in compliance with 2 CFR 200.459, but may not delegate or contract to any other party any inherently governmental responsibilities related to oversight of the grant, including policy development, fair housing and civil rights compliance, and financial management.

IV.C. Use of the ''Upper Quartile'' or ''Exception Criteria''

The LMA benefit requirement is modified when fewer than one quarter of the populated-block groups in its jurisdictions contain 51 percent or more LMI persons. In such a community, activities must serve an area that contains a percentage of LMI residents that is within the upper quartile of all census-block groups within its jurisdiction in terms of the degree of concentration of LMI residents. HUD determines the lowest proportion a grantee may use to qualify an area for this purpose and advises the grantee, accordingly. The ''exception criteria'' applies to CDBG–DR funded activities in jurisdictions covered by such criteria, including jurisdictions that receive disaster recovery funds from a state. Disaster recovery grantees are required to use the most recent data available in implementing the exception criteria (*https://www.hudexchange.info/programs/acs-low-mod-summary-data/acs-low-mod-summary-data-exception-grantees/*).

IV.D. Environmental Requirements

IV.D.1. *Clarifying note on the process for environmental release of funds when a state carries out activities directly.* For CDBG–DR grants, HUD allows state grantees to carry out activities directly and to distribute funds to subrecipients. Per 24 CFR 58.4(b)(1), when a state carries out activities directly (including through subrecipients that are not units of general local government), the state must submit the Certification and Request for Release of Funds to HUD for approval.

IV.D.2. *Adoption of another agency's environmental review.* Appropriations acts allow recipients of funds that use such funds to supplement Federal assistance provided under section 402, 403, 404, 406, 407, 408(c)(4), or 502 of the Stafford Act to adopt, without review or public comment, any environmental review, approval, or permit performed by a Federal agency. Such adoption shall satisfy the responsibilities of the recipient with respect to such environmental review, approval, or permit.

This provision allows the recipient of supplemental assistance to adopt another Federal agency's review where the HUD assistance supplements the Stafford Act, and the other Federal agency performed an environmental review for assistance under section 402, 403, 404, 406, 407, or 502 of the Stafford Act.

The other agency's environmental review must cover all project activities funded by the HUD recipient for each project. The grantee is only required to supplement the other agency's environmental review to comply with HUD regulations (*e.g.,* publication or posting requirements for Notice of Finding of No Significant Impact (FONSI), Notice of Intent to Request Release of Funds (NOI–RROF), concurrent or combined notices, or HUD approval period for objections) if the activity is modified so the other agency's environmental review no longer covers the activity. The recipient's environmental review obligations are considered complete when adopting another agency's environmental review. To be adequate:

1. The grantee must obtain a completed electronic or paper copy of the Federal agency's review and retain a copy in its environmental records.

2. The grantee must notify HUD on the Request for Release of Funds (RROF) Form 7015.15 (or the state, if the state is acting as HUD under 24 CFR 58.18) that another agency review is being used. The grantee must include the name of the other Federal agency, the name of the project, and the date of the project's review as prepared by the other Federal agency.

When permitted by the applicable appropriations acts, and notwithstanding 42 U.S.C. 5304(g)(2), the Secretary or a state may, upon receipt of a Request for Release of Funds and Certification, immediately approve the release of funds for an activity or project assisted with CDBG–DR funds if the recipient has adopted an environmental review, approval, or permit under this section, or if the activity or project is categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA).

IV.D.3. *Historic preservation reviews.* The responsible entity must comply with section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. Section 306108). Early

coordination under section 106 is important to the recovery process and required by 24 CFR 58.5(a).

IV.D.4. *Tiered environmental reviews.* Tiering, as described at 40 CFR 1508.1(ff) and 24 CFR 58.15, is a means of making the environmental review process more efficient by allowing parties to ''eliminate repetitive discussions of the same issues, focus on the actual issues ripe for decision, and exclude from consideration issues already decided or not yet ripe at each level of environmental review'' (40 CFR 1501.11(a)). Tiering is appropriate when a responsible entity is evaluating a single-family housing program with similar activities within a defined local geographic area and timeframe (*e.g.,* rehabilitating single-family homes within a city district or county over the course of one to five years) but where the specific sites and activities are not yet known. Public notice and the Request for Release of Funds (HUD-Form 7015.15) are processed at a broad-level, eliminating the need for publication at the site-specific level. However, funds cannot be spent or committed on a specific site or activity until the site-specific review has been completed and approved.

IV.E. Flood Insurance Requirements

Grantees, recipients, and subrecipients must implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements, including the purchase and notification requirements described below, before providing assistance.

IV.E.1. *Flood insurance purchase requirements.* When grantees use CDBG–DR funds to rehabilitate or reconstruct existing residential buildings in a Special Flood Hazard Area (or 100-year floodplain), the grantee must comply with applicable Federal, state, local, and tribal laws and regulations related to both flood insurance and floodplain management. The grantee must comply with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) which mandates the purchase of flood insurance protection for any HUD-assisted property within a Special Flood Hazard Area. Therefore, a HUD-assisted homeowner for a property located in a Special Flood Hazard Area must obtain and maintain flood insurance in the amount and duration prescribed by FEMA's National Flood Insurance Program.

IV.E.2. *Federal assistance to owners remaining in a floodplain.*

IV.E.2.a. *Prohibition on flood disaster assistance for failure to obtain and maintain flood insurance.* Grantees must comply with section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a), which prohibits flood disaster assistance in certain circumstances. No Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for ''repair, replacement, or restoration'' for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property.

A grantee may not provide disaster assistance for the repair, replacement, or restoration of a property to a person who has failed to satisfy the Federal requirement to obtain and maintain flood insurance and must implement a process to verify and monitor for compliance with section 582 and the requirement to obtain and maintain flood insurance. Grantees are reminded that CDBG–DR funds may be used to assist beneficiaries in the purchase of flood insurance to comply with this requirement, subject to the requirements of cost reasonableness and other federal cost principles.

IV.E.2.b. *Prohibition on flood disaster assistance for households above 120 percent of AMI for failure to obtain flood insurance.* When a homeowner located in the floodplain allows their flood insurance policy to lapse, it is assumed that the homeowner is unable to afford insurance and/or is accepting responsibility for future flood damage to the home. Higher income homeowners who reside in a floodplain, but who failed to secure or decided to not maintain their flood insurance, should not be assisted at the expense of lower income households. To ensure that adequate recovery resources are available to assist lower income homeowners who reside in a floodplain but who are unlikely to be able to afford flood insurance, the Secretary finds good cause to establish an alternative requirement.

The alternative requirement to 42 U.S.C. 5305(a)(4) is as follows: Grantees receiving CDBG–DR funds are prohibited from providing CDBG–DR assistance for the rehabilitation/reconstruction of a house, if (i) the combined household income is greater than either 120 percent of AMI or the national median, (ii) the property was located in a floodplain at the time of the disaster, and (iii) the property owner did not obtain flood insurance on the damaged property, even when the property owner was not required to obtain and maintain such insurance.

IV.E.2.c. *Responsibility to inform property owners to obtain and maintain flood insurance.* Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) is a statutory requirement that property owners receiving disaster assistance that triggers the flood insurance purchase requirement have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance and to maintain such written notification in the documents evidencing the transfer of the property, and that the transferring owner may be liable if he or she fails to do so. A grantee or subrecipient receiving CDBG–DR funds must notify property owners of their responsibilities under section 582.

IV.F. URA, Section 104(d), and Related CDBG Program Requirements

Activities and projects undertaken with CDBG–DR funds may be subject to the URA, section 104(d) of the HCDA (42 U.S.C. 5304(d)), and CDBG program requirements related to displacement, relocation, acquisition, and replacement of housing, except as modified by waivers and alternative requirements provided in this notice. The implementing regulations for the URA are at 49 CFR part 24. The regulations implementing section 104(d) are at 24 CFR part 42. The regulations for applicable CDBG program requirements are at 24 CFR 570.488 and 24 CFR 570.606. HUD is waiving or providing alternative requirements in this section for the purpose of promoting the availability of decent, safe, and sanitary housing with respect to the use of CDBG–DR funds allocated under the Consolidated Notice.

IV.F.1. *Section 104(d) one-for-one replacement of lower-income dwelling units.* One-for-one replacement requirements at section 104(d)(2)(A)(i) and (ii) and 104(d)(3) of the HCDA and 24 CFR 42.375 are waived for owner-occupied lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation. The section 104(d) one-for-one replacement housing requirements apply to occupied and vacant occupiable lower-income dwelling units demolished or converted in connection with a CDBG assisted activity. This waiver exempts all disaster-damaged owner-occupied lower-income dwelling units that meet the grantee's definition of ''not suitable for rehabilitation,'' from the one-for-one replacement housing requirements of 24 CFR 42.375. Before carrying out activities that may be subject to the one-for-one replacement housing requirements, the grantee must define ''not suitable for rehabilitation'' in its action plan or in policies/procedures governing these activities. Grantees are reminded that tenant-occupied and vacant occupiable lower-income dwelling units demolished or converted to another use other than lower-income housing in connection with a CDBG–DR assisted activity are generally subject to one-for-one replacement requirements at 24 CFR 42.375 and that these provisions are not waived.

HUD is waiving the section 104(d) one-for-one replacement requirement for owner-occupied lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation because the one-for-one replacement requirements do not account for the large, sudden changes that a major disaster may cause to the local housing stock, population, or economy. Disaster-damaged housing structures that are not suitable for rehabilitation can pose a threat to public health and safety and to economic revitalization. Prior to the implementation of this waiver and alternative requirement, grantees must reassess post-disaster population and housing needs to determine the appropriate type and amount of lower-income dwelling units (both rental and owner-occupied units) to rehabilitate and/or reconstruct. Grantees should note that the demolition and/or disposition of public housing units continue to be subject to section 18 of the United States Housing Act of 1937, as amended, and 24 CFR part 970.

IV.F.2. *Section 104(d) relocation assistance.* The relocation assistance requirements at section 104(d)(2)(A)(iii) and

(B) of the HCDA and 24 CFR 42.350, are waived to the extent that an eligible displaced person, as defined under 24 CFR 42.305 of the section 104(d) implementing regulations, may choose to receive either assistance under the URA and implementing regulations at 49 CFR part 24, or assistance under section 104(d) and implementing regulations at 24 CFR 42.350. This waiver does not impact a person's eligibility as a displaced person under section 104(d), it merely limits the amounts and types of relocation assistance that a section 104(d) eligible displaced person is eligible to receive. A section 104(d) eligible displaced person is eligible to receive the amounts and types of assistance for displaced persons under the URA, as may be modified by the waivers and alternative requirements in this notice for activities related to disaster recovery. Without this waiver, disparities exist in relocation assistance associated with activities typically funded by HUD and FEMA (*e.g.,* buyouts and relocation). Both FEMA and CDBG funds are subject to the requirements of the URA; however, CDBG funds are subject to section 104(d), while FEMA funds are not. This limited waiver of the section 104(d) relocation assistance requirements assures uniform and equitable treatment for individuals eligible to receive benefits under Section 104(d) by establishing that all forms of relocation assistance to those individuals must be in the amounts and for the types of assistance provided to displaced persons under URA requirements.

IV.F.3. *URA replacement housing payments for tenants.* The requirements of sections 204 and 205 of the URA (42 U.S.C. 4624 and 42 U.S.C. 4625), and 49 CFR 24.2(a)(6)(vii), 24.2(a)(6)(ix), and 24.402(b) are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing payment obligation to a displaced tenant by offering rental housing through a rental housing program subsidy (to include, but not limited to, a housing choice voucher), provided that comparable replacement dwellings are made available to the tenant in accordance with 49 CFR 24.204(a) where the owner is willing to participate in the program and the period of authorized assistance is at least 42 months. This waiver and alternative requirement is subject to the following: If assistance is provided through a HUD program, it is subject to the applicable HUD program requirements, including the requirement that the tenant must be eligible for the rental housing program. Failure to grant this waiver would impede disaster recovery whenever rental program subsidies are available but funds for cash replacement housing payments are limited and such payments are required by the URA to be based on a 42-month term.

IV.F.4. *URA voluntary acquisition—homebuyer primary residence purchase.* Grantees may implement disaster recovery program activities that provide financial assistance to eligible homebuyers to purchase and occupy residential properties as their primary residence. Such purchases are generally considered voluntary acquisitions under the URA and subject to the URA regulatory requirements at 49 CFR 24.101(b)(2). For CDBG–DR, 49 CFR 24.101(b)(2) is waived to the extent that it applies to a homebuyer, who does not have the power of eminent domain, and uses CDBG–DR funds in connection with the voluntary purchase and occupancy of a home the homebuyer intends to make their primary residence. This waiver is necessary to reduce burdensome administrative requirements for homebuyers following a disaster. Tenants displaced by these voluntary acquisitions may be eligible for relocation assistance.

IV.F.5. *CDBG displacement, relocation, acquisition, and replacement housing program regulations—Optional relocation assistance.* The regulations at 24 CFR 570.606(d) are waived to the extent that they require optional relocation policies to be established at the grantee level. Unlike with the regular CDBG program, states may carry out disaster recovery activities directly or through subrecipients, but 24 CFR 570.606(d) does not account for this distinction. This waiver makes clear that grantees receiving CDBG–DR funds may establish optional relocation policies or permit their subrecipients to establish separate optional relocation policies. The written policy must: Be available to the public, describe the relocation assistance that the grantee, state recipient (*i.e.,* a local government receiving a subgrant from the state through a method of distribution), or subrecipient (as applicable) has elected to provide, and provide for equal relocation assistance within each class of displaced persons according to 24 CFR 570.606(d). This waiver is intended to provide states with maximum flexibility in developing optional relocation policies with CDBG–DR funds.

IV.F.6. *Waiver of Section 414 of the Stafford Act.* Section 414 of the Stafford Act (42 U.S.C. 5181) provides that ''Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) [42 U.S.C. 4601 *et seq.*] [''URA''] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by [the URA].'' Accordingly, homeowner occupants and tenants displaced from their homes as a result of the identified disasters and who would have otherwise been displaced as a direct result of any acquisition, rehabilitation, or demolition of real property for a federally funded program or project may become eligible for a replacement housing payment notwithstanding their inability to meet occupancy requirements prescribed in the URA. Section 414 of the Stafford Act and its implementing regulation at 49 CFR 24.403(d)(1) are waived to the extent that they would apply to real property acquisition, rehabilitation, or demolition of real property for a CDBG–DR funded project commencing more than one year after the date of the latest applicable Presidentially declared disaster undertaken by the grantees, or subrecipients, provided that the project was not planned, approved, or otherwise underway before the disaster.

For purposes of this waiver, a CDBG–DR funded project shall be determined to have commenced on the earliest of: (1) The date of an approved Request for Release of Funds and certification; (2) the date of completion of the site-specific review when a program utilizes Tiering; or (3) the date of sign-off by the approving official when a project converts to exempt under 24 CFR 58.34(a)(12).

The waiver will simplify the administration of the disaster recovery process and reduce the administrative burden associated with the implementation of Stafford Act Section 414 requirements for projects commencing more than one year after the date of the Presidentially declared disaster considering most of such persons displaced by the disaster will have returned to their dwellings or found another place of permanent residence.

This waiver does not apply with respect to persons that meet the occupancy requirements to receive a replacement housing payment under the URA nor does it apply to persons displaced or relocated temporarily by other HUD-funded programs or projects. Such persons' eligibility for relocation assistance and payments under the URA is not impacted by this waiver.

IV.F.7. *RARAP Section 104(d).* CDBG–DR grantees must certify that they have in effect and are following a RARAP as required by section 104(d)(1) and (2) of the HCDA and 24 CFR 42.325. In addition to the requirements in 24 CFR 42.325 and 24 CFR 570.488 or 24 CFR 570.606(c), as applicable, HUD is specifying the following alternative requirements:

Grantees who are following an existing RARAP for CDBG purposes must either: (1) Amend their existing RARAP; or (2) create a separate RARAP for CDBG–DR purposes, to reflect the following requirements and applicable waivers and alternative requirements as modified by the Consolidated Notice.

Grantees who do not have an existing RARAP in place because they do not manage CDBG programs must create a separate RARAP for CDBG–DR purposes, to reflect the following CDBG–DR requirements and applicable waivers and alternative requirements as modified by the Consolidated Notice.

(1) RARAP requirements for CDBG–DR. As each grantee establishes and supports feasible and cost-effective recovery efforts to make communities more resilient against future disasters, the CDBG–DR RARAP must describe how the grantee plans to minimize displacement of members of families and individuals from their homes and neighborhoods as a result of any CDBG–DR assisted activities, including disaster recovery activities where displacement can be prevented (*e.g.,* housing rehabilitation programs). Across disaster recovery activities—such as buyouts and other eligible acquisition activities, where minimizing displacement is not reasonable, feasible, or cost-efficient and would not help prevent future or repetitive loss—the grantee must describe how it plans to minimize the adverse impacts of displacement.

The description shall focus on proposed disaster recovery activities that may directly or indirectly result in displacement and the

assistance that shall be required for those displaced. This description must focus on relocation assistance under the URA and its implementing regulations at 49 CFR part 24, Section 104(d) and implementing regulations at 24 CFR part 42 (to the extent applicable), 24 CFR 570.488 and/or 24 CFR 570.606, and relocation assistance pursuant to this section of the Consolidated Notice, as well as any other assistance being made available to displaced persons. The CDBG–DR RARAP must include a description of how the grantee will plan programs or projects in such a manner that recognizes the substantial challenges experienced by displaced individuals, families, businesses, farms, and nonprofit organizations and develop solutions to minimize displacement or the adverse impacts of displacement especially among vulnerable populations. The description must be scoped to the complexity and nature of the anticipated displacing activities, including the evaluation of the grantee's available resources to carry out timely and orderly relocations in compliance with all applicable relocation requirements.

V. Performance Reviews

Under 42 U.S.C. 5304(e) and 24 CFR 1003.506(a), the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the grantee has carried out its activities in a timely manner (consistent process to meet its expenditure requirement), whether the grantee's activities and certifications are carried out in accordance with the requirements and the primary objectives of the HCDA and other applicable laws, and whether the grantee has the continuing capacity to carry out those activities in a timely manner.

V.A. Timely Distribution and Expenditure of Funds

HUD waives the provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution and expenditure of funds, and establishes an alternative requirement providing that each grantee must expend 100 percent of its allocation within six years of the date HUD signs the grant agreement. HUD may extend the period of performance administratively, if good cause for such an extension exists at that time, as requested by the grantee, and approved by HUD. When the period of performance has ended, HUD will close out the grant and any remaining funds not expended by the grantee on appropriate programmatic purposes will be recaptured by HUD.

V.B. Review of Continuing Capacity

Upon a determination by HUD that the grantee has not carried out its CDBG–DR activities and certifications in accordance with the requirements in the Consolidated Notice, HUD will undertake a further review to determine if the grantee has the continuing capacity to carry out its activities in a timely manner. In making this determination, HUD will consider the nature and extent of the recipient's performance deficiencies, the actions taken by the recipient to address the deficiencies, and the success or likely success of such actions. HUD may then apply the following corrective and remedial actions as appropriate:

V.B.1. *Corrective and remedial actions.* To effectively administer the CDBG–DR program in a manner that facilitates recovery, particularly the alternative requirements permitting states to act directly to carry out eligible activities, HUD is waiving 42 U.S.C. 5304(e) to the extent necessary to establish the following alternative requirement: HUD may undertake corrective and remedial actions for states in accordance with the authorities for CDBG Entitlement grantees in subpart O (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570. In response to a deficiency, HUD may issue a warning letter followed by a corrective action plan that may include a management plan which assigns responsibility for further administration of the grant to specific entities or persons. Failure to comply with a corrective action may result in the termination, reduction, or limitation of payments to grantees receiving CDBG–DR funds.

V.B.2. *Reduction, withdrawal, or adjustment of a grant, or other appropriate action.* Before a reduction, withdrawal, or adjustment of a CDBG–DR grant, or other actions taken pursuant to this section, the recipient shall be notified of the proposed action and be given an opportunity for an informal consultation. Consistent with the procedures described in the Consolidated Notice, HUD may adjust, reduce, or withdraw the CDBG–DR grant (except funds that have been expended for eligible, approved activities) or take other actions as appropriate.

V.B.3. *Additional criteria and specific conditions to mitigate risk.* To ensure effective grantee implementation of the financial controls, procurement processes, and other procedures that are the subject of the certification by the Secretary, HUD has and may continue to establish specific criteria and conditions for each grant award as provided for at 2 CFR 200.206 and 200.208, respectively, to mitigate the risk of the grant. The Secretary shall specify any such criteria and the resulting conditions in the grant conditions governing the award. These criteria may include, but need not be limited to, a consideration of the internal control framework established by the grantee to ensure compliant implementation of its financial controls, procurement processes and payment of funds to eligible entities, as well as the grantee's risk management strategy for information technology systems established to implement CDBG–DR funded programs. Additionally, the Secretary may amend the grant conditions to mitigate risk of a grant award at any point at which the Secretary determines a condition to be required to protect the Federal financial interest or to advance recovery.

V.C. Grantee Reporting Requirements in the DRGR System

V.C.1. *DRGR-related waivers and alternative requirements.* The Consolidated Notice waives the requirements for submission of a performance report pursuant to 42 U.S.C. 12708(a), 24 CFR 91.520, and annual status and evaluation reports that are due each fiscal year under 24 CFR 1003.506(a). Alternatively, HUD is requiring that grantees enter information in the DRGR system on a quarterly basis through the performance reports. The information in DRGR and the performance reports must contain sufficient detail to permit HUD's review of grantee performance and to enable remote review of grantee data to allow HUD to assess compliance and risk.

At a minimum, each grantee must:

a. Enter its action plan and amendments as described in III.C.1, including performance measures, into the Public Action Plan in DRGR;

b. Enter activities into the DRGR Action Plan at a level of detail sufficient to allow HUD to determine grantee compliance (when the activity type, national objective, and the organization that will be responsible for the activity is known);

c. Categorize activities in DRGR under a ''project'';

d. Enter into the DRGR system summary information on grantees' monitoring visits and reports, audits, and technical assistance it conducts as part of its oversight of its disaster recovery programs;

e. Use the DRGR system to draw grant funds for each activity;

f. Use the DRGR system to track program income receipts, disbursements, revolving loan funds, and leveraged funds (if applicable);

g. Submit a performance report through the DRGR system no later than 30 days following the end of each calendar quarter. For all activities, the address of each CDBG–DR assisted property must be recorded in the performance report; and

h. Publish a version of the performance report that omits personally identifiable information reported in the performance reports submitted to HUD on the grantee's official website within three days of submission to HUD, or in the event a performance report is rejected by HUD, publish the revised version, as approved by HUD, within three days of HUD approval.

The grantee's first performance report is due after the first full quarter after HUD signs the grant agreement. Performance reports must be submitted on a quarterly basis until all funds have been expended and all expenditures and accomplishments have been reported. If a satisfactory report is not submitted in a timely manner, HUD may suspend access to CDBG–DR funds until a satisfactory report is submitted, or may withdraw and reallocate funding if HUD determines, after notice and opportunity for a hearing, that the jurisdiction did not submit a satisfactory report.

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Part III

Federal Retirement Thrift Investment Board

5 CFR Parts 1600, 1601, 1605, et al.
Transition to a New Recordkeeping System; Final Rule

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1600, 1601, 1605, 1620, 1631, 1640, 1645, 1650, 1651, 1653, 1655, and 1690

Transition to a New Recordkeeping System

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Federal Retirement Thrift Investment Board (FRTIB) is amending its regulations to reflect new processes and terminology associated with the Thrift Savings Plan's upcoming transition to a new recordkeeping system.

DATES: Effective June 1, 2022.

FOR FURTHER INFORMATION CONTACT: Kim Weaver, Office of External Affairs, (202) 465–5220 or Laurissa Stokes, Office of General Counsel, (202) 308–7707.

SUPPLEMENTARY INFORMATION: The FRTIB administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)). The provisions of FERSA that govern the TSP are codified, as amended, largely at 5 U.S.C. 8351 and 8401–79.

I. Background

In November 2020, the FRTIB awarded a contract to a service provider that will maintain and operate technology platform(s) to deliver retirement plan recordkeeping services. Examples of retirement plan recordkeeping services include: (1) Maintaining eligibility records, (2) managing payroll data, (3) processing transactions such as contribution elections, investment elections, withdrawals, loans, and beneficiary designations, (4) issuing account statements to participants, (5) providing online account access, and (6) providing responsive customer support to TSP participants.

The FRTIB is currently transitioning from its existing technology platforms to the technology platforms of its new record keeper. Following this transition, TSP participants will be able to take advantage of many new services and functionalities, such as a mobile app, electronic payment options, quick access to customer service support through an online live chat function, and the ability to complete most transactions entirely online instead of using paper forms. On March 1, 2022, the FRTIB published a proposed rule with a request for comments in the **Federal Register** (87 FR 11516) that would amend its regulations to reflect these and other new processes and update its vocabulary to reflect the terminology used by the new record keeper.

The FRTIB received one or more comments from 13 commenters. As described in more detail below, the FRTIB is adopting the proposed rule as final without any substantive changes, except for one change related to post-employment distributions.

II. Response to Public Comments

A. 60-Day Waiting Period for Post-Employment Distributions

The proposed rule would have increased the time period a TSP participant must be separated from government service before he or she is eligible for a post-employment distribution. Currently, a TSP participant need only be separated from government service for 31 calendar days. The proposed rule would have increased that time period to 60 calendar days. We received comments from six commenters strongly opposing this change.

While the intention behind the proposed increase in time was to limit the number of post-employment distribution requests by participants who are between Federal jobs and are not truly separated from government service, we recognize that it has the ancillary effect of making participants who truly have separated from government service wait a substantial amount of time to receive TSP distributions to which they are entitled. Upon reflecting on these comments, we have determined that the burden this 60-day waiting period would impose on TSP participants who have actually separated from government service outweighs the benefit of limiting the number of erroneous post-employment distributions and, therefore, the final rule does not include this change. In order to reduce the number of post-employment distribution requests by participants who are merely between Federal jobs and not separated from government service, we will work with employing agencies to make sure they understand that a participant has not separated from government service until s/he has been separated for at least 31 calendar days.

B. Notarization of Spousal Consent

We received four comments concerning our proposal to permit spouses of TSP participants to provide their written consent to distributions without the burden of finding and hiring a notary public. Two commenters supported the proposal. They described the existing notarization requirement as ''extremely inconvenient'' and ''very burdensome'' and welcomed the proposed rule as an improvement to the efficiency of TSP services. The other two commenters opposed the proposal. They expressed concern that removing the notarization requirement will result in an increase in fraudulent withdrawals.

The FRTIB has required spouses of TSP participants to notarize their written consent since 2003. See 68 FR 35491. The notarization requirement was implemented as a measure to prevent fraud. There was not then, and is not today, any evidence showing that a notarization requirement decreases fraudulent TSP withdrawals. Our assumption that the security-related benefits of requiring notarization were appreciable enough to justify the burdens they impose on TSP participants and their spouses was grounded in speculation and custom.

On April 17, 2020, we published an interim rule (85 FR 21311) that temporarily waived the notarization requirement to accommodate the fact that COVID–19 safety measures—which included mandatory business and school closures, stay-at-home/shelter-in-place orders, and quarantines—made it virtually impossible for many participants to find and access a notary in person. The interim rule went into effect immediately without the benefit of public comment, which is normally required by the Administrative Procedures Act. It was intended to be only temporary because we are mindful of the importance of public comment and the narrowness of exceptions to the Administrative Procedures Act. As such, we withdrew the interim rule on October 1, 2020.

During the time period in which the temporary waiver of the notarization requirement was in effect—between April 17, 2020 and October 1, 2020—the TSP did not experience any appreciable increase in fraudulent withdrawals. We were, therefore, faced with evidence that challenged our long-standing assumptions concerning the role of the notarization requirement in preventing fraudulent withdrawals. Simultaneously, we were confronted

with the severity of the burden it places on TSP participants and their spouses during difficult times. Although the disruptive intensity of the COVID–19 pandemic is subsiding, we continue to hear daily from participants (and spouses of participants), who are requesting distributions following natural disasters or medical emergencies. Accordingly, we sought public comments on a proposal to permanently remove the notarization requirement.

One of the commenters suggested that remote notarization technologies provide a better alternative to removing the notarization requirement altogether. The TSP already permits participants and their spouses to use remote notarization to whatever extent that remote notarization is valid under the laws of the state in which they live. But not every state has laws permitting remote notarization, and not all state remote notarization laws are the same. The TSP has participants residing in every state, and over 1.3 million participants who are serving all over the world as members of the uniformed services. Removing the notarization requirement has the advantage of reducing time and expense burdens for all participants and their spouses equally, wherever they may live or serve.

Having received no additional data from commenters, we are adopting the proposal to remove the notarization requirement as final. The FRTIB will continue to require written spousal consent in accordance with 5 U.S.C. 8435.

C. Child Support Court Orders

The proposed rule would have amended FRTIB regulations to reflect a change to the child support court order (CSCO) review process. One commenter requested that we add regulatory language requiring the TSP record keeper to notify the relevant child support agency if a CSCO is rejected. The FRTIB currently notifies all parties when any court order or legal process is rejected and will continue to do so in the future. The final rule clarifies § 1653.3(e) and § 1653.13(e) to that effect.

Another commenter expressed the view that the $600 CSCO processing fee included in the proposed rule is overly burdensome. As noted in the proposed rule, the CSCO review process is a labor-intensive, costly one that is only utilized by certain TSP participants. In order to ensure that the associated costs are not subsidized by participants who never use these services, a $600.00 fee for each CSCO submitted for an account is necessary. We note that a $600.00 fee is on the lower end for the retirement plan industry, where court order review fees often exceed $1,000.00 per review.

D. Miscellaneous

We received five comments from two commenters on issues that are outside the scope of this rule. One individual requested the ability to convert a traditional balance to a Roth balance within the TSP. The FRTIB has, in the past, considered allowing in-plan Roth conversions and ultimately concluded that the tax complexities involved and, in particular, the potential irreversible financial pitfalls for participants, weighed against doing so. Revisiting this decision was outside the scope of the transition to a new recordkeeping system. This same individual requested that a participant be allowed to elect to withdraw amounts from his or her tax-exempt balance only. Not only is this request out of the scope of this rule, a participant's tax-exempt balance does not constitute a separate contract under 26 U.S.C. 72(d) and, therefore, the FRTIB is prohibited by the Internal Revenue Code from offering this option.

Another commenter requested that the proposed rule be changed to state that annual statements will continue to be sent to TSP participants by default. Our existing regulations do not address the default delivery method for annual statements and adding a provision addressing this issue is outside of the scope of this rule. The same commenter criticized the FRTIB for not providing penalties and remedies for violations of criminal laws that are designed to deter fraudulent misrepresentations. The FRTIB does not have the statutory authority to publish regulations for the purpose of enforcing or punishing violations of criminal law. The same commenter expressed concern that spouses of participants will no longer have access to account information necessary to draft a qualifying retirement benefits court order. Nothing in our proposed or final rule would change the amount or type of account information that spouses of participants are entitled to access.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees, members of the uniformed services who participate in the TSP, and beneficiary participants.

Paperwork Reduction Act

This regulation does not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, and 1501–1571, the effects of this regulation on State, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by State, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under 2 U.S.C. 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the FRTIB submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of this rule in the **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects

5 CFR Part 1600

Claims, Government employees, Pensions, Retirement, Taxes.

5 CFR Part 1601

Government employees, Pensions, Retirement.

5 CFR Part 1605

Claims, Government employees, Pensions, Retirement.

5 CFR Part 1620

District of Columbia, Government employees, Pensions, Retirement.

5 CFR Part 1631

Courts, Freedom of information, Government employees.

5 CFR Part 1640

Government employees, Pensions, Retirement.

5 CFR Part 1645

Government employees, Pensions, Retirement.

5 CFR Part 1650

Alimony, Claims, Government employees, Pensions, Retirement.

5 CFR Part 1651

Claims, Government employees, Pensions, Retirement.

5 CFR Part 1653

Alimony, Child support, Government employees, Pensions, Retirement.

5 CFR Part 1655

Credit, Government employees, Pensions, Retirement.

5 CFR Part 1690

Government employees, Pensions, Retirement.

Ravindra Deo,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons stated in the preamble, the FRTIB amends 5 CFR chapter VI as follows:

PART 1600—EMPLOYEE CONTRIBUTION ELECTIONS, INVESTMENT ELECTIONS, AND AUTOMATIC ENROLLMENT PROGRAM

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

Authority: 5 U.S.C. 8351, 8432(a), 8432(b), 8432(c), 8432(j), 8432d, 8474(b)(5) and (c)(1), and 8440e.

■ 2. The heading for part 1600 is revised to read as set forth above.

■ 3. Amend § 1600.11, in paragraph (b), by revising the heading and removing ''TSP Funds'' and adding in its place ''TSP core funds''.

The revision reads as follows:

§ 1600.11 Types of elections.

* * * * *

(b) *Investment election.* * * *

§ 1600.13 [Amended]

■ 4. Amend § 1600.13 by removing and reserving paragraph (b).

■ 5. Amend § 1600.14 by removing and reserving paragraph (b) and revising paragraph (d).

The revision reads as follows:

§ 1600.14 Effect of election to be covered by BRS.

* * * * *

(d) Agency automatic (1%) contributions for all members covered under this section and, if applicable, agency matching contributions attributable to employee contributions must begin at the time set forth in § 1600.19(c).

§ 1600.18 [Amended]

■ 6. Amend § 1600.18, in the first sentence, by removing ''TSP'' and adding in its place ''TSP record keeper''.

■ 7. Amend § 1600.19 as follows:

■ a. Revise the headings for paragraphs (a) and (b);

■ b. In paragraphs (c)(2)(i)(A) and (c)(2)(ii)(A), remove ''Agency Automatic (1%) Contributions'' and add in its place ''Agency automatic (1%) contributions'';

■ c. In paragraphs (c)(2)(i)(B) and (c)(2)(ii)(B), remove ''Agency Matching Contributions'' and add in its place ''Agency matching contributions'';

■ d. In paragraph (c)(2)(i)(B), remove ''2 years'' and add in its place ''2 years and one day''.

The revisions read as follows:

§ 1600.19 Employing agency contributions.

(a) *Agency automatic (1%) contributions.* * * *

(b) *Agency matching contributions.* * * *

* * * * *

■ 8. Amend § 1600.21 by revising the first sentence of paragraph (b) to read as follows:

§ 1600.21 Contributions in whole percentages or whole dollar amounts.

* * * * *

(b) Uniformed services members may elect to contribute from basic pay and, if they elect to contribute from basic pay, special or incentive pay (including bonus pay) subject to the limits described in § 1600.22. * * *

§ 1600.22 [Amended]

■ 9. Amend § 1600.22, in paragraph (a), by removing ''(26 U.S.C.)''.

■ 10. Revise subpart D to read as follows:

Subpart D—Rollovers From Other Qualified Retirement Plans

Sec.

Subpart D—Rollovers From Other Qualified Retirement Plans

§ 1600.30 Accounts eligible for rollover.

(a) A participant who has an open TSP account and is entitled to receive (or receives) an eligible rollover distribution from an eligible employer plan within the meaning of section 402(c) of the Internal Revenue Code (26 U.S.C. 402(c)), or from a traditional IRA may roll over that distribution into his or her existing TSP account in accordance with § 1600.31.

(b) The only balances that the TSP record keeper will accept are balances that would otherwise be includible in gross income if the distribution were paid to the participant. The TSP record keeper will not accept any balances that have already been subjected to Federal income tax (after-tax monies) or balances from a uniformed services TSP account that will not be subject to Federal income tax (tax-exempt monies).

(c) Notwithstanding paragraph (b) of this section, the TSP record keeper will accept Roth funds that are transferred via direct rollover from an eligible employer plan that maintains a qualified Roth contribution program described in section 402A of the Internal Revenue Code.

(d) The TSP record keeper will accept a rollover only to the extent the rollover is permitted by the Internal Revenue Code.

§ 1600.31 Methods for rolling over eligible rollover distribution to the TSP.

(a) *Direct rollover.* (1) A participant may request that the administrator or trustee of an eligible employer plan or traditional IRA roll over any or all of his or her account directly to the TSP in the form and manner prescribed by the TSP record keeper. The administrator or trustee must provide to the TSP record keeper the distribution, information about the type of money included in the distribution (*i.e.,* tax-deferred and/or Roth amounts), and sufficient evidence from which to reasonably conclude that a contribution is a valid rollover contribution (as defined by 26 CFR 1.401(a)(31)–1, Q&A–14). By way of example, sufficient evidence to conclude a contribution is a valid rollover contribution includes a copy of the plan's determination letter, a letter or other statement from the plan administrator or trustee indicating that it is an eligible employer plan or traditional IRA, a check indicating that the contribution is a direct rollover, a payment confirmation, distribution statement or a tax notice from the plan to the participant indicating that the participant could receive a rollover from the plan.

(2) If the distribution is from a Roth account maintained by an eligible employer plan, the plan administrator must also provide to the TSP record keeper a statement indicating the first year of the participant's Roth 5 year non-exclusion period under the distributing plan and either:

(i) The portion of the direct rollover amount that represents Roth contributions (*i.e.,* basis); or

(ii) A statement that the entire amount of the direct rollover is a qualified Roth distribution (as defined by Internal Revenue Code section 402A(d)(2)).

(b) *Indirect rollover by participant.* A participant who has already received a

distribution from an eligible employer plan or traditional IRA may request to roll over all or part of the distribution into the TSP in the form and manner prescribed by the TSP record keeper. However, the TSP record keeper will not accept a rollover by the participant of Roth funds distributed from an eligible employer plan. A distribution of Roth funds from an eligible employer plan may be rolled into the TSP by direct rollover only. The TSP record keeper will accept a rollover by the participant of tax-deferred amounts if the following requirements and conditions are satisfied:

(1) The participant must request to roll over the amounts in the form and manner prescribed by the TSP record keeper.

(2) The administrator or trustee must provide to the TSP record keeper information about the type of money included in the distribution (*i.e.,* tax-deferred and/or Roth) and sufficient evidence from which to reasonably conclude that a contribution is a valid rollover contribution. By way of example, sufficient evidence to conclude a contribution is a valid rollover contribution includes a copy of the plan's determination letter, a letter or other statement from the plan indicating that it is an eligible employer plan or traditional IRA, a check indicating that the contribution is a direct rollover, a payment confirmation, distribution statement or a tax notice from the plan to the participant indicating that the participant could receive a rollover from the plan.

(3) The participant must submit a certified check, cashier's check, cashier's draft, money order, treasurer's check from a credit union, or personal check, made out to the ''Thrift Savings Plan,'' for the entire amount of the rollover, along with any other information required by the TSP record keeper. A participant may roll over the full amount of the distribution by making up, from his or her own funds, the amount that was withheld from the distribution for the payment of Federal taxes.

(4) The transaction must be completed within 60 days of the participant's receipt of the distribution from his or her eligible employer plan or traditional IRA. The transaction is not complete until the TSP record keeper receives the guaranteed funds for the amount to be rolled over, information sufficient to conclude that the amount is a valid rollover contribution, and any other information required by the TSP record keeper.

(c) *Participant's certification.* When rolling over a distribution to the TSP by either a direct or indirect rollover, the participant must certify that the distribution is eligible for roll over into the TSP, as follows:

(1) *Distribution from an eligible employer plan.* The participant must certify that the distribution:

(i) Is not one of a series of substantially equal periodic payments made over the life expectancy of the participant (or the joint lives of the participant and designated beneficiary, if applicable) or for a period of 10 years or more;

(ii) Is not a minimum distribution required by I.R.C. section 401(a)(9) (26 U.S.C. 401(a)(9));

(iii) Is not a hardship distribution;

(iv) Is not a plan loan that is deemed to be a taxed loan because of default;

(v) Is not a return of excess elective deferrals; and

(vi) If not rolled over, would be includible in gross income for the tax year in which the distribution is paid. This paragraph (c)(1)(vi) shall not apply to Roth funds distributed from an eligible employer plan.

(2) *Distribution from a traditional IRA.* The participant must certify that the distribution:

(i) Is not a minimum distribution required under I.R.C. section 401(a)(9) (26 U.S.C. 401(a)(9)); and

(ii) If not rolled over, would be includible in gross income for the tax year in which the distribution is paid.

§ 1600.32 Treatment accorded rollover funds.

(a) All funds rolled over to the TSP pursuant to §§ 1600.30 and 1600.31 will be treated as employee contributions.

(b) All funds rolled over to the TSP pursuant to §§ 1600.30 and 1600.31 will be invested in accordance with the participant's investment election on file at the time the rollover is completed.

(c) Funds rolled over to the TSP pursuant to §§ 1600.30 and 1600.31 are not subject to the limits on contributions described in § 1600.22.

§ 1600.33 Combining uniformed services accounts and civilian accounts.

Uniformed services TSP account balances and civilian TSP account balances may be combined (thus producing one account), subject to paragraphs (a) through (g) of this section:

(a) An account balance can be combined with another once the TSP record keeper is informed (by the participant's employing agency) that the participant has separated from Government service.

(b) Tax-exempt contributions may not be transferred from a uniformed services TSP account to a civilian TSP account.

(c) A traditional balance and a Roth balance cannot be combined.

(d) Funds transferred to the gaining account will be allocated among the TSP core funds according to the investment election in effect for the account into which the funds are transferred.

(e) Funds transferred to the gaining account will be treated as employee contributions and otherwise invested as described at 5 CFR part 1600.

(f) A uniformed service member must obtain the consent of his or her spouse before combining a uniformed services TSP account balance with his or her civilian account, even if the civilian account is not subject to FERS spousal rights. A request for an exception to the spousal consent requirement will be evaluated under the rules explained in 5 CFR part 1650.

(g) A loan cannot be transferred between accounts. Before the accounts can be combined, any outstanding loans from the losing account must be closed as described in 5 CFR part 1655.

§ 1600.35 [Amended]

■ 11. Amend § 1600.35 as follows:

■ a. In paragraph (a) introductory text, remove ''must be made on'' and add in its place ''may be made on the TSP website or by completing''; and

■ b. In paragraph (d), remove ''TSP'' and add in its place ''TSP record keeper''.

§ 1600.37 [Amended]

■ 12. Amend § 1600.37 as follows:

■ a. In the introductory text, remove ''The Board'' and add in its place ''The TSP record keeper''; and

■ b. In paragraph (c), remove ''The fund'' and ''a contribution allocation'', and add in their places ''The TSP core fund'' and ''an investment election'', respectively.

PART 1601—PARTICIPANTS' CHOICE OF TSP FUNDS

■ 13. The authority citation for part 1601 continues to read as follows:

Authority: 5 U.S.C. 8351, 8432d, 8438, 8474(b)(5) and (c)(1).

■ 14. Amend § 1601.1, in paragraph (b), as follows:

■ a. In the definition of ''Acknowledgment of risk'', remove ''TSP Fund'' and add in its place ''TSP core fund''; and

■ b. Add definitions in alphabetical order for ''Fund reallocation'' and ''Fund transfer''.

The additions read as follows:

§ 1601.1 Definitions.

* * * * *

(b) * * *

Fund reallocation means the total redistribution of a participant's existing account balance among the TSP core funds.

Fund transfer means either:

(i) The transfer of money from one or more TSP core fund(s) to another TSP core fund(s); or

(ii) The transfer of money from the TSP core funds to the mutual fund window (and vice versa).

■ 15. Revise subpart B to read as follows:

Subpart B—Investing Future Deposits

Subpart B—Investing Future Deposits

§ 1601.11 Applicability.

This subpart applies only to the investment of future deposits to the TSP core funds, including contributions, loan payments, and rollovers from traditional IRAs and eligible employer plans; it does not apply to fund reallocations or fund transfers within the TSP core funds, which is covered in subpart C of this part, or fund transfers to and from the mutual fund window, which is covered in subpart F of this part.

§ 1601.12 Investing future deposits in the TSP core funds.

(a) *Allocation.* Future deposits in the TSP, including contributions, loan payments, and rollovers from traditional IRAs and eligible employer plans, will be allocated among the TSP core funds based on the most recent investment election on file for the participant.

(b) *TSP core funds availability.* All participants may elect to invest all or any portion of their deposits in any of the TSP core funds.

§ 1601.13 Elections.

(a) *Investment election.* Each participant may indicate his or her choice of TSP core funds for the allocation of future deposits in the form and manner prescribed by the TSP record keeper. Paragraphs (a)(1) through (5) of this section apply to investment elections:

(1) Investment elections must be made in one percent increments. The sum of the percentages elected for all of the TSP core funds must equal 100 percent.

(2) The percentage elected by a participant for investment of future deposits in a TSP core fund will be applied to all sources of contributions and rollovers from traditional IRAs and eligible employer plans. A participant may not make different percentage elections for different sources of contributions.

(3) The following default investment rules shall apply to civilian participants:

(i) All deposits made on behalf of a civilian participant enrolled prior to September 5, 2015, who does not have an investment election in effect will be invested in the G Fund. A civilian participant who is enrolled prior to September 5, 2015, and subsequently rehired on or after September 5, 2015, and has a positive account balance will be considered enrolled prior to September 5, 2015 for purposes of this paragraph (a)(3)(i); and

(ii) All deposits made on behalf of a civilian participant first enrolled on or after September 5, 2015, who does not have an investment election in effect will be invested in the age-appropriate TSP Lifecycle Fund.

(iii) A civilian participant enrolled prior to September 5, 2015, who elects for the first time to invest in a TSP core fund other than the G Fund must execute an acknowledgement of risk in accordance with § 1601.33.

(4) The default investment rule in paragraphs (a)(4)(i) through (iv) of this section apply to uniformed services participants:

(i) All deposits made on behalf of a uniformed services participant who first entered service prior to January 1, 2018, has not elected to be covered by BRS, and does not have an investment election in effect will be invested in the G Fund.

(ii) All deposits made on behalf of a uniformed services participant who first entered service on or after January 1, 2018, and who does not have an investment election in effect will be invested in the age-appropriate TSP Lifecycle Fund.

(iii) If a uniformed services participant makes an election to be covered by BRS as described in 5 CFR 1600.14 and does not have an investment election in effect at the time of the election, then all deposits made after the date of such election will be invested in the age-appropriate TSP Lifecycle Fund. Deposits made prior to the date of the election will remain invested in the G Fund.

(iv) A uniformed services participant who first entered service prior to January 1, 2018, and has not made an election to be covered by the BRS who elects for the first time to invest in a TSP core fund other than the G Fund must execute an acknowledgement of risk in accordance with § 1601.33.

(5) Once an investment election becomes effective, it remains in effect until it is superseded by a subsequent investment election or the participant's account balance is reduced to zero. If a rehired participant has a positive account balance and an investment election in effect, then the participant's investment election will remain in effect until a new election is made. If, however, the participant (other than a participant described in paragraph (a)(4)(i) of this section) has a zero account balance, then the participant's contributions will be allocated to the age-appropriate TSP Lifecycle Fund until a new investment election is made.

(b) *Effect of rejection of investment election.* If a participant does not correctly complete an investment election, the attempted investment election will have no effect. The TSP record keeper will provide the participant with a written statement of the reason the transaction was rejected.

(c) *Contribution elections.* A participant may designate the amount or type of employee contributions he or she wishes to make to the TSP or may stop contributions only in accordance with 5 CFR part 1600.

■ 16. Revise subpart C to read as follows:

Subpart C—Fund Reallocations and Fund Transfers

Subpart C—Fund Reallocations and Fund Transfers

§ 1601.21 Applicability.

This subpart applies only to fund reallocations and fund transfers involving the movement of money from TSP core fund to one (or more) TSP core fund(s); it does not apply to the investment of future deposits, which is covered in subpart B of this part, nor does it apply to fund transfers involving the movement of money from the TSP core funds to the mutual fund window (and vice versa), which is covered in subpart F of this part.

§ 1601.22 Methods of requesting a fund reallocation.

(a) Participants may make a fund reallocation in the form and manner prescribed by the TSP record keeper. Paragraphs (a)(1) and (2) of this section apply to a fund reallocation request:

(1) Fund reallocation requests must be made in whole percentages (one percent increments). The sum of the percentages elected for all of the TSP core funds must equal 100 percent.

(2) The percentages elected by the participant will be applied to the balances in each source of contributions and to both traditional and Roth balances and tax-deferred and tax-exempt balances on the effective date of the fund reallocation.

(b) A fund reallocation request has no effect on deposits made after the effective date of the fund reallocation request; subsequent deposits will continue to be allocated among the TSP core funds in accordance with the participant's investment election made under subpart B of this part.

(c) If a fund reallocation is found to be invalid pursuant to § 1601.34, the purported fund reallocation will not be made.

§ 1601.23 Methods of requesting a fund transfer.

(a) Participants may make a fund transfer from one or more TSP core fund to a different TSP core fund(s) in the form and manner prescribed by the TSP record keeper. Paragraphs (a)(1) and (2) of this section apply to a fund transfer request:

(1) Fund transfer requests when selecting the TSP core funds to transfer out of, may be made in whole percentages or in dollars. When selecting the TSP core funds to transfer into, elections must be made in whole percentages (one percent increments). The sum of the percentages elected to transfer into for all of the TSP core funds must equal 100 percent.

(2) The percentages elected by the participant will be applied to the balances in each source of contributions and to both traditional and Roth balances and tax-deferred and tax-exempt balances on the effective date of the fund transfer.

(b) A fund transfer request has no effect on deposits made after the effective date of the fund transfer request; subsequent deposits will continue to be allocated among the TSP core funds in accordance with the participant's investment election made under subpart B of this part.

(c) If a fund transfer is found to be invalid pursuant to § 1601.34, the purported fund transfer will not be made.

■ 17. Revise subpart D to read as follows:

Subpart D—Investment Elections and Fund Reallocation and Fund Transfer Requests

Sec.

Subpart D—Investment Elections and Fund Reallocation and Fund Transfer Requests

§ 1601.31 Applicability.

This subpart applies to investment elections made under subpart B of this part, fund reallocations and fund transfers made under subpart C of this part, and fund transfers made under subpart F of this part.

§ 1601.32 Timing and posting dates.

(a) *Posting dates.* The date on which an investment election or fund reallocation or fund transfer request (transaction request) is processed is subject to a number of factors, including some that are outside of the control of the TSP, such as power outages, the failure of telephone service, unusually heavy transaction volume, and acts of God. These factors also could affect the availability of the TSP website and the ThriftLine. Therefore, the TSP cannot guarantee that a transaction request will be processed on a particular day. However, the TSP will process transaction requests under ordinary circumstances described in paragraphs (a)(1) through (4) of this section:

(1) A transaction request other than an investment election request entered into the TSP record keeping system by a participant who uses the TSP website or the ThriftLine, before 12 noon eastern time of any business day, will ordinarily be posted that business day. A transaction request other than an investment election request entered into the system at or after 12 noon eastern time of any business day will ordinarily be posted on the next business day. A transaction request that is an investment election request will ordinarily be posted immediately and be effective the next business day.

(2) A transaction request made on the TSP website or the ThriftLine on a non-business day will ordinarily be posted on the next business day.

(3) A transaction request made on a paper TSP form will ordinarily be posted under the rules in paragraph (a)(1) of this section, based on when the TSP record keeper enters the form into the TSP system. The TSP record keeper ordinarily enters such forms into the system within 48 hours of their receipt.

(4) In most cases, the share price(s) applied to a fund reallocation or fund transfer request is the value of the shares on the date the relevant transaction is posted. In some circumstances, such as error correction, the share price(s) for an earlier date will be used.

(b) *Limit.* There is no limit on the number of investment election requests. A participant may make a total of two unrestricted fund reallocations and/or fund transfers per account (*e.g.,* civilian or uniformed services), per calendar month. A fund reallocation or fund transfer will count toward the monthly total on the date posted by the TSP record keeper and not on the date requested by a participant. After a participant has made a total of two fund reallocations and/or fund transfers in a calendar month, the participant may make additional fund reallocations or fund transfers only into the G Fund until the first day of the next calendar month.

§ 1601.33 Acknowledgment of risk.

(a) Uniformed services participants who first entered service prior to January 1, 2018, and who have not elected to be covered by BRS and civilian participants who enrolled prior to September 5, 2015, must execute an acknowledgement of risk in order to invest in a TSP core fund other than the G Fund. If a required acknowledgment of risk has not been executed, no transactions involving the fund(s) for which the acknowledgment is required will be accepted.

(b) The acknowledgment of risk may be executed in association with an investment election, a fund reallocation, or a fund transfer in the form and manner prescribed by the TSP record keeper.

§ 1601.34 Error correction.

Errors in processing investment elections and fund reallocation or fund transfer requests, or errors that otherwise cause money to be invested in the wrong investment fund, will be corrected in accordance with the error correction regulations found at 5 CFR part 1605.

■ 18. Revise § 1601.40 to read as follows:

§ 1601.40 Lifecycle Funds.

The Executive Director will establish TSP Lifecycle Funds, which are target date asset allocation portfolios. The TSP Lifecycle Funds will invest solely in the funds established pursuant to 5 U.S.C. 8438(b)(1)(A)–(E).

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

■ 19. The authority citation for part 1605 continues to read as follows:

Authority: 5 U.S.C. 8351, 8432a, 8432d, 8474(b)(5) and (c)(1). Subpart B also issued under section 1043(b) of Public Law 104–106, 110 Stat. 186 and § 7202(m)(2) of Public Law 101–508, 104 Stat. 1388.

■ 20. Amend § 1605.1, in paragraph (b), as follows:
■ a. Revise the definition of ''Breakage'';
■ b. Add in alphabetical order a definition for ''Earnings'';
■ c. Revise the definitions of ''Error'' and ''Late contributions''.

The revisions and addition read as follows:

§ 1605.1 Definitions.

* * * * *

(b) * * *

Breakage means the loss incurred or the gain realized on makeup or late contributions.

* * * * *

Earnings means both positive and negative fund performance attributable to differences in TSP core fund share prices.

Error means any act or omission by the Board, the TSP record keeper, or the participant's employing agency that is not in accordance with applicable statutes, regulations, or administrative procedures that are made available to employing agencies and/or TSP participants. It does not mean an act or omission caused by events that are beyond the control of the Board, the TSP record keeper, or the participant's employing agency.

* * * * *

Late contributions means:

(i) Employee contributions that were timely deducted from a participant's basic pay but were not timely reported to the TSP record keeper for investment;

(ii) Employee contributions that were timely reported to the TSP record keeper but were not timely posted to the participant's account by the TSP record keeper because the payment record on which they were submitted contained errors;

(iii) Agency matching contributions attributable to employee contributions referred to in paragraph (i) or (ii) of this definition; and

(iv) Delayed agency automatic (1%) contributions.

* * * * *

■ 21. Revise § 1605.2 to read as follows:

§ 1605.2 Calculating, posting, and charging breakage on late contributions and loan payments.

(a) *General criteria.* The TSP will calculate breakage on late contributions, makeup agency contributions, and loan payments as described by § 1605.15(b). This breakage calculation is subject to the criteria in paragraphs (a)(1) and (2) of this section:

(1) The TSP record keeper will not calculate breakage if contributions or loan payments are posted within 30 days of the ''as of'' date, or if the total amount on a late payment record or the total agency contributions on a current payment record is less than $1.00; and

(2) The TSP record keeper will not take the participant's fund reallocations and fund transfers into account when determining breakage.

(b) *Calculating breakage.* The TSP record keeper will calculate breakage for all contributions or loan payment corrections as follows:

(1) Use the participant's investment election on file for the ''as of'' date to determine how the funds would have been invested, going back to the earliest daily share prices available. If there is no investment election on file, or one cannot be derived based on the investment of contributions, the TSP record keeper will consider the funds to have been invested in the default investment fund in effect for the participant on the ''as of'' date;

(2) Determine the number of shares of the applicable investment funds the participant would have received had the contributions or loan payments been made on time. If the ''as of'' date is before TSP account balances were converted to shares, this determination will be the number of shares the participant would have received on the conversion date, and will include the daily earnings the participant would have received had the contributions or loan payments been made on the ''as of'' date;

(3) Determine the dollar value on the posting date of the number of shares the participant would have received had the contributions or loan payments been made on time. If the contributions or loan payments would have been invested in a Lifecycle fund that is retired on the posting date, the share price of the L Income Fund will be used. The dollar value shall be the number of shares the participant would have received had the contributions or loan payments been made on time multiplied by the share price; and

(4) The difference between the dollar value of the contribution or loan payment on the posting date and the dollar value of the contribution or loan payment on the ''as of'' date is the breakage.

(c) *Posting contributions and loan payments.* Makeup and late contributions, late loan payments, and breakage, will be posted to the participant's account according to his or her investment election on file for the posting date. If there is no investment election on file for the posting date, they will be posted to the default investment fund in effect for the participant.

(d) *Charging breakage.* If the dollar amount posted to the participant's account is greater than the dollar amount of the makeup or late contribution or late loan payment, the TSP record keeper will charge the agency the additional amount. If the dollar amount posted to the participant's account is less than the dollar amount of the makeup or late contribution, or late loan payment, the difference between the amount of the contribution and the amount posted will be forfeited to the TSP.

(e) *Posting of multiple contributions.* If the TSP record keeper posts multiple makeup or late contributions or late loan payments with different ''as of'' dates for a participant on the same business day, the amount of breakage charged to the employing agency or forfeited to the TSP will be determined separately for each transaction, without netting any gains or losses attributable to different ''as of'' dates. In addition, gains and losses from different sources of contributions or different TSP core funds will not be netted against each other. Instead, breakage will be determined separately for each as-of date, TSP core fund, and source of contributions.

§ 1605.3 [Amended]

■ 22. Amend § 1605.3 as follows:
■ a. In paragraph (a), remove ''TSP'' and add in its place ''TSP record keeper'', remove ''contribution allocation'' and add in its place ''investment election'', and remove ''interfund transfer'' and add in its place ''fund reallocation and fund transfer''; and
■ b. In paragraphs (b) and (c), remove ''TSP'' and add in its place ''TSP record keeper''.

§ 1605.11 [Amended]

■ 23. Amend § 1605.11 as follows:
■ a. In paragraph (a), remove ''Board'' and add in its place ''Board and/or the TSP record keeper'';
■ b. In paragraph (b) introductory text, remove ''Agency Automatic (1%) Contributions'' and add in its place ''agency automatic (1%) contributions'' and remove ''Agency Matching Contributions'' and add in its place ''agency matching contributions'';
■ c. In paragraph (b)(2), remove ''TSP'' and add in its place ''TSP record keeper'';
■ d. In paragraph (c)(1), remove ''agency'' and add in its place ''employing agency'';
■ e. In paragraph (c)(4), remove the last two sentences.
■ f. In paragraph (c)(5), remove ''contribution allocation'' and add in its place ''investment election'' and remove

''TSP Fund'' and add in its place ''TSP core fund'';

■ g. In paragraph (c)(9), in the second to last sentence, remove ''matching contributions'' and add in its place ''agency matching contributions''; and

■ h. In paragraph (c)(13), remove ''TSP'' and add in its place ''TSP record keeper''.

■ 24. Amend § 1605.12 as follows:

■ a. Revise paragraphs (a), (b) introductory text, (c) introductory text, (c)(1) introductory text, (c)(1)(i), (c)(2) introductory text, (c)(2)(ii), and (d)(4);

■ b. Add a heading for paragraph (f); and

■ c. Revise paragraph (f)(1).

The revisions and addition read as follows:

§ 1605.12 Removal of erroneous contributions.

(a) *Applicability.* This section applies to the removal of funds erroneously contributed to the TSP. This action is called a negative adjustment, and agencies may only request negative adjustments of erroneous contributions made on or after January 1, 2000. Excess contributions addressed by this section include, for example, excess employee contributions that result from employing agency error and excess employer contributions. This section does not address excess contributions resulting from a FERCCA correction; those contributions are addressed in § 1605.14.

(b) *Method of correction.* Negative adjustment records must be submitted by employing agencies in accordance with this part and any other procedures provided by the Board and/or the TSP record keeper.

* * * * *

(c) *Processing negative adjustments.* To determine current value, a negative adjustment will be allocated among the TSP core funds as it would have been allocated on the attributable pay period (as reported by the employing agency). The TSP record keeper will, for each source of contributions and TSP core fund:

(1) If the attributable pay date for the erroneous contribution is on or before the date TSP accounts were converted to shares (and on or after January 1, 2000), the TSP record keeper will, for each source of contributions and investment fund:

(i) Determine the dollar value of the amount to be removed by using the daily returns for the applicable TSP core fund;

* * * * *

(2) If the attributable pay date of the negative adjustment is after the date TSP accounts were converted to shares, the TSP record keeper will, for each source of contributions and TSP core fund:

* * * * *

(ii) Multiply the price per share on the date the adjustment is posted by the number of shares calculated in paragraph (c)(2)(i) of this section. If the contribution was erroneously contributed to a Lifecycle fund that is retired on the date the adjustment is posted, the share price of the L Income Fund will be used.

(d) * * *

(4) If all employee contributions are removed from a participant's account under the rules set forth in this section, the earnings attributable to those contributions will remain in the account until the participant removes them with a TSP withdrawal. If the participant is not eligible to maintain a TSP account, the employing agency must submit an employee data record to the TSP record keeper indicating that the participant has separated from Government service (this will allow the TSP-ineligible participant to make a post-employment distribution election).

* * * * *

(f) *Multiple negative adjustments.* (1) If multiple negative adjustments for the same attributable pay date for a participant are posted on the same business day, the amount removed from the participant's account and used to offset TSP administrative expenses, or returned to the employing agency, will be determined separately for each adjustment. Earnings and losses for erroneous contributions made on different dates will not be netted against each other. In addition, for a negative adjustment for any attributable pay date, gains and losses from different sources of contributions or different TSP core funds will not be netted against each other. Instead, for each attributable pay date each source of contributions and each TSP core fund will be treated separately for purposes of these calculations. The amount computed by applying the rules in this section will be removed from the participant's account pro rata from all funds, by source, based on the allocation of the participant's account among the TSP core funds when the transaction is posted; and

* * * * *

■ 25. Amend § 1605.13 as follows:

■ a. In paragraph (a)(3), remove ''contribution allocation'' and add in its place ''investment election'';

■ b. In paragraph (b)(3), remove ''contribution allocation'' and add in its place ''investment election''; and

■ c. Revise paragraphs (d) and (e).

The revisions read as follows:

§ 1605.13 Back pay awards and other retroactive pay adjustments.

* * * * *

(d) *Prior withdrawal of TSP account.* If a participant has received a post-employment distribution in any form other than an annuity, and the separation from Government service upon which the post-employment distribution was based is reversed, resulting in reinstatement of the participant without a break in service, the participant will have the option to restore the amount distributed to his or her TSP account. The right to restore the distributed funds will expire if the participant does not notify the TSP record keeper within 90 days of reinstatement. If the participant returns the funds that were distributed, the number of shares purchased will be determined by using the share price of the applicable investment fund on the posting date. Restored funds will not incur breakage.

(e) *Reinstating a loan.* Participants who are covered by paragraph (d) of this section and who elect to return funds that were distributed may also elect to reinstate a loan which was previously declared to be a loan foreclosure.

■ 26. Amend § 1605.14 by revising paragraphs (a)(2), (b)(4), (c)(3), (f)(3), and (g)(2) to read as follows:

§ 1605.14 Misclassified retirement system coverage.

(a) * * *

(2) All agency contributions that were made to a CSRS participant's account will be forfeited. An employing agency may submit a negative adjustment record to request the return of an erroneous contribution that has been in the participant's account for less than one year.

(b) * * *

(4) If the retirement coverage correction is a FERCCA correction, the employing agency must submit makeup employee contributions on late payment records. The participant is entitled to breakage on contributions from all sources. Breakage will be calculated pursuant to § 1605.2. If the retirement coverage correction is not a FERCCA correction, the employing agency must submit makeup employee contributions on current payment records; in such cases, the employee is not entitled to breakage. Agency makeup contributions may be submitted on either current or late payment records; and

* * * * *

(c) * * *

(3) The TSP record keeper will consider a participant to be separated

from Government service for all TSP purposes and the employing agency must submit an employee data record to reflect separation from Government service. If the participant has an outstanding loan, it will be subject to the provisions of part 1655 of this chapter. The participant may make a TSP post-employment distribution election pursuant to 5 CFR part 1650, subpart B, and the distribution will be subject to the provisions of 5 CFR 1650.60(b).

* * * * *

(f) * * *

(3) The employing agency must, under the rules of § 1605.11, make agency automatic (1%) contributions and agency matching contributions on employee contributions that were made while the participant was misclassified; and

* * * * *

(g) * * *

(2) All agency contributions that were made to a non-BRS participant's account will be forfeited. An employing service may submit a negative adjustment record to request the return of an erroneous contribution that has been in the participant's account for less than one year.

§ 1605.15 [Amended]

■ 27. Amend § 1605.15 as follows:

■ a. In paragraph (b), remove ''TSP'' and add in its place ''TSP record keeper''; and

■ b. In paragraph (d), remove ''TSP'' and add in its place ''TSP record keeper''.

■ 28. Amend § 1605.16 by revising paragraphs (a)(1) and (2) and (b)(1) and (2) to read as follows:

§ 1605.16 Claims for correction of employing agency errors; time limitations.

(a) * * *

(1) Upon discovery of an error made within the past six months involving the correct or timely remittance of payments to the TSP record keeper (other than a retirement system misclassification error, as covered in paragraph (c) of this section), an employing agency must promptly correct the error on its own initiative. If the error was made more than six months before it was discovered, the agency may exercise sound discretion in deciding whether to correct it, but, in any event, the agency must act promptly in doing so.

(2) For errors involving incorrect dates of birth caused by employing agency error that result in default investment in the wrong L Fund, the employing agency must promptly notify the TSP record keeper that the participant is entitled to breakage if the error is discovered within 30 days of either the date the TSP record keeper provides the participant with a notice reflecting the error or the date the TSP or its record keeper makes available on its website a participant statement reflecting the error, whichever is earlier. If it is discovered after that time, the employing agency may use its sound discretion in deciding whether to pay breakage, but, in any event, must act promptly in doing so.

(b) * * *

(1) If an agency fails to discover an error of which a participant has knowledge involving the correct or timely remittance of a payment to the TSP record keeper (other than a retirement system misclassification error as covered by paragraph (c) of this section), the participant may file a claim with his or her employing agency to have the error corrected without a time limit. The agency must promptly correct any such error for which the participant files a claim within six months of its occurrence; if the participant files a claim to correct any such error after that time, the agency may do so at its sound discretion.

(2) For errors involving incorrect dates of birth that result in default investment in the wrong L Fund of which a participant or beneficiary has knowledge, he or she may file a claim for breakage with the employing agency no later than 30 days after either the date the TSP record keeper provides the participant with a notice reflecting the error or the date the TSP or its record keeper makes available on its website a participant statement reflecting the error, whichever is earlier. The employing agency must promptly notify the TSP record keeper that the participant is entitled to breakage.

* * * * *

■ 29. Amend § 1605.17 by revising paragraphs (b) and (c)(1) through (3) to read as follows:

§ 1605.17 Redesignation and recharacterization.

* * * * *

(b) *Method of correction.* The employing agency must promptly submit a redesignation record or a recharacterization record in accordance with this part and the procedures provided to employing agencies by the Board and/or the TSP record keeper in bulletins or other guidance.

(c) * * *

(1) Upon receipt of a properly submitted redesignation record, the TSP record keeper shall treat the erroneously submitted contribution (and associated positive earnings) as if the contribution had been made to the correct balance on the date that it was contributed to the wrong balance. The TSP record keeper will adjust the participant's traditional balance and the participant's Roth balance accordingly. The TSP record keeper will also adjust the participant's Roth initiation date as necessary.

(2) Upon receipt of a properly submitted recharacterization record or recharacterization request, the TSP record keeper will update the tax characterization of the erroneously characterized contribution.

(3) Agency automatic (1%) contributions and agency matching contributions cannot be redesignated as Roth contributions or recharacterized as tax-exempt contributions.

* * * * *

■ 30. Revise § 1605.21 to read as follows:

§ 1605.21 Plan-paid breakage and other corrections.

(a) *Plan-paid breakage.* (1) Subject to paragraph (a)(3) of this section, if, because of an error committed by the Board or the TSP record keeper, a participant's account is not credited or charged with the investment gains or losses the account would have received had the error not occurred, the account will be credited accordingly.

(2) Errors that warrant the crediting of breakage under paragraph (a)(1) of this section include, but are not limited to:

(i) Delay in crediting contributions or other money to a participant's account;

(ii) Improper issuance of a loan or TSP withdrawal payment to a participant or beneficiary which requires the money to be restored to the participant's account; and

(iii) Investment of all or part of a participant's account in the wrong investment fund(s).

(3) A participant will not be entitled to breakage under paragraph (a)(1) of this section if the participant had the use of the money on which the investment gains would have accrued.

(4) If the participant continued to have a TSP account, or would have continued to have a TSP account but for the Board or TSP record keeper's error, the TSP record keeper will compute gains or losses under paragraph (a)(1) of this section for the relevant period based upon the investment funds in which the affected money would have been invested had the error not occurred. If the participant did not have, and should not have had, a TSP account during this period, then the TSP will use the rate of return set forth in § 1605.2(b) for the relevant period and return the money to the participant.

(b) *Other corrections.* The Executive Director may, in his or her discretion

and consistent with the requirements of applicable law, correct any other errors not specifically addressed in this section, including payment of breakage, if the Executive Director determines that the correction would serve the interests of justice and fairness and equity among all participants of the TSP.

§ 1605.22 [Amended]

■ 31. Amend § 1605.22, in the last sentence of paragraph (d)(1), by removing ''record keeper's'' and adding in its place ''TSP record keeper's''.

■ 32. Amend § 1605.31 by revising paragraphs (c)(1) through (5) and (d) to read as follows:

§ 1605.31 Contributions missed as a result of military service.

* * * * *

(c) * * *

(1) The employee is entitled to receive the agency automatic (1%) contributions that he or she would have received had he or she remained in civilian service or pay status. Within 60 days of the employee's reemployment or restoration to pay status, the employing agency must calculate the makeup agency automatic (1%) contributions and report those contributions to the record keeper, subject to any reduction in agency automatic (1%) contributions required by paragraph (c)(5) of this section.

(2) An employee who contributed to a uniformed services TSP account during the period of military service is also immediately entitled to receive makeup agency matching contributions to his or her civilian account for the employee contributions to the uniformed services account that were deducted from his or her basic pay, subject to any reduction in agency matching contributions required by paragraph (c)(4) of this section. However, an employee is not entitled to receive makeup agency matching makeup contributions on contributions that were deducted from his or her incentive pay or special pay, including bonus pay, while performing military service.

(3) An employee who makes up missed contributions is entitled to receive attributable makeup agency matching contributions (unless the employee has already received the maximum amount of matching contributions, as described in paragraphs (c)(2) and (4) of this section).

(4) If the employee received uniformed services agency matching contributions, the makeup agency matching contributions will be reduced by the amount of the uniformed services agency matching contributions.

(5) If the employee received uniformed services agency automatic (1%) contributions, the agency automatic (1%) contributions will be reduced by the amount of the uniformed services agency automatic (1%) contributions.

(d) *Breakage.* The employee is entitled to breakage on agency contributions made under paragraph (c) of this section. Breakage will be calculated based on the investment election(s) on file for the participant during the period of military service.

PART 1620—EXPANDED AND CONTINUING ELIGIBILITY

■ 33. The authority citation for part 1620 continues to read as follows:

Authority: 5 U.S.C. 8474(b)(5) and (c)(1). Subpart C also issued under 5 U.S.C. 8440a(b)(7), 8440b(b)(8), and 8440c(b)(8). Subpart D also issued under sec. 1043(b) of Pub. L. 104–106, 110 Stat. 186, and sec. 7202(m)(2) of Pub. L. 101–508, 104 Stat. 1388. Subpart E also issued under 5 U.S.C. 8432b(1) and 8440e.

■ 34. Revise § 1620.3 to read as follows:

§ 1620.3 Contributions.

The employing agency is responsible for transmitting to the TSP record keeper, in accordance with the TSP record keeper's procedures, any employee and employer contributions that are required by this part.

§ 1620.14 [Amended]

■ 35. Amend § 1620.14 as follows:

■ a. In the section heading, remove ''record keeper'' and add in its place ''TSP record keeper''; and

■ b. In paragraph (b), remove ''Board'' and add in its place ''its''.

§ 1620.22 [Amended]

■ 36. Amend § 1620.22 as follows:

■ a. In paragraph (a) introductory text, remove ''withdrawal'' and add in its place ''distribution''; and

■ b. In paragraph (a)(2) introductory text, remove ''withdrawal'' and add in its place ''distribution''.

■ 37. Revise § 1620.35 to read as follows:

§ 1620.35 Loan payments.

NAF instrumentalities must deduct and transmit TSP loan payments for employees who elect to be covered by CSRS or FERS to the TSP record keeper in accordance with 5 CFR part 1655 and the TSP record keeper's procedures. Loan payments may not be deducted and transmitted for employees who elect to be covered by the NAF retirement system. Such employees will be considered to have separated from Government service and may continue making loan repayments in accordance with 5 CFR part 1655 and the TSP record keeper's procedures.

§ 1620.42 [Amended]

■ 38. Amend § 1620.42, in paragraph (c)(1), by removing the word ''form''.

§ 1620.43 [Amended]

■ 39. Amend § 1620.43, in the section heading and paragraphs (a) and (c), by removing ''record keeper'' and adding in its place ''TSP record keeper''.

■ 40. Revise § 1620.45 to read as follows:

§ 1620.45 Suspending TSP loans, restoring post-employment distributions, and reversing loan foreclosures.

(a) *Suspending TSP loans during nonpay status.* If the TSP record keeper is notified that an employee entered into a nonpay status to perform military service, any outstanding TSP loan from a civilian TSP account will be suspended, that is, it will not be declared a loan foreclosure while the employee is performing military service.

(1) Interest will accrue on the loan balance during the period of suspension. When the employee returns to civilian pay status, the employing agency will resume deducting loan payments from the participant's basic pay and the TSP record keeper will reamortize the loan (which will include interest accrued during the period of military service). The maximum loan repayment term will be extended by the employee's period of military service. Consequently, when the employee returns to pay status, the TSP record keeper must receive documentation to show the beginning and ending dates of military service.

(2) The TSP record keeper may close the loan account and declare it to be a loan foreclosure if the TSP record keeper does not receive documentation that the employee entered into nonpay status. However, this can be reversed in accordance with paragraph (c) of this section.

(b) *Restoring post-employment distributions.* An employee who separates from civilian service to perform military service and who receives an automatic payment pursuant to § 1650.11 may return to the TSP an amount equal to the amount of the payment. The employee must notify the TSP record keeper of his or her intent to return the distributed funds within 90 days of the date the employee returns to civilian service or pay status; if the employee is eligible to return a distribution, the TSP record keeper will

then inform the employee of the actions that must be taken to return the funds.

(c) *Reversing loan foreclosures.* An employee may request that a loan foreclosure be reversed it resulted from the employee's separation or placement in nonpay status to perform military service. The TSP record keeper will reverse the loan foreclosure under the process described as follows:

(1) An employee who received a post-employment distribution when he or she separated to perform military service can have a loan foreclosure reversed only if the distributed amount is returned as described in paragraph (b) of this section;

(2) A loan foreclosure can be reversed either by reinstating the loan or by repaying it in full. The TSP loan can be reinstated only if the employee agrees to repay the loan within the maximum loan repayment term plus the length of military service, and if, after reinstatement of the loan, the employee will have no more than two outstanding loans, only one of which is a residential loan; and

(3) The employee must notify the TSP record keeper of his or her intent to reverse a loan foreclosure within 90 days of the date the employee returns to civilian service or pay status; if the employee is eligible to reverse a loan foreclosure, the TSP record keeper will then inform the employee of the actions that must be taken to reverse the distribution.

(d) *Breakage.* Employees will not receive breakage on amounts returned to their accounts under this section.

§ 1620.46 [Amended]

■ 41. Amend § 1620.46, in paragraphs (b) an (d), by removing ''record keeper'' and adding in its place ''TSP record keeper''.

PART 1631—AVAILABILITY OF RECORDS

Subpart A—Production or Disclosure of Records Under the Freedom of Information Act, 5 U.S.C. 552

■ 42. The authority citation for subpart A of part 1631 continues to read as follows:

Authority: 5 U.S.C. 552.

■ 43. Amend § 1631.3 by revising paragraphs (a)(3) and (7) through (11) and removing paragraph (a)(12) to read as follows:

§ 1631.3 Organization and functions.

(a) * * *

(3) The Office of Participant Services;

* * * * *

(7) The Office of Planning and Risk;

(8) The Office of External Affairs;

(9) The Office of Chief Financial Officer;

(10) The Office of Resource Management; and

(11) The Office of Technology Services.

* * * * *

PART 1640—PERIODIC PARTICIPANT STATEMENTS

■ 44. The authority citation for part 1640 continues to read as follows:

Authority: 5 U.S.C. 8439(c)(1) and (c)(2), 5 U.S.C. 8474(b)(5) and (c)(1).

§ 1640.2 [Amended]

■ 45. Amend § 1640.2 by removing ''Board'' and adding in its place ''TSP or its record keeper''.

■ 46. Revise § 1640.3 to read as follows:

§ 1640.3 Statement of individual account.

In the quarterly statements, the TSP or its record keeper will furnish each participant with the following information concerning the participant's individual account:

(a) Name and account number under which the account is established.

(b) Statement whether the participant has a beneficiary designation on file with the TSP record keeper.

(c) Investment election that is current at the end of the statement period.

(d) Beginning and ending dates of the period covered by the statement.

(e) The following information for and, as of the close of business on the ending date of, the period covered by the statement:

(1) The total account balance and tax-exempt balance, if applicable;

(2) The account balance for each source of contributions;

(3) The account balance and activity in each TSP core fund, including the dollar amount of the transaction, the share price, and the number of shares;

(4) Loan information and activity, if applicable; and

(5) The mutual fund window account balance, if applicable.

(f) Any other information concerning the account that the Executive Director determines should be included in the statement.

■ 47. Revise § 1640.4 to read as follows:

§ 1640.4 Account transactions.

(a) Where relevant, the following transactions will be reported in each individual account statement:

(1) Contributions;

(2) Withdrawals;

(3) Forfeitures;

(4) Loan disbursements and repayments;

(5) Fund reallocations and fund transfers among TSP core funds;

(6) Adjustments to prior transactions;

(7) Rollovers from traditional individual retirement accounts (IRAs) and eligible employer plans within the meaning of section 402(c) of the Internal Revenue Code (26 U.S.C. 402(c)); and

(8) Any other transaction that the Executive Director determines will affect the status of the individual account.

(b) Where relevant, the statement will contain the following information concerning each transaction identified in paragraph (a) of this section:

(1) Type of transaction;

(2) TSP core funds affected;

(3) Amount of the transaction (in dollars); and

(4) Any other information the Executive Director deems relevant.

■ 48. Revise § 1640.5 to read as follows:

§ 1640.5 TSP core fund information.

The TSP or its record keeper will provide to each participant each calendar year information concerning each of the TSP core funds, including:

(a) A summary description of the type of investments made by the fund, written in a manner that will allow the participant to make an informed decision; and

(b) The performance history of the type of investments made by the fund, covering the five-year period preceding the date of the evaluation.

■ 49. Revise § 1640.6 to read as follows:

§ 1640.6 Methods of providing information.

The TSP or its record keeper will furnish the information described in this part to participants by making it available on the TSP website. A participant can request paper copies of that information by calling the ThriftLine, submitting a request through the TSP website, or by writing to the TSP record keeper.

PART 1645—CALCULATION OF SHARE PRICES

■ 50. The authority citation for part 1645 continues to read as follows:

Authority: 5 U.S.C. 8439(a)(3) and 8474.

■ 51. Revise § 1645.2 to read as follows:

§ 1645.2 Posting of transactions.

Contributions, loan payments, loan disbursements, withdrawals, fund reallocations, fund transfers, and other transactions will be posted in dollars and in shares by source and by TSP core fund to the appropriate individual account by the TSP record keeper, using the share price for the date the transaction is posted.

§ 1645.3 [Amended]

■ 52. Amend § 1645.3 as follows:
■ a. In the section heading and paragraph (a), remove ''TSP Fund'' and add in its place ''TSP core fund''; and
■ b. In paragraph (c), remove ''each TSP fund'' and add in its place ''each TSP core fund''.

■ 53. Amend § 1645.4 by revising the section heading, introductory text, and paragraphs (a) and (c) to read as follows:

§ 1645.4 Administrative expenses attributable to each TSP core fund.

A portion of the administrative expenses accrued during each business day will be charged to each TSP core fund. A fund's respective portion of administrative expenses will be determined as follows:

(a) Accrued administrative expenses (other than those described in paragraph (b) of this section) will be reduced by:

(1) Accrued forfeitures;

(2) The fees described in §§ 1601.53(a) (relating to the mutual fund window), 1655.21 (relating to loans), 1653.6 (relating to retirement benefits court orders), and 1653.16 (relating to child support court orders) of this chapter; and

(3) Accrued earnings on forfeitures, abandoned accounts, unapplied deposits, and fees described in paragraph (a)(2) of this section.

* * * * *

(c) The amount of accrued administrative expenses not covered by forfeitures, fees, and earnings under paragraph (a) of this section, and not described in paragraph (b) of this section, will be charged on a pro rata basis to all TSP core funds, based on the respective fund balances on the last business day of the prior month end.

§ 1645.5 [Amended]

■ 54. Amend § 1645.5, in paragraph (a), as follows:
■ a. Remove ''TSP Fund'' and adding in its place ''TSP core fund''; and
■ b. Remove ''two decimal places'' and add in its place ''four decimal places''.

§ 1645.6 [Amended]

■ 55. Amend § 1645.6 by removing ''TSP Fund'' and adding in its place ''TSP core fund''.

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

■ 56. The authority citation for part 1650 continues to read as follows:

Authority: 5 U.S.C. 8351, 8432d, 8433, 8434, 8435, 8474(b)(5) and 8474(c)(1).

■ 57. Amend § 1650.1, in paragraph (b), as follows:
■ a. Remove the definition of ''Post-employment withdrawal''; and
■ b. Add in alphabetical order definitions for ''Post-employment distribution'' and ''TSP withdrawal''.

The additions read as follows:

§ 1650.1 Definitions.

* * * * *

(b) * * *

Post-employment distribution means a distribution from the TSP that is available to a participant who is separated from Government service.

* * * * *

TSP withdrawal means a post-employment distribution and/or an in-service withdrawal.

■ 58. Amend § 1650.2 by revising paragraphs (a) through (c), (f), and (h) to read as follows:

§ 1650.2 Eligibility and general rules for a TSP withdrawal.

(a) A participant who is separated from Government service can elect a distribution of all or a portion of his or her account balance by one or a combination of the distribution methods described in subpart B of this part.

(b) A post-employment distribution will not be paid unless TSP records indicate that the participant is separated from Government service. The TSP record keeper will, when possible, cancel a pending post-employment distribution election upon receiving information from an employing agency that a participant is no longer separated.

(c) A participant cannot make a full post-employment distribution of his or her account until any outstanding TSP loan has either been repaid in full or declared to be a loan foreclosure. An outstanding TSP loan will not affect a participant's eligibility for a partial post-employment distribution or an in-service withdrawal.

* * * * *

(f) A participant can elect to have any portion of a single or installment payment that is not rolled over to an eligible employer plan, traditional IRA, or Roth IRA deposited directly, by electronic funds transfer (EFT), into a savings or checking account at a financial institution in the United States.

* * * * *

(h) A participant may elect to have his or her TSP withdrawal distributed from the participant's traditional balance only, Roth balance only, or pro rata from the participant's traditional and Roth balances. Any distribution from the traditional balance will be prorated between the tax-deferred balance and any tax-exempt balance. Any distribution from the Roth balance will be prorated between contributions in the Roth balance and earnings in the Roth balance. In addition, all TSP withdrawals will be distributed pro rata from all TSP core funds in which the participant's account is invested. All prorated amounts will be based on the balances in each TSP core fund or source of contributions on the day the TSP withdrawal is processed.

■ 59. Revise § 1650.3 to read as follows:

§ 1650.3 Frozen accounts.

(a) All distributions from the TSP are subject to the rules relating to spousal rights (found in subpart G of this part) and to domestic relations orders, alimony and child support legal process, and child abuse enforcement orders (found in 5 CFR part 1653).

(b) A participant may not take a distribution of any portion of his or her account balance if the account is frozen due to a pending retirement benefits court order, an alimony or child support enforcement order, or a child abuse enforcement order, or because a freeze has been placed on the account by the TSP record keeper for another reason.

■ 60. Revise § 1650.4 to read as follows:

§ 1650.4 Certification of truthfulness.

By completing a TSP withdrawal request, the participant certifies, under penalty of perjury, that all information provided to the TSP record keeper during the withdrawal process is true and complete, including statements concerning the participant's marital status and, where applicable, the spouse's email or physical address at the time the application is filed or the current spouse's consent to the withdrawal.

■ 61. Revise § 1650.5 to read as follows:

§ 1650.5 Returned funds.

If a TSP withdrawal is returned as undeliverable, the TSP record keeper will attempt to locate the participant. If the participant does not respond within 90 days, the returned funds will be forfeited to the TSP. The participant can claim the forfeited funds, although they will not be credited with TSP investment fund returns.

■ 62. Revise § 1650.6 to read as follows:

§ 1650.6 Deceased participant.

(a) The TSP record keeper will cancel a pending TSP withdrawal request if it receives notice, in the form and manner prescribed by the TSP record keeper, that a participant is deceased. The TSP record keeper will also cancel an annuity purchase made on or after the participant's date of death but before annuity payments have begun, and the

annuity vendor will return the funds to the TSP.

(b) If the TSP record keeper processes a TSP withdrawal request before being notified that a participant is deceased, the funds cannot be returned to the TSP.

■ 63. Revise § 1650.11 to read as follows:

§ 1650.11 Post-employment distribution elections.

(a) Subject to the restrictions in this subpart, participants may elect a distribution of all or a portion of their TSP accounts in a single payment, a series of installment payments, a life annuity, or any combination of these options.

(b) If a participant's account balance is less than $5.00 when he or she separates from Government service, the balance will automatically be forfeited to the TSP. The participant can reclaim the money by contacting the TSP record keeper and requesting the amount that was forfeited; however, TSP investment earnings will not be credited to the account after the date of the forfeiture.

(c) Provided that the participant has not submitted a post-employment distribution election prior to the date the automatic payment is processed, if a participant's vested account balance is less than $200 when he or she separates from Government service, the TSP record keeper will automatically pay the balance in a single payment to the participant at his or her TSP address of record. The participant will not be eligible for any other payment option or be allowed to remain in the TSP.

(d) Only one post-employment distribution election per account will be processed in any 30-calendar-day period.

■ 64. Revise § 1650.12 to read as follows:

§ 1650.12 Single payment.

Provided that, in the case of a partial distribution, the amount elected is not less than $1,000, a participant can elect a distribution of all or a portion of his or her account balance in a single payment.

■ 65. Amend § 1650.13 by revising paragraphs (a) introductory text, (a)(2), (f), and (g) to read as follows:

§ 1650.13 Installment payments.

(a) A participant can elect a distribution of all or a portion of the account balance in a series of substantially equal installment payments, to be paid on a monthly, quarterly, or annual basis in one of the following manners:

* * * * *

(2) An installment payment amount calculated based on life expectancy. Payments based on life expectancy are determined using the factors set forth in the Internal Revenue Service life expectancy tables codified at 26 CFR 1.401(a)(9)–9(b) and (c). The installment payment amount is calculated by dividing the account balance by the factor from the IRS life expectancy tables based upon the participant's age as of his or her birthday in the year payments are to begin. This amount is then divided by the number of installment payments to be made per calendar year to yield the installment payment amount. In subsequent years, the installment payment amount is recalculated in January by dividing the prior December 31 account balance by the factor in the IRS life expectancy tables based upon the participant's age as of his or her birthday in the year payments will be made. There is no minimum amount for an installment payment calculated based on this method.

* * * * *

(f) A participant receiving installment payments may change the investment of his or her account balance among the TSP core funds and may invest through the mutual fund window as provided in 5 CFR part 1601.

(g) Upon receiving information from an employing agency that a participant receiving installment payments is no longer separated, the TSP record keeper will cancel all pending and future installment payments.

■ 66. Amend § 1650.14 by revising paragraphs (a), (b), (d), (e), (g)(3)(iii), and (h) to read as follows:

§ 1650.14 Annuities.

(a) A participant electing a post-employment distribution can use all or a portion of his or her total account balance, traditional balance only, or Roth balance only to purchase a life annuity.

(b) If a participant has a traditional balance and a Roth balance and elects to use all or a portion of his or her total account balance to purchase a life annuity, the TSP record keeper must purchase two separate annuity contracts for the participant: One from the portion of the withdrawal distributed from his or her traditional balance and one from the portion of the withdrawal distributed from his or her Roth balance.

* * * * *

(d) Unless an amount must be paid directly to the participant to satisfy any applicable minimum distribution requirement of the Internal Revenue Code, the TSP record keeper will purchase the annuity contract(s) from the TSP's annuity vendor using the participant's entire account balance or the portion specified. In the event that a minimum distribution is required by section 401(a)(9) of the Internal Revenue Code before the date of the first annuity payment, the TSP record keeper will compute that amount prior to purchasing the annuity contract(s) and pay it directly to the participant.

(e) An annuity will provide a payment for life to the participant and, if applicable, to the participant's survivor, in accordance with the type of annuity chosen. The TSP annuity vendor will make the first annuity payment approximately 30 days after the TSP record keeper purchases the annuity.

* * * * *

(g) * * *

(3) * * *

(iii) A participant can establish that a person not described in paragraph (g)(3)(ii) of this section has an insurable interest in him or her by submitting, with the annuity request, an affidavit from a person other than the participant or the joint annuitant that demonstrates that the designated joint annuitant has an insurable interest in the participant (as described in paragraph (g)(3)(i) of this section).

* * * * *

(h) For each distribution election in which the participant elects to purchase an annuity with some or all of the amount distributed, if the TSP record keeper must purchase two annuity contracts, the type of annuity, the annuity features, and the joint annuitant (if applicable) selected by the participant will apply to both annuities purchased. For each distribution election, a participant cannot elect more than one type of annuity by which to receive a distribution, or portion thereof, from any one account.

* * * * *

■ 67. Amend § 1650.16 by revising paragraphs (c) and (d) to read as follows:

§ 1650.16 Required minimum distributions.

* * * * *

(c) In the event that a separated participant does not withdraw from his or her account an amount sufficient to satisfy his or her required minimum distribution for the year, the TSP record keeper will automatically distribute the necessary amount on or before the applicable date described in paragraph (a) of this section.

(d) The TSP record keeper will disburse required minimum distributions described in paragraph (c) of this section pro rata from the

participant's traditional balance and the participant's Roth balance.

* * * * *

■ 68. Revise § 1650.17 to read as follows:

§ 1650.17 Changes and cancellation of a post-employment distribution request.

(a) *Before processing.* A pending post-employment distribution request can be cancelled if the cancellation is received and can be processed before the TSP record keeper processes the request. However, the TSP record keeper processes post-employment distribution requests each business day and those that are entered into the record keeping system by 12 noon eastern time will ordinarily be processed that night; those entered after 12 noon eastern time will be processed the next business day. Consequently, a cancellation request must be received and entered into the system before the cut-off for the day the request is submitted for processing in order to be effective to cancel the post-employment distribution.

(b) *After processing.* A post-employment distribution election cannot be changed or cancelled after the withdrawal request has been processed. Consequently, funds disbursed cannot be returned to the TSP.

(c) *Change in installment payments.* If a participant is receiving a series of installment payments, with appropriate supporting documentation as required by the TSP record keeper, the participant can change at any time: The payment amount or frequency (including stopping installment payments), the address to which the payments are mailed, the amount of federal tax withholding, whether or not a payment will be rolled over (if permitted) and the portion to be rolled over, the method by which direct payments to the participant are being sent (EFT or check), the identity of the financial institution to which payments are rolled over or sent directly to the participant by EFT, or the identity of the EFT account.

■ 69. Revise subpart C to read as follows:

Subpart C—Procedures for Post-Employment Distributions

Sec.

Subpart C—Procedures for Post-Employment Distributions

§ 1650.21 Information provided by employing agency or service.

When a TSP participant separates from Government service, his or her employing agency or service must report the separation and the date of separation to the TSP record keeper. Until the TSP record keeper receives this information from the employing agency or service, it will not pay a post-employment distribution.

§ 1650.22 Accounts of $200 or more.

A participant whose account balance is $200 or more must submit a properly completed distribution election to request a post-employment distribution of his or her account balance.

§ 1650.23 Accounts of less than $200.

Upon receiving information from the employing agency that a participant has been separated for more than 60 days and that any outstanding loans have been closed, provided the participant has not made a distribution election before the distribution is processed, if the account balance is $5.00 or more but less than $200, the TSP record keeper will automatically distribute the entire amount of his or her account balance. The TSP record keeper will not pay this amount by EFT. The participant may not elect to leave this amount in the TSP, nor will the TSP record keeper roll over any automatically distributed amount to an eligible employer plan, traditional IRA, or Roth IRA. However, the participant may make an indirect rollover of this payment into an eligible employer plan, traditional IRA, or Roth IRA to the extent the roll over is permitted by the Internal Revenue Code.

§ 1650.24 How to obtain a post-employment distribution.

To request a post-employment distribution, a participant must initiate a request in the form and manner prescribed by the TSP record keeper.

§ 1650.25 Rollovers from the TSP.

(a) The TSP record keeper will, at the participant's election, roll over all or any portion of an eligible rollover distribution (as defined by section 402(c) of the Internal Revenue Code) directly to an eligible employer plan or an IRA.

(b) If a post-employment distribution includes a payment from a participant's traditional balance and a payment from the participant's Roth balance, the TSP record keeper will, at the participant's election, roll over all or a portion of the payment from the traditional balance to a single plan or IRA and all or a portion of the payment from the Roth balance to another plan or IRA. The TSP record keeper will also allow the traditional and Roth portions of a payment to be rolled over to the same plan or IRA but, for each type of balance, the election must be made separately by the participant and each type of balance will be rolled over separately. However, the TSP record keeper will not roll over portions of the participant's traditional balance to two different institutions or portions of the participant's Roth balance to two different institutions.

(c) If a post-employment distribution includes an amount from a participant's Roth balance and the participant elects to roll over that amount to another eligible employer plan or Roth IRA, the TSP record keeper will inform the plan administrator or trustee of the start date of the participant's Roth 5 year non-exclusion period or the participant's Roth initiation date, and the portion of the distribution that represents Roth contributions. If a post-employment distribution includes an amount from a participant's Roth balance and the participant does not elect to roll over the amount, the TSP record keeper will inform the participant of the portion of the distribution that represents Roth contributions.

(d) Tax-exempt contributions can be rolled over only if the IRA or plan accepts such funds.

(e) The TSP record keeper will roll over distributions only to the extent that the rollover is permitted by the Internal Revenue Code.

■ 70. Amend § 1650.31 by revising paragraph (b) to read as follows:

§ 1650.31 Age-based withdrawals.

* * * * *

(b) An age-based withdrawal is an eligible rollover distribution, so a participant may request that the TSP record keeper roll over all or a portion of the withdrawal to a traditional IRA, an eligible employer plan, or a Roth IRA in accordance with § 1650.25.

* * * * *

■ 71. Amend § 1650.32 by revising paragraphs (a), (b)(5), and (e) to read as follows:

§ 1650.32 Financial hardship withdrawals.

(a) A participant who has not separated from Government service and who can certify that he or she has a financial hardship is eligible to withdraw all or a portion of his or her own contributions to the TSP (and their attributable earnings) in a single payment to meet certain specified financial obligations. The amount of a financial hardship withdrawal request must be at least $1,000.

(b) * * *

(5) The participant has incurred expenses and losses (including loss of income) on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100–707, provided that the participant's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster.

* * * * *

(e) The participant must certify that he or she has a financial hardship as described on the hardship withdrawal request, and that the dollar amount of the withdrawal request does not exceed the actual amount of the financial hardship.

* * * * *

§ 1650.33 [Removed and Reserved]

■ 72. Remove and reserve § 1650.33.

■ 73. Revise § 1650.34 to read as follows:

§ 1650.34 Uniqueness of loans and in-service withdrawals.

An outstanding TSP loan cannot be converted into an in-service withdrawal or vice versa. Funds distributed as an in-service withdrawal cannot be returned or repaid.

■ 74. Revise subpart E to read as follows:

Subpart E—Procedures for In-Service Withdrawals

Sec.

Subpart E—Procedures for In-Service Withdrawals

§ 1650.41 How to obtain an age-based withdrawal.

To request an age-based withdrawal, a participant must initiate a request in form and manner prescribed by the TSP record keeper.

§ 1650.42 How to obtain a financial hardship withdrawal.

(a) To request a financial hardship withdrawal, a participant must initiate a request in the form and manner prescribed by the TSP record keeper.

(b) There is no limit on the number of financial hardship withdrawals a participant can make; however, the TSP record keeper will not accept a financial hardship withdrawal request for a period of six months after a financial hardship disbursement is made.

§ 1650.43 [Reserved]

■ 75. Amend § 1650.61 by revising paragraphs (a), (b), (c) introductory text, and (c)(1), (2), (4), and (5) to read as follows:

§ 1650.61 Spousal rights applicable to post-employment distributions.

(a) The spousal rights described in this section apply to total post-employment distributions when the married participant's vested TSP account balance exceeds $3,500, to partial post-employment distributions without regard to the amount of the participant's account balance, and to any change in the amount or frequency of an existing installment payment series, including a change from payments calculated based on life expectancy to payments based on a fixed-dollar amount.

(b) Unless the participant was granted an exception under this subpart to the spousal notification requirement within 90 days of the date the distribution request is processed by the TSP record keeper, the spouse of a CSRS participant is entitled to notice when the participant applies for a post-employment distribution or makes a change to the amount or frequency of an existing installment payment series. The participant must provide the TSP record keeper with the spouse's correct email or physical address to which to send the required notice.

(c) The spouse of a FERS or uniformed services participant has a right to a joint and survivor annuity with a 50 percent survivor benefit, level payments, and no cash refund based on the participant's entire account balance when the participant elects a total post-employment distribution.

(1) The participant may make a different total post-employment distribution election only if his or her spouse consents to that election and waives the right to this annuity.

(2) A participant's spouse must consent to any partial post-employment distribution election (other than an election to purchase this type of an annuity with such amount) and waive his or her right to this annuity with respect the amount distributed.

* * * * *

(4) Unless the participant was granted an exception under this subpart to the spousal consent requirement within 90 days of the date the distribution request is processed by the TSP record keeper, to show that the spouse has consented to a different total or partial post-employment distribution election or installment payment change and waived the right to this annuity with respect to the applicable amount, the participant must submit to the TSP record keeper a properly completed distribution request, signed by his or her spouse.

(5) The spouse's consent and waiver is irrevocable for the applicable distribution or installment payment change once the TSP record keeper has received it.

■ 76. Amend § 1650.62 by revising paragraphs (b) and (c) to read as follows:

§ 1650.62 Spousal rights applicable to in-service withdrawals.

* * * * *

(b) Unless the participant was granted an exception under this subpart to the spousal notification requirement within 90 days of the date on which the withdrawal request is processed by the TSP record keeper, the spouse of a CSRS participant is entitled to notice when the participant applies for an in-service withdrawal. The participant must provide the TSP record keeper with the spouse's correct email or physical address to which to send the required notice.

(c) Unless the participant was granted an exception under this subpart to the spousal consent requirement within 90 days of the date the withdrawal request is processed by the TSP record keeper, before obtaining an in-service withdrawal, a participant who is covered by FERS or who is a member of the uniformed services must obtain the consent of his or her spouse and waiver of the spouse's right to a joint and survivor annuity described in § 1650.61(c) with respect to the applicable amount. To show the spouse's consent and waiver, a participant must submit to the TSP record keeper a properly completed withdrawal request, signed by his or her spouse. Once a request containing the spouse's consent and waiver has been submitted to the TSP record keeper, the spouse's consent is irrevocable for that withdrawal.

■ 77. Amend § 1650.63 by revising paragraphs (a) introductory text, (a)(3)(i), (b), and (c) to read as follows:

§ 1650.63 Executive Director's exception to the spousal notification requirement.

(a) Whenever this subpart requires the Executive Director to give notice of an action to the spouse of a CSRS participant, an exception to this requirement may be granted if the participant establishes to the satisfaction of the Executive Director that the spouse's whereabouts cannot be determined. A request for such an exception must be submitted to the TSP

record keeper in the form and manner prescribed by the TSP record keeper, accompanied by the following:

* * * * *

(3) * * *

(i) The participant's statement must give the full name of the spouse, declare the participant's inability to locate the spouse, state the last time the spouse's location was known, explain why the spouse's location is not known currently, and describe the good faith efforts the participant has made to locate the spouse in the 90 days before the request for an exception was received by the TSP record keeper. Examples of attempting to locate the spouse include, but are not limited to, checking with relatives and mutual friends or using telephone directories and directory assistance for the city of the spouse's last known address. Negative statements, such as, ''I have not seen nor heard from him,'' or ''I have not had contact with her,'' are not sufficient.

* * * * *

(b) A TSP withdrawal election will be processed within 90 days of an approved exception so long as the spouse named on the TSP withdrawal request is the spouse for whom the exception has been approved.

(c) The TSP and/or its record keeper may require a participant to provide additional information before granting a waiver. The TSP and/or its record keeper may use any of the information provided to conduct its own search for the spouse.

■ 78. Amend § 1650.64 by revising paragraphs (a) introductory text, (a)(2)(ii)(C), and (b) to read as follows:

§ 1650.64 Executive Director's exception to the spousal consent requirement.

(a) Whenever this subpart requires the consent of a spouse of a FERS or uniformed services participant to a loan or TSP withdrawal or a waiver of the right to a survivor annuity, an exception to this requirement may be granted if the participant establishes to the satisfaction of the Executive Director that:

* * * * *

(2) * * *

(ii) * * *

(C) Expressly states that the participant may obtain a loan from his or her TSP account or make a TSP withdrawal notwithstanding the absence of the spouse's signature.

(b) A post-employment distribution election or an in-service withdrawal request processed within 90 days of an approved exception will be accepted by the TSP record keeper so long as the spouse named on the request is the spouse for whom the exception has been approved.

PART 1651—DEATH BENEFITS

■ 79. The authority citation for part 1651 continues to read as follows:

Authority: 5 U.S.C. 8424(d), 8432d, 8432(j), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

§ 1651.1 [Amended]

■ 80. Amend § 1651.1 by removing the definition of ''TIN''.

■ 81. Amend § 1651.2 by revising paragraphs (a) introductory text, (a)(1), (b) introductory text, (b)(1) through (4), (c), and (d) to read as follows:

§ 1651.2 Entitlement to funds in a deceased participant's account.

(a) *Death benefits.* Except as provided in paragraph (b) of this section, the account balance of a deceased participant will be paid as a death benefit to the individual or individuals surviving the participant, in the following order of precedence:

(1) To the beneficiary or beneficiaries designated by the participant in accordance with § 1651.3;

* * * * *

(b) *TSP withdrawals.* If the TSP record keeper processes a notice that a participant has died, it will cancel any pending request by the participant to withdraw his or her account. The TSP record keeper will also cancel an annuity purchase made on or after the participant's date of death but before annuity payments have begun, and the annuity vendor will return the funds to the TSP. The funds designated by the participant for the withdrawal will be paid as a death benefit in accordance with paragraph (a) of this section, unless the participant elected to withdrawal his or her account in the form of an annuity, in which case the funds designated for the purchase of the annuity will be paid as described in paragraphs (b)(1) through (5) of this section:

(1) If the participant requested a single life annuity with no cash refund or 10-year certain feature, the TSP record keeper will pay the funds as a death benefit in accordance with paragraph (a) of this section.

(2) If the participant requested a single life annuity with a cash refund or 10-year certain feature, the TSP record keeper will pay the funds as a death benefit to the beneficiary or beneficiaries designated by the participant on the annuity portion of the TSP post-employment distribution request, or as a death benefit in accordance with paragraph (a) of this section if no beneficiary designated on the withdrawal request survives the participant.

(3) If the participant requested a joint life annuity without additional features, the TSP record keeper will pay the funds as a death benefit to the joint life annuitant if he or she survives the participant, or as a death benefit in accordance with paragraph (a) of this section if the joint life annuitant does not survive the participant.

(4) If the participant requested a joint life annuity with a cash refund or 10-year certain feature, the TSP record keeper will pay the funds as a death benefit to the joint life annuitant if he or she survives the participant, or as a death benefit to the beneficiary or beneficiaries designated by the participant on the annuity portion of the TSP post-employment distribution request if the joint life annuitant does not survive the participant, or as a death benefit in accordance with paragraph (a) of this section if neither the joint life annuitant nor any designated beneficiary survives the participant.

* * * * *

(c) *TSP loans.* If the TSP record keeper processes a notice that a participant has died, any pending loan disbursement will be cancelled and the funds designated for the loan will be distributed as a death benefit in accordance with paragraph (a) of this section. If a TSP loan has been disbursed, but the check has not been negotiated (or an electronic funds transfer (EFT) has been returned), the loan proceeds will be used to pay off the loan. If the loan check has been negotiated (or the EFT has been processed), the funds cannot be returned to the TSP and the TSP record keeper will declare the loan balance as a loan foreclosure in accordance with part 1655 of this chapter.

(d) *TSP investments.* Upon a participant's death, his or her TSP account will remain invested in the same TSP core funds as the account balance was invested on his or her date of death. If any portion of the participant's TSP account is invested through the mutual fund window at the time of his or her death, his or her mutual fund window account will be closed and the balance will be transferred back to the TSP core funds in the participant's TSP account in accordance with his or her most recent investment election until it is paid out or a beneficiary participant account is established under this part.

■ 82. Revise § 1651.3 to read as follows:

§ 1651.3 Designation of beneficiary.

(a) *Designation requirements.* A participant may designate one or more beneficiaries for his or her TSP account. A valid TSP designation of beneficiary remains in effect until it is properly changed as described in § 1651.4.

(b) *Eligible beneficiaries.* Any individual, firm, corporation, or legal entity, including the U.S. Government, may be designated as a beneficiary. A participant can name up to 20 total (primary and contingent) beneficiaries to share the death benefit. A beneficiary may be designated without the knowledge or consent of that beneficiary or the knowledge or consent of the participant's spouse.

(c) *Validity requirements.* To be valid and accepted by the TSP record keeper, a TSP designation of beneficiary must:

(1) Be received by the TSP record keeper on or before the date of the participant's death;

(2) Identify the participant in such a manner so that the TSP record keeper can locate his or her TSP account;

(3) Be signed and properly dated by the participant and signed and properly dated by one witness:

(i) The participant must either sign the designation of beneficiary in the presence of the witness or acknowledge his or her signature on the designation of beneficiary to the witness;

(ii) A witness must be age 21 or older; and

(iii) A witness designated as a beneficiary will not be entitled to receive a death benefit payment; if a witness is the only named beneficiary, the designation of the beneficiary is invalid. If more than one beneficiary is named, the share of the witness beneficiary will be allocated among the remaining beneficiaries pro rata;

(4) Designate primary beneficiary shares which when summed equal 100%;

(5) Contain no substantive alterations (*e.g.,* struck-through shares or scratched-out names of beneficiaries);

(6) Designate each primary and each contingent beneficiary in such a manner so that the TSP record keeper can identify the individual or entity;

(7) Not attempt to designate beneficiaries for the participant's traditional balance and the participant's Roth balance separately; and

(8) Be received by the TSP record keeper not more than 365 calendar days after the date of the participant's most recent signature.

(d) *Will.* A participant cannot use a will to designate a TSP beneficiary.

■ 83. Revise § 1651.4 to read as follows:

§ 1651.4 How to change a designation of beneficiary.

(a) *Change.* To change a designation of beneficiary, the participant must submit to the TSP record keeper a new TSP designation of beneficiary meeting the requirements of § 1651.3 to the TSP record keeper. If the TSP record keeper receives more than one valid designation of beneficiary, it will honor the designation with the latest date signed by the participant. A participant may change a TSP beneficiary at any time, without the knowledge or consent of any person, including his or her spouse.

(b) [Reserved]

(c) *Will.* A participant cannot use a will to change a TSP designation of beneficiary.

§ 1651.5 [Amended]

■ 84. Amend § 1651.5, in paragraph (b), by removing ''TSP'' and adding in its place ''TSP record keeper''.

§ 1651.6 [Amended]

■ 85. Amend § 1651.6, in paragraph (d) introductory text, by removing ''TSP'' and adding in its place ''TSP record keeper''.

§ 1651.8 [Amended]

■ 86. Amend § 1651.8, in paragraph (b), by removing ''Board'' and adding in its place ''TSP record keeper''.

§ 1651.10 [Amended]

■ 87. Amend § 1651.10, in paragraph (c), by removing ''form''.

§ 1651.12 [Amended]

■ 88. Amend § 1651.12 by removing ''Board'' and adding in its place ''TSP record keeper'' wherever it appears.

■ 89. Revise § 1651.13 to read as follows:

§ 1651.13 How to apply for a death benefit.

To apply for a TSP death benefit, a potential beneficiary must contact the ThriftLine for instructions on providing a certified copy of the participant's death certificate, along with any other information as required by the TSP.

■ 90. Revise § 1651.14 to read as follows:

§ 1651.14 How payment is made.

(a) *In general.* Each beneficiary's death benefit will be disbursed pro rata from the participant's traditional and Roth balances. The payment from the traditional balance will be further pro rated between the tax-deferred balance and tax-exempt balance. The payment from the Roth balance will be further pro rated between contributions in the Roth balance and earnings in the Roth balance. In addition, all death benefits will be disbursed pro rata from all TSP core funds in which the deceased participant's account is invested. All pro rated amounts will be based on the balances in each TSP core fund or source of contributions on the day the disbursement is made. Disbursement will be made separately for each entitled beneficiary.

(b) *Spouse beneficiaries.* The TSP record keeper will automatically transfer a surviving spouse's death benefit to a beneficiary participant account (described in § 1651.19) established in the spouse's name. The TSP record keeper will not maintain a beneficiary participant account if the balance of the beneficiary participant account is less than $200 on the date the account is established. The TSP record keeper also will not transfer this amount or pay it by electronic funds transfer. Instead, the spouse will receive an immediate distribution in the form of a check.

(c) *Nonspouse beneficiaries.* The TSP record keeper will send notice of pending payment to each beneficiary. Payment will be sent to the address that is provided on the participant's TSP designation of beneficiary unless the TSP record keeper receives notice of a more recent address. All individual beneficiaries must provide the TSP record keeper with a Social Security number. The following additional rules apply to payments to nonspouse beneficiaries:

(1) *Payment to minor child or incompetent beneficiary.* Payment will be made in the name of a minor child or incompetent beneficiary. A parent or other guardian may direct where the payment should be sent and may make any permitted tax withholding election. A guardian of a minor child or incompetent beneficiary must submit court documentation showing his or her appointment as guardian.

(2) *Payment to executor or administrator.* If payment is to the executor or administrator of an estate, the check will be made payable to the estate of the deceased participant, not to the executor or administrator. A taxpayer identification number must be provided for all estates.

(3) *Payment to trust.* If payment is to a trust, the payment will be made payable to the trust and mailed in care of the trustee. A taxpayer identification number must be provided for the trust.

(4) *Payment to inherited IRA on behalf of a nonspouse beneficiary.* If payment is to an inherited IRA on behalf of a nonspouse beneficiary, the check will be made payable to the account. Information pertaining to the

inherited IRA must be submitted by the IRA trustee. A payment to an inherited IRA will be made only in accordance with the rules set forth in 5 CFR 1650.25.

(5) *Undeliverable payments.* If a death benefit payment is returned as undeliverable, the TSP record keeper will attempt to contact the beneficiary. If the beneficiary does not respond within 90 days, the death benefit payment will be forfeited to the TSP. The beneficiary can claim the forfeited funds, although they will not be credited with investment returns.

(6) *Proper payments.* A properly paid death benefit payment cannot be returned to the TSP.

■ 91. Amend § 1651.16 by revising paragraph (c) to read as follows:

§ 1651.16 Missing and unknown beneficiaries.

* * * * *

(c) *Abandoned account.* If no beneficiaries of the account are located, the account will be considered abandoned and the funds will revert to the TSP. If there are multiple beneficiaries and one or more of them refuses to cooperate in the TSP record keeper's search for the missing beneficiary, the missing beneficiary's share will be considered abandoned. In such circumstances, the account can be reclaimed if the missing beneficiary is found at a later date. However, earnings will not be credited from the date the account is abandoned. The TSP may require the beneficiary to apply for the death benefit in the form and manner prescribed by the TSP record keeper and submit proof of identity and relationship to the participant.

■ 92. Amend § 1651.19 by revising paragraphs (a), (b), (c)(3) and (4), (e), (g), (h), (k), (l), (m) introductory text, (m)(1) and (4), and (n) to read as follows:

§ 1651.19 Beneficiary participant accounts.

* * * * *

(a) *Initial investment allocation.* Each beneficiary participant account, once established, will be allocated to the TSP core funds in which the deceased participant's account balance was invested on his or her date of death. A beneficiary participant may redistribute his or her beneficiary participant account balance among the TSP core funds by making a fund reallocation or fund transfer request described in part 1601, subpart C, of this chapter. A beneficiary participant may move a portion of his or her beneficiary account balance from the TSP core funds to the mutual fund window by making a fund transfer request described in part 1601, subpart F.

(b) *Contributions.* A beneficiary participant may not make contributions or rollovers to his or her beneficiary participant account. The TSP record keeper will not accept an investment election request described in part 1601, subpart B, of this chapter for a beneficiary participant account.

(c) * * *

(3) In the event that a beneficiary participant does not withdraw from his or her beneficiary participant account an amount sufficient to satisfy his or her required minimum distribution for the year, the TSP record keeper will automatically distribute the necessary amount on or before the applicable date described in paragraph (c)(1) of this section.

(4) The TSP record keeper will disburse required minimum distributions described in paragraph (c)(3) of this section pro rata from the beneficiary participant's traditional balance and the beneficiary participant's Roth balance.

* * * * *

(e) *Ineligibility for certain withdrawals.* A beneficiary participant is ineligible to request the following types of withdrawals from his or her beneficiary participant account: Age-based withdrawals described in § 1650.31 of this chapter, financial hardship withdrawals described in § 1650.32 of this chapter, or loans described in part 1655 of this chapter.

* * * * *

(g) *Rollovers.* A beneficiary participant may request that the TSP record keeper roll over all or a portion of an eligible rollover distribution (within the meaning of I.R.C. section 402(c)) from his or her beneficiary participant account to a traditional IRA, Roth IRA or eligible employer plan (including a civilian or uniformed services TSP account other than a beneficiary participant account) in the form and manner prescribed by the TSP record keeper.

(h) *Periodic statements.* The TSP or its record keeper will furnish beneficiary participants with periodic statements in a manner consistent with part 1640 of this chapter.

* * * * *

(k) *Court orders.* Court orders relating to a civilian beneficiary participant account or uniformed services beneficiary participant account shall be processed pursuant to the procedures set forth in part 1653 of this chapter as if all references to a TSP participant are references to a beneficiary participant and all references to a TSP account or account balance are references to a beneficiary participant account or beneficiary participant account balance. Notwithstanding any provision of part 1653, a payee of a court-ordered distribution from a beneficiary participant account cannot request a rollover of the court-ordered distribution to an *eligible employer plan or IRA.*

(l) *Death of beneficiary participant.* To the extent it is not inconsistent with this § 1651.19, a beneficiary participant account shall be disbursed upon the death of the beneficiary participant in accordance with part 1651 as if any reference to a participant is a reference to a beneficiary participant. For example, a beneficiary participant may designate a beneficiary for his or her beneficiary participant account in accordance with §§ 1651.3 and 1651.4. No individual who is entitled to a death benefit from a beneficiary participant account shall be eligible to keep the death benefit in the TSP or request that the TSP record keeper roll over all or a portion of the death benefit to an IRA or eligible employer plan.

(m) *Uniformed services beneficiary participant accounts.* Uniformed services beneficiary participant accounts are subject to the following additional rules and procedures:

(1) Uniformed services beneficiary participant accounts are established and maintained separately from civilian beneficiary participant accounts. Beneficiary participants who have a uniformed services beneficiary participant account and a civilian beneficiary participant account will be issued two separate TSP account numbers. A beneficiary participant must submit separate fund allocation, fund transfer, re and/or TSP withdrawal requests for each account and submit separate beneficiary designations for each account;

* * * * *

(4) A beneficiary participant may roll over all or any portion of an eligible rollover distribution (within the meaning of I.R.C. section 402(c)) from a uniformed services beneficiary participant account into a civilian or uniformed services TSP participant account. However, tax-exempt money attributable to combat zone contributions cannot be rolled over from a uniformed services beneficiary participant account to a civilian TSP participant account.

(n) *Multiple beneficiary accounts.* Each beneficiary participant account is maintained separately from all other beneficiary participant accounts. If an individual has multiple beneficiary

participant accounts, each of the individual's beneficiary participant accounts will have a unique account number. A beneficiary participant must submit separate fund reallocation, fund transfer, and/or TSP withdrawal requests and submit separate beneficiary designations for each beneficiary participant account that the TSP maintains for him or her. A beneficiary participant account cannot be combined with another beneficiary participant account.

PART 1653—COURT ORDERS AND LEGAL PROCESSES AFFECTING THRIFT SAVINGS PLAN ACCOUNTS

■ 93. The authority citation for part 1653 continues to read as follows:

Authority: 5 U.S.C. 8432d, 8435, 8436(b), 8437(e), 8439(a)(3), 8467, 8474(b)(5) and 8474(c)(1).

§ 1653.1 [Amended]

■ 94. Amend § 1653.1, in the definition of ''TSP investment earnings or earnings'', by removing ''TSP fund'' and adding in its place ''TSP core fund''.

■ 95. Amend § 1653.2 by revising paragraphs (a)(3)(ii) and (iv) and (b)(1), (2), (4), (5), and (7) to read as follows:

§ 1653.2 Qualifying retirement benefits court orders.

(a) * * *

(3) * * *

(ii) A stated percentage of the account; or

* * * * *

(iv) The following examples would qualify to require payment from the TSP, although ambiguous or conflicting language used elsewhere could cause the order to be rejected.

(A) *Example 1.* ORDERED: [payee's name, Social Security number (SSN), and address] is awarded $____ from the [civilian or uniformed services] Thrift Savings Plan account of [participant's name, account number or SSN, and address].

(B) *Example 2.* ORDERED: [payee's name, SSN, and address] is awarded ____ % of the [civilian and/or uniformed services] Thrift Savings Plan account[s] of [participant's name, account number or SSN, and address] as of [date].

Note 1 to paragraph (a)(3)(iv). The following optional language can be used in conjunction with any of the above examples. FURTHER ORDERED: Earnings will be paid on the amount of the entitlement under this ORDER until payment is made.

* * * * *

(b) * * *

(2) An order relating to a TSP account that contains only nonvested money;

* * * * *

(4) An order requiring the TSP to make a payment in the future, unless the present value of the payee's entitlement can be calculated, in which case the TSP will make the payment currently;

(5) An order that does not specify the account to which the order applies, if the participant has both a civilian TSP account and a uniformed services TSP account;

* * * * *

(7) An order that designates the TSP core fund, source of contributions, or balance (*e.g.,* traditional, Roth, or tax-exempt) from which the payment or portions of the payment shall be made.

■ 96. Revise § 1653.3 to read as follows:

§ 1653.3 Processing retirement benefits court orders.

(a) The payment of a retirement benefits court order from the TSP is governed solely by FERSA and by the terms of this subpart. The TSP record keeper will honor retirement benefits court orders properly issued and certified by a court (as defined in § 1653.1). However, those courts have no jurisdiction over the TSP and the TSP cannot be made a party to the underlying domestic relations proceedings.

(b) The TSP record keeper will review a retirement benefits court order to determine whether it is enforceable against the TSP only after the TSP record keeper has received a complete copy of the document. Receipt by an employing agency or any other agency of the Government does not constitute receipt by the TSP record keeper. Retirement benefits court orders should be submitted to the TSP record keeper at the current address as provided at *https://www.tsp.gov.* Receipt by the TSP record keeper is considered receipt by the TSP. To be complete, a court order must be written in English or be accompanied by a certified English translation and contain all pages and attachments; it must also provide (or be accompanied by a document that provides):

(1) The participant's account number or Social Security number (SSN);

(2) The name and last known mailing address of each payee covered by the order; and

(3) The payee's SSN and state of legal residence if he or she is the current or former spouse of the participant.

(c) As soon as practicable after the TSP record keeper receives a document that purports to be a qualifying retirement benefits court order, whether or not complete, the participant's account will be frozen. After the account is frozen, no withdrawals or loan disbursements (other than a required minimum distribution pursuant to section 401(a)(9) of the Internal Revenue Code, 26 U.S.C. 401(a)(9)) will be allowed until the account is unfrozen. All other account activity will be permitted.

(d) The following documents do not purport to be qualifying retirement benefits court orders, and accounts of participants to whom such orders relate will not be frozen:

(1) A court order relating to a TSP account that has been closed;

(2) A court order dated before June 6, 1986;

(3) A court order that does not award all or any part of the TSP account to someone other than the participant; and

(4) A court order that does not mention retirement benefits.

(e) After the participant's account is frozen, the TSP record keeper will review the document further to determine if it is complete; if the document is not complete, it will be rejected, the account will be unfrozen, all parties will be notified, and no further action will be taken with respect to the document.

(f) The TSP record keeper will review a complete copy of an order to determine whether it is a qualifying retirement benefits court order as described in § 1653.2. The TSP record keeper will mail a decision letter to all parties containing the following information:

(1) A determination regarding whether the court order is qualifying;

(2) A statement of the applicable statutes and regulations;

(3) An explanation of the effect the court order has on the participant's TSP account; and

(4) If the qualifying order requires payment, the letter will provide:

(i) An explanation of how the payment will be calculated and an estimated amount of payment;

(ii) The anticipated date of payment;

(iii) Tax and withholding information to the person responsible for paying Federal income tax on the payment;

(iv) Information on how to roll over the payment to an eligible employer plan within the meaning of section 402(c) of the Internal Revenue Code (26 U.S.C. 402(c)), traditional IRA, or Roth IRA (if the payee is the current or former spouse of the participant); and

(v) Information on how to receive the payment through an electronic funds transfer (EFT).

(g)[Reserved]

(h) An account frozen under this section will be unfrozen as follows:

(1) If the account was frozen in response to an order issued to preserve the status quo pending final resolution of the parties' rights to the participant's TSP account, the account will be unfrozen if the TSP record keeper receives a court order that vacates or supersedes the previous order (unless the order vacating or superseding the order itself qualifies to place a freeze on the account). A court order that purports to require a payment from the TSP supersedes an order issued to preserve the status quo, even if it does not qualify to require a payment from the TSP;

(2) If the account was frozen in response to an order purporting to require a payment from the TSP, the freeze will be lifted:

(i) Once payment is made, if the court order is qualifying; or

(ii) Eighteen (18) months after the date of the decision letter if the court order is not qualifying. The 18-month period will be terminated, and the account will be unfrozen, if both parties submit to the TSP record keeper a written request for such a termination.

(i) The TSP record keeper will hold in abeyance the processing of a court-ordered payment if the TSP record keeper is notified in writing that the underlying court order has been appealed, and that the effect of the filing of the appeal is to stay the enforceability of the order.

(1) In the notification, the TSP record keeper must be provided with proper documentation of the appeal and citations to legal authority, which address the effect of the appeal on the enforceability of the underlying court order.

(i) If the TSP record keeper receives proper documentation and citations to legal authority which demonstrate that the underlying court order is not enforceable, the TSP record keeper will inform the parties that the payment will not occur until resolution of the appeal, and the account will remain frozen for loans and withdrawals.

(ii) In the absence of proper documentation and citations to legal authority, the TSP record keeper will presume that the provisions relating to the TSP in the court order remain valid and will proceed with the payment process.

(2) The TSP record keeper must be notified in writing of the disposition of the appeal before the freeze will be removed from the participant's account or a payment will be made. The notification must include a complete copy of an order from the appellate court explaining the effect of the appeal on the participant's account.

(j) Multiple qualifying court orders relating to the same TSP account and received by the TSP record keeper will be processed as follows:

(1) If the orders make awards to the same payee or payees and do not indicate that the awards are cumulative, the TSP record keeper will only honor the order bearing the latest effective date.

(2) If the orders relate to different former spouses of the participant and award survivor annuities, the TSP record keeper will honor them in the order of their effective dates.

(3) If the orders relate to different payees and award fixed dollar amounts, percentages of an account, or portions of an account calculated by the application of formulae, the orders will be honored:

(i) In the order of their receipt by the TSP record keeper, if received by the TSP record keeper on different days; or

(ii) In the order of their effective dates, if received by the TSP record keeper on the same day.

(4) In all other cases, the TSP record keeper will honor multiple qualifying court orders relating to the same TSP account in the order of their receipt by the TSP record keeper.

■ 97. Amend § 1653.4 by revising paragraphs (b), (c), (f) introductory text, (f)(1), (f)(3) introductory text, (f)(3)(i), (g) introductory text, and (g)(2) to read as follows:

§ 1653.4 Calculating entitlements.

* * * * *

(b) If the court order awards a percentage of an account as of a specific date, the payee's entitlement will be calculated based on the account balance as of that date. If the date specified in the order is not a business day, the TSP record keeper will use the participant's account balance as of the last preceding business day.

(c) If the court order awards a percentage of an account but does not contain a specific date as of which to apply that percentage, the TSP record keeper will use the liquidation date.

* * * * *

(f) The payee's entitlement will be credited with TSP investment earnings as described:

(1) The entitlement calculated under this section will not be credited with TSP investment earnings unless the court order specifically provides otherwise. The court order may not specify a rate for earnings.

* * * * *

(3) If earnings are awarded, the TSP record keeper will calculate the amount to be awarded by:

(i) Determining the payee's award amount (*e.g.,* the percentage of the participant's account);

* * * * *

(g) The TSP record keeper will estimate the amount of a payee's entitlement when it prepares the decision letter and will recalculate the entitlement at the time of payment. The recalculation may differ from the initial estimation because:

* * * * *

(2) After the estimate of the payee's entitlement is prepared, the TSP record keeper may process account transactions that have an effective date on or before the date used to compute the payee's entitlement. Those transactions will be included when the payee's entitlement is recalculated at the time of payment; and

* * * * *

■ 98. Amend § 1653.5 by revising paragraphs (a)(1) and (2), (d), (e), (g), (h), (k), (m), and (n) to read as follows:

§ 1653.5 Payment.

(a) * * *

(1) As soon as administratively practicable after the date of the decision letter when the payee is the current or former spouse of the participant, but in no event earlier than 30 days after the date of the decision letter.

(2) As soon as administratively practicable after the date of the decision letter when the payee is someone other than the current or former spouse of the participant.

* * * * *

(d) Payment will be made pro rata from the participant's traditional and Roth balances. The distribution from the traditional balance will be further pro rated between the tax-deferred balance and tax-exempt balance. The payment from the Roth balance will be further pro rated between contributions in the Roth balance and earnings in the Roth balance. In addition, all payments will be distributed pro rata from all TSP core funds in which the participant's account is invested. All pro rated amounts will be based on the balances in each fund or source of contributions on the day the disbursement is made. The TSP record keeper will not honor provisions of a court order that require payment to be made from a specific TSP core fund, source of contributions, or balance.

(e) Payment will be made only to the person or persons specified in the court order. However, if the court order specifies a third-party mailing address for the payment, the TSP record keeper will mail to the address specified any portion of the payment that is not rolled over to a traditional IRA, Roth IRA, or

eligible employer plan within the meaning of section 402(c) of the Internal Revenue Code (26 U.S.C. 402(c)).

* * * * *

(g) If there are insufficient funds to pay each court order payee, payment will be made as follows:

(1) If the order specifies an order of precedence for the payments, the TSP record keeper will honor it.

(2) If the order does not specify an order of precedence for the payments, the TSP record keeper will pay a current or former spouse first and a dependent second.

(h) If the payee dies before a payment is disbursed, payment will be made to the estate of the payee, unless otherwise specified by the court order. A distribution to the estate of a deceased court order payee will be reported as income to the decedent's estate. If the participant dies before payment is made, the order will be honored so long as it is submitted to the TSP record keeper before the TSP account has been closed.

* * * * *

(k) If a court ordered payment is returned as undeliverable, the TSP record keeper will attempt to locate the payee by writing to the address provided on the court order. If the payee does not respond within 90 days, the funds will be forfeited to the TSP. The payee can claim the forfeited funds, although they will not be credited with TSP investment fund returns.

* * * * *

(m) A payee who is a current or former spouse of the participant may elect to roll over a court-ordered payment to a traditional IRA, eligible employer plan within the meaning of section 402(c) of the Internal Revenue Code (26 U.S.C. 402(c)), or Roth IRA. Any election permitted by this paragraph (m) must be made pursuant to the rules described in 5 CFR 1650.25.

(n) If a court order payee who is the current or former spouse of the participant has their own TSP account (other than a beneficiary participant account), the payee can request that the TSP record keeper roll over the court-ordered payment to the payee's TSP account in accordance with the rules described in 5 CFR 1650.25. However, any pro rata share attributable to tax-exempt contributions cannot be rolled over; instead, it will be paid directly to the payee.

■ 99. Add § 1653.6 to subpart A to read as follows:

§ 1653.6 Fees.

The TSP record keeper will charge a participant a $600.00 court order processing fee as follows:

(a) Upon receipt of a complete court order document (whether draft or final) and prior to reviewing the order to determine whether it is a qualifying retirement benefits court order, the fee will be deducted from his or her TSP account balance on a pro rata basis from the participant's traditional and Roth balances. The portion of the fee deducted from the traditional balance will be further pro rated between the tax-deferred balance and tax-exempt balance. The portion of the fee deducted from the Roth balance will be further pro rated between contributions in the Roth balance and earnings in the Roth balance. In addition, the entire fee will be distributed pro rata from all TSP core funds in which the participant's account is invested. All pro rated amounts will be based on the balances in each fund or source of contributions on the day the fee is deducted;

(b) The fee will be charged only once per court order. However, it will not be refunded in the event that the court order is never determined to be a qualifying retirement benefits court order; and

(c)(1) If the court order:

(i) Is determined to be a qualifying retirement benefits court order; and

(ii) Explicitly requires the fee to be split between the participant and the payee;

(2) The TSP record keeper will deduct the payee's portion of the fee from his or her payment and credit that amount back to the participant's TSP account balance.

■ 100. Amend § 1653.12 as follows:

■ a. In paragraph (a), remove ''TSP'' and add in its place ''TSP record keeper'';

■ b. Revise paragraph (c)(2); and

■ c. In paragraph (c)(6), remove ''TSP Fund'' and add in its place ''TSP core fund''.

The revision reads as follows:

§ 1653.12 Qualifying legal processes.

* * * * *

(c) * * *

(2) A legal process relating to a TSP account that contains only nonvested money;

* * * * *

■ 101. Revise § 1653.13 to read as follows:

§ 1653.13 Processing legal processes.

(a) The payment of legal processes from the TSP is governed solely by the Federal Employees' Retirement System Act, 5 U.S.C. chapter 84, and by the terms of this subpart. Although the TSP record keeper will honor legal processes properly issued by a competent authority, those entities have no jurisdiction over the TSP and the TSP cannot be made a party to the underlying proceedings.

(b) The TSP record keeper will review a legal process to determine whether it is enforceable against the TSP only after the TSP record keeper has received a complete copy of the document. Receipt by an employing agency or any other agency of the Government does not constitute receipt by the TSP. Legal processes should be submitted to the TSP record keeper at the current address as provided at *https://www.tsp.gov.* Receipt by the TSP record keeper is considered receipt by the TSP. To be complete, a legal process must contain all pages and attachments; it must also provide (or be accompanied by a document that provides):

(1) The participant's account number or Social Security number (SSN);

(2) The name and last known mailing address of each payee covered under the order; and

(3) The SSN and state of legal residence of the payee if he or she if the current or former spouse of the participant.

(c) As soon as practicable after the TSP record keeper receives a document that purports to be a qualifying legal process, whether or not complete, the participant's account will be frozen. After the account is frozen, no TSP withdrawal or loan disbursements will be allowed until the account is unfrozen. All other account activity will be permitted, including contributions, loan repayments, adjustments, investment elections, fund reallocations, and fund transfers.

(d) The following documents will not be treated as purporting to be a qualifying legal processes, and accounts of participants to whom such orders relate will not be frozen:

(1) A document that does not indicate on its face (or accompany a document that establishes) that it has been issued by a competent authority;

(2) A legal process relating to a TSP account that has been closed; and

(3) A legal process that does not relate either to the TSP or to the participant's retirement benefits.

(e) After the participant's account is frozen, the TSP record keeper will review the document further to determine if it is complete; if the document is not complete, it will be rejected, the account will be unfrozen, all parties will be notified, and no further action will be taken with respect to the document.

(f) As soon as practicable after receipt of a complete copy of a legal process, the TSP record keeper will review it to determine whether it is a qualifying legal process as described in § 1653.12. The TSP record keeper will mail a decision letter to all parties containing the same information described at § 1653.3(f).

(g) [Reserved]

(h) An account frozen under this section will be unfrozen as follows:

(1) If the account was frozen pursuant to a legal process requiring the TSP to freeze the participant's account in anticipation of an order to pay from the account, the account will be unfrozen if any one of the following events occurs:

(i) As soon as practicable after the TSP record keeper receives a complete copy of an order vacating or superseding the preliminary order (unless the order vacating or superseding the preliminary order qualifies to place a freeze on the account);

(ii) Upon payment pursuant to the order to pay from the account, if the TSP record keeper determines that the order is qualifying; or

(iii) As soon as practicable after the TSP issues a decision letter informing the parties that the order to pay from the account is not a qualifying legal process;

(2) If the account was frozen after the TSP record keeper received a document that purports to be a legal process requiring payment from the participant's account, the account will be unfrozen:

(i) Upon payment pursuant to a qualifying legal process; or

(ii) As soon as practicable after the TSP record keeper informs the parties that the document is not a qualifying legal process.

(i) The TSP record keeper will hold in abeyance the processing of a payment required by legal process if the TSP record keeper is notified in writing that the legal process has been appealed, and that the effect of the filing of the appeal is to stay the enforceability of the legal process. The notification must be accompanied by the documentation and citations to legal authority described at § 1653.3(i).

(j) Multiple qualifying legal processes relating to the same TSP account and received by the TSP record keeper will be processed as follows:

(1) If the legal processes make awards to the same payee or payees and do not indicate that the awards are cumulative, the TSP record keeper will only honor the legal process bearing the latest effective date.

(2) If the legal processes relate to different payees, the legal process will be honored:

(i) In the order of their receipt by the TSP record keeper, if received by the TSP record keeper on different days; or

(ii) In the order of their effective dates, if received by the TSP record keeper on the same day.

■ 102. Add § 1653.16 to subpart B to read as follows:

§ 1653.16 Fees.

The TSP record keeper will charge a participant a $600.00 legal process processing fee as follows:

(a) Upon receipt of a complete legal process document (whether draft or final) and prior to reviewing order to determine whether it is a qualifying legal process, the fee will be deducted from his or her TSP account balance on a pro rata basis from the participant's traditional and Roth balances. The portion of the fee deducted from the traditional balance will be further pro rated between the tax-deferred balance and tax-exempt balance. The portion of the fee deducted from the Roth balance will be further pro rated between contributions in the Roth balance and earnings in the Roth balance. In addition, the entire fee will be distributed pro rata from all TSP core funds in which the participant's account is invested. All pro rated amounts will be based on the balances in each fund or source of contributions on the day the fee is deducted; and

(b) The fee will be charged only once per legal process. However, it will not be refunded in the event that the court order is never determined to be a qualifying legal process.

§ 1653.22 [Amended]

■ 103. Amend § 1653.22 by removing ''TSP'' and adding in its place ''TSP record keeper''.

§ 1653.23 [Amended]

■ 104. Amend § 1653.23 by removing ''TSP'' and adding in its place ''TSP record keeper''.

§ 1653.32 [Amended]

■ 105. Amend § 1653.32 as follows:

■ a. In paragraph (a), remove ''TSP'' and add in its place ''TSP record keeper'';

■ b. In paragraph (c)(2), remove ''the TSP'' and add in its place ''the TSP record keeper''; and

■ c. In paragraph (c)(6), remove ''TSP Fund'' and add in its place ''TSP core fund''.

§ 1653.33 [Amended]

■ 106. Amend § 1653.33 as follows:

■ a. In paragraph (a), remove ''TSP'' and add in its place ''TSP record keeper'';

■ b. In paragraph (c)(2), remove ''the TSP'' and add in its place ''the TSP record keeper''; and

■ c. In paragraph (c)(6), remove ''TSP Fund'' and add in its place ''TSP core fund''.

■ 107. Revise § 1653.34 to read as follows:

§ 1653.34 Processing Federal tax levies and criminal restitution orders.

(a) The payment of tax levies and criminal restitution orders from the TSP is governed solely by the Federal Employees' Retirement Systems Act, 5 U.S.C. chapter 84, and by the terms of this subpart. Although the TSP record keeper will honor tax levies or criminal restitution orders properly issued, those entities have no jurisdiction over the TSP and the TSP cannot be made a party to the underlying proceedings.

(b) The TSP record keeper will review a tax levy or criminal restitution order to determine whether it is enforceable against the TSP record keeper only after it has received a complete copy of the document. Receipt by an employing agency or any other agency of the Government does not constitute receipt by the TSP record keeper. Tax levies and criminal restitution orders should be submitted to the TSP record keeper at the current address as provided at *https://www.tsp.gov.* Receipt by the TSP record keeper is considered receipt by the TSP. To be complete, a tax levy or criminal restitution order must meet all the requirements of § 1653.32 or § 1653.33; it must also provide (or be accompanied by a document or enforcement letter that provides):

(1) The participant's TSP account number or Social Security number (SSN); and

(2) The name and mailing address of the payee.

(c) As soon as practicable after the TSP record keeper receives a document that purports to be a qualifying tax levy or criminal restitution order, the participant's account will be frozen. After the participant's account is frozen, no TSP withdrawal or loan disbursements will be allowed until the account is unfrozen. All other account activity will be permitted, including contributions, loan repayments, adjustments, investment elections, fund reallocations, and fund transfers. Once a disbursement from the account is made in accordance with the restitution order or levy, the hold will be removed from the participant's account.

(d) As soon as practicable after receipt of a complete copy of a tax levy or criminal restitution order, the TSP record keeper will review it to determine whether it is qualifying as

described in § 1653.32 or § 1653.33. The TSP record keeper will mail a decision letter to all parties containing the following information:

(1) A determination regarding whether the restitution order or levy is qualifying;

(2) A statement of the applicable statutes and regulations;

(3) An explanation of the effect the restitution order or levy has on the participant's TSP account; and

(4) If the qualifying restitution order or levy requires payment, the letter will provide:

(i) An explanation of how the payment will be calculated and an estimated amount of payment;

(ii) The anticipated date of payment.

§ 1653.36 [Amended]

■ 108. Amend § 1653.36 as follows
■ a. In paragraph (a), remove ''TSP'';
■ b. In paragraph (e), remove ''TSP Funds'' and add in its place ''TSP core funds''; and
■ c. In paragraph (h), remove ''TSP'' and add in its place ''TSP record keeper''.

PART 1655—LOAN PROGRAM

■ 109. The authority citation for part 1655 continues to read as follows:

Authority: 5 U.S.C. 8432d, 8433(g), 8439(a)(3) and 8474.

■ 110. Amend § 1655.1, in paragraph (b), as follows:
■ a. Add in alphabetical order a definition for ''Cure period'';
■ b. Remove the definition of ''Date of application'';
■ c. Add in alphabetical order definitions for ''Deemed distribution'', ''Loan direct debit repayment'', and ''Loan offset''; and
■ d. Remove the definition of ''Taxable distribution''.

The additions read as follows:

§ 1655.1 Definitions.

* * * * *

(b) * * *

Cure period means the period set forth at § 1655.14(e).

Date of request means the day on which the TSP record keeper receives the loan request in the form and manner prescribed by the TSP record keeper.

Deemed distribution means a deemed distribution under Internal Revenue Code section 72(p) and the regulations promulgated thereunder. Also referred to as a loan taxation or taxed loan, it means the amount of outstanding principal and interest on a loan that must be reported to the Internal Revenue Service as taxable income as a result of the failure of a participant who has not separated from Government service to:

(i) Make timely loan repayments before the end of the cure period; or

(ii) Repay the loan in full by the maximum term limit.

* * * * *

Loan direct debit repayment means a loan repayment made directly from a participant's personal savings or checking account.

* * * * *

Loan offset means a loan offset under Internal Revenue Code section 72(p) and the regulations promulgated thereunder. Also referred to as a loan foreclosure, it means the amount of outstanding principal and interest on a loan that must be reported to the Internal Revenue Service as taxable income as the result of the failure of a participant who has separated from Government service to repay his or her loan in full or begin making repayments by the deadline imposed by the TSP record keeper.

* * * * *

■ 111. Revise § 1655.2 to read as follows:

§ 1655.2 Eligibility for loans.

A participant can apply for a TSP general purpose or residential loan if:

(a) More than 30 business days have elapsed since the participant has repaid in full any TSP loan;

(b) The participant is in pay status;

(c) The participant is eligible to contribute to the TSP; and

(d) The participant has at least $1,000 in employee contributions and attributable earnings in his or her account. Paragraph (b) of this section shall not apply to loan requests made during a Government shutdown by participants who are furloughed or excepted from furlough due to the Government shutdown.

§ 1655.3 [Amended]

■ 112. Amend § 1655.3 by removing ''record keeper''.

■ 113. Revise § 1655.4 to read as follows:

§ 1655.4 Number of loans.

A participant may have no more than two loans outstanding from his or her TSP account at any time. No more than one outstanding loan from an account may be a residential loan. A participant with both a civilian TSP account and a uniformed services TSP account may have two outstanding loans from each account.

■ 114. Revise § 1655.5 to read as follows:

§ 1655.5 Loan repayment period.

(a) *Minimum.* The minimum repayment period a participant may request for a general purpose loan is 12 months of scheduled payments. The minimum repayment period a participant may request for a residential loan is 61 months of scheduled payments.

(b) *Maximum.* The maximum repayment period a participant may request for a general purpose loan is 60 months of scheduled payments. The maximum repayment period a participant may request for a residential loan is 180 months years of scheduled payments.

■ 115. Amend § 1655.6 by revising paragraph (b)(2) and adding paragraph (d) to read as follows:

§ 1655.6 Amount of loan.

* * * * *

(b) * * *

(2) 50 percent of the participant's vested account balance that is attributable to employee contributions and attributable earnings (including any outstanding loan balance) or $10,000, whichever is greater, minus any outstanding loan balance; or

* * * * *

(d) Any amount invested through the mutual fund window at the time the participant makes a loan request will not be considered for purposes of determining either the minimum or maximum loan amounts.

■ 116. Amend § 1655.7 by revising paragraph (a) to read as follows:

§ 1655.7 Interest rate.

(a) Except as provided in paragraph (b) of this section, loans will bear interest at the monthly G Fund interest rate established by the Department of the Treasury in effect on the 15th of the month prior to the date the loan request is made.

* * * * *

§ 1655.8 [Removed and Reserved]

■ 117. Remove and reserve § 1655.8.

■ 118. Amend § 1655.9 as follows:
■ a. In paragraph (b), remove ''TSP Fund'' and add in its place ''TSP core fund'';
■ b. In paragraph (c), remove ''TSP Funds'' and add in its place ''TSP core funds'' and remove ''TSP Fund'' and ad in its place ''TSP core fund'';
■ c. In paragraph (d), remove ''contribution allocation'' and add in its place ''investment election'' and remove ''TSP Fund'' and add in its place ''TSP core fund''; and
■ d. Add paragraph (e).

The addition reads as follows:

§ 1655.9 Effect of loans on individual account.

* * * * *

(e) Loan disbursements will not be made from any amounts invested through the mutual fund window and loan payments will not be credited to a participant's mutual fund window account.

■ 119. Revise § 1655.10 to read as follows:

§ 1655.10 Loan request process.

(a) Any participant may apply for a loan by submitting a completed TSP loan request in the form and manner prescribed by the TSP record keeper.

(b) If a participant has a uniformed services account and a civilian account, a separate loan request must be made for each account.

■ 120. Revise § 1655.11 to read as follows:

§ 1655.11 Loan acceptance.

If the requirements set forth in §§ 1655.2, 1655.4, and 1655.6(a) are satisfied, the TSP record keeper will nevertheless reject a loan request if:

(a) The participant has failed to provide all required information on the loan request;

(b) The participant has a pending loan request or in-service withdrawal request; or

(c) A hold has been placed on the account pursuant to 5 CFR 1653.3(c).

■ 121. Revise § 1655.12 to read as follows:

§ 1655.12 Loan agreement.

(a) Upon determining that a loan request meets the requirements of this part, the TSP record keeper will provide the participant with the terms and conditions of the loan.

(b) By accepting the loan agreement, the participant agrees to be bound by all of its terms and conditions, agrees to repay the loan by payroll deduction, and certifies, under penalty of perjury, to the truth and completeness of all statements made in the loan request and loan agreement to the best of his or her knowledge.

(c) For loan requests not completed on the TSP website, the TSP record keeper must receive the completed loan agreement (including any required supporting documentation) before the expiration date stated on the loan agreement or the agreement will not be processed.

(d) The signed loan agreement must be accompanied by:

(1) In the case of a residential loan, supporting materials that document the purchase or construction of the residence and the amount requested (as described in § 1655.20); and

(2) Any other information that the Executive Director may require.

(e) A participant may request, in the form and manner prescribed by the TSP record keeper, that the loan be disbursed by direct deposit to a checking or savings account maintained by the participant in a financial institution.

§ 1655.13 [Amended]

■ 122. Amend § 1655.13 as follows:

■ a. In paragraph (b)(2), remove ''TSP'' and add in its place ''TSP record keeper'';

■ b. Remove paragraph (b)(5); and

■ c. In paragraph (e), remove ''60'' and add in its place ''90'' and remove ''TSP'' and add in its place ''TSP record keeper''.

■ 123. Revise § 1655.14 to read as follows:

§ 1655.14 Loan payments.

(a) In the case of a participant who has not separated from Government service, loan payments must be made through payroll deduction in accordance with the loan agreement. Once loan payments begin, the employing agency cannot terminate the payroll deductions at the employee's request, unless the TSP or its record keeper instructs it to do so.

(b) The participant may make additional payments by mailing a check or guaranteed funds to the TSP record keeper or by enrolling in loan direct debit repayments from his or her personal savings or checking account. If the TSP record keeper receives a payment that repays the outstanding loan amount and overpays the loan by $10.00 or more, the overpayment will be refunded to the participant. Overpayments of less than $10.00 will be applied to the participant's account and will not be refunded. If a loan overpayment refund is returned as undeliverable, the TSP record keeper will attempt to locate the participant. If the participant does not respond within 90 days, the overpayment refund will be forfeited to the TSP. The participant can claim the forfeited funds, although they will not be credited with TSP investment fund returns.

(c) The initial payment on a loan is due on or before the 60th day following the loan issue date. Interest accrues on the loan from the date of issuance.

(d) Subsequent payments are due at regular intervals as prescribed in the loan agreement, or most recent amortization, according to the participant's pay cycle.

(e) In the case of a participant who has not separated from Government service, if a payment is not made when due, the TSP record keeper will notify the participant of the missed payment and the participant must make up the payment in full. The participant's make-up payment must be in the form of a check, guaranteed funds, or a one-time payment via loan direct debit from his or her personal savings or checking account. If the participant does not make up all missed payments by the end of the calendar quarter following the calendar quarter in which the first payment was missed, the TSP record keeper will declare the loan to be a deemed distribution in accordance with § 1655.15(a). The declaration of a deemed distribution does not relieve the participant of his or her obligation to repay the amount.

(f) Interest will accrue on all missed payments and will be included in the calculation of any deemed distribution subsequently declared in accordance with § 1655.15(a). Interest will also accrue on payments missed while a participant is in nonpay status and on any deemed distribution until it is repaid in full.

(g) A participant who has separated from Government service with an outstanding loan balance may continue making loan repayments via check, guaranteed funds, or loan direct debit repayments. If a separated participant does not begin making post-separation loan repayments or pay off the loan in full by the deadline imposed by the TSP record keeper, the TSP record keeper will declare the outstanding loan balance and accrued interest to be a loan offset in accordance with § 1655.15(b). In the case of a separated participant who commences post-separation loan repayments, if a payment is not made when due, the TSP record keeper will notify the separated participant of the missed payment and he or she must make up the payment in full. The make-up payment must be in the form of a check, guaranteed funds, or a one-time payment via loan direct debit from his or her personal savings or checking account. If the participant does not make up all missed payments by the end of the calendar quarter following the calendar quarter in which the first payment was missed, the TSP record keeper will declare the outstanding loan balance and accrued interest to be a loan offset in accordance with § 1655.15(b).

■ 124. Revise § 1655.15 to read as follows:

§ 1655.15 Deemed Distributions and Loan Offsets.

(a) The TSP record keeper will ensure that all requirements set forth in section 72(p) of the Internal Revenue Code and the regulations promulgated thereunder with respect to deemed distributions are satisfied.

(1) The TSP record keeper will declare the entire unpaid balance of an outstanding loan (including interest) to be a deemed distribution if:

(i) The participant misses two or more loan payments or the participant's payments are made for less than the required amount, and the delinquency is not cured within the cure period;

(ii) The loan is not repaid in full by the maximum term limit; or

(iii) A participant is in a confirmed nonpay status for a period of one year or more, has not advised the TSP record keeper that he or she is serving on active military duty, and payments are not resumed after the participant is notified the loan has been reamortized.

(2) Loan taxation does not relieve a participant of his or her obligation to repay the taxed loan amount. A participant may repay a taxed loan in full (including accrued interest) via check or money order up until the time he or she separates from Government service. The tax basis in a participant's TSP account will be adjusted to reflect the repayment of a taxed loan.

(3) If a participant does not repay a taxed loan:

(i) His or her account balance will be permanently reduced; and

(ii) The taxed loan will count as one of the two loans the participant is permitted per account and is treated as an outstanding loan balance when calculating the participant's maximum loan amount.

(b) The TSP record keeper will ensure that all requirements set forth in section 72(p) of the Internal Revenue Code and the regulations promulgated thereunder with respect to loan offsets are satisfied.

(1) The TSP record keeper will declare a loan offset in the following situations:

(i) A participant separates from Government service and does not begin making loan repayments or repay the outstanding loan principal and interest in full within the period specified by the notice to the participant from the TSP record keeper explaining the participant's repayment options; or

(ii) The participant dies.

(2) [Reserved]

(c) If a deemed distribution or loan offset occurs in accordance with paragraph (a) or (b) of this section, as applicable, the TSP record keeper will notify the participant of the amount and date of the distribution. The TSP record keeper will report the distribution to the Internal Revenue Service as income for the year in which it occurs.

(d) If a participant dies and a loan offset occurs in accordance with paragraph (b) of this section, the TSP record keeper will notify the participant's estate of the amount and date of the distribution. Neither the estate nor any other person, including a beneficiary, may repay the loan of a deceased participant, nor can the funds be returned to the TSP.

(e) If, because of Board or TSP record keeper error, a TSP loan is declared a deemed distribution or loan offset under circumstances that make such a declaration inconsistent with this part, or inconsistent with other procedures established by the Board or TSP record keeper in connection with the TSP loan program, the distribution will be reversed. The participant will be provided an opportunity to reinstate loan payments or repay in full the outstanding balance on the loan.

■ 125. Revise § 1655.16 to read as follows:

§ 1655.16 Reamortization.

(a) When a participant's pay cycle changes for any reason, he or she must notify the TSP record keeper of the change in the form and manner prescribed by the TSP record keeper. Upon notification, the participant's loan will be reamortized to adjust the scheduled payment to an equivalent amount in the new pay cycle. If the new pay cycle results in fewer payments per year and the participant does not reamortize the loan, the loan may be declared a deemed distribution pursuant to § 1655.15(a)(1).

(b) Upon reamortization, the outstanding principal balance remains the same. Any accrued interest is paid off first before payments are applied to principal and current interest.

(c) The interest rate on a reamortized loan will be the same as the interest rate on the original loan.

■ 126. Revise § 1655.17 to read as follows:

§ 1655.17 Prepayment.

(a) A participant may repay a loan in full, without a penalty, at any time before the declaration of a deemed distribution or loan foreclosure under § 1655.15. Repayment in full means receipt by the TSP record keeper of a payment, by check or guaranteed funds made payable to the Thrift Savings Plan or via loan direct debit repayments, of all principal and interest due on the loan.

(b) If a participant returns a loan check to the TSP record keeper, it will be treated as a repayment; however, additional interest may be owed, which, if not paid, could result in a deemed distribution. The loan, even though repaid, will also be taken into account in determining the maximum amount available for future loans, in accordance with § 1655.6(b).

(c) The amount outstanding on a loan can be obtained from the TSP website, the ThriftLine, or by a written request to the TSP record keeper.

■ 127. Amend § 1655.18 by revising paragraph (d) to read as follows:

§ 1655.18 Spousal rights.

* * * * *

(d) *Certification of truthfulness.* By completing a loan request, the participant certifies, under penalty of perjury, that all information provided to the TSP record keeper during the loan process is true and complete, including statements concerning the participant's marital status, the spouse's email or physical address at the time the application is filed, or the current spouse's consent to the loan.

■ 128. Revise § 1655.20 to read as follows:

§ 1655.20 Residential loans.

(a) A residential loan will be made only for the purchase or construction of the primary residence of the participant, or for the participant and his or her spouse, and for the amount required to close on the purchase. The participant must actually bear all or part of the cost of the purchase. If the participant purchases a primary residence with someone other than his or her spouse, only the portion of the purchase costs that is borne by the participant will be considered in making the loan. A residential loan will not be made for the purpose of paying off an existing mortgage or otherwise providing financing for a previously purchased primary residence.

(b) The participant's primary residence is his or her principal residence. A primary residence may include a house, a townhouse, a condominium, a share in a cooperative housing corporation, or a mobile home; a primary residence does not include a second home or vacation home. A participant cannot have more than one primary residence.

(c) Purchase of a primary residence means acquisition of the residence through the exchange of cash or other property or through the total construction of a new residence. A residential loan will not be made for a lease-to-buy option, unless the option to buy is being exercised and the documentation states that the funds are being used to purchase the primary residence. Construction of an addition to or the renovation of a residence or the purchase of land only does not constitute the purchase of a primary residence.

(d) The amount required to close on the purchase of a primary residence does not include points or loan origination fees charged for a loan. In addition, real estate taxes cannot be included.

(e) The documentation required for a loan under this section is as follows:

(1) For all purchases, except for construction, a signed sale/purchase contract/settlement offer or agreement or addendum; or

(2) For construction, a signed builder's agreement/contract; and

(3) For requests including closing costs and/or settlement charges, a loan estimate/worksheet/statement/closing disclosure from a mortgage company.

(f) The documentation provided under this section must meet the requirements set forth by the TSP record keeper.

■ 129. Revise § 1655.21 to read as follows:

§ 1655.21 Loan fee.

The TSP will charge a participant a $50.00 loan fee when it disburses a general purpose loan and a $100.00 loan fee when it disburses a residential loan and will deduct the applicable fee from the proceeds of the loan.

PART 1690—THRIFT SAVINGS PLAN

■ 130. The authority citation for part 1690 continues to read as follows:

Authority: 5 U.S.C. 8474.

■ 131. Amend § 1690.1 as follows:

■ a. Remove the definitions of ''Account or individual account'' and ''Account balance'';

■ b. Remove the definition of ''Agency Automatic (1%) Contributions'' and add in its place a definition for ''Agency automatic (1%) contributions'';

■ c. Remove the definition of ''Contribution allocation'';

■ d. Revise the definitions of ''Employer contributions'' and ''In-service withdrawal request'';

■ e. Add in alphabetical order definitions for ''Investment election'', ''L Fund'', and ''Post-employment distribution request'';

■ f. Remove the definition of ''Post-employment withdrawal request'';

■ g. Revise the definitions of ''Roth balance'', paragraph (1)(iii) of the definition of ''Roth initiation'', the definition of ''Source of contributions'', paragraph (1) of the definition of ''Tax-deferred balance'', and the definition of ''Traditional balance'';

■ h. Remove the definition of ''Trustee-to-trustee transfer or transfer'';

■ i. Add in alphabetical order a definition for ''TSP core fund'';

■ j. Remove the definition of ''TSP Fund'';

■ k. Revise the definition of ''TSP record keeper''; and

■ l. Remove the definition of ''TSP website'' and add a definition for ''TSP website'' in its place.

The revisions and additions read as follows:

§ 1690.1 Definitions.

* * * * *

Agency automatic (1%) contributions means any contributions made under 5 U.S.C. 8432(c)(1) and (c)(3). It also includes service automatic (1%) contributions made under 5 U.S.C. 8440e(e)(3)(A).

Agency matching contributions means any contributions made under 5 U.S.C. 8432(c)(2). It also includes service matching contributions under 5 U.S.C. 8440e(e)(3)(B).

* * * * *

Employer contributions means agency automatic (1%) contributions under 5 U.S.C. 8432(c)(1), 8432(c)(3), or 5 U.S.C. 8440e(e)(3)(A) and agency matching contributions under 5 U.S.C. 8432(c)(2) or 5 U.S.C. 8440e(e)(3)(B).

* * * * *

In-service withdrawal request means a properly completed withdrawal election for either an age-based in-service withdrawal under 5 CFR 1650.41 or a financial hardship in-service withdrawal under 5 CFR 1650.42.

Investment election means the participant's apportionment of his or her future contributions, loan payments, and rollovers from eligible employer plans or traditional IRAs among the TSP core funds.

L Fund means the Lifecycle Funds described in 5 CFR part 1601, subpart E.

* * * * *

Post-employment distribution request means a properly completed distribution withdrawal election under 5 CFR 1650.24.

* * * * *

Roth balance means the sum of:

(1) Roth contributions and associated earnings; and

(2) Amounts rolled over to the TSP from a Roth account maintained by an eligible employer plans and earnings on those amounts.

* * * * *

Roth initiation date * * *

(1) * * *

(iii) The date used, by a plan from which the participant directly rolled over Roth money into the TSP, to measure the participant's Roth 5 year non-exclusion period.

* * * * *

Source of contributions means traditional contributions, Roth contributions, agency automatic (1%) contributions, or agency matching contributions. All amounts in a participant's account are attributed to one of these four sources. Catch-up contributions, rollovers, and loan payments are included in the traditional contribution source or the Roth contribution source.

* * * * *

Tax-deferred balance * * *

(1) All contributions and rollovers in a participant's traditional balance that would otherwise be includible in gross income if paid directly to the participant and earnings on those amounts; and

* * * * *

Traditional balance means the sum of:

(1) Tax-deferred contributions and associated earnings;

(2) Tax-deferred amounts rolled over into the TSP and associated earnings;

(3) Tax-exempt contributions and associated earnings;

(4) Agency matching contributions and associated earnings;

(5) Agency automatic (1%) contributions and associated earnings.

* * * * *

TSP core fund means an investment fund established pursuant to 5 U.S.C. 8438(b)(1)(A)–(E) and (c)(2).

TSP record keeper means the entities the Board engages to perform record keeping and administration services for the Thrift Savings Plan.

TSP website means the internet location(s) maintained by the TSP and/or its record keeper, which contain(s) information about the TSP and by which TSP participants may, among other things, access their accounts by computer.

* * * * *

■ 132. Revise § 1690.12 to read as follows:

§ 1690.12 Power of attorney.

(a) A participant or beneficiary can appoint an agent to conduct business with the TSP on his or her behalf by using a power of attorney (POA). The agent is called an attorney-in-fact. The TSP record keeper must approve a POA before the agent can conduct business with the TSP; however, the TSP record keeper will accept a document that was signed by the agent before the TSP record keeper approved the POA. The TSP record keeper will approve a POA if it meets the following conditions:

(1) The POA must give the agent either general or specific powers, as explained in paragraphs (b) and (c) of this section;

(2) The POA must be signed by the participant;

(3) The POA must provide the names and addresses of the participant and the agent;

(4) The POA must meet the state law requirements of the participant's state of domicile as determined by the address on file with the TSP record keeper;

(5) The POA must be a complete document; and

(6) The POA must be submitted to the TSP record keeper for approval.

(b) A general POA gives an agent unlimited authority to conduct business with the TSP, including the authority to sign any TSP-related document. Additional information regarding general powers of attorney can be accessed at *https://www.tsp.gov.*

(c) A specific power of attorney gives an agent the authority to conduct specific TSP transactions. A specific POA must expressly describe the authority it grants. Additional information regarding specifical powers of attorney, as well as a sample form, can be accessed at *https://www.tsp.gov.*

■ 133. Revise § 1690.13 to read as follows:

§ 1690.13 Guardianship and conservatorship orders.

(a) A court order can authorize an agent to conduct business with the TSP on behalf of an incapacitated participant or beneficiary. The agent is called a guardian or conservator and the incapacitated person is called a ward. The TSP record keeper must approve a court order before an agent can conduct business with the TSP; however, the TSP record keeper will accept a document that was signed by the agent before the TSP record keeper approved the court order. The TSP record keeper will approve a court order appointing an agent if the following conditions are met:

(1) A court of competent jurisdiction (as defined at § 1690.1) must have issued the court order;

(2) The court order must give the agent either general or specific powers, as explained in paragraphs (b) and (c) of this section; and

(3) The agent must demonstrate that he or she meets any precondition specified in the court order, such as a bonding requirement.

(b) A general grant of authority gives a guardian or conservator unlimited authority to conduct business with the TSP, including the authority to sign any TSP-related document. By way of example, an order gives a general grant authority by appointing a ''guardian of the ward's estate,'' by permitting a guardian to ''conduct business transactions'' for the ward, or by authorizing a guardian to care for the ward's ''personal property'' or ''Federal Government retirement benefits.''

(c) A specific grant of authority gives a guardian or conservator authority to conduct specific TSP transactions. Such an order must expressly describe the authority it grants. By way of example, an order may authorize an agent to ''obtain information about the ward's TSP account'' or ''borrow or withdraw funds from the ward's TSP account.''

■ 134. Amend § 1690.14 by revising paragraph (b) to read as follows:

§ 1690.14 Checks made payable to the Thrift Savings Plan.

* * * * *

(b) *TSP payment address.* The TSP record keeper has established an address for the receipt of specified TSP payments. The TSP record keeper will not answer correspondence mailed to that payment address.

■ 135. Revise § 1690.15 to read as follows:

§ 1690.15 Freezing an account—administrative holds.

(a) The TSP record keeper may freeze (*e.g.,* place an administrative hold on) a participant's account for any of the following reasons:

(1) Pursuant to a qualifying retirement benefits court order as set forth in part 1653 of this chapter;

(2) Pursuant to a request from the Department of Justice under the Mandatory Victims Restitution Act;

(3) Upon the death of a participant;

(4) Upon suspicion or knowledge of fraudulent account activity or identity theft;

(5) In response to litigation pertaining to an account;

(6) For operational reasons (*e.g.,* to correct a processing error or to stop payment on a check when account funds are insufficient);

(7) Pursuant to a written request from a participant made in the manner prescribed by the TSP record keeper; and

(8) For any other reason necessary to ensure the integrity of TSP accounts or compliance with law.

(b) [Reserved]

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Part IV

The President

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 10399 of May 20, 2022

National Safe Boating Week, 2022

By the President of the United States of America

A Proclamation

Exploring America's magnificent lakes, rivers, ponds, bays, and oceans has long been a favorite pastime for recreational boaters and a memorable way to discover our Nation's natural treasures. As we prepare for warmer weather, and as more Americans take to the water, National Safe Boating Week reminds us of the importance of following responsible and safe boating practices.

So many Americans enjoy recreational boating, and most trips are safe. But many preventable accidents occur each year that result in tragic deaths and injuries. Observing boating safety precautions is essential for all boaters, whether you are fishing, sailing, kayaking, or motoring.

Safe boating practices start well before the hull breaks the water's surface. Experts agree that taking a State-offered boating safety course is one of the best ways to minimize accidents. Most boating fatalities involve boats whose operators—including paddlers in rentals—did not have proper boating safety education. I urge all Americans to use the free assistance of the Coast Guard Auxiliary and America's Boating Club to ensure that your vessels are safe and that operators have the tools they need to operate them safely.

I also call upon Americans to follow basic boating safety procedures and to always wear a life jacket to protect yourself and your loved ones. In 2020, three-quarters of boating deaths were drownings, and nearly 7 out of every 8 drowning victims were not wearing a life jacket. In addition, avoid using alcohol or drugs when operating a boat. Alcohol continues to be a significant contributing factor in boating deaths, and its effects are compounded by water movement, exposure to the elements, and dynamic operating conditions. Finally, wearing an engine cut-off switch link will stop the boat's engine in the event the operator falls overboard, protecting everyone from vessel and propeller strikes. By adhering to safe boating practices, Americans will be safer on the water while enjoying the boating season.

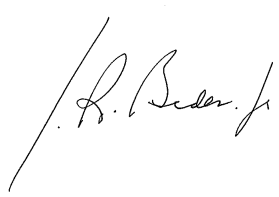
This week, we also pay tribute to the United States Coast Guard and the Federal, State, Tribal, and local partners who help save lives and protect us from accidents on the water. This season, let us recommit to following basic boating safety procedures to prevent boating fatalities, avoid property damage, and help boaters stay safe as they enjoy the beauty of the open water.

In recognition of the importance of safe boating practices, the Congress, by joint resolution approved on June 4, 1958 (36 U.S.C. 131), as amended, has authorized and requested the President to proclaim annually the 7-day period before Memorial Day weekend as ''National Safe Boating Week.''

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim May 21 through May 27, 2022, as National Safe Boating Week. I encourage all Americans who participate in boating activities to observe this occasion by learning more about safe boating practices, and by taking advantage of boating safety education opportunities.

I also encourage the Governors of the States and Territories, and appropriate officials of all units of government, to join me in encouraging boating safety in every community.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of May, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-sixth.



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Presidential Documents

Proclamation 10400 of May 20, 2022

Armed Forces Day, 2022

By the President of the United States of America

A Proclamation

On Armed Forces Day, we share our unending appreciation for the proud patriots who answer the call to serve, taking the sacred oath to defend our Constitution. The brave members of our Army, Navy, Air Force, Marine Corps, Space Force, Coast Guard, and National Guard and Reserve forces represent the best of our Nation. Today and every day, we honor their immeasurable service on behalf of our grateful Nation.

On this special day of tribute, we recognize the sacrifices that our service members and their families make on our behalf, and we recommit to our solemn duty to support them as they protect us. Our Nation has a sacred obligation to properly equip and prepare our troops when we send them in to harm's way and to support them—both while they are serving abroad and when they return home—as well as their families, caregivers, and survivors. We must meet this obligation.

My Administration's unity agenda focuses on key issues that bring Americans together: supporting our veterans, beating the opioid epidemic, addressing our national mental health crisis, and ending cancer as we know it. Each of these issues impact our military community, and each is essential to meeting our obligation to our troops, their families, caregivers, and survivors. Mental health issues pose a real challenge to our service members and their families, and my Administration will continue to strengthen the tools, resources, and support for our military community so our brave service members, who have answered the call to serve, can thrive. This includes taking bold action to reduce suicide among service members, veterans, and their families.

The success of our Armed Forces also rests on every member of our military community feeling that their safety and ability to prosper is prioritized as they defend our Nation. That is why my Administration is so focused on addressing the potential adverse consequences related to toxic exposures or exposures to other environmental hazards during deployment or in garrison.

Safety for our troops also means addressing the scourge of sexual harassment and sexual assault in our military. We have already taken important steps. In December, I was proud to sign into law historic military justice reforms as part of the 2022 National Defense Authorization Act. The Department of Defense is working to implement these critical changes, alongside recommendations from the Independent Review Commission on Sexual Assault in the Military for prevention, climate and culture, and victim care and support. Much work still lies ahead to deliver the progress that our troops deserve, and this will remain a top priority for my Administration.

Our diversity is one of our greatest strengths as a Nation, and we will continue to strive for our Armed Forces to reflect society at every level within its ranks. Ensuring equal opportunity and greater inclusivity will bolster the strength of our military and make sure every American knows they can succeed and thrive as a member of the United States Armed Forces. We are renewing our efforts to address the recruitment, retention,

and well-being of women in the military as well as providing a path to service for other under-represented groups.

As we look around the world today, we are reminded again that freedom comes at great cost. Throughout our history, brave Americans have always stepped forward to defend our liberties—willing to pay the price to keep our country safe. Our Nation's Armed Forces are the best in the world. And we know that it is not only the person who wears our Nation's uniform that serves. Their loved ones serve as well. Today, we also honor the families, caregivers, and survivors of our Armed Forces—all those who sacrifice on our behalf and who give their all to support the service members they stand behind.

On Armed Forces Day, we salute our brave service members, whose dedication and sacrifice ensure that our Nation's Armed Forces are unmatched in strength, unity, and resilience. They are the greatest fighting force the world has ever known.

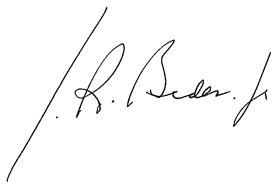
NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, and Commander in Chief of the Armed Forces of the United States, continuing the precedent of my predecessors in office, do hereby proclaim the third Saturday of each May as Armed Forces Day.

I direct the Secretary of Defense, on behalf of the Army, Navy, Air Force, Marine Corps, Space Force, and the Secretary of Homeland Security on behalf of the Coast Guard, to plan for appropriate observances each year, with the Secretary of Defense responsible for soliciting the participation and cooperation of civil authorities and private citizens. I invite the Governors of the States, the Commonwealth of Puerto Rico, and other areas subject to the jurisdiction of the United States to provide for the observance of Armed Forces Day within their respective jurisdictions each year in an appropriate manner designed to increase public understanding and appreciation of the Armed Forces of the United States. I also invite veterans, civic leaders, and other organizations to join in the observance of Armed Forces Day each year.

Finally, I call upon all Americans to display the flag of the United States at their homes and businesses on Armed Forces Day, and I urge citizens to learn more about military service by attending and participating in the local observances of the day.

Proclamation 10210 of May 14, 2021, is hereby superseded.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of May, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-sixth.



[FR Doc. 2022–11322
Filed 5–23–22; 11:15 am]
Billing code 3395–F2–P

Presidential Documents

Proclamation 10401 of May 20, 2022

National Maritime Day, 2022

By the President of the United States of America

A Proclamation

From sea to shining sea, whether in still or raging waters, America has always been a Nation of maritime travel. Across our 25,000 miles of waterways and over 360 commercial ports, the United States Merchant Marine is integral to our Nation's prosperity. From helping move goods throughout the supply chain to supporting our troops wherever they are deployed, the Merchant Marine plays a vital role in the economic security and defense of our country. On National Maritime Day and every day, we honor the Merchant Marines for their service and sacrifice and acknowledge their crucial role in protecting our Nation's security and commerce.

Today, our Merchant Marine remains inextricably linked to our national and economic security and competitiveness. Merchant mariners' legacy of perseverance and dedication is carried on by today's civilian mariners. As tyranny and violence again cause the tragic loss of innocent lives and senseless destruction in Europe, our merchant mariners have answered the call of duty by crewing vessels of our United States Ready Reserve, moving vital military cargo to help the Ukrainian people in their defense of freedom.

We also salute the remarkable efforts of our entire maritime industry throughout the COVID–19 pandemic. They put the well-being of the American people first, risking their lives to ensure that essential cargoes of medical supplies and personal protective equipment were delivered to those in need across our Nation.

As we continue to build a better America, our Merchant Marine plays a pivotal role in securing our coastal and inland waterways so that they are open to trade. No matter the hardship, mariners provide a smooth passage for America's critical domestic goods and serve as stewards of our Nation's trading gateways with the rest of the world. My Administration continues its unwavering support of the United States Merchant Marine, as well as the Jones Act, which protects the integrity of our domestic maritime industry, supports hundreds of thousands of jobs, and contributes over $150 billion in economic benefits.

We also know that the future success of the vital maritime industry depends on its ability to attract the talent of all Americans and reflect the diversity of the Nation it serves. That is why we are resolved to continue the urgent work of advancing diversity, equity, and inclusion in the ranks of the Merchant Marine and to end sexual assault, sexual harassment, and bullying in the workplace.

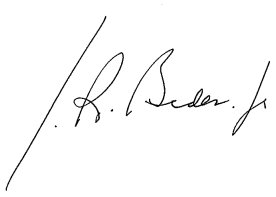
Our Nation's merchant mariners serve with honor and integrity each and every day. Today, we recognize their service and sacrifice and recommit ourselves to fulfilling the promises and uplifting the values that they continue to protect.

The Congress, by a joint resolution approved May 20, 1933, has designated May 22 of each year as ''National Maritime Day'' to commemorate the first transoceanic voyage by a steamship in 1819 by the S.S. Savannah. By this resolution, the Congress has authorized and requested the President to issue annually a proclamation calling for its appropriate observance.

I also request that all ships sailing under the American flag dress ship on that day.

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 May 22, 2022, as National Maritime Day. I call upon all Americans to observe this day and to celebrate the United States Merchant Marine and maritime industry with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of May, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-sixth.



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Tuesday, May 24, 2022

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